

Appeal brought on 5 September 2012 by YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH against the judgment of the General Court (Third Chamber) delivered on 27 June 2012 in Case T-448/07: YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH v European Commission

(Case C-408/12 P)

(2012/C 343/12)

Language of the case: English

Parties

Appellants: YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH (represented by: D. Arts, W. Devroe, advocaten, E. Winter, Rechtsanwältin, F. Miotto, Advocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court of 27 June 2012 in Case T-448/07, YKK Cop., YKK Holding Europe BV and YKK Stocko Fasteners GmbH v. European Commission;
- annul Article 2(1) and Article 2(3) of the contested Decision in so far as it concerns the Appellants and/or to reduce the relevant fines;
- order the European Commission to pay the costs at first instance and for the present appeal.

Pleas in law and main arguments

In their first ground of appeal, the Appellants submit that the General Court erred in law by not adequately stating its reasons for rejecting their plea relating to the disproportionate starting amount of the fine, which makes it impossible for the Appellants to determine whether the General Court rejected their plea on the ground that the Commission (a) took sufficient account of the impact of the infringement on the market; or (b) did not take account of the impact of the infringement on the market because it did not have to. Secondly, should it appear that the General Court ruled that the Commission took sufficient account of impact on the market, the Appellants submit that, in so doing, the General Court misinterpreted the contested Decision and infringed EU law, in particular Article 23(2) and (3) of Regulation 1/2003⁽¹⁾ and the case law of the ECJ, which require that the Commission, where it considers it

appropriate to take into account impact on the market in order to increase the starting amount of the fine to more than the minimum likely amount of EUR 20 million fixed by the Guidelines⁽²⁾, must provide specific, credible and adequate evidence to assess the actual influence of the infringement on competition in that market. Thirdly, should it appear that the General Court ruled that the Commission did not take into account impact on the market because it did not have to, the Appellants submit that, in so doing, the General Court misapplied EU law, according to which sanctions under national and EU law do not only have to be real and deterrent but also proportionate to the infringement committed.

In their second ground of appeal, the Appellants submit that the General Court did not adequately state reasons for rejecting the applicants' plea concerning the Commission's failure to apply the 2002 Leniency Notice. The Appellants submit that, in any event, the General Court's judgment misinterprets EU law, in particular the *lex mitior* principle, according to which the more lenient law must apply retroactively.

In their third ground of appeal, the Appellants submit that, by dismissing the applicants' plea relating to the incorrect application by the Commission of the 10 % ceiling to the fine in relation to the BWA cooperation for the period preceding Stocko's acquisition by YKK, for which Stocko is considered to be solely and exclusively liable, the General Court infringed Article 23(2) of Regulation 1/2003 including the inherent principle of proportionality, the principle that penalties must be specific to the individual and the offence, according to which an undertaking may be penalised only for acts imputed to it individually, and the principle of equal treatment.

In their fourth ground of appeal, the Appellants submit that, in dismissing the applicants' plea concerning the incorrect application by the Commission in the contested Decision of the multiplier for the period preceding the acquisition of Stocko, the General Court provided an inadequate statement of reasons and that, in any event, the General Court violated Article 23(2) of Regulation 1/2003, the enshrined principle that penalties must be specific to the individual concerned and the related principle of proportionality as well as the principle of equal treatment, by accepting that the increase for deterrence was justified for the period prior to Stocko's acquisition by YKK, for which Stocko has been held solely and exclusively liable.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
OJ 2003, L 001, p. 1.

⁽²⁾ Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty
OJ 1998 C 9, p. 3.