

C/2024/2932

6.5.2024

Appeal brought on 29 February 2024 by JPMorgan Chase & Co., JPMorgan Chase Bank, National Association against the judgment of the General Court (Tenth Chamber, Extended Composition) delivered on 20 December 2023 in Case T-106/17, JPMorgan Chase and Others v Commission

(Case C-160/24 P)

(C/2024/2932)

*Language of the case: English***Parties**

Appellants: JPMorgan Chase & Co., JPMorgan Chase Bank, National Association (represented by: M. Lester KC, D. Piccinin KC, D. Heaton, Barrister, P. Luckhurst, BL, B. Tormey, N. Frey, D. Das, A. Holroyd, D. Hunt, N. English, L. Ream, Solicitors)

Other party to the proceedings: European Commission

Form of order sought

The Appellants claim that the Court should:

- set aside paragraphs 3 to 5 of the operative part of the judgment under appeal;
- annul Article 1(c) of the Decision ⁽¹⁾, and
- order the Commission to pay the Appellants' costs of the proceedings, including the costs of the Appellants before the General Court and the Court of Justice.

Pleas in law and main arguments

In support of the appeal, the Appellants rely on three pleas in law.

First plea: the General Court erred in law in finding that JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association (together, 'JPMC') trader "participated in conduct with the aim of manipulating Euribor rates" in the communications of 27, 28 and 29 September 2006, 2, 25 and 26 October 2006, 8 November 2006, 18 December 2006, 4 and 8 January 2007, 6 February 2007, and 16 and 19 March 2007. First part: the General Court made factual findings that go beyond the findings in the Decision and thereby exceeded its jurisdiction in an application for annulment by substituting its own reasoning for that of the author of the contested act. Second part: the General Court failed properly to apply the burden and standard of proof. Third part: the General Court distorted the evidence. Fourth part: the General Court failed to address the arguments and evidence submitted by JPMC and thereby failed to comply with the duty to state reasons. Fifth part: the General Court wrongly found that there was a requirement for JPMC to publicly distance itself from the conduct of certain other undertakings and thereby misapplied the case law on public distancing.

Second plea: the General Court erred in law by finding that the communications of 13 November 2006 and 14 March 2007 were within the scope of the infringement. Neither communication pursued the objective identified by the Commission in its finding of a single and continuous infringement which restricted competition by object.

Third plea: the General Court erred in law in its approach to the penalty. First part: in using the Commission's reduction factor to calculate the fine the General Court (i) failed to give adequate reasons, (ii) failed to address JPMC's arguments directed to the discount factor, (iii) breached Article 47 of the Charter of Fundamental Rights and (iv) imposed a fine that was manifestly disproportionate. Second part: the General Court failed to address JPMC's key point, and almost all of its arguments, on whether allocated franchise revenue or discounted cash receipts should be used to assess value of sales, and thereby breached the duty to give reasons, the duty to examine JPMC's arguments, Article 47 of the Charter and, in any event, imposed a fine that is manifestly disproportionate. Third part: in respect of the use of full within contract netting by another undertaking subject to a penalty in the same case, the General Court distorted the evidence and infringed the principle of equal treatment. Fourth and fifth parts: in respect of the exclusion of "hybrids" and "exotics" from the value of sales by other undertakings subject to a penalty in the same case, the General Court distorted the evidence and infringed the principle of equal treatment.

⁽¹⁾ Commission Decision C(2016) 8530 final of 7 December 2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39914 – Euro Interest Rate Derivatives (EIRD)).