



Reports of Cases

Case C-434/13 P

European Commission
v
Parker Hannifin Manufacturing Srl
and
Parker-Hannifin Corp.

(Appeals — Agreements, decisions and concerted practices — European market for marine hoses — Succession of legal entities — Attributability of unlawful conduct — Reduction of the fine by the General Court — Unlimited jurisdiction)

Summary — Judgment of the Court (First Chamber), 18 December 2014

1. *Judicial proceedings — Oral part of the procedure — Reopening — Conditions*

(Rules of Procedure of the Court of Justice, Art. 83)

2. *Competition — EU rules — Infringements — Attribution — Infringement committed by an entity which did not cease to exist and continued by another entity which succeeded it in the economic activity of the market concerned — Attribution of the entire infringement to that other entity — Lawfulness — Existence of a situation of economic continuity — Criteria for assessment — Relevant date for the purpose of that assessment*

(Art. 81(1) EC)

3. *Competition — EU rules — Infringements — Attribution — Infringement committed by an entity which did not cease to exist and continued by another entity which succeeded it in the economic activity of the market concerned — Attribution of the entire infringement to that other entity — Existence of a situation of economic continuity — Assessment — Presumption that a transferor entity exercises decisive influence over a wholly-owned transferee entity — Rebuttable presumption*

(Art. 81(1) EC)

4. *Competition — Fines — Amount — Determination — Commission's discretion — Judicial review — Unlimited jurisdiction of the EU judicature — Scope — Limits — Compliance with the obligation to state reasons*

(Statute of the Court of Justice, Arts 36 and 53, first para.; Council Regulation No 1/2003, Art. 31)

5. *Appeals — Cross-appeal — Admissibility — Obligation to bring a cross-appeal by a separate document*

(Rules of Procedure of the Court of Justice, Art. 176(2))

1. See the text of the decision.

(see paras 27-30)

2. EU competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed. When such an entity infringes competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.

When an entity that committed an infringement of the competition rules is subject to a legal or organisational change, that change does not necessarily create a new undertaking free of liability for its predecessor's infringements of the competition rules, when, from an economic point of view, the two are identical. Thus, where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred.

As regards, in particular, the transfer by a parent company of its activities in the sector in which the infringement of the competition rules occurred to one of its subsidiaries, the relevant date for assessing whether the transfer of activities is within a group or between independent undertakings, for the purpose of establishing the existence of economic continuity, must be that of the transfer itself.

Whilst in order to establish the existence of economic continuity there must, on that date, be structural links between the transferor and the transferee on the basis of which it may be considered, in accordance with the principle of personal responsibility, that the two entities form a single undertaking, those links need not, in view of the purpose of the principle of economic continuity, subsist throughout the rest of the infringement period or until the adoption of a decision penalising the infringement. Nor is it necessary that the structural links on the basis of which economic continuity may be established subsist for a minimum period.

In that context, the principle of legal certainty precludes taking into consideration, for the purpose of examining the existence of economic continuity, the objective of the transfer of activities. The taking into consideration of the economic reasons which led to that transfer would introduce into the application of the principle of economic continuity subjective factors which are incompatible with a transparent and predictable application of that principle.

(see paras 39-41, 50-53)

3. See the text of the decision.

(see paras 57-65)

4. As regards judicial review of Commission decisions imposing a fine for infringement of the competition rules, the review of legality is supplemented by the unlimited jurisdiction which Article 31 of Regulation No 1/2003 confers on the Courts of the European Union. Under that jurisdiction, the Courts, in addition to carrying out a mere review of the lawfulness of the penalty, may substitute their own appraisal for the Commission's and, consequently, cancel, reduce or increase the fine or penalty payment imposed.

The General Court is bound, when exercising its unlimited jurisdiction, by certain requirements. Those requirements include the duty to state reasons, by which it is bound in accordance with Article 36 of the Statute of the Court, applicable to the General Court under the first paragraph of Article 53 of the Statute, and the principle of equal treatment.

The General Court breaches the duty to state reasons if, in the exercise of its unlimited jurisdiction, it reduces the amount of the fine imposed on a subsidiary for which the parent company must be held jointly and severally liable without providing the information necessary to enable the parties concerned to understand why it set at that level the amount of the fine attributable to that parent company, and, moreover, to enable the Court to review the lawfulness of that reduction.

(see paras 74, 77, 84-86)

5. See the text of the decision.

(see paras 91-97)