



Reports of Cases

Case C-231/14 P

InnoLux Corp.
v
European Commission

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101 TFEU — Article 53 of the EEA Agreement — Worldwide market for liquid crystal display (LCD) panels — Price-fixing — Fines — Guidelines on the method of setting fines (2006) — Point 13 — Determination of the value of sales to which the infringement relates — Internal sales of the goods concerned outside the EEA — Inclusion of sales to third parties in the EEA of finished products incorporating the goods concerned)

Summary — Judgment of the Court (Third Chamber), 9 July 2015

1. *Judicial proceedings — Oral part of the procedure — Reopening — No obligation to reopen the oral part of the procedure in order to allow the parties to submit observations in response to the Advocate General's Opinion*

(Art. 252, second para., TFEU; Statute of the Court of Justice, Art. 23; Rules of Procedure of the Court of Justice, Art. 83)

2. *Competition — Fines — Amount — Determination — Calculation of the basic amount of the fine — Determination of the value of sales — Criteria — Account taken of sales to undertakings integrated vertically into the incriminated undertaking — Lawfulness — Account taken of the value of the goods the subject of the infringement into finished products sold by third parties by subsidiaries — Lawfulness*

(Art. 101(1) TFEU; Council Regulation No 1/2003, Art. 23(2); Commission Notice 2006/C 210/02, para. 13)

3. *Appeals — Grounds — Mistaken assessment of the facts — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted*

(Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.)

4. *Competition — Fines — Penalties imposed by EU institutions and penalties imposed in a non-member country for infringement of national competition law — No infringement of the principle *ne bis in idem**

(Council Regulation No 1/2003, Art. 23)

1. See the text of the decision.

(see paras 26-29)

2. For the purposes of determining the amount of the fine for an infringement of competition law, the concept of the value of sales referred to in point 13 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 encompasses the sales made on the market concerned by the infringement in the European Economic Area (EEA), and it is not necessary to determine whether those sales were genuinely affected by that infringement, since the proportion of the overall turnover deriving from the sale of goods in respect of which the infringement was committed is best able to reflect the economic importance of that infringement. Admittedly that concept cannot extend to encompassing sales made by the undertaking in question which in no way fall within the scope of the alleged cartel. It would, however, be contrary to the goal pursued by Article 23(2) of Regulation No 1/2003 if the vertically-integrated participants in a cartel could, solely because they incorporated the goods the subject of the infringement into the finished products outside the EEA, expect to have excluded from the calculation of the fine the proportion of the value of their sales of those finished products in the EEA that are capable of being regarded as corresponding to the value of the goods the subject of the infringement.

Vertically-integrated undertakings may benefit from a horizontal price-fixing agreement concluded in breach of Article 101 TFEU, not only when sales are made to independent third parties on the market for the goods the subject of the infringement, but also on the downstream market in processed goods made up of, inter alia, the goods which are the subject of the infringement, for two different reasons. Either the price increases of the inputs which result from the infringement are passed on by those undertakings in the price of the processed goods, or those undertakings do not pass these increases on, which thus effectively grants them a cost advantage in relation to their competitors which obtain those same inputs on the market for the goods which are the subject of the infringement. Such a limitation would, in addition, have the effect of artificially minimising the economic significance of the infringement committed by a particular undertaking, since the mere fact such sales genuinely affected by the cartel in the EEA are excluded from being taken into account would lead to the imposition of a fine which bore no actual relation to the scope of application of the cartel in question.

Taking account of those internal sales of the goods, which took place outside the EEA within a vertically-integrated undertaking, for the purposes of setting the fine does not fall outside the Commission's territorial jurisdiction. The Commission has jurisdiction to apply Article 101 TFEU to a worldwide cartel, since the cartel participants implemented that cartel in the EEA by making direct sales in the EEA of the goods concerned by the infringement to independent third parties. Where that is the case, it is important that the value of sales taken into account for the calculation of the fine reflects the economic importance of the infringement as well as the relative weight of the undertaking concerned in the infringement.

(see paras 51, 55, 56, 62, 70-74)

3. See the text of the decision.

(see paras 59-61)

4. See the text of the decision.

(see para. 75)