

**Parties to the main proceedings**

*Applicant:* 'Vekos trade' AD

*Defendant:* Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika', Varna, pri Tsentralno Upravlenie na Natsionalnata agentsia za prihodite

**Questions referred**

1. Are the principles of fiscal neutrality, proportionality and protection of legitimate expectations violated by administrative practice and case-law according to which it is for the vendor — the consignor under the transport contract — to determine the authenticity of the acquirer's signature and to establish whether it comes from a person representing the company (the acquirer), one of its employees in a corresponding position or an authorised person?
2. In a case such as the present does Article 138(1) of Council Directive 2006/112/EC <sup>(1)</sup> of 28 November 2006 on the common system of value added tax have direct effect, and can the national court directly apply the provision?

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<sup>(1)</sup> OJ 2006 L 347, p. 1.

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**Appeal brought on 28 August 2014 by Intel Corporation against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 12 June 2014 in Case T-286/09: Intel Corporation v European Commission**

**(Case C-413/14 P)**

(2014/C 395/31)

*Language of the case: English*

**Parties**

*Appellant:* Intel Corporation (represented by: Messrs D. M. Beard QC, A. N. Parr and R. W. Mackenzie, Solicitors)

*Other parties to the proceedings:* European Commission,

Association for Competitive Technology, Inc.,

Union fédérale des consommateurs — Que choisir (UFC — Que choisir)

**Form of order sought**

The appellant claims that the Court should:

- set aside in whole or in part the judgment under appeal;
- annul in whole or in part the contested decision;
- cancel or substantially reduce the fine imposed;
- in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice;
- order the Commission to pay the costs of these proceedings and of the proceedings before the General Court.

**Pleas in law and main arguments**

By the first ground of appeal, which is divided in three parts, the Appellant claims that the General Court applied the wrong legal standard to assess the legality of its conduct under Article 82 EC and Article 54 of the EEA Agreement:

The General Court erred in concluding that the conduct in question was inherently capable of restricting competition and thus may be found contrary to Article 82 EC and Article 54 of the EEA Agreement without any need to consider all of the relevant facts and circumstances surrounding it.

The General Court erred in concluding that in order to establish an infringement of Article 82 EC and Article 54 of the EEA Agreement, capability to restrict competition may be assessed on the basis of abstract considerations rather than likely or actual effects.

The General Court erred in its alternative finding that the conduct in question was capable of restricting competition, because the Court erroneously took account of factors that cannot establish that capability and disregarded a number of relevant factors that should have been considered, such as the market coverage of the practice, the duration of the alleged practices, actual market evidence of rapidly declining prices and a lack of foreclosure, and the conclusions to be properly drawn from the as-efficient competitor (AEC) test carried out by the Commission during the administrative proceeding.

By the second ground of appeal, the Appellant claims that the General Court erred in finding an infringement for the final two years of the alleged period of infringement, given that, at most, the market coverage of the conduct during those years would have affected a mere 3.5 % of the relevant market.

By the third ground of appeal, the Appellant claims that the General Court erred by classifying its conduct with HP and Lenovo as 'exclusivity rebates' when that conduct concerned only 28 % and 42 % (or less) of each customer's total purchases of the relevant product, respectively, falling well short of 'all or most' of these customers' requirements.

By the fourth ground of appeal, the Appellant claims that the General Court violated the principles of effective judicial protection and procedural fairness in relation to a five-hour interview that the Commission had with a key Dell executive on questions bearing an objective link with the substance of the investigation, and during which the key Dell executive provided very detailed explanations. The General Court erred by concluding that it was sufficient for the Commission to disclose a mere list of the topics that were discussed during the interview, rather than a record or summary of what the interviewee said in relation to these topics. The General Court also erred by concluding that the Appellant had the burden to adduce prima facie evidence that the Commission failed to record exculpatory evidence; properly understood, the Appellant's burden was only to show that it could not be excluded that the material might have been of use for its defence, a burden that it clearly met in this case.

By the fifth ground of appeal, which is divided in three parts, the Appellant claims that the General Court incorrectly established Community jurisdiction over Intel's agreements with Lenovo in 2006 and 2007:

The General Court erred in concluding that this conduct was 'implemented' in the EEA, because Intel did not sell any products to Lenovo in the EEA under these agreements.

The General Court erred in concluding that the 'qualified effects' test is an appropriate basis for Community jurisdiction over the conduct in question.

The General Court erred in applying the 'qualified effects' tests because it was not foreseeable that Intel's agreements with Lenovo regarding x86 CPUs for delivery in China would have an immediate and substantial effect within the EEA.

By the sixth ground of appeal, which is divided in two parts, the Appellant claims that the General Court committed various errors in calculating the fine imposed:

The fine was manifestly disproportionate.

The General Court violated fundamental principles of EU law by applying the Commission's 2006 fining guidelines to conduct that had pre-dated them.

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