

**Action brought on 19 September 2014 — Lupin v Commission****(Case T-680/14)**

(2014/C 439/43)

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

*Applicant:* Lupin Ltd (Maharashtra, India) (represented by: M. Pullen, R. Fawcett-Feuillette, M. Boles, Solicitors, V. Wakefield, Barrister, and M. Hoskins QC)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- declare the Decision void insofar as it finds that Lupin infringed Article 101 TFEU; and/or
- set aside or reduce the fine imposed on Lupin; and
- require the Commission to pay Lupin's costs of these proceedings.

**Pleas in law and main arguments**

By its present action, the applicant seeks the annulment, in part, of Commission Decision C(2014) 4955 final of 9 July 2014 in case AT.39612 — Perindopril (Servier).

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the Commission erred in law insofar as it found that the applicant had committed an infringement *by object* of Article 101 TFEU. The applicant submits that:
    - the Commission's finding is unlawful because it applies a wholly novel and incorrect legal test. In particular, it is dependent upon the payment of a 'significant inducement', which according to the applicant is not reflected in the existing case-law and is wrong as a matter of law;
    - the Commission's approach fails to recognise and give effect not just to the objectives of competition law, but also those of patent law and modern civil procedure. According to the applicant, the Commission should have assessed the question of restriction by object by reference to the ancillary restraints doctrine and/or by reference to the principles recognised in the Wouters judgment. Its failure to do so was wrong in law.
  2. Second plea in law, alleging that the Commission erred in law insofar as it found that the applicant had committed an infringement *by effect* of Article 101 TFEU. The applicant considers that the Commission's approach to determining whether a patent settlement agreement was an infringement by effect suffered from the same flaws as its approach to object infringements.
  3. Third plea in law, alleging that the Commission was wrong to impose any fine upon the applicant, alternatively the fine imposed was too high and should be reduced. The applicant contends that:
    - its alleged wrong-doing was novel and merits no fine, alternatively only a symbolic fine;
    - the fine fails to reflect the relative gravity and duration of the applicant's alleged infringement and is unfair;
    - the Commission failed to take account of the legitimate value of the intellectual property transferred by the applicant to Servier;
    - the Commission breached the principle of equal treatment in comparison with the fine imposed on Krka.
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