



Reports of Cases

Case C-411/15 P

**Timab Industries
and
Cie financière et de participations Roullier (CFPR)
v
European Commission**

(Appeal — Agreements, decisions and concerted practices — European market for animal feed phosphates — Allocation of sales quotas, coordination of prices and conditions of sale and exchange of commercially sensitive information — Appellants' withdrawal from the settlement procedure — Unlimited jurisdiction — Protection of legitimate expectations and of equal treatment — Reasonable length of proceedings)

Summary — Judgment of the Court (Tenth Chamber), 12 January 2017

- Judicial proceedings — Oral part of the procedure — Reopening — Conditions*
(Statute of the Court of Justice, Art. 23; Rules of Procedure of the Court of Justice, Art. 83)
- Appeal — Grounds — Review by the Court of the findings of fact — Possible only where the clear sense of the evidence has been distorted — Control of the observance of the general principles of law and of the rules of evidence*
(Art. 256 TFEU; Statute of the Court of Justice, Art. 58, first para)
- Competition — Administrative procedure — Request for information — Rights of defence — Right to refuse to provide an answer implying recognition of the existence of an infringement*
(Council Regulation No 1/2003, Art. 18)
- Competition — Fines — Amount — Determination — Non-imposition or reduction of the fine for cooperation of the undertaking concerned — Need for conduct which facilitated the Commission's finding of an infringement — Discretion of the Commission*
(Council Regulation No 1/2003, Art. 23(2); Commission Notice 2002/C 45/03)
- Appeal — 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)

6. *Competition — Fines — Amount — Determination — Discretion of the Commission — Judicial review — Unlimited jurisdiction of the EU judicature — Scope*

(Art. 261 TFEU and 263 TFEU; Council Regulation No 1/2003, Art. 31; Commission Notice 2002/C 45/03 and 2006/C 210/02, paragraph 29)

7. *Competition — Administrative procedure — Settlement procedure — Indication of a range of fines — Withdrawal of an undertaking from the settlement procedure — Commission not applying that range of fines in the final decision — Lawfulness — Breach of principle of the protection of legitimate expectation — None*

(Council Regulation No 1/2003; Commission Notices 2002/C 45/03 and 2006/C 210/02)

8. *Appeal — Grounds — Error of law relied on not identified — Ground lacking precision — Inadmissibility*

[Art. 256(1), para 2 TFEU; Statute of the Court of Justice, Art. 58, first para; Rules of Procedure of the Court of Justice, Art. 168(1)(d)]

9. *Appeal — Grounds — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted — Ground of appeal alleging distortion of the clear sense of the evidence — Material inaccuracy of the finding not clear from the case-file — Inadmissibility*

(Art. 256(1), para 2 TFEU; Statute of the Court of Justice, Art. 58, first para)

10. *Appeal — Grounds — Mere repetition of the pleas and arguments put forward before the General Court — Inadmissibility — Challenge to the General Court's interpretation or application of EU law — Admissibility*

(Art. 256 EC; Statute of the Court of Justice, Art. 58, para 1 1 Rules of Procedure of the Court of Justice, art. 168(1)(d) and 169 Art. 169(2)]

11. *Judicial proceedings — Duration of the proceedings before the General Court — Reasonable time — Dispute concerning whether there has been an infringement of the competition rules — Failure to act within a reasonable time — Consequences — Non-contractual liability — Composition of the judgment formation*

(Art. 101 TFEU, 102 TFEU, 256(1), TFEU, 268 TFEU and 340, para 2, TFEU; Charter of Fundamental Rights of the European Union, Art. 47, para 2

12. *Judicial proceedings — Duration of the proceedings before the General Court — Reasonable time — Criteria for assessment*

(Art. 101 TFEU, 102 TFEU, 256(1), TFEU, 268 TFEU and 340, para 2, TFEU; Charter of Fundamental Rights of the European Union, Art. 47, para 2

1. See the text of the decision.

(see para 47)

2. See the text of the decision.

(see paras 58, 59)

3. See the text of the decision.

(see para 83)

4. See the text of the decision.

(see paras 84-86)

5. See the text of the decision.

(see para 89)

6. With regard to judicial review of decisions whereby the Commission imposes a fine or periodic penalty payment for infringement of the competition rules, in addition to the review of legality provided for in Article 263 TFEU, the European Union judicature has the unlimited jurisdiction which it is afforded by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU, and which empowers it to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or periodic penalty payment imposed. In that regard, it is not for the Court of Justice, when ruling on questions of law in the context of an appeal, to substitute, on grounds of fairness, its own assessment for that of the General Court exercising its unlimited jurisdiction to rule on the amount of fines imposed on undertakings for their infringement of EU law. It is only in so far as the Court of Justice considers that the level of the penalty is not merely inappropriate, but also excessive to the point of being disproportionate, that it would have to find that the General Court erred in law, due to the inappropriateness of the amount of a fine.

In the present case, although the General Court did ensure that all the arguments by which the appellants had criticised the Commission for having applied, to an undertaking which had withdrawn from the settlement procedure, a fine higher than the maximum in the range envisaged during the settlement discussions, and for a considerably reduced period of infringement, such an analysis is subject to compliance with the principles of sound administration of justice and transparency. The General Court cannot therefore be criticised for having carried out such a comprehensive examination in the context of a dispute which, for the first time, led it to rule on a situation in which an undertaking, after engaging in a settlement procedure, had finally withdrawn from it. However, the General Court fully exercised its unlimited jurisdiction by reviewing in depth both the legality of the contested decision and the appropriateness of the amount of the fine stipulated in that decision.

Thus, the General Court duly verified the merits of the Commission's analysis having regard to all the circumstances present when the contested decision was adopted and in view of the extent of the cooperation of the appellants after their withdrawal from the settlement procedure, and hence during the ordinary procedure. The General Court also systematically examined the factors adopted by the Commission to calculate the amount of the fine imposed in the contested decision. In particular, it carried out a detailed examination of the way in which the Commission took account of the factors allowing it to grant reductions of that fine or otherwise, under the leniency notice, or, in respect of cooperation, in accordance with point 29 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. Moreover, it must be held that the appellants have failed to demonstrate how the amount of the fine imposed on them is excessive, to the extent of being disproportionate.

(see paras 104-106, 108-112)

7. The principle of the protection of legitimate expectations is among the fundamental principles of EU law and any economic operator whom an institution has, by giving him precise assurances, caused to entertain justified expectations may rely on that principle. Furthermore, the Commission cannot, in

the procedural stage preceding the adoption of the final decision, give any precise assurance as to any reduction of, or immunity from, fines and that the participants in the cartel cannot therefore entertain a legitimate expectation in that regard.

First, the settlement procedure is an alternative administrative procedure distinct from the standard procedure and which has certain special features such as, *inter alia*, notification of a likely range of fines. Secondly, if the undertaking does not put forward a proposal for a settlement, the procedure leading to the final decision is governed by the general provisions of Regulation No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 101 and 102 TFEU, instead of those governing the settlement procedure.

Thirdly, as regards that standard procedure, in which liabilities have yet to be determined, the Commission is only bound by the statement of objections, which does not set a range of fines, and is required to take into consideration the new information brought to its attention during that procedure. In the present case, the appellants withdrew from the settlement procedure and it was only after that withdrawal that they put forward, in the context of the standard procedure, evidence of reduction of the duration of their participation in the alleged infringement.

Consequently, the appellants could not rely on any legitimate expectation that the estimates transmitted to them by the Commission during the settlement procedure, in the form of likely ranges of fines fixed in the light of the factors taken into consideration at that stage of the procedure, would be maintained. Moreover, when the appellants withdrew from the settlement procedure, they were in possession of all the information they required to foresee that disputing their involvement in the infringement during the period prior to the year in question would necessarily have an effect on the reductions they might be granted both in the context of the notice on immunity from fines and reduction of fines in cartel cases and under point 29 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. Accordingly, the General Court cannot be accused of any breach of the principle of the protection of legitimate expectations.

(see paras 134-139)

8. See the text of the decision.

(see paras 140-142)

9. See the text of the decision.

(see para 153)

10. See the text of the decision.

(see paras 154, 155, 157)

11. See the text of the decision.

(see paras 165, 166)

12. A claim for compensation in respect of the damage caused by the General Court's failure to adjudicate within a reasonable period may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself, an action for damages constituting an effective remedy. That said, where it is clear, without any need for the parties to adduce additional evidence in that regard, that the General Court infringed, in a sufficiently serious manner, its obligation to adjudicate on the case within a reasonable time, the Court of Justice may note that fact. Consequently, the Court may, in the context of the appeal, find that there has been a breach of the

right to a fair trial, as guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, given the unreasonable length of the proceedings before the General Court.

As regards the criteria for assessing whether the General Court has observed the reasonable time principle, the reasonableness of the period for delivering judgment is to be appraised in the light of the circumstances specific to each case, such as the complexity of the case and the conduct of the parties. In that regard, the list of relevant criteria is not exhaustive and the assessment of the reasonableness of that period does not require a systematic examination of the circumstances of the case in the light of each factor where the duration of the proceedings appears justified in the light of one of them. Thus, the complexity of the case or the dilatory conduct of the appellant may be deemed to justify a duration which is *prima facie* too long.

(see paras 165, 167 -169)