



Reports of Cases

Case T-222/17

(publication in extract form)

Recylex SA and Others

v

European Commission

Judgment of the General Court (Eighth Chamber) of 23 May 2019

(Competition — Agreements, decisions and concerted practices — Market for lead-acid car battery recycling — Decision finding an infringement of Article 101 TFEU — Coordination of purchase prices — Fines — Point 26 of the 2006 Leniency Notice — Point 37 of the Guidelines on the method of setting fines — Unlimited jurisdiction)

1. *Competition — Fines — Amount — Determination — Commission Notice on immunity from fines and reduction of fines in exchange for the cooperation of the undertakings concerned — Whether binding on the Commission*
(Art. 101 TFEU; Commission Notice 2006/C 298/11, point 38)

(see paragraph 142)

2. *Competition — Fines — Amount — Determination — Reduction of the fine in exchange for the cooperation of the undertaking concerned — Conditions — Undertaking being the first to provide compelling evidence — Assessment criteria*
(Art. 101 TFEU; Commission Notice 2006/C 298/11, points 12, 24 and 30)

(see paragraphs 143, 145-151)

3. *Competition — Fines — Amount — Determination — Judicial review — Unlimited jurisdiction of the EU judiciary — Scope — Account taken of the Guidelines on the method of setting fines — Limits*
(Art. 261 TFEU; Council Regulation No 1/2003, Art. 31; Commission Notices 2006/C 210/02 and 2006/C 298/11)

(see paragraphs 160-162)

4. *Competition — Fines — Amount — Determination — Adjustment of the basic amount — Ability to pay — Obligation to take into consideration the poor financial situation of the undertaking concerned — None*
(Art. 101 TFEU; Commission Notice 2006/C 298/11, point 35)

(see paragraphs 164-166)

Résumé

By its judgment in *Recylex and Others v Commission* (T-222/17) of 23 May 2019, the General Court dismissed the action brought by Recylex SA, Fonderie et Manufacture de Métaux SA and Harz-Metall GmbH ('Recylex'), companies that are active in the production of recycled lead and other products, for a reduction of the fine imposed by the Commission in its decision¹ relating to an infringement of Article 101 TFEU. That infringement entailed agreements or concerted practices between four groups of undertakings covering the territories of Belgium, Germany, France and the Netherlands. It consisted in the coordination of purchase prices for scrap lead-acid car batteries used for the production of recycled lead.

The administrative procedure which led to the contested decision had been initiated following an application for immunity by JCI, one of the groups of undertakings concerned. Eco-Bat, another group of undertakings, and finally Recylex had, in turn, applied for immunity or, failing that, for a reduction of the fine under the Commission's 2006 Leniency Notice.² JCI had then been granted immunity while Eco-Bat had been granted a 50% reduction of the fine on the ground that it had been the first undertaking to provide evidence of significant added value. Recylex, the second undertaking to produce such evidence, had been granted a reduction of 30%.

In that context, the Court was required to determine whether, where two undertakings have provided evidence of significant added value, the undertaking which provided that evidence second could take the place of the first undertaking, if it transpired that the latter's cooperation did not meet the requirements of point 12 of the 2006 Leniency Notice.

The Court found that it is apparent in particular from the very logic of the 2006 Leniency Notice that the effect sought is to create a climate of uncertainty within cartels by encouraging those participating in them to denounce the cartels to the Commission. That uncertainty results precisely from the fact that the cartel participants know that only one of them can benefit from immunity from fines by denouncing the other participants in the infringement, thereby exposing them to the risk that they face being fined. In the context of that system, and according to the same logic, the undertakings that are quickest to provide their cooperation are supposed to benefit from greater reductions of the fines that would otherwise be imposed on them than those granted to the undertakings that are less quick to cooperate. The chronological order and the speed of the cooperation provided by the members of the cartel therefore constitute fundamental elements of the system put in place by the 2006 Leniency Notice.

¹ Commission Decision C(2017) 900 final of 8 February 2017 relating to a proceeding under Article 101 TFEU (Case AT.40018 — Car battery recycling).

² Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).