



Reports of Cases

Case T-799/17

Scania AB and Others

v

European Commission

Judgment of the General Court (Tenth Chamber, Extended Composition), 2 February 2022

(Competition – Agreements, decisions and concerted practices – ‘Truck manufacturers’ market – Decision finding an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement – Agreements and concerted practices in relation to the prices of trucks, the timing for the introduction of emission technologies and the passing on to customers of the costs relating to those technologies – ‘Hybrid’ procedure staggered over time – Presumption of innocence – Principle of impartiality – Charter of Fundamental Rights – Single and continuous infringement – Restriction of competition by object – Geographic scope of the infringement – Fine – Proportionality – Equal treatment – Unlimited jurisdiction)

1. *Judicial proceedings – Publicity of decisions – Duty of the EU Courts to ensure a fair balance between the publicity of decisions and the right to the protection of personal data – Request for omission of information which is in the public domain and which constitutes legal classifications or provides factual details – Rejection – Request for omission of information pending before the Hearing Officer in respect of the same information – Irrelevant (Art. 15 TFEU; Rules of Procedure of the General Court, Art. 66; Commission Decision 2011/695, Art. 8)*

(see paragraphs 80-83)

2. *Competition – Administrative procedure – Settlement procedure – Procedure not involving all the participants in a cartel – Withdrawal of an undertaking from the settlement procedure – Commission’s adoption of two decisions with different addressees, those decisions being based on the same evidence – Whether permissible – Conditions – Observance of the duty of impartiality and of the presumption of innocence – Scope (Art. 101 TFEU; Charter of Fundamental Rights of the European Union, Arts 41 and 48; Commission Regulation No 773/2004, Art. 10a)*

(see paragraphs 99-105, 125-158)

3. *EU law – Principles – Fundamental rights – Presumption of innocence – Procedure in competition matters – Applicability – Enshrinement of that principle by the European Convention on Human Rights and reaffirmation by the Charter of Fundamental Rights of the*

*European Union – Account being taken of that convention and the related case-law for the purposes of interpreting the Charter
(Art. 101 TFEU; Charter of Fundamental Rights of the European Union, Arts 48 and 52(3))*

(see paragraphs 108, 109)

4. *Competition – Administrative procedure – Settlement procedure – Procedure not involving all the participants in a cartel – Withdrawal of an undertaking from the settlement procedure – Commission’s adoption of two decisions with different addressees following two separate procedures staggered over time – Observance of the presumption of innocence – Settlement decision referring to the undertaking which decided to withdraw from the settlement procedure – Whether permissible – Conditions
(Art. 101 TFEU; Charter of Fundamental Rights of the European Union, Art. 48; Commission Regulation No 773/2004, Art. 10a)*

(see paragraphs 110-124)

5. *Competition – Administrative procedure – Settlement procedure – Procedure not involving all the participants in a cartel – Withdrawal of an undertaking from the settlement procedure – Commission’s adoption of two decisions with different addressees following two separate procedures staggered over time – Settlement decision adopted without the undertaking which decided to withdraw from the settlement procedure being heard – Observance of the rights of the defence – Conditions
(Art. 101 TFEU; Charter of Fundamental Rights of the European Union, Art. 48; Commission Regulation No 773/2004, Art. 10a)*

(see paragraphs 159-162)

6. *Competition – Administrative procedure – Observance of the rights of the defence – Access to the file – Subject matter – Communication of replies to the statement of objections – Conditions – Relevance of the replies of the other addressees of the statement of objections for the defence of the undertaking concerned – Burden of proof – Obligation of the undertaking concerned to adduce prima facie evidence of the usefulness of those replies for its defence
(Art. 101 TFEU; Charter of Fundamental Rights of the European Union, Art. 48(2); Council Regulation No 1/2003, Art. 27(2))*

(see paragraphs 169-190)

7. *Agreements, decisions and concerted practices – Prohibition – Infringements – Agreements and concerted practices constituting a single infringement – Attribution of liability for the entire infringement to an undertaking – Conditions – Unlawful practices and conduct forming part of an overall plan – Assessment – Criteria – Contribution to the single objective of the infringement – Knowledge or foreseeability of the overall plan of the agreement, decision or concerted practice and of its key elements – Assessment of that knowledge at the level of the undertaking – Requirement for a link of complementarity between the practices complained of – Absence*

(Art. 101(1) TFEU)

(see paragraphs 191-196, 206-210, 447-450, 478, 494-499)

8. *Competition – Administrative procedure – Commission decision finding an infringement – Commission’s burden of proving the infringement and its duration – Extent of the burden of proof – Degree of detail required in respect of the evidence used by the Commission – Body of evidence – Judicial review – Scope – Decision leaving a doubt in the mind of the Court – Observance of the principle of the presumption of innocence*
(Art. 101(1) TFEU; Charter of Fundamental Rights of the European Union, Art. 48(1))

(see paragraphs 197-200)

9. *Acts of the institutions – Statement of reasons – Obligation – Scope – Decision to apply competition rules – Decision enabling its addressee to understand the reasoning which led the Commission to adopt that decision and to challenge it before the EU Courts – No infringement of the duty to state reasons*
(Arts 101(1) and 296, second para., TFEU)

(see paragraphs 245-248)

10. *Agreements, decisions and concerted practices – Concerted practice – Concept – Coordination and cooperation incompatible with the obligation on each undertaking to determine independently its conduct on the market – Exchange of information between competitors – Anticompetitive object or effect – Presumption – Conditions*
(Art. 101(1) TFEU)

(see paragraphs 268-270, 315-323, 391)

11. *Agreements, decisions and concerted practices – Adverse effect on competition – Criteria for assessment – Content and objective of a cartel, and the economic and legal context of its development – Distinction between infringements by object and infringements by effect – Intention of the parties to an agreement to restrict competition – Not a necessary criterion – Infringement by object – Sufficient degree of harm – Criteria for assessment*
(Art. 101(1) TFEU)

(see paragraphs 309-314)

12. *Competition – EU rules – Infringements – Attribution – Attribution to an undertaking of the conduct of its bodies – Conditions – Action of a person authorised to act on behalf of the undertaking – Assessment*
(Art. 101 TFEU)

(see paragraphs 476, 477)

13. *Competition – Administrative procedure – Limitation period for fines – Point from which time starts to run – Single and continuous infringement*
(Art. 101 TFEU; Council Regulation No 1/2003, Art. 25)

(see paragraphs 515, 516)

14. *Competition – Administrative procedure – Commission decision finding an infringement – Commission’s burden of proving the infringement and its duration – Extent of the burden of proof – Proof adduced by a number of indicia and coincidences pointing to the existence and duration of continuous anticompetitive practices – Whether permissible*
(Art. 101(1) TFEU)

(see paragraphs 522, 523)

15. *Competition – Fines – Amount – Judicial review – Unlimited jurisdiction – Review of legality – Scope and limits – Unlimited jurisdiction strictly limited to determining the amount of the fine imposed*
(Arts 101, 261 and 263 TFEU; Council Regulation No 1/2003, Art. 31)

(see paragraphs 535-538)

16. *Competition – Fines – Amount – Determination – Principle of equal treatment – Scope*
(Art. 101(1) TFEU; Charter of Fundamental Rights of the European Union, Art. 20)

(see paragraph 559)

Résumé

The General Court dismisses Scania’s action and maintains the fine of EUR 880.52 million imposed by the Commission for Scania’s participation in a cartel between truck manufacturers

The Court provides clarification on, first, the legality of a ‘hybrid’ procedure combining the settlement procedure and the standard administrative procedure in cartel matters and, second, the concept of a single and continuous infringement

By decision of 27 September 2017 (‘the contested decision’),¹ the European Commission found that the companies Scania AB, Scania CV AB and Scania Deutschland GmbH, three entities of the Scania group, which produce and sell heavy trucks used for long-haulage transport (together, ‘Scania’), had infringed EU rules prohibiting cartels,² by participating, from January 1997 to January 2011, with their competitors, in collusive arrangements aimed at restricting competition on the market for medium and heavy trucks in the EEA. The Commission imposed a fine of EUR 880 523 000 on Scania.

¹ Commission Decision C(2017) 6467 final of 27 September 2017, relating to proceedings under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) (Case AT.39824 – Trucks).

² Article 101 TFEU and Article 53 of the EEA Agreement.

The contested decision was adopted following a ‘hybrid’ procedure combining the settlement procedure³ and the standard administrative procedure in cartel matters.

In the present case, each undertaking to which a statement of objections was addressed, including Scania, confirmed to the Commission its willingness to participate in settlement discussions. However, following discussions with the Commission, Scania decided to withdraw from that procedure. The Commission thus adopted a settlement decision in respect of the undertakings which had submitted a formal request in that regard,⁴ and continued the investigation concerning Scania.

By its judgment of 2 February 2022, the Court dismisses the action brought by Scania seeking annulment of the contested decision, and provides clarifications regarding the legality of a ‘hybrid’ procedure in cartel matters and the concept of a single and continuous infringement.

Findings of the Court

As regards the legality of the ‘hybrid’ procedure followed by the Commission, the Court begins by observing that, contrary to what Scania submitted, the Commission’s decision to follow such a procedure does not, in itself, entail an infringement of the presumption of innocence, the rights of the defence or the duty of impartiality. The provisions governing the settlement procedure do not preclude the Commission from being able to follow such a procedure in the context of the application of Article 101 TFEU. Furthermore, under the case-law, in such procedures, the Commission is entitled, initially, to adopt a settlement decision and then go on to adopt a decision following the standard procedure, provided that it ensures observance of the abovementioned principles and rights.

That being so, the Court examines whether, in the circumstances of the present case, the Commission observed those principles.

As regards the complaint alleging infringement of the principle of the presumption of innocence, Scania submitted that the settlement decision had defined the Commission’s final decision as regards the same facts as those set out in the statement of objections and had concluded, on the basis of the same evidence used in the contested decision, that those facts, in which Scania had also participated, constituted an infringement.

In that regard, the Court notes, in the first place, that none of the passages of the statement of reasons for the settlement decision, read in its entirety, in the light of the particular circumstances in which the settlement decision had been adopted, was likely to be understood as a premature expression of Scania’s liability. In the second place, the Court clarifies that the acknowledgement by the addressees of a settlement decision of their liability cannot lead to the implicit acknowledgement of the liability of the undertaking which decided to withdraw from that procedure, on account of its possible participation in the same facts regarded as an infringement in the settlement decision. In the context of the standard administrative procedure which follows the adoption of such a decision, the undertaking concerned and the Commission are, in relation to

³ That procedure is governed by Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18). It enables the parties in cartel cases to acknowledge their liability and, in exchange, to receive a reduction in the amount of the fine imposed.

⁴ Decision C(2016) 4673 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39824 – Trucks). That decision was adopted on the basis of Article 7 and Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

the settlement procedure, in a situation known as ‘*tabula rasa*’, where liabilities have yet to be determined. Thus, the Commission, first, is bound solely by the statement of objections and, secondly, is required to review the file in the light of all the relevant circumstances, including all the information and arguments put forward by the undertaking concerned when exercising its right to be heard. Consequently, the Commission’s legal classification of the facts with regard to the settling parties does not in itself presuppose that the same legal classification of the facts was necessarily adopted by the Commission with respect to the undertaking which withdrew from such a procedure. In that context, there is nothing to prevent the Commission from relying on evidence used in both decisions of the hybrid procedure.

In the light of those considerations and in view of the fact that Scania did not deny that it had had the opportunity to submit all the evidence to challenge the facts and evidence on which the Commission relied in the standard administrative procedure, including the evidence added to the file after the statement of objections, the Court finds that there was no infringement of the principle of the presumption of innocence in the present case.

As regards the complaint alleging infringement of the rights of defence, the Court found that, in the settlement decision, the Commission had in no way prejudged Scania’s liability for the infringement. Consequently, the fact that Scania was not heard in the context of that procedure could not result in there being an infringement of its rights of defence.

As regards the complaint alleging infringement of the principle of impartiality, the Court found that Scania had not established that the Commission had not offered, during the investigation procedure, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case. When the Commission examines, in the context of the standard procedure, the evidence submitted by the parties which have chosen not to settle, it is in no way bound by the factual findings and legal classifications which it adopted in the settlement decision. Furthermore, given that the principle which prevails in EU law is that evidence may be freely adduced and that the Commission has discretion as to whether it is appropriate to adopt investigative measures, its refusal to adopt new investigative measures is not contrary to the principle of impartiality, unless it is demonstrated that the absence of such measures is due to the Commission’s bias.

As regards the concept of a single and continuous infringement, the Court examines the conditions relating to the existence of such an infringement in the present case and its imputability to Scania.

As regards the finding that there was a single and continuous infringement, the Court observes that, contrary to what Scania argued, such a finding does not necessarily presuppose that a number of infringements have been established, each of which falls within Article 101 TFEU, but rather the demonstration that the various instances of conduct identified form part of an overall plan designed to achieve a single anticompetitive objective.

In the present case, the Court finds that the Commission had established to the requisite legal standard that the collusive contacts which took place over time at different levels, in particular at top management level between 1997 and 2004, at lower headquarters level between 2000 and 2008, and at German level between 2004 and 2011, taken together, formed part of an overall plan aimed at achieving the single anticompetitive objective of restricting competition on the market for medium and heavy trucks in the EEA.

More specifically, the existence of links between the three levels of the collusive contacts was apparent from the fact that the participants in the meetings were always employees of the same undertakings, there was a temporal overlap between the meetings held at the different levels and there were contacts between employees at the lower level of the respective headquarters of the parties to the cartel and the employees at German level. Furthermore, the nature of the information shared, the participating undertakings, the objectives and the products concerned remained the same throughout the infringement period. Thus, even though the collusive contacts at top management level had been interrupted in September 2004, the same cartel, which had the same content and scope, was continued after that date, the only difference being that the employees involved were from different organisational levels within the undertakings involved, and not from top management level. In that context, the alleged fact that the Scania employees at German level did not know that they were involved in the continuation of the practices that had taken place at the other two levels, or that the Scania employees who participated in the meetings at lower headquarters level were not aware of the meetings at top management level was of no relevance to the finding that there was an overall plan. Awareness of the existence of such a plan must be assessed at the level of the undertakings involved and not at the level of their employees.

As regards the imputability of the infringement, the Court finds that, similarly, the factors determining the imputability of the single and continuous infringement must also be assessed at the level of the undertaking. In the present case, since Scania directly participated in all the relevant aspects of the cartel, the Commission was entitled to impute the infringement as a whole to Scania, without the Commission being required to demonstrate that the criteria of interest, knowledge and acceptance of the risk were satisfied.