

The third ground alleges that the agreements concluded on the same day with Matrix and its distributor Niche are not anti-competitive by object. According to Servier, the General Court erred in law by classifying those companies as potential competitors and by regarding the payments as harmful and not inherent in the settlement agreement.

By its fourth ground, Servier alleges errors of law in relation to the agreement with Teva, which is also not anti-competitive by object in view of the legal and economic context of which it forms part, its ambivalent effects and the complementarity of the parties, since Teva is, unlike Servier, a generics distributor in the United Kingdom.

The fifth ground alleges errors of law concerning the agreement with Lupin. The General Court should have examined the effects of the agreement because of its scope, which is at the least ambivalent, if not pro-competitive. In the alternative, the appellants argue that duration of the infringement, and therefore the calculation of the fine, is vitiated by an error.

In the alternative, Servier submits, in the sixth ground, that the General Court should have annulled the decision in so far as it penalises the agreement concluded with Matrix in addition to that concluded with Niche even though they are not separate infringements.

In the further alternative, the seventh ground concerns the claim that the judgment should be set aside in so far as it validates the method of determining the fine.

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**Appeal brought on 28 February 2019 by Biogaran against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-677/14, Biogaran v Commission**

**(Case C-207/19 P)**

(2019/C 139/38)

*Language of the case: French*

**Parties**

*Appellant:* Biogaran (represented by: M. Utges Manley, Solicitor, A. Robert, advocate, O. de Juvigny, T. Reymond, J. Killick, J. Jourdan, avocats)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court delivered on 12 December 2018 in Case T-677/14 in its entirety;
- annul Articles 1(b)(iv), 7(1)(b) and 8 of Commission Decision C(2014) 4955 final (Case AT.39612 — Perindopril (Servier)), in so far as they concern Biogaran;
- order the Commission to pay the costs.

**Grounds of appeal and main arguments**

By its first ground of appeal, Biogaran submits that the judgment is vitiated by errors of law in that it finds the licence to be infringing on the ground that the settlement agreement has an anti-competitive object. According to the applicant, the judgment is based on a broad interpretation of the concept of a 'by object' infringement and disregards the absence of experience and of an obvious restriction. Moreover, the judgment is based on an incorrect legal test which ignores both the context of the settlement agreement between Servier and Niche and the fact that those undertakings were not potential competitors.

By its second ground of appeal, Biogaran submits that the General Court erred in law by substituting its own reasoning for that of the Commission. The General Court considered that Biogaran's alleged inducement was 'decisive' in that it determined Niche's decision not to enter the market. However, neither the statement of reasons, nor the decision state or establish that that inducement, characterised only as 'additional', was 'decisive' in Niche's acceptance of the terms of the settlement.

Biogaran argues, in the third ground of appeal, that the General Court disregarded the principle of proportionality and the objectives of Article 101 TFEU by finding it liable, in addition to its parent company. Since the General Court held that the parent company had directly participated in the infringement and used its power to influence its subsidiary to take part in its own infringing conduct, with the result that the subsidiary had no autonomy whatsoever, it could not find the subsidiary liable in addition to its parent company without going beyond what is strictly necessary for the proper application of the competition rules.

By its fourth ground of appeal, Biogaran submits that the judgment must be set aside in that it validates the principle and the method of calculating the fine, despite the complex and unprecedented nature of the present case and the fact that Biogaran did not play a decisive role.

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