

- annul the Commission's decision in so far as it imposes a fine on InnoLux based on the value of intra-group deliveries of LCD panels within the appellant's factories in China and Taiwan;
- accordingly reduce the fine imposed on InnoLux to €173 million; and
- order the Commission to bear all of the costs of these proceedings, including the proceedings before the General Court.

### Pleas in law and main arguments

1. First plea: the General Court erred in law by ruling that intra-group deliveries of LCD panels within the appellant's factories in China and Taiwan come within the scope of Article 101 TFEU and Article 53 EEA by the mere fact that computer monitors into which the LCD panels are incorporated as components in the factories in question are sold in the EEA by the appellant.

This plea is based on the following grounds:

- a. The finding of infringement in the Contested Decision only covers deliveries in the EEA of LCD panels, whether sold to third parties or supplied intra-group, and makes no distinction between intra-group deliveries by vertically-integrated cartel participants who form a single undertaking with their related purchaser and those who do not;
  - b. The use of the concept of so-called 'direct EEA sales through transformed products' is inconsistent with the rationale underlying *Europa Carton* to treat intra-group deliveries in exactly the same way as sales to third parties;
  - c. It is inconsistent with the *Wood Pulp I* implementation doctrine to apply Article 101 TFEU and Article 53 EEA to deliveries of LCD panels that take place outside the EEA;
  - d. The concept of so-called 'direct EEA sales through transformed products' leads to the unlawful exclusion from the scope of Article 101 TFEU and Article 53 EEA of transactions concerning LCD panels which take place and restrict competition within the EEA, on the basis of a reasoning which was expressly rejected by this Court in *Commercial Solvents*;
  - e. The extra-territorial application of EU competition law resulting from the use of the concept of so-called 'EEA direct sales through transformed products' gives rise to a risk of double jeopardy for undertakings and jurisdictional conflict with other competition authorities.
2. Second plea: the General Court erred in law by ruling that the applicability of the category of so-called 'direct EEA sales through transformed products' to the intra-group deliveries of LCD panels of each of the addressees of the Commission's decision was assessed by the Commission 'on the basis of the same objective criteria', while rejecting as inadmissible all pleas raised by the appellant contesting the relevance, objectivity and coherence of the criterion used, namely whether they formed a single undertaking with their related purchasers.

This plea is based on the following grounds:

- a. Whether or not the vertically-integrated addressees of the Contested Decision form a single undertaking with their related purchasers is not an 'objective difference' justifying the differential treatment of their respective intra-group deliveries;
- b. The principle of legality cannot be invoked to dismiss the appellant's plea to have its intra-group deliveries of LCD panels treated on the basis of the same method as that applied to the intra-group deliveries of LCD panels of LG Display and AUO since that method is perfectly legal.

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**Request for a preliminary ruling from the Augstākā tiesa (Republic of Latvia) lodged on 12 May 2014 — SIA 'Ostas celtnieks' v Talsu novada pašvaldība, Iepirkumu uzraudzības birojs**

(Case C-234/14)

(2014/C 212/24)

Language of the case: Latvian

### Referring court

Augstākā tiesa

**Parties to the main proceedings**

*Applicant:* SIA 'Ostas celtnieks'

*Defendants:* Talsu novada pašvaldība, Iepirkumu uzraudzības birojs

**Question referred**

Must the provisions of Directive 2004/18/EC<sup>(1)</sup> of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted as meaning that, in order to reduce the risk of non-performance of the contract, they do not preclude the specifications from containing the condition that, in the event of the contract being awarded to a tenderer which relies on the capacities of other contractors, that tenderer must, before the contract is awarded, conclude with those undertakings a cooperation agreement (which includes the particular items set out in the specifications), or set up a partnership with them?

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<sup>(1)</sup> OJ 2004 L 134, p. 114

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**Action brought on 12 May 2014 — European Commission v Ireland**

**(Case C-236/14)**

(2014/C 212/25)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: P. Hetsch, K. Herrmann, L. Armati, agents)

*Defendant:* Ireland

**The applicant claims that the Court should:**

- Declare that by failing to adopt provisions transposing the definitions laid down in Article 2, letters (f), (h), (m), (n) and (o), and the requirements laid down in Article 3(2) and (4), Article 5, Article 13(1), letters (a) to (e), Article 15(6), letter (e), Article 16(1), (3), (5), (6), (7), second sentence, and (8), Article 17 (1) to (5), Article 17(6) regarding bioliquids, Article 17(8), Article 18(1) and (3) regarding biolquids, Article 18(7), Article 19(1) and (3), Article 21(1), second sentence, and Annexes II to V and VII of Directive 2009/28/EC<sup>(1)</sup> of the European Parliament and the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 27(1) of that Directive;
- Impose a penalty payment on Ireland pursuant to Article 260(3) TFEU in the amount of EUR 25 447,50 per day, with effect from the date of the judgment of the Court and payable to the account of the Union's own resources, for failure to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure; and
- order Ireland to pay the costs.

**Pleas in law and main arguments**

The period prescribed for transposing the directive expired on 5 December 2010.

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<sup>(1)</sup> OJ L 140, p. 16