



Reports of Cases

ORDER OF THE PRESIDENT OF THE GENERAL COURT

15 December 2015 *

(Application for interim measures — Competition — Cartels — Retail food packaging — Decision imposing fines — Bank guarantee — Application for suspension of operation — Prima facie case — Urgency — Balance of interests)

In Case T-522/15 R,

CCPL — Consorzio Cooperative di Produzione e Lavoro SC, established in Reggio Emilia (Italy),

Coopbox group SpA, established in Reggio Emilia,

Poliemme Srl, established in Reggio Emilia,

Coopbox Hispania, SL, established in Lorca (Spain),

Coopbox Eastern s.r.o., established in Nové Mesto nad Váhom (Slovakia),

represented by S. Bariatti and E. Cucchiara, lawyers,

applicants,

v

European Commission, represented initially by F. Jimeno Fernandez, A. Biolan and P. Rossi, and subsequently by F. Jimeno Fernandez, P. Rossi and L. Malferrari, acting as Agents,

defendant,

APPLICATION for suspension of the operation of Commission Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (AT.39563 — Retail food packaging), in so far as it requires the applicants to provide a bank guarantee or to make provisional payment of the amount of the fines imposed as a condition for the avoidance of the immediate recovery of that sum,

THE PRESIDENT OF THE GENERAL COURT

makes the following

* Language of the case: Italian.

Order¹

Background to the dispute

- 1 This case concerns cartels in the sector relating to the packaging of food in polystyrene and polypropylene trays used for the retail packaging of fresh food such as meat, poultry and fish. The geographical areas covered by the cartels included Italy, South-West Europe and Central-Eastern Europe. The main objectives pursued by the anticompetitive agreements were to maintain high prices, to pass on the rising price of raw materials in a coordinated manner and to preserve the status quo with regard to historically allocated clients and markets. The European Commission claims that the applicants, CCPL — Consorzio Cooperative di Produzione e Lavoro SC, Coopbox group SpA, Poliemme Srl, Coopbox Hispania, SL and Coopbox Eastern s.r.o., participated in those cartels.
- 2 In Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (AT.39563 — Retail food packaging; ‘the contested decision’), notified on 1 July 2015, the Commission stated that the applicants formed part of the Coopbox group, whose parent company controlled the companies belonging to the fresh food packaging division of the CCPL group, the latter being a consortium of 10 cooperatives which had holdings in a number of other companies and operated in several different sectors, such as fresh food packaging through Coopbox, construction materials, business services, energy and real estate. According to the Commission, CCPL was the ultimate parent company of the CCPL group. The applicants were fined a total of EUR 33 694 000, that is, EUR 22 137 000 for the infringement committed in Italy, EUR 10 955 000 for that committed in South-West Europe and EUR 602 000 for that committed in Central-Eastern Europe.
- 3 The amount of those fines was fixed after the grant, by way of a leniency measure, of a 20% reduction of the fine that should have been imposed on the applicants for the infringement committed in Italy and a 30% reduction of the fines that should have been imposed on them for the infringements committed in South-West Europe and Central-Eastern Europe, in other words a reduction of approximately EUR 14 million, pursuant to the Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17). Furthermore, under paragraph 35 of its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; ‘the 2006 Guidelines’), the Commission partly upheld the applicants’ request invoking their inability to pay and reduced by [confidential]², or approximately EUR [confidential], the final amount of the fines which it should have imposed on them.
- 4 The last paragraph of Article 2 of the contested decision provides that the fines must be paid within three months of the date of notification and that, after the expiry of that period, interest will be automatically payable at the rate applied by the European Central Bank (ECB) to its main refinancing operations on the first day of the month in which the decision was adopted, plus 3.5 percentage points. If any of the fined undertakings lodges an appeal, it may cover the fine by the due date either by providing a bank guarantee or making a provisional payment of the fine.
- 5 The letter notifying the contested decision states that, after expiry of the deadline for payment, the Commission will recover the debt, which will automatically accrue interest from the day following such expiry until the date of actual payment, both inclusive. Interest will be calculated at the base rate of 0.05% plus 3.5 points, in other words at 3.55%. If an appeal is lodged, the applicants must provide cover for the fine before expiry of the deadline, either by providing a financial guarantee that is acceptable to the Commission’s accounting officer or by making provisional payment of the fine. If a

1 — Only the paragraphs of the present order which the Court considers it appropriate to publish are reproduced here.

2 — Confidential information not disclosed.

financial guarantee is given, the amount of the fine will accrue interest at the rate of 1.55%. Any delay in payment or in the provision of the financial guarantee will result in the application of default interest, calculated at the abovementioned base rate plus 3.5 percentage points.

Procedure and forms of order sought by the parties

- 6 By application lodged at the Court Registry on 10 September 2015, the applicants brought an action seeking annulment of the fines imposed on them by the contested decision or, in the alternative, a reduction of the amount of those fines. In support of their action, they claim, in particular, an infringement of the principles of proportionality and the appropriate determination of the amount of the fines imposed.
- 7 By separate document lodged at the Court Registry on 29 September 2015, the applicants brought the present application for interim measures, in which they claim, in essence, that the President of the General Court should:
 - suspend the operation of the contested decision in so far as it requires them to provide a bank guarantee or to make provisional payment of the amount of the fines as a condition for the avoidance of the immediate recovery of that sum;
 - order the Commission to pay the costs.
- 8 In its observations lodged at the Court Registry on 15 October 2015, the Commission contends that the President of the General Court should:
 - dismiss the application for interim measures;
 - order the applicants to pay the costs.
- 9 The applicants replied to the Commission's observations by written pleading of 28 October 2015. The Commission submitted comments thereon by written pleading of 6 November 2015, which was followed by an exchange of correspondence dated 18, 23 and 30 November and 3 December 2015.

Law

General considerations ...

- 14 In the circumstances of the present case, it is appropriate first to examine whether the condition relating to a *prima facie* case is satisfied. Regarding the precise scope of that examination, it appears that, in the light of Article 2 of the contested decision and the letter notifying that decision (see paragraphs 4 and 5 above), the application for interim measures can have no aim other than to obtain dispensation from the obligation to provide a bank guarantee, which is a less costly course of action than provisional payment of the fines imposed, as a prerequisite in order to avoid the immediate recovery of those fines by the Commission (see, to that effect, order of 29 October 2009 in *Novácke chemické závody v Commission*, T-352/09 R, EU:T:2009:422, paragraph 19 and the case-law cited).

Prima facie case ...

- 16 In support of the head of claim submitted in the alternative in the main proceedings seeking a reduction of the fines imposed on them, the applicants complain that the Commission, in particular, did not take sufficient account of the inability to pay of the CCPL group, to which they belong. The

Commission, whilst acknowledging the severe financial difficulties affecting the group, refused to grant the applicants a more sizeable reduction of the fines imposed which might permit their economic survival.

- 17 The applicants recall that the CCPL group is currently experiencing very serious financial difficulties, which led it to draw up a restructuring plan, the contents of which were notified to the Commission during the administrative proceedings. The key components of the plan consist in rationalising the portfolio of holdings, including the transfer of holdings in sectors other than food packaging. Under that plan, on 8 August 2014 CCPL concluded a standstill agreement with its creditor banks, valid until 30 June 2015, the purpose of which was to establish a moratorium on the repayment of principal sums as well as a commitment not to cancel the credit granted. This standstill agreement was intended to enable the applicants to continue their activities to implement and finalise the restructuring plan. According to the applicants, the revenue derived from the planned transfers will not be sufficient to repay all of the CCPL group's bank debts of EUR [confidential], making it necessary for those debts to be renegotiated with the creditor banks, refinanced and repaid beyond the term of the restructuring plan. Since the restructuring plan has not yet been approved by the creditor banks, the applicants submit that the CCPL group does not have any funds outside that plan to pay the fines imposed by the contested decision.
- 18 The applicants note that the Commission itself acknowledges, in Annex IV to the contested decision and pursuant to paragraph 35 of the 2006 Guidelines (see paragraph 3 above), that they are in imminent danger of being compulsorily wound up. Consequently, it is completely incomprehensible for the Commission to find that they are in a position to pay, before 1 October 2015, fines totalling more than EUR 33 million, especially since none of the sources of financing mentioned by the Commission in Annex IV to the contested decision are available to them for that purpose.
- 19 In so far as the Commission criticises Coopbox for the fact that the restructuring plan provides for revenue of EUR [confidential], but allocates only EUR [confidential] to payment of the fines imposed, even though Coopbox had set aside EUR [confidential] for that purpose in the 2013 budget, the applicants make clear that in no way did the inclusion of provision of EUR [confidential], in itself, mean that they would have sufficient funds to pay the possible penalty on the date of adoption of the contested decision. They reiterate that the only resources possibly available to the CCPL group are those resulting from the performance of the restructuring plan, a plan which the creditor banks have not yet approved. In any event, they submit that the revenue derived from the planned transfers will not be sufficient to repay the bank debts of EUR [confidential].
- 20 Furthermore, the applicants argue that they themselves did not 'choose' to allocate only EUR [confidential] to payment of the fines; that, rather, was a consequence of the viability threshold set by the creditor banks in the restructuring plan. Those banks are willing to accept the plan on the sole condition that the penalty does not exceed the ceiling of EUR [confidential]. For their part, the applicants — in order to avoid being wound up — have no choice but to accept the plan on the terms stipulated, *de facto*, by the creditor banks.
- 21 In so far as the Commission submits that the CCPL group could generate additional resources outside that plan, particularly by selling minority financial holdings, such as those in the companies Refincoop SpA, Erzelli Energia Srl, Smec Srl, Sagif SpA and Athenia Net Srl, or as a result of possible financial support from its members, such as the cooperatives CMB SC or CCFS SC, the applicants state that the consequence of their group using the revenue from the sale of holdings to pay fines rather than repay its debts would be their compulsory winding-up. Consequently, even if the sale of those holdings generates revenue, such revenue would first have to be used to repay debts. In addition, [confidential].

...

26 As for the possibility of generating additional resources through possible financial support from CCPL's members, the applicants recall that four of the member cooperatives of CCPL — Coopsette SC, Unieco SC, Open Co SC and CEAP SC — are in serious financial difficulty. As for the others, particularly the cooperatives CMB and CCFS, the applicants note that CMB's holding in CCPL does not even reach 20% and is purely institutional in nature. CCPL is a consortium of first-tier cooperatives and its main purpose is to facilitate the mutuality-based objectives of its members. It is therefore difficult to identify a specific economic or industrial interest of CMB which would justify a financial commitment on its part in support of CCPL. In addition, the internal provisions governing the financial activity of CCFS lay down maximum exposure limits vis-à-vis each member, namely one sixth of the accounting net worth according to the last approved balance sheet, in order to avoid high concentrations of risk in a single company. In view of the sharp fall in the net worth of CCPL, due to the losses it sustained in 2013 and 2014, there was no question of CCFS granting its request for credit.

...

32 It must be pointed out, first of all, that the general arguments of principle by which the Commission contends that it is not required, when determining the amount of a fine, to take account of the loss-making financial situation of the undertaking concerned, if it is not to confer an unfair competitive advantage on the undertakings least well adapted to the conditions of the market, are irrelevant in the present context. It is common ground that the Commission indeed took account, in Annex IV to the contested decision and pursuant to paragraph 35 of the 2006 Guidelines, of the loss-making financial situation of the applicants.

33 Thus, the Commission found in that annex that [confidential]. According to the Commission, [confidential], that situation mainly being due to [confidential], which had a significant impact on Coopbox's level of debt, [confidential]. Moreover, the Commission takes the view that there is nothing about Coopbox's current situation to suggest that there would be [confidential]. The Commission therefore considers [confidential].

34 In the present case, it is not for the Court to decide on questions of principle, such as those addressed by the Commission, but rather to examine whether the Commission, by granting only a [confidential] reduction of the amount of the fine to take account of the inability to pay of 'Coopbox', gave sufficient weight to the financial difficulties which the CCPL group was experiencing when the contested decision was adopted. Against that background, there are several factors which suggest that, in the contested decision, the Commission indeed underestimated the seriousness of the loss-making financial situation of the applicants, considered in the context of the CCPL group to which they belong.

35 Thus, first, by granting 'Coopbox' only a [confidential] reduction of the amount of the fine, the Commission ostensibly failed to give proper weight to the financial strength of the CCPL group. It should be noted that, in the context of the present proceedings for interim measures, the parties are agreed on the fact — supported by the documents before the Court — that the CCPL group is experiencing financial difficulties which obliged it to draw up a restructuring plan. The initial version of that plan from 2014 was tied to a standstill agreement with the creditor banks of the group and was updated in April 2015. The key components of the plan consist in restructuring the CCPL group's debts and transferring holdings in specified companies. The revenue from those transfers is intended to relaunch the economic activities of the group, while enabling it to repay its bank debts.

36 The applicants insist — and the Commission offers no proper rebuttal — on the need for the restructuring plan to be implemented effectively, which appears to be crucial for the financial survival of the group. The group's precarious situation is compounded by the fact that the plan has not yet received final approval from the creditor banks, precisely because of the considerable size, in the opinion of those banks, of the fines imposed on the applicants. Against that background, although the Commission expressed a degree of scepticism in that regard, it is not surprising, *prima facie*, that the

banks should try to force the CCPL group to give priority to the recovery of their bank claims, which arose before the adoption of the contested decision, by providing only for the subordinated payment of the future penalty in the context of a plan which was also drawn up prior to that decision. As for the fact that provision was only made for EUR [confidential] for that purpose, this seems to reflect the uncertain nature of the amount of revenue expected from the restructuring of the group, particularly from the sale of assets, which the banks — with good reason — fear will be insufficient even to ensure that their claims are recovered first.

...

- 39 Thirdly, by claiming that the applicants would be able to cover the fines imposed by having recourse to the resources of a number of cooperatives which are shareholders of CCPL, particularly CMB and CCFS, the Commission seemingly disregards the cooperative structure of the CCPL group. Unlike an economic group which, within the framework of an integrated vertical organisation, is controlled by a parent company which identifies and determines both the economic strategy and the common interests of all members of the group, resulting in reciprocal financial responsibility, the members which make up a cooperative retain, as a general rule, a higher level of economic and financial independence. Based on the principle of cooperation, a cooperative's only objective is to serve the interests of its members, particularly by providing services to them, organising the centralised sale of their products, purchasing raw materials on a joint basis or offering work opportunities. Therefore, a member will have only a very limited objective interest in providing financial support to another member of the same cooperative. As regards a member's interest in ensuring the financial survival of 'its' cooperative where there is a risk of compulsory winding-up, this will also be of a limited nature since it will depend on the specific benefits the member receives from membership, the possibilities of joining another cooperative, as the case may be a newly established cooperative, where the previous cooperative has ceased to exist, as well as the costs of joining another cooperative.
- 40 The same is true, in principle, for the structure of the CCPL group, which the applicants submit — without being challenged by the Commission — is a consortium of first-tier cooperatives whose main purpose is to facilitate the mutuality-based objectives of its member cooperatives, particularly CMB, whose holdings are purely institutional in nature. It may be concluded that CMB — faced with a choice between using its apparently considerable resources (see paragraph 28 above) to support a cooperative structure heavily in debt and highly exposed, precisely on account of the fines imposed, and at risk of being compulsorily wound up, or investing, as the case may be, in a new cooperative structure — has scarcely any objective interest in committing itself to provide major financial support to the ultimate parent company CCPL or to sister cooperatives. For the same reasons, this interest is minimal for the CCFS finance cooperative, whose activities are, moreover, subject to strict banking rules and which is already the largest bank creditor of the CCPL group, bearing in mind that, under its internal rules, its claim had to be secured by appropriate guarantees. Due to its difficult financial situation, the group hardly appears to be in a position to provide CCFS with additional guarantees, which seems to rule out, *prima facie*, all reasonable possibility of CCFS financing the fines imposed in the contested decision.
- 41 Thus, the arguments put forward by the applicants to show that the Commission underestimated the loss-making financial situation of the CCPL group do not seem, *prima facie*, to be without reasonable substance. In any event, the President of the General Court cannot avoid the conclusion that the assessment of the considerations set out above calls for a close examination to be conducted by the Court when it comes to adjudicate on the substance in the main proceedings. Consequently, there is a *prima facie* case for the applicants to be granted a higher reduction of the amount of the fines imposed than that allowed by the Commission in the contested decision.
- 42 It must be added that the Court, in accordance with Article 261 TFEU and Article 31 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), has unlimited jurisdiction to

review the disputed fine determinations by the Commission. In the present case, there is a sufficient degree of probability that, making use of that jurisdiction in the main proceedings, the Court will reduce the fines imposed on the applicants even further (see, to that effect, order of 13 April 2011 in *Westfälische Drahtindustrie and Others v Commission*, T-393/10 R, ECR, EU:T:2011:178, paragraph 60). The Court with unlimited jurisdiction may, when exercising its power to vary decisions, take account of the legal and factual situation existing on the date it issues a ruling (see, to that effect, judgments of 6 March 1974 in *Istituto Chemioterapico Italiano and Commercial Solvents v Commission*, 6/73 and 7/73, ECR, EU:C:1974:18, paragraphs 51 and 52; 14 July 1995 in *CB v Commission*, T-275/94, ECR, EU:T:1995:141, paragraph 61; and 5 October 2011 in *Romana Tabacchi v Commission*, T-11/06, ECR, EU:T:2011:560, paragraphs 282 to 285). In paragraphs 3 and 42 of their written pleading of 28 October 2015, the applicants make clear — and the Commission offers no effective rebuttal — that the economic and financial situation of the CCPL group, particularly that of the cooperatives Coopsette and Open, deteriorated even further during the third quarter of 2015 compared to the situation taken into consideration in the contested decision.

- 43 Following the examination of the condition relating to a *prima facie* case, the President of the General Court therefore considers that there is, *prima facie*, a sufficiently high probability that the Court, when adjudicating on the substance, will grant the applicants a substantial reduction of the amount of the fines imposed by the Commission in the contested decision.

Urgency ...

- 48 As is apparent from Article 2 of the contested decision and the letter notifying that decision (see paragraphs 4 and 5 above), the Commission allowed the applicants to have recourse to a bank guarantee enabling them to discharge their obligation to pay the fines imposed on a provisional basis, without having to pay out the sums claimed on the due date.
- 49 It should be recalled that, since the possibility of requiring the provision of a bank guarantee is a general and reasonable way for the Commission to act, only in exceptional circumstances can the applicants obtain dispensation from the obligation to provide such a guarantee as a condition for the fines imposed not being recovered immediately (see, to that effect, orders of 23 March 2001 in *FEG v Commission*, C-7/01 P(R), ECR, EU:C:2001:183, paragraph 44 and the case-law cited, and *Fapricela v Commission*, cited in paragraph 46 above, EU:T:2011:395, paragraph 22 and the case-law cited).
- 50 In order to prove that such exceptional circumstances exist, the applicants must, in principle, adduce evidence either that it is objectively impossible for them to provide a bank guarantee or that such provision would imperil their existence (see, to that effect, orders in *Westfälische Drahtindustrie and Others v Commission*, cited in paragraph 42 above, EU:T:2011:178, paragraph 23 and the case-law cited, and *Fapricela v Commission*, cited in paragraph 46 above, EU:T:2011:395, paragraph 23 and the case-law cited).
- 51 Those two exceptional circumstances are alternative and not cumulative. Consequently, if the applicants are able to prove, to the requisite legal standard, that it is objectively impossible for them to provide a bank guarantee for the fines imposed, it is appropriate, in accordance with the case-law cited in the previous paragraph, to acknowledge the urgency of the application for suspension of operation.
- ...
- 56 In the present case, it is apparent from the documents before the Court that, in July 2015, the CCPL group approached 13 financial institutions — Unicredit, Intesa SanPaolo, Monte dei Paschi di Siena, Banca Nazionale del Lavoro, Unipol Banca, Banca Popolare di Milano, Banco Popolare, BPER,

Cariparma, Carige, CCFS, Coopfond and Carisbo — with a view to securing a bank guarantee covering the fines which had been imposed on the applicants in the contested decision. All of the applications for a guarantee were refused.

...

- 61 It emerges from those documents that the vast majority of the financial institutions approached justified their refusal based on detailed arguments concerning the uncertain economic and financial situation of the CCPL group, which prevented them from granting the requested bank guarantee. To that end, they relied, in particular, on the relevant accounting records relating to the proprietary and financial situation of the CCPL group, the plan drawn up to restructure the group and the level of the fines imposed.
- 62 As regards the context surrounding the bank guarantee requests at issue, the documents before the Court show that, at the beginning of July 2015, a firm of strategy consultants representing the CCPL group made email contact with the financial institutions approached, including the in-house creditor banks of the CCPL group, as well as with several lawyers. On that occasion, the firm sent them a document containing ‘alternative scenarios’ for the group, setting out two possible options: (i) bringing an action against the contested decision, including the grant of a bank guarantee, and submitting an agreement on the restructuring of the group’s debt designed to avoid winding-up; and (ii) initiating winding-up proceedings with liquidation. This document, in particular, listed the advantages of restructuring accompanied by the grant of a bank guarantee in terms of asset realisation value and the recovery of claims, compared to an arrangement. Against that background, it set out the manner in which the bank guarantee would be apportioned between the banks, so that eight banks, including the in-house creditor banks, would provide partial guarantees each in the amount of the respective bank claim held against the group.
- 63 In view of all the foregoing, the President of the General Court has no reasonable grounds for doubting that the abovementioned document — which the Commission describes as a mere preparatory document for discussions with the creditor banks — was indeed one of the factors on which the financial institutions approached based their refusal to grant the requested bank guarantee. That refusal also covered the scenarios involving guarantees divided into tranches.
- 64 It follows that the applicants, as members of the CCPL group, promptly and seriously sought to obtain a bank guarantee covering the fines imposed on them. Those efforts failed because the financial institutions which were contacted refused the guarantee applications after a searching examination of the financial and economic situation of the CCPL group, as is clear from almost all their refusal letters, demonstrating that they were fully informed of the situation of the group as a whole. Accordingly, it is irrelevant that only Unipol Banca justified its refusal by referring, succinctly, to ‘an in-depth assessment of [the] application’.
- ...
- 66 As refusals of the requested bank guarantee, justified on the grounds as stated above, were made by a total of 12 banks, the applicants have demonstrated to the requisite legal standard that it was objectively impossible for them to secure that guarantee, especially when one considers that, in similar cases, the case-law has already accepted 2 or 3 refusals as sufficient (orders of 13 July 2006 in *Romana Tabacchi v Commission*, T-11/06 R, ECR, EU:T:2006:217, paragraphs 102 and 103, and *I. garantovaná v Commission*, cited in paragraph 44 above, EU:T:2011:63, paragraph 56).
- 67 None of the Commission’s counter-arguments are convincing.

- 68 In the first place, the Commission criticises the applicants for not making sufficient use of the resources of the CCPL group, by approaching the cooperatives with shares in CCPL (particularly CMB and CCFS, each of which had a shareholding of 19.42% and sufficient resources (see paragraph 28 above)) in order to secure financial support capable of being used as security for possible bank guarantees.
- 69 It must be recalled that taking into account the strength of the group to which the party seeking interim measures belongs is based on the consideration that the objective interests of that party are not to be viewed independently from the interests of the persons who control it or who are members of the same group, bearing in mind that this approach applies, in the light of the shareholding structure of the group, even to minority shareholders with 50%, 40% or even 30% of the share capital of the company in question (see, to that effect, orders in *Westfälische Drahtindustrie and Others v Commission*, cited in paragraph 42 above, EU:T:2011:178, paragraph 38; 21 June 2011 in *MB System v Commission*, T-209/11 R, EU:T:2011:297, paragraph 35; and 26 September 2013 in *Tilly-Sabco v Commission*, T-397/13 R, EU:T:2013:502, paragraph 41).
- 70 However, as explained in paragraphs 39 and 40 above, there is no sufficiently close convergence of interests within the CCPL group, particularly between the cooperatives CMB and CCFS, on the one hand, and the applicants, the ultimate parent company and the sister cooperatives, on the other. Consequently, the concept of group, as set out in paragraph 69 above, does not apply in a cooperative environment, so that the financial resources of CMB and CCFS cannot be taken into account in the present context. There is accordingly no need to decide whether a minority holding representing only 19.42% of the share capital can be regarded as large enough to trigger the application of the concept of a group.
- ...
- 75 It follows from all the foregoing that the applicants have demonstrated the urgency of the interim measure which they seek to the requisite legal standard.

Balance of interests ...

- 77 In the present case, the applicants have demonstrated both the urgency of their application for interim measures, as it was objectively impossible for them to secure a bank guarantee for their fines, and a *prima facie* case for the fine reductions sought in their application. It must therefore be acknowledged that they have an interest worthy of protection in the suspension of the obligation to provide a bank guarantee for those fines (see, to that effect, order in *Westfälische Drahtindustrie and Others v Commission*, cited in paragraph 42 above, EU:T:2011:178, paragraph 63). If their application for interim measures were disallowed, the Commission would be authorised to recover the fines immediately, which would very likely result in the compulsory winding-up of the applicants in the light of what the Commission itself stated in Annex IV to the contested decision, which should be avoided. Furthermore, it is common ground that the CCPL group currently employs 822 workers, including 647 in the fresh food packaging sector. Thus, if compulsory winding-up were to occur, the level of unemployment would increase, which the Commission indeed expressly acknowledged in Annex IV to the contested decision.
- 78 In so far as the Commission relies on the public interest in maintaining the effectiveness of the EU rules on competition and in the deterrent effect of the fines it imposes, it must be stated that this interest does not run counter to the principle of a reduction, even of a substantial nature, of the amount of the fines it imposes. As is apparent from paragraph 35 of the 2006 Guidelines, the Commission expressly reserves the right to grant fine reductions in order to take account of the inability to pay of the undertakings concerned. The right to grant a dispensation from the obligation

to provide a bank guarantee cannot therefore be denied to the President of the General Court, who will be called upon, for the duration of the main proceedings, to strike a balance between the deterrent effect of the fine imposed and the financial situation of the fined undertaking.

...

80 It is apparent from all the foregoing that, in the light of the specific circumstances shaping the factual and legal situation of the applicants, particularly the objective impossibility for them to provide, at the present time, a bank guarantee covering the fines imposed, it is appropriate to put the interests of the applicants above those invoked by the Commission.

81 It should nevertheless be observed that a *prima facie* case was only acknowledged in respect of the alternative head of claim seeking a reduction of the amount of the fines imposed and that the applicants expressed their willingness, in their written pleadings of 28 October and 18 and 30 November 2015, to take steps to pay the fines in instalments. In this connection, they recalled that the restructuring plan of the CCPL group — submitted to the creditor banks for approval — made it possible, for the time being, to allocate EUR [confidential] to payment of the fines. They also indicated that they were willing — subject to approval from the same banks — to allocate to such payment revenue up to EUR [confidential], or even more, derived from the proposed transfer of the holdings in Refincoop, Erzelli Energia and Smec.

82 In their written pleading of 30 November 2015, the applicants added that, after the holdings in Refincoop, Erzelli Energia and Smec have been transferred, their only asset will be their holding in [confidential]. So that the Commission refrains from enforcing the contested decision against them and in order to cover the full amount of the fines imposed, the applicants intend to transfer to third parties [confidential], with a balance sheet value of EUR [confidential]. In those circumstances, it is impossible to predict when that transfer will take place and how soon the resulting revenue could be used to pay the fines. Furthermore, the possibility for the applicants to transfer [confidential] is conditional on the creditor banks giving their approval.

...

85 Accordingly, in order to take account of the financial interests of the European Union as well as the deterrent effect of the fines imposed, it is appropriate to link the grant of the dispensation sought to the condition that the applicants:

- send to the Commission, on a quarterly basis, regular and detailed information on the implementation of the restructuring plan of the CCPL group and on the amount of revenue derived from the sale of its assets both in performance of and ‘outside’ that plan;
- pay the Commission:
 - EUR 5 million, as soon as they have obtained that sum from the sale,
 - the entire revenue derived from the proposed transfer of the holdings in Refincoop, Erzelli Energia and Smec, as soon as that revenue has been obtained.

...

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

1. **The obligation on the applicants, CCPL — Consorzio Cooperative di Produzione e Lavoro SC, Coopbox group SpA, Poliemme Srl, Coopbox Hispania, SL and Coopbox Eastern s.r.o., to provide a bank guarantee in favour of the European Commission to avoid the immediate recovery of the fines imposed on them under Article 2 of Commission Decision No C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (AT.39563 — Retail food packaging) is suspended, provided that:**
 - **within one month from service of this order, then every three months until adoption of the decision in the main proceedings and at each event liable to affect their future capacity to pay the fines imposed, the applicants submit a detailed written report to the Commission on the implementation of the restructuring plan of the CCPL group and on the amount of revenue derived from the sale of its assets both in performance of and ‘outside’ that plan;**
 - **the applicants pay the Commission EUR 5 million, as soon as they have obtained that sum from the sale, as well as the entire revenue derived from the proposed transfer of the holdings in Refincoop SpA, Erzelli Energia Srl and Smec Srl, as soon as that revenue has been obtained.**
2. **Costs are reserved.**

Luxembourg, 15 December 2015.

E. Coulon
Registrar

M. Jaeger
President