



Press and Information

Court of Justice of the European Union
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Judgment in Case C-441/11 P
Commission v Verhuizingen Coppens NV

The Court of Justice sets aside, in relation to Coppens, the judgment of the General Court concerning the cartel on the Belgian international removals market

Since Coppens was liable for its participation in an agreement for the submission of cover quotes to customers, it must be fined a total of €35,000

By decision of 11 March 2008¹, the Commission imposed fines totalling €32.76 million on 10 undertakings for their participation, over various periods between October 1984 and September 2003, in a cartel on the international removal services market in Belgium. The cartel arrangement involved the direct and indirect fixing of prices, market sharing and the manipulation of tendering procedures, in particular through the issuing of false quotes ('cover quotes') to customers and through a system under which cartel members received compensation for rejected offers. In that context, a fine of €104,000 was imposed on Coppens.

Five companies, including Coppens, together with a number of their parent companies, claimed before the General Court that the decision should be annulled or their respective fines reduced. Although, by its judgments of 16 June 2011, the General Court upheld for the most part the Commission's decision concerning that cartel, it annulled the decision and cancelled the fine so far as Coppens was concerned². The General Court found that the Commission had failed to prove that Coppens' involvement in the cartel extended beyond its participation in the agreement on cover quotes.

The Commission brought an appeal before the Court of Justice against the judgment of the General Court.

In its judgment delivered today, the Court of Justice notes, first of all, that the mere fact that the General Court finds that an action for the annulment of a Commission decision is in part well founded does not automatically enable it to annul that decision in its entirety. In that connection, the Court of Justice explains that, if the General Court concludes that the Commission has erred in finding that an undertaking has participated in a single and continuous infringement but has nonetheless established that the undertaking was liable for some of the forms of anti-competitive conduct, the General Court must, provided that certain conditions are satisfied, annul the decision in part.

An undertaking which did not participate in, or was not aware of, all the forms of anti-competitive conduct comprising a single and continuous infringement must nevertheless be held liable for the offending conduct in which it did itself engage and for conduct of which it was aware and which pursued the same anti-competitive objectives, provided that it was made sufficiently clear that the Commission was also seeking to attribute that conduct to the undertaking.

In the present case, since the Commission had identified, in its decision finding that Coppens had taken part in the cartel, a number of forms of anti-competitive conduct which were severable, the

¹ Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.543 – International Removal Services). Subsequently, in Decision C(2009) 5810 final of 24 July 2009, the Commission reduced the fine initially imposed on Gosselin Group. Accordingly, the total amount of the fines imposed was reduced to €31.54 million.

² Case [T-210/08 Verhuizingen Coppens v Commission](#), see also Press Release No [63/11](#).

General Court should have annulled that decision in part. Such a partial annulment would not have altered the substance of the decision, the purpose of such a decision being to make a finding as to the occurrence of one or more forms of conduct constituting an infringement of the rules on competition.

The Court also notes that the General Court itself had not ruled out Coppens' participation in the cartel through the issue of cover quotes to its customers. Such participation may in itself constitute an infringement of EU competition law, even though Coppens did not contribute to all the common objectives pursued by the other cartel members.

Accordingly, the Court of Justice **holds that the judgment of the General Court is flawed by an error of law in so far as it annulled the contested decision in its entirety in respect of Coppens without holding Coppens liable for the infringement which it had committed. The Court of Justice therefore sets aside that judgment.**

Next, the Court decides to give final judgment in the matter. In that connection, it notes that the infringement in respect of which Coppens was found liable by the Commission was composed of two agreements: (i) the agreement on cover quotes, whereby the competitors of an undertaking selected to win the contract quoted higher prices to the customer than the price proposed by the undertaking itself, and (ii) the agreement on commissions which was designed to compensate competitors who had voluntarily abstained from making competitive bids.

In that context, the Court of Justice confirms that Coppens participated in the agreement on cover quotes and that its participation constituted anti-competitive conduct in breach of EU competition law. On the other hand, as the General Court had found, the Commission had failed to prove that Coppens had been aware of the agreement on commissions implemented by the other cartel members. Consequently, **the Court of Justice concludes that Coppens could not be held liable for the agreement on commissions and annuls the Commission's decision in part.**

Lastly, the Court decides to **reduce the amount** of the fine imposed on Coppens to **€35,000**.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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