



Press and Information

General Court of the European Union

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Judgment in Case T-456/10

Timab Industries and Cie financière et de participations Roullier (CFPR) v  
Commission

**In the context of the cartel on phosphates, the General Court for the first time rules on the relationship between the standard procedure and the settlement procedure, and upholds the fine of nearly €60 million imposed on the Roullier group**

In 2010, the Commission imposed fines in the amount of €75 647 000 on six groups of producers who had taken part in a price-fixing cartel and had shared the market for animal feed phosphates for more than 30 years. As part of that cartel, the undertakings concerned allocated amongst themselves sales quotas by region and customer, coordinated prices and, in some cases, the conditions of sale. The Roullier group, of which Timab Industries is a subsidiary, was fined €59 850 000<sup>1</sup> for having participated in the cartel between 1993 and 2004.

Unlike the other groups involved in the cartel,<sup>2</sup> the Roullier group did not wish to enter into a settlement with the Commission after having been informed of the approximate amount of the fine that the Commission intended to impose upon it. The purpose of concluding a settlement is to simplify the procedure, with the undertakings concerned admitting their participation in the cartel and accepting binding commitments in exchange for a 10% reduction in the amount of the fine. The Commission therefore resorted to the standard procedure against the Roullier group. This is the first 'hybrid' cartel case, in that the settlement procedure has run parallel to the standard procedure.

The Roullier group brought an action before the General Court for the annulment of the Commission decision and a reduction in the amount of the fine. The Roullier group specifically criticised the Commission for having applied a fine higher than the maximum figure of the range envisaged during the settlement discussions.

**By today's judgment, the Court dismisses the Roullier group's action and confirms the fine imposed by the Commission.**

The Court first notes that, during settlement discussions, the Commission proposed a joint fine of between €41 and €44 million, whereas the fine ultimately imposed on the Roullier group amounts to almost €60 million. The Court nevertheless notes that **the Commission applied the same method when calculating the range of fines at the stage of the settlement procedure and the amount of the fine ultimately imposed as part of the standard procedure.** The difference between the amount proposed as part of a settlement and the final amount may be explained in particular by the fact that the Commission applied, as part of the settlement proposal, reductions that it was not required to apply as part of the standard procedure and that it took account, during the standard procedure, of new information which required it to review the file, to redefine the period taken into account and to readjust the amount of the fine. The Court concludes that the Commission did not penalise the Roullier Group because of its withdrawal from the settlement procedure.

<sup>1</sup> Decision (2010) 5001 final of 20 July 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38866 — Animal feed phosphates)

<sup>2</sup> Namely the Kemira group (Yara Phosphates Oy, Yara Suomi Oy and Kemira Oy), Tessenderlo Chemie, the Ercros group (Ercros SA and Ercros Industriel SA), the FMC group (FMC Foret SA, FMC Netherlands BV and FMC Corporation) and the group formed by Quimitécnica.com-Comércio e Indústria Química and its parent company José de Mello SGPS.

Moreover, the Court notes that **the Commission is not bound by the range indicated as part of the settlement procedure**. The calculation of a range of fines is an instrument solely and specifically related to the settlement procedure that is not found in the standard procedure, especially since the Commission must, during the standard procedure, establish the liabilities of the undertakings concerned while taking account of new arguments or evidence brought to its attention (which may have an impact on the determination of the amount of the fine to be imposed). **It would therefore be illogical that the Commission be required to apply a range of fines falling within the scope of another procedure now abandoned.**

Furthermore, the Court notes that the Commission correctly investigated the case during settlement discussions, conducted a proper analysis and assessment of the anti-competitive practices attributed to the Roullier group and did not err in calculating the amount of the fine.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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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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