



General Court of the European Union

**PRESS RELEASE No 83/15**

Luxembourg, 15 July 2015

Judgments in Joined Cases T-389/10 and T-419/10 (SLM v Commission and Ori Martin v Commission) and in Joined Cases T-413/10 and T-414/10 (Socitrel v Commission and Companhia Previdente v Commission) and judgments in Cases T-391/10 (Nedri Spanstaal v Commission), T-393/10 (Westfälische Drahtindustrie and Others v Commission), T-398/10 (Fapricela v Commission), T-406/10 (Emesa-Trefileria and Industrias Galycas v Commission), T-418/10 (voestalpine and voestalpine Wire Rod Austria), T-422/10 (Trafilerie Meridionali v Commission), T-423/10 (Redaelli Tecna v Commission) and T-436/10 (HIT Groep v Commission)

Press and Information

## **The General Court reduces the fines imposed by the Commission on three members of the European pre-stressing steel market cartel**

*However it confirms, in essence, the fines imposed on the other members*

By decision of 30 June 2010,<sup>1</sup> the Commission penalised a cartel in which prestressing steel suppliers had participated between the 1980s/1990s and 2002.

Pre-stressing steel, which can take the form of metal wires, strands made of wire rod or steel for pre-stressed or post-tensioned concrete is, used for building bridges, balconies, foundation piles or pipes and is, principally, used in structural engineering and underground engineering.

The first pan-European cartel meetings were held in Zurich, Switzerland, which was why the cartel was initially called 'Club Zurich', before being renamed 'Club Europe'. There were also two regional branches; one in Italy ('Club Italia') and one in Spain and Portugal ('Club España'). The different branches were interconnected by overlapping territory, membership and common goals. The undertakings involved usually met at the margins of official trade meetings in hotels all over Europe.

The cartel consisted of quota fixing, customer sharing, price fixing and exchanging of sensitive commercial information relating to price, volume and customers at European (Club Zurich/Club Europe), regional and national (Club Italia/Club España) level. The Commission, accordingly, took the view that the 18 undertakings referred to had committed a single and continuous infringement of EU law (prohibition of cartels at EU-level).

Between 2010 and 2014, 28 actions were brought before the General Court against the Commission's decision.<sup>2</sup> In essence, the companies concerned seek a reduction in the fine

<sup>1</sup> Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel).

<sup>2</sup> Apart from the cases which are the subject of this press release, the following cases should also be mentioned: [T-385/10](#), ArcelorMittal Wire France and Others v Commission, [T-388/10](#), Productos Derivados del Acero v Commission, [T-399/10](#), ArcelorMittal España v Commission, [T-426/10](#), Moreda-Riviere Trefilerías v Commission, [T-427/10](#), Trefilerías Quijano v Commission, [T-428/10](#), Trenzas y Cables de Acero v Commission, [T-429/10](#), Global Steel Wire v Commission, [T-575/10](#), Moreda-Riviere Trefilerías v Commission, [T-576/10](#), Trefilerías Quijano v Commission, [T-577/10](#), Trenzas y Cables de Acero v Commission, [T-578/10](#), Global Steel Wire v Commission, [T-438/12](#), Global Steel Wire v Commission, [T-439/12](#), Trefilerías Quijano v Commission, [T-440/12](#), Moreda-Riviere Trefilerías v Commission, [T-441/12](#), Trenzas y Cables de Acero v Commission and [T-409/13](#), Companhia Previdente and Socitrel v Commission. Cases [T-385/10](#) and [T-399/10](#) were removed from the register following their discontinuance by the companies from the ArcelorMittal group; the General Court decided that there was no longer any need to adjudicate on the action in Case [T-388/10](#). The actions in Cases [T-575/10](#), [T-576/10](#), [T-577/10](#) and [T-578/10](#) were dismissed by reasoned orders (which are on the subject of appeals before the Court of Justice). Case T-409/13 is under examination. Oral arguments in the 8 remaining cases were heard on 8 July last.

imposed on them. In four cases,<sup>3</sup> several companies also made applications for a suspension of the decision's operation. The President of the General Court, hearing those applications for interim relief, dismissed three of them. However he upheld in part the application made by WDV, WDI and Pampus, which accordingly benefitted from a restructuring of their payment obligations pending the delivery of today's judgment. The General Court today gives judgment in 12 out of those 28 cases.

In order to correct calculation errors, some of which had been revealed by the actions brought, the Commission, during the proceedings, amended its decision for the first time on 30 September 2010,<sup>4</sup> which resulted in a reduction of some the fines imposed in the initial decision.

While the Commission was of the opinion that it had not erred in the initial decision, it amended that decision a second time during the proceedings, on 4 April 2011,<sup>5</sup> substantially reducing the fines imposed on ArcelorMittal Wire France and SLM. Following that second amendment, ArcelorMittal Wire France (Case T-385/10) and ArcelorMittal España (Case T-426/10) discontinued their actions.<sup>6</sup>

In each of the cases, the General Court ordered several measures of organisation of procedure relating to; inter alia, access to the file compiled by the Commission during the administrative procedure. It also took measures of inquiry for the production of confidential documents covered by the leniency programme.

In its 10 judgments of today,<sup>7</sup> the General Court dismisses a majority of the actions, namely those brought by Socitrel, Companhia Previdente, Nedri Spanstaal, HIT Groep, Emesa-Trefileria, Industrias Galycas, Redaelli Tecna and WDV, WDI and Pampus.

The General Court, however, accepts the arguments of several of the undertakings penalised, holding that the penalties imposed on them did not appropriately reflect their individual participation in a complex infringement. It accordingly grants fine reductions in several cases. First, in respect of Ori Martin, found jointly and severally liable for the participation of its subsidiary SLM in the cartel, the General Court reduces the part of the fine for which Ori Martin is jointly and severally liable from €14 million to €13.3 million.<sup>8</sup> The General Court considers that, in order to determine the amount of the fine imposed on SLM, account must not be taken of the value of the sales achieved in countries which were not covered by the cartel. Since a large part of those sales occurred during the period when Ori Martin was directly answerable for SLM's actions as its parent company,<sup>9</sup> the part of the fine for which Ori Martin is jointly and severally liable is proportionately reduced.

As regards the fine imposed jointly and severally on voestalpine and voestalpine Austria Draht,<sup>10</sup> the General Court observes that the Commission failed to establish that voestalpine Austria Draht had participated directly in Club Zurich, Club Europe or Club España, that is to say in the essential aspects of the cartel. However, the General Court considers that voestalpine Austria Draht was correctly held to have participated in Club Italia given the anti-competitive actions of its commercial agent in Italy, even though there was no evidence that voestalpine Austria Draht was aware of that agent's unlawful behaviour. As long as he was acting within his authority which covered only Italy,

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<sup>3</sup> Cases [T-385/10 R](#), ArcelorMittal Wire France and Others v Commission, [T-393/10 R](#), WDI and Others v Commission, [T-398/10 R](#), Fapricela v Commission, T-414/10 R, Companhia Previdente v Commission and [T-422/10 R](#), Emme v Commission. The appeals brought against the orders of the President of the General Court by ArcelorMittal Wire France (Case [C-598/10 P\(R\)](#)) and Fapricela (Case [C-507/11 P\(R\)](#)) have been dismissed.

<sup>4</sup> Commission Decision C(2010) 6676 final of 30 September 2010.

<sup>5</sup> Commission Decision C(2011) 2269 final of 4 April 2011.

<sup>6</sup> Even though ArcelorMittal España did not receive a fine reduction.

<sup>7</sup> Cases [T-389/10](#) and [T-419/10](#) were joined, as were Cases [T-413/10](#) and [T-414/10](#). Accordingly, the 12 actions in respect of which the General Court gives judgment today are the subject of 10 judgments.

<sup>8</sup> The SLM and Ori Martin cases are particular in that it was SLM, first of all, which was found liable for its participation in the cartel, with Ori Martin being held jointly and severally liable as SLM's parent company. SLM was initially fined €19 800 000, for €14 000 000 of which Ori Martin was jointly and severally liable. The Commission subsequently reduced SLM's fine from €19 800 000 to €15 956 000, while the part for which Ori Martin was jointly and severally liable remained fixed at €14 000 000.

<sup>9</sup> SLM was wholly controlled by Ori Martin as from 1 January 1999, when the latter accordingly became jointly and severally liable.

<sup>10</sup> Now called voestalpine Wire Rod Austria.

the commercial agent had to be regarded as forming part of the undertaking. However, the General Court takes the view that the liability for that agent's anti-competitive actions outside the Italian market could not be imputed to voestalpine Austria Draht. Given those factors, the General Court reduces the fine imposed jointly and severally on those two companies from €22 million to €7.5 million.

In addition, in three cases (SLM, Fapricela and Emme Holding<sup>11</sup>), the General Court grants fine reductions which do not change the final amount which the companies must pay. Since those fines are, despite their reduction by the General Court, still higher than the 10% ceiling of the worldwide turnover of the undertakings concerned,<sup>12</sup> their final amounts remain unchanged.<sup>13</sup>

Finally, in its judgment in WDI and Others v Commission, the General Court finds that the economic and financial position of the three companies concerned has evolved significantly and holds that the submissions directed against the letter by which the Director-General of the Commission's Directorate-General for Competition rejected their request for a reassessment of their ability to pay are admissible. It finds moreover that the Commission erred in its assessment of those three companies' ability to pay. It therefore examines whether those companies are able to pay the fine imposed on them. According to the General Court, it is clear from the case-file that the three companies' financial and commercial partners are confident that those companies are viable, all the more so given that those companies have failed to demonstrate that their financial position is such that paying the fine imposed on them would result in their assets losing all value. Taking into account the applicants' position when giving judgment, the General Court therefore upholds the amount of the fine imposed on the three companies by the Commission.

Ultimately, only three undertakings benefit from an effective reduction in the final fine amount:

Company(ies)	Final fine imposed by the Commission	Fine as set by the General Court
Siderurgica Latina Martin (SLM)	€1 956 000	Unchanged
Ori Martin	€14 000 000 imposed jointly and severally <sup>14</sup>	€13 300 000 imposed jointly and severally
Socitrel and Companhia Previdente	€12 590 000 (fine imposed jointly and severally)	Unchanged
Nedri Spanstaal and HIT Groep	€5 056 500 (fine imposed jointly and severally) and €1 877 500 for HIT Groep individually	Unchanged
Westfälische Drahtindustrie (WDI)	€46 550 000, €38 855 000 of which jointly and severally with WDV and €15 485 000 of which jointly and severally with Pampus	Unchanged
Westfälische Drahtindustrie Verwaltungsgesellschaft (WDV)	€38 855 000, all of which jointly and severally with WDI and €15 485 000 of which jointly and severally with Pampus	Unchanged
Pampus Industriebeteiligungen	€15 485 000 all of which jointly and severally with WDI and WDV	Unchanged

<sup>11</sup> Now called Trafileria Meridionali.

<sup>12</sup> EU law provides that fines imposed by the Commission cannot exceed 10% of the undertaking's worldwide turnover.

<sup>13</sup> The €19.8 million fine imposed on SLM is reduced to €19 million, but SLM only has to pay an amount equal to 10% of its worldwide turnover, namely €1.956 million. Fapricela's fine is reduced from €18.4 million to €17 million, but the final amount is set at €8.874 million by reason of the 10% ceiling. Lastly, Emme Holding's fine is reduced by half to €5 million for an effectively unchanged final amount of €3.249 million.

<sup>14</sup> See footnote 8.

Fapricela	€8 874 000	Unchanged
Emesa-Trefileria	Jointly and severally liable in the amount of €2 576 000 of the €36 720 000 fine imposed on ArcelorMittal España	Unchanged
Industrias Galycas	Jointly and severally liable in the amount of €868 300 of the €36 720 000 fine imposed on ArcelorMittal España	Unchanged
voestalpine and voestalpine Austria Draht	€22 000 000 (fine imposed jointly and severally)	€7 500 000 (fine imposed jointly and severally)
Emme Holding	€3 249 000	Unchanged
Redaelli Tecna	€6 341 000	Unchanged

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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 EU 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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*Unofficial document for media use, not binding on the General Court.*

The full text of the judgments [T-389/10 & T-419/10](#), [T-413/10 & T-414/10](#), [T-391/10](#), [T-393/10](#), [T-398/10](#), [T-406/10](#), [T-418/10](#), [T-422/10](#), [T-423/10](#), [T-436/10](#) are published on the CURIA website on the day of delivery.

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