General Court of the European Union
PRESS RELEASE No 57/16
Luxembourg, 2 June 2016

Judgment in Joined Cases T-426/10 Moreda-Riviere Trefilerías, SA v Commission, T-427/10 Trefilerías Quijano, SA v Commission, T-428/10 Trenzas y Cables de Acero PSC, SL v Commission, T-429/10 Global Steel Wire, SA v Commission, and T-438/12 Global Steel Wire, SA v Commission, T-439/12 Trefilerías Quijano, SA v Commission, T-440/12 Moreda-Riviere Trefilerías, SA v Commission and T-441/12 Trenzas y Cables de Acero PSC, SL v Commission

Press and Information

The General Court dismisses the actions brought by the four Spanish companies which had participated in the cartel on the European pre-stressing steel market

By decision of 30 June 2010,[1] the Commission penalised a cartel in which pre-stressing 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, inter alia, used for building bridges, balconies, foundation piles or pipes and is, principally, used in structural and underground engineering.

The first pan-European cartel meetings were held in Zurich, Switzerland, hence the name 'Club Zurich'. The last attested meeting of the Club Zurich took place on 9 January 1996. However, in order to overcome the crisis of that club, the former participants also continued to meet on a regular basis between January 1996 and May 1997 ('the transitional period'). In May 1997, they finally adopted a revised pan-European arrangement called 'Club Europe'.

There were also two regional branches: one in Italy ('Club Italia') and the other in Spain and Portugal ('Club España'). The different branches were interconnected by overlapping territory, overlapping membership and common goals. The undertakings involved usually met at the margins of official trade meetings in hotels throughout Europe.

The cartel consisted of activities involving quota-fixing, customer-sharing, price-fixing and the exchange of sensitive commercial information relating to price, volume and customers at European level (Club Zurich/Club Europe) and at regional and national levels (Club Italia/Club España). 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 cases were brought before the General Court in connection with the cartel. In essence, the companies concerned sought a reduction in the fines imposed on them. On 15 July 2015 the Court gave judgment in 12 out of those 28 cases.[2]

[1] 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) ('the initial decision').

[2] For more details, see Press Release No 83/15. Several appeals were brought before the Court against some of those judgments. Thus, the judgment in Joined Cases T-389/10 and T-419/10 in SLM v Commission and Ori Martin v Commission was the subject of two appeals, namely (i) Case C-505/15 P in SLM v Commission and (ii) Case C-522/15 P in Commission v SLM and Ori Martin, removed from the register by order of the President of the Court of 18 December 2015; in addition, the judgments in Cases T-393/10, T-398/10, T-422/10 and T-436/10 were the subject of appeals in Cases C-523/15 P, Westfälische Drahtindustrie and Others v Commission, C-510/15 P, Fapricela v Commission, C-519/15 P, Trafilerie Meridionali v Commission, and C-514/15 P, HIT Groep v Commission, respectively.

.

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,[3] which resulted in a reduction of several of the fines imposed in the initial decision.

While the Commission was of the opinion that it had not erred in the initial decision, as amended, it amended that decision a second time during the proceedings, on 4 April 2011.[4]

Moreda-Riviere Trefilerías (MRT), Trefilerías Quijano (TQ), Trenzas y Cables de Acero PSC (Tycsa PSC) and Global Steel Wire (GSW) are four companies belonging to the Spanish Celsa group. That group participated in the cartel since, according to the Commission, the four companies constituted a single economic entity. Following the initial decision, those companies took the view that they were not able to pay the fines which had been imposed on them (totalling €54 389 000 for the four companies of the group) without compromising their viability. They submitted to the Commission an application seeking the reassessment of their ability to pay and sought once again a reduction in the amount of the fines (which they had already done in February 2009, during the administrative procedure, invoking an inability to pay). That new application was rejected by a letter from the Director-General of the Commission's DG 'Competition' ('the Director-General') of 25 July 2012.

MRT, TQ, Tycsa PSC and GSW brought actions (i) against the initial decision, as amended by the first and second amending decisions (Cases T-426/10 to T-429/10; 'the first series of cases') and, secondly, against the letter of 25 July 2012 (Cases T-438/12 to T-441/12; 'the third series of cases').[5]

By today's judgment, the Court dismisses the eight actions brought by the four companies.

The companies dispute, in essence, their membership of an economic unit and their liability.

First of all, the Court mentions **several indications of their economic integration**, which are sufficient to render plausible the Commission's allegations that those companies constituted a single economic entity: **(i) the four companies were united by stable and close structural links during the entire period of the infringement; (ii) the argument that they acted independently on the market is inadequately substantiated; (iii) they were perceived by the other members of the cartel as a single competitor; (iv) they had staff in common; and (v) the allocation of tasks between them and the manner in which that allocation developed demonstrate a coherent strategy for optimising resources for the production and sale of pre-stressing steel.**

Next, **the Court declares that the Commission did not err when attributing liability to the companies. It thus confirms the unitary nature of the infringement, comprising several elements, and its continuity.** In that regard, it dismisses the claims that, first, the acts committed during the period prior to 12 May 1997 are time-barred and, secondly, the cartel was interrupted during the transitional period.

---

[3] Decision C (2010) 6676 final of the Commission of 30 September 2010 ('the first amending decision').

[4] Decision C (2011) 2269 final of the Commission of 4 April 2011 ('the second amending decision'). The Commission substantially reduced the fines imposed (i) on ArcelorMittal, ArcelorMittal Verderio, ArcelorMittal Fontaine and ArcelorMittal Wire France and (ii) on SLM and Ori Martin. Following that second amendment, ArcelorMittal Wire France (Case T-385/10) and ArcelorMittal España (Case T-426/10) withdrew their actions.

[5] The actions in Cases T-575/10, T-576/10, T-577/10 and T-578/10, brought by Moreda-Riviere Trefilerías, Trefilerías Quijano, Trenzas y Cables de Acero and Global Steel Wire (which also brought the actions which are the subject of today's judgment), were directed against the first amending decision ('the second series of cases'). By orders of 25 November 2014, the second series of cases and the identical forms of order submitted by the aforementioned companies in the first series of cases were dismissed by the Court as being manifestly inadmissible (orders of 25 November 2014 in Cases Moreda-Riviere Trefilerías v Commission, T-426/10 and T-575/10, Trefilerías Quijano v Commission, T-427/10 and T-576/10, Trenzas y Cables de Acero v Commission, T-428/10 and T-577/10, and in Global Steel Wire v Commission, T-429/10 and T-578/10). The appeals brought by those companies against the orders of 25 November 2014 were dismissed by the Court of Justice as being manifestly unfounded (order of 17 December 2015 in Cases C-53/15 P to C-56/15 P Moreda-Riviere Trefilerías and Others v Commission).

So far as concerns the pleas seeking a reduction in the amount of the fines imposed on the companies, the Court takes the view that the **Commission did not infringe the principle of non−retroactivity of criminal law by applying the 2006 guidelines for the purpose of calculating the amount of the fine to be imposed on the companies of the Celsa group for an infringement committed prior to their adoption,** given that the new calculation method which those guidelines lay down was reasonably foreseeable, at the time when the infringement was committed, for undertakings such as the four companies concerned. Moreover, **having regard to the particular complexity of the case, the Court takes the view that, notwithstanding the particularly long duration of the first stage of the administrative procedure, it must not be classified as excessive.**

As for the assessment of the companies' ability to pay, **the Court takes the view, like the Commission in the initial decision, that the companies had the means, if not of immediately paying off the fines imposed in their entirety, at least of obtaining the necessary funding or guarantees. The Court states that the Commission was also justified in taking the view that the financial situation of the group's shareholders made it possible for the companies to cope with the payment of a fine of €54.4 million**, which did not represent an unsustainable burden for the Celsa group.

Lastly, the Court examines the third series of cases, concerning the letter of 25 July 2012. In that letter, the Director-General rejected the requests of the applicant companies seeking to have their ability to pay reassessed, as he found that their financial situation had improved in relation to the data available to the Commission at the time when the initial decision was adopted. The Director General therefore took the view that the group had sufficient resources to cope with the payment of the fine, which represented less than 2% of the total of the bank debts renegotiated for an amount of €3 billion. The Director-General also mentioned the possibility that the shareholders in the companies might contribute to the payment of the fine. The Court declares that **the facts alleged by the companies in their requests were not capable of substantially amending the assessment of their ability to pay made in the initial decision.** Consequently, **the letter of 25 July 2012 is not in the nature of a decision** and the actions constituting the third series of cases are dismissed as being inadmissible.

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.

Press contact: Holly Gallagher ☎ (+352) 4303 3355