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Judgments of the Court in Cases C-176/19 P | Commission v Servier and Others, C-201/19 P | Servier and Others v Commission, C-151/19 P | Commission v Krka, C-144/19 P | Lupin v Commission, C-164/19 P | Niche Generics v Commission, C-166/19 P | Unichem Laboratories v Commission, C-197/19 P | Mylan Laboratories and Mylan v Commission, C-198/19 P | Teva UK and Others v Commission, and C-207/19 P | Biogaran v Commission

The Court of Justice rules on the existence of agreements, decisions and concerted practices and of abuse of a dominant position on the perindopril market

It examines the patent dispute settlement agreements concluded by the Servier group with manufacturers of generic medicines

The Servier pharmaceutical group developed and markets perindopril, a medicine intended for the treatment of certain heart diseases. In the 2000s, the patent for the active ingredient of perindopril came into the public domain. Servier applied for patents relating in particular to the manufacturing process of that active ingredient, including the 947 patent, which was granted in 2004.

A number of generic companies challenged the validity of that patent. Servier concluded settlement agreements with certain of those companies, under which they would refrain from disputing the patent and from entering the perindopril market, in return for remuneration from Servier ¹.

The Commission found that those agreements constituted restrictions of competition and that Servier had implemented a strategy of exclusion that constituted an abuse of a dominant position ². It imposed fines of over €330 million on Servier and of around €97 million on the generic manufacturers concerned, which brought proceedings before the General Court of the European Union.

The General Court dismissed in part the actions brought by Servier and the generic manufacturers against that decision of the Commission. It confirmed that the agreements concluded by Servier with Niche/Unichem, Matrix (now Mylan), Teva and Lupin constituted infringements. On the other hand, it annulled the Commission's decision as regards, first, abuse of a dominant position by Servier and, second, the agreements concluded by Servier with Krka. Servier, its subsidiary Biogaran and the generic companies that had been fined brought appeals against those judgments of the General Court. The Commission also brought appeals against the General Court judgments in Servier and Others v Commission ³ and Krka v Commission ⁴.

The Court of Justice has been called upon to assess the patent dispute settlement agreements concluded by Servier with those generic manufacturers from the perspective of EU competition law. In its review, it has ruled on the many points of law raised in the nine appeals.

The Court **dismisses the appeals of Lupin, Niche Generics, Unichem Laboratories, Matrix, Teva and Biogaran**. It thereby confirms the judgments of the General Court that held that the agreements concluded by Servier and

Biogaran constituted market-exclusion agreements and **restricted competition**. Those companies therefore remain **liable for the fines** imposed by the Commission.

After ruling on all the grounds of the appeals brought by the Commission and Servier, the Court **sets aside in part** the judgment of the General Court in **Servier and Others v Commission** and sets aside the judgment of the General Court in **Krka v Commission**.

In relation to the infringement consisting in an abuse of a dominant position, the Court of Justice, granting the forms of order sought by the Commission, holds that the General Court relied on incorrect grounds when it invalidated the definition of the relevant market used by the Commission.

As regards whether two of the three agreements between Servier and Krka constituted an infringement, the Court of Justice, granting the forms of order sought by the Commission, holds that the General Court made **a number of errors of law** and gives final judgment **dismissing** the actions at first instance of Servier and Krka to the extent that they relate to those agreements. Since the General Court did not rule on the third of those agreements, the state of the cases does not permit final judgment to be given and they are referred back to the General Court for it to rule on whether that third agreement constituted an infringement.

In relation specifically to the infringement relating to the agreement with Lupin, the Court of Justice grants in part the forms of order sought by Servier, finding that the General Court erred when it confirmed the period to be taken into account for determining the amount of the fine. Having regard to that error, the amount of the fine for that infringement, originally set at €37 102 100, is **reduced to €34 745 100**.

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 and, as the case may be, an abstract of the judgments ([C-176/19 P](#), [C-201/19 P](#), [C-151/19 P](#), [C-144/19 P](#), [C-164/19 P](#), [C-166/19 P](#), [C-197/19 P](#), [C-198/19 P](#) and [C-207/19 P](#)) are published on the CURIA website on the day of delivery.

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¹ The practice known as 'pay-for-delay'.

² European Commission Decision C(2014) 4955 final of 9 July 2014 relating to a proceeding under Article 101 and Article 102 [TFEU] (Case AT.39612 – Perindopril (Servier)).

³ Judgment of the General Court of 12 December 2018, Servier and Others v Commission [T-691/14](#) (see also Press Release No [194/18](#)).

⁴ Judgment of the General Court of 12 December 2018, Krka v Commission [T-684/14](#) (see also Press Release No [194/18](#)).