



Press and Information

General Court of the European Union  
**PRESS RELEASE No 168/14**  
Luxembourg, 10 December 2014

Judgment in Case T-90/11  
Ordre national des pharmaciens and Others v Commission

## **The General Court confirms that the French Ordre national des pharmaciens restricted competition on the clinical biology analysis market**

*The General Court nevertheless reduces the fine imposed by the Commission from €5 million to €4.75 million*

The Ordre national des pharmaciens (ONP) is a French professional body to which the French State has delegated, amongst other tasks, the task of contributing to the promotion of public health and quality of care, including the safety of professional actions. In France, clinical biology is principally carried out by pharmacists, which explains the ONP's predominant role in that sector. Clinical biology analyses may be carried out only in clinical biology analysis laboratories.

Labco, a European group of laboratories operating in France and in several other European countries, lodged a complaint with the Commission in 2007. The complaint related to decisions adopted by the ONP with a view to hindering the development of Labco and restricting its ability to compete with other laboratories on the clinical biology analysis market. At the conclusion of the investigation, the Commission found that the ONP had restricted competition by preventing groups of laboratories from developing and by attempting to impose a minimum price on the French market for clinical biology analysis. It therefore fined ONP €5 million. The ONP brought an action before the General Court seeking annulment of the Commission's decision or, failing that, a reduction of the fine.

In today's judgment, the **General Court confirms the Commission's decision, but reduces the fine from €5 million to €4.75 million.**

In response to the argument that the ONP's actions were those of a public authority to which the competition rules do not apply and that they were justified for the protection of public health, the General Court finds that, although it is true that the competition rules do not apply to activities which are connected with the exercise of the powers of a public authority,<sup>1</sup> the ONP does not have regulatory powers and brings together pharmacists, at least some of whom carry on an economic activity and may be regarded as undertakings. The General Court observes that, as regards the conduct complained of, the ONP could not claim to be acting merely as an extension of the power of the public authorities, nor was it empowered to extend the scope of legal protection with a view to protecting the interests of a group, since the national legislature had set the limits of the protection afforded and made allowance for a certain degree of competition. In those circumstances, the General Court concludes that **the restrictive conduct of the ONP, targeted by the Commission, is indeed caught by the competition rules of the EU.**

With more specific regard to the **conduct aimed at preventing groups of laboratories from developing in France**, the General Court finds that the Commission analysed correctly the restrictive nature of the various measures adopted by the ONP. The ONP attempted to impede, by a variety of means, the participation by groups in the capital of laboratories with the aim of reducing the competitive threat that the development of groups of laboratories posed to the numerous small laboratories active on the market. Thus, the ONP systematically chose to interpret the law in the manner most unfavourable to the opening up of the market to groups of laboratories and opposed

<sup>1</sup>Case [C-309/99](#); *Wouters and Others* see also Press Release No [15/2002](#).

legal arrangements which were nevertheless consistent with the law. In addition, the ONP misconstrued the French legislation by requiring the disclosure of certain documents and by making the entry into force of structural changes to companies operating laboratories conditional on receipt of prefectural orders and on registration on the list of the ONP. Finally, by obstructing the economic activities of professionals operating on the market or by preventing external capital from investing in the market, the ONP limited or controlled production, technical development and investment.

As regards the **ONP's minimum price policy**, the General Court confirms the Commission's assessment that the ONP's conduct had the object of imposing a minimum market price by prohibiting laboratories, from 2005 onwards, from granting discounts above a ceiling of 10%. The General Court observes that the Commission correctly interpreted the applicable legal framework, for that framework, contrary to the rules imposed by the ONP, does indeed allow laboratories freely to grant reductions in the price of clinical biology analysis services in the context of cooperation agreements or contracts concluded between laboratories or with hospitals. The General Court finds, as did the Commission, that the ONP's conduct with regard to discounts does not amount to a mere application of the law, since on several occasions the ONP went beyond the limits of its statutory task in order to impose its own economic interpretation of the law. Lastly, the General Court points out that the Commission relied on documentary evidence which was sufficient to support the conclusion that there was an infringement by object, consisting of a horizontal price agreement, since that evidence shows that the ONP fixed, for market operators, a maximum discount level of 10% in relation to the contractual reimbursement price, whereas the law permitted laboratories to apply lower prices.

Although confirming the Commission's decision, **the General Court nevertheless reduces the fine imposed on the ONP from €5 million to €4.75 million**. The General Court observes that there was a circular in existence which could have led the ONP to think that prefectural approval was required in certain cases of structural changes to companies operating laboratories. The Commission ought to have recognised, therefore, that there was a mitigating circumstance in that regard, it being understood that the Commission's error relates to only one specific aspect of the ONP's conduct designed to prevent the development of groups of laboratories. In those circumstances, the General Court takes the view that it is appropriate to reduce the fine by €250 000.

---

**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.

---

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

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106