



Press and Information

Court of Justice of the European Union

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Judgment in Case C-411/15 P

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

The Court confirms the fine of nearly €60 million imposed on the Roullier group regarding the phosphates cartel

In 2010, the Commission imposed fines amounting to €175 647 000 on six groups of producers who had participated in a price-fixing cartel and shared the phosphate market for animal feed for more than 30 years. In that cartel, the companies concerned shared sales quotas by region and by customer, coordinated prices and, in some cases, the conditions of sale. A fine of €59 850 000¹ was imposed on the Roullier group, of which Timab Industries is a subsidiary, for having participated in that cartel from 1993 to 2004.

Unlike the other groups involved in the cartel,² the Roullier group did not wish to settle with the Commission after it became aware of the approximate amount of the fine that the Commission intended to impose on it. The purpose of settlement is to simplify the procedure, as the companies concerned admit their participation in the cartel and accept mandatory commitments in exchange for a 10% reduction of the fine. The Commission therefore applied the standard procedure against the Roullier group. This is the first 'hybrid' cartel case, in so far as the settlement procedure took place in parallel with the standard procedure.

The Roullier group brought an action before the General Court seeking annulment of the Commission's decision and a reduction of the fine. In particular, the Roullier group criticised the Commission for imposing on it a fine higher than the maximum in the range envisaged during the settlement procedure. By judgment of 20 May 2015,³ the General Court dismissed the action brought by the Roullier group, finding essentially that the Commission had not penalised the Roullier group on account of its withdrawal from the settlement procedure and was not bound by the range of fines communicated during the settlement procedure. Dissatisfied with the reasoning of the General Court, the Roullier Group asks the Court to set aside the judgment of the General Court.

By today's judgment, the Court dismisses Roullier group's appeal and thus **confirms the fine of almost €60 million imposed by the Commission.**

As regards the argument that the Commission applied to the Roullier group, under the standard procedure, a fine higher than the maximum in the range envisaged during the settlement procedure, the Court observes that the General Court duly verified the validity of the analysis carried out by the Commission during the standard procedure, as well as the factors used by the Commission to calculate the amount of the fine.

¹ Decision C(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).

² Those being the Kemira group (Yara Phosphates Oy, Yara Suomi Oy and Kemira Oy), the company Tessengerlo Chemie, the Ercros group (Ercros SA and Ercros Industriel SA), the FMC group (FMC Foret SA, FMC Netherlands B.V. and FMC Corporation) and the group formed by the company Quimitecnica.com-Comercia e Indústria Química and its parent company José de Mello SGPS.

³ Case: [T-456/10](#) Timab Industries and Cie financière et de participations Roullier (CFPR) V Commission, see Press Release No. [57/15](#).

In particular, the Commission, **while following the same methodology as that used** for the range of fines indicated to the Roullier group **during the settlement procedure, was entitled to ‘review’ the amount of the fine.** The Court finds, as did the General Court, that the Commission had to take into account, in the course of the standard procedure, new information which obliged it to review the file, to redefine the duration of the cartel and adjust the fine by not applying reductions it had proposed during the settlement procedure. In that regard, the Court notes in particular that, during the settlement procedure, the Roullier group did not dispute the duration of the cartel taken into consideration by the Commission (1978 to 2004), whereas, during the standard procedure, the group argued (successfully) that its participation in the cartel was limited to the years 1993-2004. The Roullier group could expect, therefore, that disputing its participation in the cartel during the period between 1978 and 1993 would have an impact on the reductions which might be granted to it when fixing the fine. That paradox, which results in a higher fine for a shorter period of infringement, is explained by the fact that the Commission had been willing, during the settlement procedure, to grant further reductions to the Roullier group for the information provided by that group in respect of the period 1978-1993. Since the Roullier group subsequently disputed its participation in the cartel during that period, the Commission considered that most of the proposed reductions were no longer appropriate for the period 1993-2004. The change in position of the Roullier group explains why it cannot rely on the principle of the protection of legitimate expectations regarding maintenance of the estimates indicated by the Commission during the settlement procedure.

The Roullier group further argues that the General Court did not give a ruling within a reasonable period (the proceedings before the General Court having lasted approximately four years and nine months). In that regard, the Court considers that, in the absence of any additional evidence submitted by the parties, **it is not evident that the General Court infringed, in a sufficiently serious manner, its obligation to adjudicate on the case within a reasonable time.**

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](#) of the judgment is published on the CURIA website on the day of delivery.

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