



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 43/18**

Luxembourg, 12 April 2018

Advocate General's Opinion in Case C-99/17 P  
Infineon Technologies AG v Commission

**In the context of the cartel in the smart card chip market, Advocate General Wathelet proposes that the Court should set aside the judgment handed down by the General Court against Infineon Technologies and refer the case back to the General Court**

By decision of 3 September 2014,<sup>1</sup> the Commission imposed fines totalling approximately €138 million on four companies (Infineon Technologies, Philips, Samsung and Renesas) for having coordinated, from 2003 to 2005, their conduct on the smart card chip market in the European Economic Area. The cartel functioned through a network of bilateral contacts and exchanges among the undertakings of commercially sensitive information relating inter alia to prices. The Commission in particular imposed a fine of €82 784 000 on Infineon and of €20 148 000 on Philips.

Disputing the existence of the cartel and the amount of the fine imposed on them, Infineon and Philips brought actions for the annulment of the Commission Decision before the General Court, which were dismissed by that court by judgments of 15 December 2016.<sup>2</sup> Those two companies then brought proceedings before the Court of Justice to have those judgments set aside. The present Opinion only concerns the appeal brought by Infineon and it focuses primarily on one of the grounds put forward by that company before the Court. As to the appeal brought by Philips (Case [C-98/17 P](#)), the Court will proceed to judgment without an Opinion at a later date.

In today's Opinion **Advocate General Melchior Wathelet proposes that the General Court's judgment against Infineon be set aside and that the case be referred back to the General Court.**

The Advocate General endorses the claim that **the General Court did not examine, in its judgment, each of the arguments put forward by Infineon in order to establish the lawfulness of the bilateral contacts made with the other participants to the cartel** and which the Commission found it to have had. The General Court merely examined 5 of 11 bilateral contacts Infineon had engaged in with the other participants to the cartel. The Advocate General considers that, although the General Court did not commit any error by limiting its examination to those five contacts to establish the existence of a single and continuous cartel, it should have carried out an exhaustive review of all the contacts challenged by Infineon to show whether the amount of the fine was commensurate with the gravity of the participation of that undertaking in the cartel: the taking into account of the 11 bilateral contacts could have led the General Court to conclude that Infineon had not participated in all aspects of the cartel or that it had played a minor role in it and thus to reduce the amount of the fine imposed by the Commission.

Considering that the **General Court did not take into consideration all the essential factors to assess the gravity of the conduct of which Infineon is accused and that it did not respond to a sufficient legal standard to all the arguments raised by that company with a view to**

<sup>1</sup> Commission Decision C(2014) 6250 final of 3 September 2014 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39574 — Smart Card Chips).

<sup>2</sup> Cases: [T-758/14](#) Infineon Technologies v Commission) and [T-762/14](#) Koninklijke Philips and Philips France v Commission, see Press Release No [136/16](#).

**having the fine cancelled or reduced**, the Advocate General proposes that Court should set aside the General Court's judgment and refer the case back to it in order for it to examine the contacts at issue in their entirety and reach the appropriate conclusions.

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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.

---

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

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

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