



Press and Information

General Court of the European Union  
**PRESS RELEASE No 20/22**  
Luxembourg, 2 February 2022

Judgment in Case T-799/17  
Scania and Others v Commission

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**The General Court dismisses Scania's action and maintains the fine of €880.52 million imposed by the Commission for Scania's participation in a cartel between truck manufacturers**

*The General Court provides clarification on, first, the legality of a 'hybrid' procedure combining the settlement procedure and the standard administrative procedure in cartel matters and, second, the concept of a 'single and continuous infringement'*

By decision of 27 September 2017 ('the contested decision'),<sup>1</sup> the European Commission found that the companies Scania AB, Scania CV AB and Scania Deutschland GmbH, three entities of the Scania group, which produce and sell heavy trucks used for long-haulage transport (together, 'Scania'), had infringed EU rules prohibiting cartels,<sup>2</sup> by participating, from January 1997 to January 2011, with their competitors, in collusive arrangements aimed at restricting competition on the market for medium and heavy trucks in the EEA. The Commission imposed a fine of €880 523 000 on Scania.

The contested decision was adopted following a 'hybrid' procedure, combining the settlement procedure<sup>3</sup> and the standard administrative procedure in cartel matters.

In the present case, each undertaking to which a statement of objections was addressed, including Scania, confirmed to the Commission its willingness to participate in settlement discussions. However, following discussions with the Commission, Scania decided to withdraw from that procedure. The Commission thus adopted a settlement decision in respect of the undertakings which had submitted a formal request in that regard,<sup>4</sup> and continued the investigation concerning Scania.

By its judgment of 2 February 2022, **the General Court dismisses the action brought by Scania** seeking annulment of the contested decision, and provides clarifications regarding the legality of a 'hybrid' procedure in cartel matters and the concept of a 'single and continuous infringement'.

### **Findings of the General Court**

As regards the legality of the 'hybrid' procedure followed by the Commission, the General Court begins by observing that, contrary to what Scania submitted, the Commission's decision to follow such a procedure, does not, in itself, entail an infringement of the presumption of innocence, the rights of the defence or the duty of impartiality. The provisions governing the settlement procedure

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<sup>1</sup> Commission Decision C(2017) 6467 final of 27 September 2017, relating to proceedings under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) (Case AT.39824 – Trucks).

<sup>2</sup> Article 101 TFEU and Article 53 of the EEA Agreement.

<sup>3</sup> That procedure is governed by Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18). It enables the parties in cartel cases to acknowledge their liability and, in exchange, to receive a reduction in the amount of the fine imposed.

<sup>4</sup> Decision C(2016) 4673 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39824 – Trucks). That decision was adopted on the basis of Article 7 and Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003, L 1, p. 1).

do not preclude the Commission from being able to follow such a procedure in the context of the application of Article 101 TFEU. Furthermore, under the case-law, in such procedures, **the Commission is entitled, initially, to adopt a settlement decision and then go on to adopt a decision following the standard procedure**, provided that it ensures observance of the abovementioned principles and rights.

That being so, the General Court examines whether, in the circumstances of the present case, the Commission observed those principles.

**As regards the complaint alleging infringement of the principle of the presumption of innocence**, Scania submitted that the settlement decision had defined the Commission's final decision as regards the same facts as those set out in the statement of objections and had concluded, on the basis of the same evidence used in the contested decision, that those facts, in which Scania had also participated, constituted an infringement.

In that regard, the General Court notes, in the first place, that none of the passages of the statement of reasons for the settlement decision, read in its entirety, in the light of the particular circumstances in which the settlement decision had been adopted, was likely to be understood as a premature expression of Scania's liability.

In the second place, the General Court clarifies that the acknowledgement by the addressees of a settlement decision of their liability cannot lead to the implicit acknowledgement of the liability of the undertaking which decided to withdraw from that procedure, on account of its possible participation in the same facts regarded as an infringement in the settlement decision. In the context of the standard administrative procedure which follows the adoption of such a decision, the undertaking concerned and the Commission are, in relation to the settlement procedure, in a situation known as 'tabula rasa', where liabilities have yet to be determined.

Thus, the Commission is bound, firstly, solely by the statement of objections and, secondly, it is required to review the file in the light of all the relevant circumstances, including all the information and arguments put forward by the undertaking concerned when exercising its right to be heard. Consequently, the Commission's legal classification of the facts with regard to the settling parties does not in itself presuppose that the same legal classification of the facts was necessarily adopted by the Commission with respect to the undertaking which withdrew from such a procedure. In that context, there is nothing to prevent the Commission from relying on evidence used in both decisions of the hybrid procedure.

In the light of those considerations and in view of the fact that Scania did not deny that it had had the opportunity to submit all the evidence to challenge the facts and evidence on which the Commission relied in the standard administrative procedure, including the evidence added to the file after the statement of objections, **the General Court finds that there was no infringement of the principle of the presumption of innocence** in the present case.

**As regards the complaint alleging infringement of the rights of defence**, the General Court found that, in the settlement decision, the Commission had in no way prejudged Scania's liability for the infringement. Consequently, **the fact that Scania was not heard in the context of that procedure could not result in there being an infringement of its rights of defence**.

**As regards the complaint alleging infringement of the principle of impartiality**, the General Court found that Scania had not established that the Commission had not offered, during the investigation procedure, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case. When the Commission examines, in the context of the standard procedure, the evidence submitted by the parties which have chosen not to settle, it is in no way bound by the factual findings and legal classifications which it adopted in the settlement decision. Furthermore, given that the principle which prevails in EU law is that evidence may be freely adduced and that the Commission has discretion as to whether it is appropriate to adopt investigative measures, **its refusal to adopt new investigative measures is not contrary to the**

**principle of impartiality, unless it is demonstrated that the absence of such measures is due to the Commission's bias.**

As regards **the concept of a 'single and continuous infringement'**, the General Court examines the conditions relating to the existence of such an infringement in the present case and its imputability to Scania.

As regards the finding that there was a single and continuous infringement, the General Court observes that, contrary to what Scania argued, such a finding does not necessarily presuppose that a number of infringements have been established, each of which falls within Article 101 TFEU, but rather the demonstration that the various instances of conduct identified form part of an overall plan designed to achieve a single anti-competitive objective.

In the present case, the General Court finds that the Commission had established to the requisite legal standard that the collusive contacts which took place over time at different levels, in particular at top management level between 1997 and 2004, at lower headquarters level between 2000 and 2008, and at German level between 2004 and 2011, taken together, formed part of an overall plan aimed at achieving the single anti-competitive objective of restricting competition on the market for medium and heavy trucks in the EEA.

More specifically, the existence of links between the three levels of the collusive contacts was apparent from the fact that the participants in the meetings were always employees of the same undertakings, there was a temporal overlap between the meetings held at the different levels and there were contacts between employees at the lower level of the respective headquarters of the parties to the cartel and the employees at German level. Furthermore, the nature of the information shared, the participating undertakings, the objectives and the products concerned remained the same throughout the infringement period. Thus, even though the collusive contacts at top management level had been interrupted in September 2004, the same cartel, which had the same content and scope, was continued after that date, the only difference being that the employees involved were from different organisational levels within the undertakings involved, and not from top management level.

In that context, the alleged fact that the Scania employees at German level did not know that they were involved in the continuation of the practices that had taken place at the other two levels, or that the Scania employees who participated in the meetings at lower headquarters level were not aware of the meetings at top management level was of no relevance to the finding that there was an overall plan. Awareness of the existence of such a plan must be assessed at the level of the undertakings involved and not at the level of their employees.

**As regards the imputability of the infringement**, the General Court finds that, similarly, the factors determining the imputability of the single and continuous infringement must also be assessed at the level of the undertaking. In the present case, since Scania directly participated in all the relevant aspects of the cartel, the Commission was entitled to impute the infringement as a whole to Scania, without the Commission being required to demonstrate that the criteria of interest, knowledge and acceptance of the risk were satisfied.

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**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 and ten days 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.

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*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

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