

## General Court Annuls Fine in Envelope Cartel Settlement

***First successful appeal against an EU settlement decision in a cartel case may have broader implications for the settlement process.***

On 13 December 2016, the General Court of the Court of Justice of the European Union (the GC or Court) allowed Tompla's appeal against the European Commission's (the Commission's) decision in the envelope cartel.<sup>1</sup> The GC agreed with Tompla that the contested decision did not explain in sufficient detail why the Commission had applied differentiated fine reductions for the different members of the cartel. The GC consequently annulled Tompla's €4.7 million fine.

### Background

In December 2014, the Commission fined five companies a total of €19.5 million for engaging in a cartel in the sale of envelopes.<sup>2</sup> The Commission's decision was adopted under the settlement procedure and the companies in question benefited from a 10% reduction in fine. The Commission also granted four undertakings (including Tompla) fine reductions under the Leniency Notice.

Tompla appealed the Commission's decision, arguing that the Commission failed to adequately explain its fining methodology in its decision.

### Commission must properly reason its settlement decisions

In the envelope cartel decision, the Commission exceptionally departed from its stated fining methodology (as point 37 of its Fining Guidelines allows)<sup>3</sup>. The reason for the Commission's approach was that most decision addressees were 'mono-product' undertakings, *i.e.* entities that generate all of their revenues on a single market (*i.e.* envelopes). Consequently, the fines of all parties would have reached the legal maximum of 10% of total turnover, thereby raising concerns that any distinction on the basis of gravity or mitigating circumstances would not be reflected in the fines. In order to address this issue, the Commission discounted the basic amount of the fine (which is the basis for the application of its fining methodology). The Commission did not, however, apply the same discount to all decision addressees and it did not provide more than a cursory explanation of how it applied the relevant reductions. This "perfunctory" statement of reasons was, according to the Court, capable of giving the misleading impression that the main reason for the adjustments to the basic amount of the fine was the "mono-product" nature of the decision addressees' business, whereas in fact one company (Hamelin) also generated revenues from other products.

The GC did not accept the argument that the Commission was under a less onerous duty to state reasons in a settlement context. The GC found that the reasoning must be sufficiently clear to enable the addressees of a decision to determine whether there is an error that would allow an annulment, and the Court to exercise its powers of review.<sup>4</sup>

Importantly, the Court pointed out that the need for the Commission to provide clarity on its reasoning in this case was even greater because the Commission departed from the general methodology in its Fining Guidelines when calculating the relevant fines.

## Practical Implications

The judgment is likely to have broader implications for the Commission's settlement process. The GC confirmed that even if a company has admitted liability and settled in full awareness of the amount of the fine eventually imposed on it, the company can successfully appeal the settlement decision. The judgment may, therefore, lead to more settlement decisions being appealed (particularly on the ground of breach of the principle of equal treatment), which in turn may undermine the very procedural efficiencies that make settlements attractive from the Commission's perspective. Such appeals could, in the short term, be facilitated by the terse reasoning contained in recent settlement decisions. More importantly, going forward, better reasoned settlement decisions may constrain the Commission's ability to "do deals" in settlements (for example, by excluding certain aspects of one undertaking's participation in an infringement from the calculation of its fines in borderline cases) and may make the settlement tool less attractive to some parties in cartel cases. As the Commission typically agrees to pursue the settlement route only if all defendants are willing to settle, a more rigid approach to settlement fines could limit the overall attractiveness of settlements in future cases.

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#### Endnotes

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<sup>1</sup> Case T-95/15, *Printeos v European Commission*

<sup>2</sup> C(2014) 9295

<sup>3</sup> Guidelines on the method of setting fines, 2006/C 210/02

<sup>4</sup> During the proceedings the Commission admitted that Hamelin received a discount despite not being a mono-product firm on equity grounds; the GC noted that this explanation came far too late to remedy the Commission's failure to state reasons in its decision.