Provisional text

JUDGMENT OF THE COURT (First Chamber)
1 August 2022 (*)

(Reference for a preliminary ruling – Competition – Agreements, decisions and concerted practices – Article 101 TFEU – Actions for damages for infringements of the provisions of EU competition law – European Commission decision finding an infringement – Settlement procedure – Products concerned by the infringement – Specialised trucks – Household refuse collection trucks)

In Case C-588/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Hannover (Hanover Regional Court, Germany), made by decision of 19 October 2020, received at the Court on 10 November 2020, in the proceedings

Landkreis Northeim

v

Daimler AG,

intervening parties:

Iveco Magirus AG,

Traton SE, successor in law to MAN SE, MAN Truck & Bus and MAN Truck & Bus Deutschland GmbH,

Schönmackers Umweltdienste GmbH & Co. KG,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, P.G. Xuereb and A. Kumin, Judges,

Advocate General: L. Medina,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 17 November 2021,

after considering the observations submitted on behalf of:

Landkreis Northeim, by L. Maritzen and B. Rohlfing, Rechtsanwälte,

Daimler AG, by U. Denzel, L. Schultze-Moderow and C. von Köckritz, Rechtsanwälte,

Iveco Magirus AG, by A. Boos, M. Buntscheck, T. Mühlbach and H. Stichweh, Rechtsanwälte,

Traton SE, successor in law to MAN SE, MAN Truck & Bus and MAN Truck & Bus Deutschland GmbH, by C. Jopen, S. Milde and D.J. Zimmer, Rechtsanwälte,

Schönmackers Umweltdienste GmbH & Co. KG, by A. Glöckner, Rechtsanwalt,

the Austrian Government, by A. Posch, E. Samoilova and J. Schmoll, acting as Agents,

the European Commission, by S. Baches Opi, M. Farley and L. Wildpanner, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,

gives the following

Judgment

This request for a preliminary ruling concerns the interpretation of the decision of the European Commission of 19 July 2016, notified under reference C(2016) 4673 final, relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (OJ 2017 C 108, p. 6; 'the decision at issue').

The request has been made in proceedings between the Landkreis Northeim (Northeim district, Germany) and Daimler AG concerning damage allegedly caused to the Northeim district by the infringement of Article 101 TFEU and of Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement') found in the decision at issue.

Legal context

European Union law

Regulation (EC) No 1/2003

Article 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 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), entitled 'Burden of proof', provides:

'In any national or [EU] proceedings for the application of Articles [101 TFEU] and [102 TFEU], the burden of proving an infringement of Article [101(1) TFEU] or of Article [102 TFEU] shall rest on the party or the authority alleging the infringement. The undertaking or association of undertakings claiming the benefit of Article [101(3) TFEU] shall bear the burden of proving that the conditions of that paragraph are fulfilled.'

Under Article 7 of that regulation, entitled 'Finding and termination of infringement':

'1. Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article [101 TFEU] or of Article [102 TFEU], it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally

effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.

2. Those entitled to lodge a complaint for the purposes of paragraph 1 are natural or legal persons who can show a legitimate interest and Member States.'

Article 11 of Regulation (EC) No 1/2003, entitled 'Cooperation between the Commission and the competition authorities of the Member States', provides, in paragraph 6 thereof:

'The initiation by the Commission of proceedings for the adoption of a decision under Chapter III shall relieve the competition authorities of the Member States of their competence to apply Articles [101 TFEU] and [102 TFEU]. If a competition authority of a Member State is already acting on a case, the Commission shall only initiate proceedings after consulting with that national competition authority.'

Article 16 of that regulation, entitled 'Uniform application of [EU] competition law', provides, in paragraph 1 thereof:

'When national courts rule on agreements, decisions or practices under Article [101 TFEU] or Article [102 TFEU] which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article [267 TFEU].'

Article 18 of Regulation No 1/2003, entitled 'Requests for information', states, in paragraph 1 thereof:

'In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.'

Article 23 of that regulation, entitled 'Fines', states, in paragraphs 2 and 3 thereof:

'2. The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

they infringe Article [101 TFEU] or Article [102 TFEU]; or

they contravene a decision ordering interim measures under Article 8; or

they fail to comply with a commitment made binding by a decision pursuant to Article 9.

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

Where the infringement of an association relates to the activities of its members, the fine shall not exceed 10% of the sum of the total turnover of each member active on the market affected by the infringement of the association.

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.'

The 2006 Guidelines

Point 6 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines') states:

'The combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement. Reference to these factors provides a good indication of the order of magnitude of the fine and should not be regarded as the basis for an automatic and arithmetical calculation method.'

According to point 13 of those guidelines:

'In determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking's sales of goods or services to which the infringement directly or indirectly … relates in the relevant geographic area within the [European Economic Area (EEA)]. It will normally take the sales made by the undertaking during the last full business year of its participation in the infringement (hereafter "value of sales").'

Point 37 of the 2006 Guidelines provides:

'Although these [g]uidelines present the general methodology for the setting of fines, the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in point 21.'

The settlement notice

Point 2 of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation No 1/2003 in cartel cases (OJ 2008 C 167, p. 1) provides:

'When parties to the proceedings are prepared to acknowledge their participation in a cartel violating Article [101 TFEU] and their liability therefore, they may also contribute to expediting the proceedings leading to the adoption of the corresponding decision pursuant to Article 7 and Article 23 of [Regulation No 1/2003] in the way and with the safeguards specified in this Notice. Whilst the Commission, as the investigative authority and the guardian of the Treaty empowered to adopt enforcement decisions subject to judicial control by the [European Union] Courts, does not negotiate the question of the existence of an infringement of [European Union] law and the appropriate sanction, it can reward the cooperation described in this Notice.'

German law

Paragraph 33(4) of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions on competition) of 26 June 2013 (*BGBl.* 2013 I, p. 1750), in the version applicable to the dispute in the main proceedings, provides:

'Where compensation is sought for an infringement of a provision of this Law or of Article [101 TFEU] or [102 TFEU] the court shall be bound by the finding of an infringement in so far as it was made in a final decision of the cartel authority [*(Kartellbehörde)*], the [European Commission] or the competition authority [*(Wettbewerbsbehörde)*] or the court acting in that capacity in another Member State of the [European Union]. The

same shall apply to corresponding findings in final court decisions that have been issued as a result of challenges to decisions pursuant to the first sentence. …'

The dispute in the main proceedings and the question referred for a preliminary ruling

In 2006 and 2007, the Northeim district purchased, by means of a call for tenders, two household refuse collection trucks from Daimler.

On 19 July 2016, in the context of a settlement procedure, the Commission adopted the decision at issue.

By that decision, the Commission found that there was a cartel in which several international truck manufacturers, including Daimler, MAN SE and Iveco Magirus AG participated, as regards, first, pricing and gross price increases of trucks weighing between 6 and 16 tonnes ('medium trucks') and trucks weighing more than 16 tonnes ('heavy trucks') in the EEA and, secondly, the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to 6 standards, and consequently, an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement. The Commission took the view that that infringement lasted from 17 January 1997 to 18 January 2011.

Following the adoption of that decision, the Northeim district brought an action for damages against Daimler before the referring court, the Landgericht Hannover (Hanover Regional Court, Germany), seeking compensation for the damage allegedly suffered by that district as a result of the anti-competitive practices engaged in by Daimler.

The Northeim district submits that the household refuse collection trucks which it purchased from Daimler are among the products concerned by the infringement found in the decision at issue. It refers in that regard to the wording of that decision, which does not expressly exclude specialised trucks from those products.

Daimler, for its part, argues before the referring court that household refuse collection trucks, which are specialised trucks, are not covered by the decision at issue. In that regard, Daimler explained that, on 30 June 2015, in the course of the procedure which led to the adoption of that decision, the Commission sent it a request for information in which it was stated that, for the purposes of the questions referred, the term 'trucks' did not cover used trucks, specialised trucks (for example, trucks for military use or firefighting trucks), resold structures (*add-ons*), aftersales or other services and warranties.

In that context, and taking into account the requirements of Article 16(1) of Regulation No 1/2003 according to which, when national courts rule on agreements, decisions or practices under Article 101 TFEU or Article 102 TFEU which are already the subject of a Commission decision, they cannot take decisions running counter to that decision, the referring court has doubts as regards the products covered by the cartel in question referred to in the decision at issue. In particular, that court asks whether or not, in the light of the national case-law on the scope of the concept of 'trucks' as used in that decision, which is not uniform, household refuse collection trucks are excluded from the products covered by that cartel.

In that regard, the referring court points out, first of all, that, in recital 5 of the decision at issue, the Commission found, first, that 'the products concerned by the infringement are trucks weighing between [6] and [16] tonnes ("medium trucks") and trucks weighing more than [16] tonnes ("heavy trucks") both as rigid trucks as well as tractor trucks', secondly, that trucks for military use are excluded from the products covered by the cartel in question in the main proceedings, and, thirdly, that the case which gave rise to the decision at issue '[did] not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services'.

In those circumstances, the referring court takes the view that the wording used by the Commission in order to describe the products covered by the cartel in question in the main proceedings could be understood as covering, in principle, only 'normal' trucks, with the exception of those intended for military use, and that, in the absence of an express statement, specialised trucks, including household refuse collection trucks, are excluded from the concept of 'trucks' used by the Commission in the decision at issue, since they fall within the concept of 'other goods'.

However, according to that court, that same wording could also be understood as meaning that the concept of 'trucks' covers all types of trucks, including all types of specialised trucks, with the exception of trucks for military use.

Next, that court is uncertain as to the effect of the Commission's request for information of 30 June 2015, referred to in paragraph 19 above, on the determination of the products covered by the cartel in question in the main proceedings. In particular, that court seeks to ascertain whether the fact that the Commission stated in that request that, for the purposes of the questions referred, the concept of 'trucks' covered neither used trucks nor specialised trucks, 'e.g. military trucks, fire trucks', means that those latter trucks are referred to for illustrative purposes only, without constituting an exhaustive list.

Lastly, the referring court notes that the decision at issue was adopted in the context of a settlement procedure which was initiated by the Commission, following requests made to that institution by the parties involved in the procedure initiated pursuant to Article 11(6) of Regulation No 1/2003. In that connection, that court is uncertain as to the impact of the fact that the scope of the anti-competitive conduct is determined in the context of a settlement procedure.

In those circumstances the Landgericht Hannover (Hanover Regional Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the decision [at issue] be interpreted as meaning that special-purpose/specialised vehicles, in particular [household] refuse collection trucks, are also covered by the findings of that decision?'

Consideration of the question referred

Admissibility

In the first place, on the assumption that the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), applies by analogy to the case in the main proceedings, the Northeim district submits that the request for a preliminary ruling is inadmissible on the ground that Daimler did not bring an action for annulment of

the decision at issue before the General Court and that, accordingly, that company can no longer challenge the legality of that decision.

In that regard, it is sufficient to note that there is nothing in the order for reference to indicate that Daimler, as defendant in the main proceedings to an action for damages brought by the Northeim district following the adoption of the decision at issue, challenges the validity of that decision before the referring court. However, it is clear from the documents before the Court that the referring court is called upon to interpret that decision, and not to rule on its validity.

In the second place, Schönmackers Umweltdienste GmbH & Co. KG, intervener in the main proceedings, intervening in support of the Northeim district, argues that it is not expressly clear from the order for reference how the answer to the question referred is necessary in order to resolve the dispute in the main proceedings.

In that regard, in accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 25).

It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26).

Specifically, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is pending before the national courts, in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 27).

In the present case, an action for damages has been brought before the referring court, following the adoption of the decision at issue by which the Commission found that a cartel existed between several international truck manufacturers, including Daimler, concerning, first, medium trucks and heavy trucks both as rigid trucks as well as tractor trucks, and, secondly, the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to 6 standards. In its request for a preliminary ruling, the referring court explains that the applicant in the main proceedings, which purchased two household refuse collection trucks from Daimler, takes the view that those trucks are among the products covered by that cartel. However, Daimler contends before that court that those trucks, being specialised trucks, do not fall within the material scope of the decision at issue.

It is, therefore, clear from the order for reference that the referring court is uncertain as to the scope of the decision at issue and raises, in particular, the question whether, in the present case, those household refuse collection trucks are among the products covered by the cartel found by the Commission in that decision.

In those circumstances, the interpretation sought of the scope of that decision appears necessary in order to enable the referring court to determine whether or not, in the present case, the action for damages is well founded.

Having regard to all those factors, it must be held that the request for a preliminary ruling is admissible.

Substance

By its question, the referring court asks, in essence, whether the decision at issue must be interpreted as meaning that specialised trucks, in particular household refuse collection trucks, fall within the scope of the products covered by the cartel found in that decision.

In that regard, it should be noted at the outset that the products concerned by an infringement of Article 101 TFEU found in a Commission decision are determined by reference to the agreements and activities covered by the cartel. It is the members of the cartel which voluntarily concentrate their anti-competitive actions on the products covered by that cartel.

It follows that, in order to determine whether specialised trucks, in particular household refuse collection trucks, fall within the scope of the products covered by the cartel found in the decision at issue, reference must be made, as a matter of priority, to the operative part and to the statement of reasons for that decision, with the result that the definitions of the concepts of 'truck' and of 'special purpose vehicle' in the various acts of secondary EU legislation, to which the participants in the present proceedings refer, are irrelevant.

In that regard, it should be noted that, according to Article 1 of the decision at issue, the cartel in question in the main proceedings concerned, first, pricing and gross price increases within the EEA for medium trucks and heavy trucks and, secondly, the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to 6 standards.

As regards the products covered by the cartel in question in the main proceedings, the Commission, in recital 5 of the decision at issue, in the subsection headed 'The Product', expressly defined the products on which the members of the cartel in the main proceedings concluded collusive arrangements.

As is apparent from the first sentence of that recital, the products concerned by the infringement in the main proceedings are trucks weighing between 6 and 16 tonnes ('medium trucks') and trucks weighing more than 16 tonnes ('heavy trucks') both as rigid trucks as well as tractor trucks. In footnote 5, relating to that recital, the Commission expressly excluded only trucks for military use from the products concerned.

The second sentence of that recital specifies that the case which gave rise to the decision at issue does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services.

In that context, since the distinction by category of trucks in recital 5 of the decision at issue is made entirely on the basis of the weight of the trucks, it must be held, as the Advocate General observed in point 74 of her Opinion, that the criterion laid down in that decision for determining whether a truck falls within the scope of that decision is its weight.

It follows that the decision at issue relates to the sale of all medium trucks and heavy trucks both as rigid trucks as well as tractor trucks.

Furthermore, there is nothing in that decision to suggest that specialised trucks are not among the products concerned by the infringement at issue in the main proceedings.

On the contrary, as is apparent in particular from recitals 46, 48 and 56 of the decision at issue, recital 56 forming part of the subsection entitled 'Nature and scope of the infringement', the infringement at issue in the main proceedings concerned all special and standard equipment and models and all factory-fitted options offered by the respective manufacturers which have participated in the cartel in the main proceedings.

In particular, it is apparent, first of all, from recital 46 of that decision that the Commission established that the undertakings concerned exchanged gross price lists and computerised truck configurators containing all possible models and options, which facilitated the calculation of gross prices for any truck configuration. According to recital 28 of that decision, those price lists included the prices of all models of medium trucks and heavy trucks and all factory-fitted options (for specialised equipment) that the respective manufacturers offered.

Next, it is apparent from recital 48 of the decision at issue that the computerised truck configurators exchanged between the undertakings concerned made it possible to determine which options were compatible with which trucks and which options would be part of the standard equipment or an extra.

Lastly, it follows from recital 56 of that decision that the information exchanged between the undertakings concerned included information on intended future gross price increases either of the basic truck models or of the trucks and the available options.

In those circumstances, it must be held that specialised trucks, including household refuse collection trucks, are among the products concerned by the infringement established in the decision at issue.

That finding is not invalidated by the arguments put forward, in particular, by Daimler, Traton SE and Iveco Magirus, according to which, in the context of the settlement procedure, the requests for information sent to them are necessarily relevant for the purposes of determining whether specialised trucks were among the products covered by the cartel in question in the main proceedings. It is argued that, in its request for information of 30 June 2015, referred to in paragraph 19 above – the purpose of which is to obtain information on the turnover achieved by the undertakings concerned with products directly or indirectly related to the infringement found, for the purposes of determining the amount of the fine – the Commission clearly stated that specialised trucks such as trucks for military use and firefighting trucks did not fall within the concept of 'trucks' in respect of which the turnover achieved had to be submitted. In that context, it is submitted that it would be contradictory not to take into account turnover relating to the sales of specialised trucks in the calculation of the fine, but to include those trucks in the concept of 'trucks' within the meaning of recital 5 of the decision at issue.

In that regard, the Court notes, in the first place, that, as is apparent from point 2 of the Commission Notice referred to in paragraph 12 above, although in the context of a settlement procedure the Commission may reward the cooperation of the undertakings concerned, it does not negotiate either the question of the existence of an infringement of the EU competition rules or the appropriate sanction. Accordingly, the fact that the decision at issue was adopted in the context of such a procedure has no bearing on the determination of the scope of the anti-competitive conduct.

In the second place, it follows form Article 18(1) of Regulation No 1/2003 that, in order to carry out the duties assigned to it by that regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

It follows from the case-law of the Court that a request for information is an investigative measure whose sole purpose is to enable the Commission to obtain the information and documentation necessary to check the actual existence and scope of a specific factual and legal situation (see, to that effect, judgment of 10 March 2016, *HeidelbergCement* v *Commission*, C-247/14 P, EU:C:2016:149, paragraph 37).

As the Advocate General in essence stated in point 83 of her Opinion, the purpose of such a request for information is not to define or specify the products covered by the anti-competitive conduct.

In the present case, it is apparent from the documents before the Court that the request for information of 30 June 2015, referred to in paragraph 19 above, sought solely to obtain information on the turnover of the undertakings concerned from the products directly or indirectly linked to the infringement found, for the purposes of determining the amount of the fine.

In the third place, it should be borne in mind that the Commission enjoys a broad discretion as regards the method for calculating fines in relation to infringements of the EU competition rules. That method displays flexibility in a number of ways, enabling the Commission to exercise its discretion in accordance with Article 23(2) and (3) of Regulation No 1/2003 (judgment of 3 September 2009, *Papierfabrik August Koehler and Others* v *Commission*, C-322/07 P, C-327/07 P and C-338/07 P, EU:C:2009:500, paragraph 112).

Although Article 23(2) of Regulation No 1/2003 leaves the Commission a discretion, it nevertheless limits the exercise of that discretion by establishing objective criteria to which the Commission must adhere. Thus, first, the amount of the fine that may be imposed on an undertaking is subject to a quantifiable and absolute ceiling, so that the maximum amount of the fine that can be imposed on a given undertaking can be determined in advance. Secondly, the exercise of that discretion is also limited by rules of conduct which the Commission imposed on itself (see, to that effect, judgments of 18 July 2013, *Schindler Holding and Others* v *Commission*, C-501/11 P,

EU:C:2013:522, paragraph 58, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 146).

In that connection, it should be noted that point 13 of the 2006 Guidelines provides that, 'in determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking's sales of goods or services to which the infringement directly or indirectly … relates in the relevant geographic area within the EEA'. Those guidelines state, in point 6 thereof, that 'the combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement'.

Nevertheless, in accordance with point 37 of the 2006 Guidelines, the Commission may depart from the general methodology laid down in those guidelines for the setting of fines, in order to take account of the particularities of a given case or to achieve sufficient deterrence.

As the Advocate General in essence observed in points 94 and 95 of her Opinion, the Commission is not required, as the case may be, to take into account the maximum value of all sales concerned by the cartel in order to ensure that a fine is effective and a deterrent.

That being so, it must be noted that, when the Commission decides to rely on point 37 of the 2006 Guidelines and to depart from the general methodology set out in those guidelines, it must fulfil its obligation to state reasons under Article 296 TFEU. The Commission may not depart from those guidelines in an individual case without giving reasons that are compatible with EU law.

In the present case, it is apparent from recital 106 of the decision at issue that the fines imposed had been calculated by reference to the principles laid down in the 2006 Guidelines. The Commission also noted, in recitals 108 and 110 of that decision, the rule on the calculation of relevant sales set out in point 13 of those guidelines. In recital 109 of that decision, the Commission observed that the relevant value of sales included sales of medium trucks and heavy trucks both as rigid trucks as well as tractor trucks.

However, it is apparent from recital 112 of the decision at issue that the Commission applied point 37 of the 2006 Guidelines in order to adjust uniformly the proportion of each undertaking's value of sales for the purposes of calculating the variable and additional amounts of the fines. The Commission explained that it did this in the context of its discretion, inter alia for 'reasons of proportionality'. In particular, the Commission took the view that, having regard to the magnitude of the value of sales of the undertakings concerned, the objectives of deterrence and proportionality underlying Article 23(2)(a) of Regulation No 1/2003 could be achieved without using the total value of the truck sales of the undertakings concerned. Consequently, and pursuant to point 37 of the 2006 Guidelines, the Commission decided to use only a fraction of the total value of sales for the purposes of calculating the fine.

In those circumstances, as the Advocate General noted, in essence, in points 90 and 91 of her Opinion, the fact that specialised trucks were excluded from the concept of 'trucks' in the request for information of 30 June 2015, referred to in paragraph 19 above, seeking to obtain information on the turnover of the undertakings concerned from products directly or indirectly linked to the infringement found and that, in recital 112 of the decision at issue, the Commission decided to use only a fraction of the total value of the sales for the purposes of calculating the fine does not permit the inference that specialised trucks were not among the products covered by the cartel in question in the main proceedings.

In the light of the foregoing considerations, the answer to the question referred is that the decision at issue must be interpreted as meaning that specialised trucks, including household refuse collection trucks, fall within the scope of the products covered by the cartel found in that decision.

Costs

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The decision of the European Commission of 19 July 2016, notified under reference C(2016) 4673 final, relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) must be interpreted as meaning that specialised trucks, including household refuse collection trucks, fall within the scope of the products covered by the cartel found in that decision.

[Signatures]

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* Language of the case: German.