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Judgment of the General Court in Case T-561/21 | HSBC Holdings and Others v Commission

Competition in the field of Euro Interest Rate Derivatives: the General Court confirms the Commission's amended decision against HSBC

The revised fine of €31 739 000 is upheld

The origin of this case is the Commission's **decision of 7 December 2016 ('the 2016 Decision')**. By that decision, the Commission found that Crédit agricole, HSBC and JPMorgan Chase had participated in a single and continuous infringement which restricted and/or distorted competition in the Euro Interest Rate Derivatives (EIRD) sector. In respect of that infringement, the Commission imposed on HSBC a fine of €33 606 000.

By its **judgment of 24 September 2019 (T-105/17)**,¹ the General Court of the European Union largely upheld the Commission's finding that HSBC had participated in an infringement of competition law. However, it annulled the fine imposed on the grounds that the statement of reasons was inadequate. The Commission (C-806/19 P) and HSBC (C-883/19 P) brought appeals against that judgment.

In June 2021, **the Commission adopted a new decision ('the 2021 Decision')**. It indicated that the sole purpose of that decision was to remedy the situation following the judgment in Case T-105/17, imposing on HSBC a fine in respect of the infringement established in the 2016 Decision while taking account of the findings made in that judgment. The revised amount of the fine was €31 739 000. On 23 July 2021, the Commission withdrew its appeal in Case C-806/19 P.

On 8 September 2021, HSBC lodged the present action before the General Court against the new decision. It seeks, first, the annulment of the Commission's decision and, second, a reduction in the amount of the fine imposed by the contested decision. The proceedings in this case were stayed until the judgment in Case C-883/19 P was delivered.

By its **judgment of 12 January 2023 (C-883/19 P)**,² the Court of Justice set aside the judgment of the General Court (T-105/17) in so far as it dismissed HSBC's action. It ruled on HSBC's action itself, rejecting it. Nevertheless, the judgment under appeal was upheld in so far as the General Court annulled the fine imposed on the HSBC group; it was that annulment which the 2021 Decision sought to remedy.

By today's judgment, the General Court dismisses HSBC's action against the 2021 Decision.

The arguments of HSBC dismissed by the General Court include its argument that the Commission imposed the fine on HSBC outside of the period prescribed for doing so. According to the General Court, the Commission's lodging of the appeal had the effect of suspending the limitation period in respect of its power to impose fines until the Court of Justice adopted a decision bringing the proceedings in that case to an end. In addition, the mere act of proposing to adopt a decision in order to comply with a judgment of the General Court cannot, as such, be interpreted as definitive and formal acquiescence on the part of the Commission to the judgment of the General Court concerned with the result that the suspension of the running of the limitation period fell away from that moment. Such a

proposal by a Member of the Commission to the College of Commissioners does not mean that any interest on the part of the Commission in the outcome its appeal has ceased since, while those proceedings were pending, there was uncertainty as to the lawfulness of Article 2(b) of the 2016 Decision, which imposed the fine on HSBC, among others.

The mere fact of having taken steps to adopt a new decision following the delivery of the judgment in Case T-105/17 does not show that the Commission lost all interest in seeking a declaration that Article 2(b) of the 2016 Decision was lawful, since that interest continued until the Court of Justice adopted a decision bringing the proceedings to an end or, at the very least, until that new decision was adopted. The fact that, after the 2021 Decision was adopted, the Commission withdrew its appeal in Case C-806/19 P does not in any way alter that conclusion.

Moreover, the General Court rejects HSBC's other arguments seeking annulment of the 2021 Decision and its head of claim requesting that the amount of the fine imposed on it in that decision be reduced.

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.

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.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ Judgment of 24 September 2019, HSBC Holdings and Others v Commission, [T-105/19](#) (see also [Press Release No 116/19](#)).

² Judgment of 12 January 2023, HSBC Holdings and Others v Commission, [C-883/19 P](#) (see also [Press Release No 8/23](#)).