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TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
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VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Second Chamber)

10 December 2025 *

(Competition – Abuse of dominant position – Microprocessors market – Decision finding an infringement of Article 102 TFEU and Article 54 of the EEA Agreement – ‘Naked’ restrictions – Consequences of the annulment in part of an earlier decision – Nature of the infringement – Amount of the fine – 2006 Guidelines on the method of setting fines – Proportionality – Whether appropriate – Unlimited jurisdiction)

In Case T-1129/23,

Intel Corporation Inc., established in Wilmington, Delaware (United States), represented by B. Meyring, J.-F. Bellis, lawyers, D. Beard and J. Williams, Barristers-at-Law,

applicant,

v

European Commission, represented by F. Castillo de la Torre and P. Caro de Sousa, acting as Agents,

defendant,

THE GENERAL COURT (Second Chamber),

composed, at the time of the deliberations, of A. Marcoulli, President, J. Schwarcz and W. Valasidis (Rapporteur), Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

further to the hearing on 16 May 2025,

* Language of the case: English.

gives the following

Judgment

- 1 By its action under Articles 261 and 263 TFEU, the applicant, Intel Corporation Inc., seeks, first, the annulment of Commission Decision C(2023) 5914 final of 22 September 2023 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (AT.37990 – Intel) ('the contested decision') and, second, the cancellation or reduction of the fine imposed on it in that decision.

Background to the dispute

- 2 For a fuller description of the background to the dispute than that set out in paragraphs 3 to 10 below, reference is made to paragraphs 1 to 35 of the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19), and to paragraphs 3 to 19 of the judgment of 24 October 2024, *Commission v Intel Corporation* (C-240/22 P, EU:C:2024:915), which dismissed the appeal by the European Commission against the judgment of the General Court.
- 3 The Commission had initially alleged that the applicant had infringed Article 102 TFEU and Article 54 of the Agreement on the European Economic Area (EEA) by committing a single and continuous between October 2002 and December 2007, characterised by the implementation of a strategy aimed at excluding a competitor, namely Advanced Micro Devices Inc. ('AMD'), from the market for microprocessors (Central Processing Units, 'CPUs'), more specifically x86 CPUs ('x86 CPUs').
- 4 That infringement was based on eight separate courses of conduct identified by the Commission in Article 1(a) to (h) of Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article [102 TFEU] and Article 54 of the EEA Agreement (COMP/C-3/37.990) – Intel), a summary of which is found in the *Official Journal of the European Union* (OJ 2009 C 227, p. 13) ('the 2009 decision'). Three of those courses of conduct, listed in Article 1(f) to (h) of that decision, concerned the applicant having infringed Article 102 TFEU by making certain payments to three computer manufacturers, namely HP, Acer and Lenovo, conditional on those manufacturers cancelling or postponing the launch of its competitor AMD's computers with x86 CPUs or conditional on restrictions on the marketing of such computers ('the naked restrictions').
- 5 The fine imposed on the applicant in respect of the infringement found, taken as a whole, amounted to EUR 1 060 000 000.

- 6 By judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19, paragraph 527), the General Court held that the grounds of the 2009 decision were not capable of serving as a basis for Article 1(a) to (e) of that decision.
- 7 It therefore annulled Article 1(a) to (e) of the 2009 decision and Article 2 thereof in its entirety. It also annulled Article 3 of that decision as regards the conduct described in Article 1(a) to (e) of the 2009 decision and dismissed the action as to the remainder.
- 8 By the judgment of 24 October 2024, *Commission v Intel Corporation* (C-240/22 P, EU:C:2024:915), the Court of Justice dismissed the Commission's appeal, which concerned the judgment of the General Court of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19) only in so far as the General Court had annulled the 2009 decision in part.
- 9 The Commission had adopted the contested decision on 22 September 2023, which was already before the delivery of the judgment of 24 October 2024, *Commission v Intel Corporation* (C-240/22 P, EU:C:2024:915).
- 10 The Commission relied on the part of the 2009 decision which did not relate to the annulment in part ordered by the General Court and which was not the subject of the appeal before the Court of Justice, namely Article 1(f) to (h) of that decision. The Commission determined the amount of the fine which related, in its view, to the naked restrictions and, accordingly, substituted a new article for Article 2 of the 2009 decision annulled by the General Court, imposing on the applicant a fine of EUR 376 358 000.

Forms of order sought

- 11 The applicant claims, in essence, that the Court should:
 - annul, in whole or in part, the contested decision;
 - accordingly, or in the alternative, cancel the fine imposed on it or reduce the amount of that fine;
 - order the Commission to pay the costs.
- 12 The Commission contends that the Court should:
 - dismiss the action;
 - order the applicant to pay the costs.

Law

The head of claim seeking the annulment of the contested decision

- 13 In support of its head of claim seeking the annulment, in whole or in part, of the contested decision, the applicant relies on three pleas in law. By the first plea in law, the applicant maintains that the level of the fine imposed on it in the contested decision is disproportionate and unlawful. By the second plea in law, which, in essence, is made up of three parts, the applicant maintains that that decision fails to provide sufficient reasoning, that the content of that decision necessitated first sending a new statement of objections and that its rights of defence were infringed. By its third plea in law, the applicant maintains that the Commission failed to verify whether it had jurisdiction to make findings in relation to the naked restrictions imposed on two of the three computer manufacturers referred to in paragraph 4 above, namely Acer and Lenovo.
- 14 Those three pleas will be examined in reverse order.

The third plea: partial lack of jurisdiction on the part of the Commission

- 15 The third ground of appeal is based on the assertion that the considerations set out by the Court of Justice and the General Court regarding the Commission's jurisdiction to find an infringement of Article 102 TFEU, having regard to the foreseeable, immediate and substantial effects of that infringement in the EEA, apply only in so far as they related to the single and continuous infringement referred to in the 2009 decision, which was the expression of an overall strategy, carried out via eight infringing courses of conduct. In so far as only three of those courses of conduct, which relate to the naked restrictions, remain, the applicant maintains that the nature of the single and continuous infringement which is the subject of the contested decision is radically and fundamentally different from that found in the 2009 decision, with the result that the Commission could not, as it did, simply refer to the 2009 decision.
- 16 In particular, the applicant emphasises, in relation to Acer and Lenovo, the modest extent of the sales of notebook models at issue, which the General Court acknowledged in paragraphs 260 and 290 of the judgment of 12 June 2014, *Intel v Commission* (T-286/09, EU:T:2014:547).
- 17 In the reply, the applicant states that the question of jurisdiction is a ground involving a matter of public policy, which therefore does not depend on whether or not it is raised by the parties.
- 18 The Commission disputes those arguments and contends that the third plea ought to be rejected.
- 19 The examination of the third plea involves determining whether the Commission ought to have established, in the contested decision, that it had jurisdiction to

make a finding as regards the naked restrictions in relation to Acer and Lenovo. The Commission maintains that that was not necessary on account of the force of *res judicata* and that it merely adopted measures to comply with the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19).

- 20 In that regard, it should be noted that, although it is for the institution concerned to take, under Article 266 TFEU, the necessary steps to comply with an annulment judgment, such a judgment, delivered by the Courts of the European Union, has, according to settled case-law, as soon as it becomes final, the force of *res judicata* with absolute effect, which applies not only to the operative part of the judgment annulling a decision, but also to the grounds which are its essential basis and are inseparable from it (see order of 7 June 2019, *Mellifera v Commission*, C-784/18 P, not published, EU:C:2019:479, paragraph 20 and the case-law cited).
- 21 In addition, the question of the force of *res judicata* with absolute effect is a matter of public policy and must, consequently, be raised by the Court of its own motion (judgment of 1 June 2006, *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya v Commission*, C-442/03 P and C-471/03 P, EU:C:2006:356, paragraph 45).
- 22 However, the principle of *res judicata* in respect of a judgment extends only to the matters of fact and law actually or necessarily settled by a judicial decision (judgment of 19 February 1991, *Italy v Commission*, C-281/89, EU:C:1991:59, paragraph 14). Accordingly, Article 266 TFEU requires the institution which adopted the annulled act only to take the necessary measures to comply with the judgment annulling its act (see judgment of 8 September 2020, *Commission and Council v Carreras Sequeros and Others*, C-119/19 P, EU:C:2020:676, paragraph 57 and the case-law cited).
- 23 In the present case, as recalled in paragraph 8 above, the Commission's appeal related to the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19), only in so far as the General Court had annulled in part the 2009 decision, and the applicant failed to bring an appeal. Therefore, before the adoption of the contested decision, that decision had become final in so far as the Commission had found therein an infringement of Article 102 TFEU relating to the naked restrictions referred to in Article 1(f) to (h) of the 2009 decision.
- 24 Since the finding of that infringement relating to the naked restrictions has become final, including as regards the question of the Commission's jurisdiction to make that finding, the applicant errs in maintaining that the Commission ought to have once more established that it was competent to make the finding regarding those restrictions in so far as they concerned Acer and Lenovo.
- 25 Moreover, it must be recalled that the applicant had expressly withdrawn its complaints concerning the Commission's lack of jurisdiction to make the finding

regarding those restrictions in the context of the application for annulment of the 2009 decision. First of all, the applicant – which had initially disputed the Commission’s jurisdiction over all of the agreements involving entities located outside the European Union, namely Dell, HP, NEC, Acer and Lenovo – expressly reduced the scope of its challenge ‘solely to the conduct vis-à-vis Acer and Lenovo’, formal note of which was taken by the General Court at the hearing relating to those proceedings, as attested by paragraph 225 of the judgment of 12 June 2014, *Intel v Commission* (T-286/09, EU:T:2014:547).

- 26 Next, as is apparent from the fifth ground of appeal against the judgment of 12 June 2014, *Intel v Commission* (T-286/09, EU:T:2014:547), the applicant argued before the Court of Justice that the General Court misapplied the tests in relation to the Commission’s jurisdiction over the agreements concluded solely with Lenovo in 2006 and 2007, to the exclusion of the agreements involving Acer (see, to that effect, judgment of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraphs 31 and 32). The Court rejected the fifth plea in its entirety (see paragraph 65 of that judgment).
- 27 Lastly, in the context of the referral of the case back to the General Court, the General Court stated that the applicant had expressly ‘withdr[awn] the pleas in law in the action based on the Commission’s jurisdiction and procedural irregularities, which therefore no longer form[ed] part of the subject matter of the proceedings following the referral back’ (see, to that effect, judgment of 26 January 2022, *Intel Corporation v Commission*, T-286/09 RENV, EU:T:2022:19, paragraphs 74 and 82).
- 28 Therefore, not only had the 2009 decision become final as regards the naked restrictions, as stated in paragraph 23 above, but the applicant had itself withdrawn, in the course of the judicial proceedings relating to that decision, all of the pleas alleging that the Commission lacked jurisdiction to make a finding relating to those restrictions. Accordingly, the Commission had no reason to establish its jurisdiction once more, in the contested decision, regarding the finding of those restrictions, contrary to the applicant’s assertions.
- 29 As regards the applicant’s assertion that the infringement at issue, which is based only on naked restrictions, is radically and fundamentally different from that found in the 2009 decision, which concerned eight courses of conduct taken as a whole, which required the Commission to establish its jurisdiction once more, it must be pointed out that that assertion is contradicted by the fact that neither the Court of Justice nor the General Court held that the naked restrictions could no longer form part of the single and continuous infringement initially found by the Commission.
- 30 On the contrary, it must be noted that, in paragraphs 52 and 55 of the judgment of 6 September 2017, *Intel v Commission* (C-413/14 P, EU:C:2017:632), the Court of Justice endorsed the General Court’s reasoning as regards the link between the

naked restrictions and the existence of an overall strategy by the applicant. Accordingly, rejecting the fifth ground of appeal, it held as follows:

‘52 ... since in paragraph 255 of the judgment under appeal, the General Court found, in essence, that Intel’s conduct vis-à-vis Lenovo formed part of an overall strategy intended to ensure that no Lenovo notebook equipped with an AMD CPU would be available on the market, including in the EEA, the General Court did not err in considering, in paragraph 277 of the judgment under appeal, that Intel’s conduct was capable of producing an immediate effect in the EEA.

...

55 It suffices, in that respect, to note that the General Court held that Intel’s conduct vis-à-vis Lenovo formed part of an overall strategy aimed at foreclosing AMD’s access to the most important sales channels, which, moreover, Intel does not dispute in its appeal.’

- 31 Therefore, contrary to applicant’s assertions, the Commission was required – in compliance with what was definitively judged by the EU Courts, without defining a new infringement and, consequently, without having to establish once more its jurisdiction as regards the finding of naked restrictions – to set a new amount of the fine based on those restrictions, considered in the light of an overall strategy by the applicant seeking to foreclose its competitor AMD from the market.
- 32 The Commission was, accordingly, justified in stating, at recital 24 to the contested decision, that the decision re-imposed a fine for an already established infringement and that the amount of that fine would be calculated by reference solely to the naked restrictions as set out in Article 1(f) to (h) of the 2009 decision.
- 33 In addition, the assertion, set out in the reply, that jurisdiction is a plea involving a matter of public policy, cannot call into question the preceding considerations, since, as recalled in paragraph 21 above, the question of the force of *res judicata* with absolute effect is also a ground involving a matter of public policy and the EU Courts cannot be allowed to review, on the basis of considerations having the force of *res judicata*, questions of jurisdiction which they have already settled.
- 34 The third plea must therefore be rejected.

The second plea: the statement of reasons for the contested decision is insufficient, the Commission was required to send a new statement of objections and the applicant’s rights of defence were infringed

– *The first part: the statement of reasons for the contested decision is insufficient*

- 35 The applicant maintains that, in the present case, given the radical change in the nature, extent and scope of the single and continuous infringement in the

contested decision compared with the infringements in the 2009 decision, the Commission ought to have provided it with detailed and clear reasoning as to the basis for its proposed decision.

- 36 The Commission was required, in particular, to explain with precision the basis on which the three naked restrictions were regarded as forming a single and continuous infringement and the nature, extent and legal consequences of that infringement.
- 37 The applicant submits that it questioned the Commission in that regard in a letter which it sent to it on 26 June 2023 ('the letter of 26 June 2023'), but did not receive a reply.
- 38 The fact that the Commission referred to certain recitals of the 2009 decision in its letter of 2 May 2023 addressed to the applicant ('the letter of 2 May 2023') and in the contested decision does not provide sufficient reasoning, since, in the 2009 decision, the Commission undertook a combined assessment for both the pricing practices and naked restrictions.
- 39 The Commission failed to set out, either in the letter of 2 May 2023 or in the contested decision, the essential or principal elements of fact resulting in the imposition of a fine, including the anticompetitive nature of the naked restrictions or how the relevant factors were weighed or assessed.
- 40 The Commission contends that the first part of the second plea ought to be rejected.
- 41 It must be recalled that the obligation to state reasons found in the second paragraph of Article 296 TFEU is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (see judgment of 10 September 2024, *Commission v Ireland and Others*, C-465/20 P, EU:C:2024:724, paragraph 389 and the case-law cited).
- 42 The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, those errors will affect the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect. It follows that objections and arguments intended to establish that a measure is not well founded are irrelevant in the context of a ground of appeal alleging an inadequate statement of reasons or a lack of such a statement (see judgment of 10 September 2024, *Commission v Ireland and Others*, C-465/20 P, EU:C:2024:724, paragraph 390 and the case-law cited).
- 43 It is settled case-law that the statement of reasons must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the

court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law since the question whether the statement of reasons meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 7 November 2024, *Ryanair v Commission*, C-588/22 P, EU:C:2024:935, paragraph 136 and the case-law cited).

- 44 Accordingly, where the decision was adopted in a context which was known to the applicant and sets out both the legal considerations and a sufficient number of facts which were of decisive importance in the scheme of that decision, that decision enables its addressee to assess its validity and lawfulness, and therefore satisfies the obligation to state reasons (see, to that effect, judgment of 21 November 2024, *UG v Commission*, C-546/23 P, EU:C:2024:975, paragraph 140).
- 45 In the present case, it is apparent from examining the arguments put forward by the applicant in support of the complaint alleging a breach of the Commission's obligation to state reasons that that line of argument is based entirely on the premiss that the contested decision concerns a new single and continuous infringement. As is apparent from paragraph 31 above, that premiss is incorrect, which means that all the arguments relating to it must be rejected.
- 46 Moreover, it must be stated that the contested decision was adopted in a context which was particularly well known to the applicant, within the meaning of the case-law referred to in paragraph 44 above. First, the applicant had full knowledge of the content of the entire court proceedings which led to the annulment in part of the 2009 decision, since that it took part in those proceedings. Second, it was informed, by the letter of 2 May 2023, that the Commission intended to adopt a new decision setting the amount of the fine in respect of the three infringing courses of conduct still at issue, that is to say, the naked restrictions, since that letter provided a step-by-step explanation, under the heading 'Methodology that is proposed to calculate the fine', of the Commission's proposed method for calculating the fine to be applied.
- 47 In addition, a reading of the contested decision itself makes it possible to gain a clear understanding of the Commission's reasoning and to ascertain both the basis for the fine and the method used to determine its amount. Accordingly, after recalling in paragraphs 1 to 8 of that decision how the administrative and judicial proceedings had progressed up until the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19), the Commission set out in detail, responding to the applicant's objections, in particular to paragraphs 18 and 22 to 24 of that decision, contrary to the applicant's assertions,

the reasons why it was entitled to rely on the considerations having the force of *res judicata* as regards the naked restrictions in order to impose a new fine. The Commission also set out in detail, in recitals 28 to 75 of the contested decision, how the fine was calculated, integrating the applicant's objections and responding to them, as is apparent from recitals 34 to 40, 50 to 57 and from recital 71 of that decision.

- 48 It follows from the foregoing considerations that it is necessary to reject the first part of the second plea, alleging that the Commission infringed the obligation to state reasons.

– *The second part: the Commission was required to send a new statement of objections*

- 49 According to the applicant, it was incumbent on the Commission to send it a new statement of objections. In the reply, the applicant reiterates the assertion that the Commission was required to issue a new or supplementary statement of objections, which the Commission disputes.

- 50 It must be recalled that, according to the case-law, the purpose of the statement of objections is to enable the parties concerned properly to identify the conduct complained of by the Commission and, therefore, to enable them properly to defend themselves, before the Commission adopts a final decision. That obligation is satisfied if the decision does not allege that the persons concerned have committed infringements other than those referred to in the statement of objections and only takes into consideration facts on which the persons concerned have had the opportunity of making known their views (see judgment of 26 November 2014, *Energetický a průmyslový and EP Investment Advisors v Commission*, T-272/12, EU:T:2014:995, paragraph 85 and the case-law cited).

- 51 As is apparent from paragraph 31 above, in the present case, the Commission did not allege that the applicant had committed a new infringement, or uphold any new complaint against it, but, on the contrary, in compliance with the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19), which was upheld by the judgment of 24 October 2024, *Commission v Intel Corporation* (C-240/22 P, EU:C:2024:915), it calculated the amount of the new fine by accepting only the three of the eight initial courses of conduct at issue which constituted the naked restrictions.

- 52 It is apparent from the case-law that Article 266 TFEU, which, in the case of annulment on the basis of Article 263 TFEU, requires the institutions, bodies, offices and agencies of the European Union to take the necessary measures to comply with the judgments given in their regard without, however, freeing them from the task of ensuring, in their fields of competences, the implementation of EU law (judgment of 4 October 2024, *Ferriere Nord v Commission*, C-31/23 P, EU:C:2024:851, paragraph 57). In the present case, the annulment in part of the 2009 decision resulting from the judgment of 26 January 2022, *Intel Corporation*

v Commission (T-286/09 RENV, EU:T:2022:19), did not relate to the naked restrictions and, as has been pointed out in paragraph 23 above, the part of that decision which remained in force became final. The Commission was therefore required to comply with the principle of *res judicata* as regards those restrictions, which, since they were in no way affected by the annulment in part of that decision, meant only that the Commission had to recalculate the fine, in the circumstances referred to in paragraph 31 above.

- 53 The applicant is therefore in no way justified in maintaining that it was necessary to send a new statement of objections or a supplementary statement of objections. The second part of the second plea must therefore be rejected.

— *The third part: the applicant's rights of defence were infringed*

- 54 The applicant maintains that it was not provided with an adequate opportunity to exercise its rights of defence, since it cannot understand the basis for the fine. The principle of respect for the rights of the defence includes the right to be heard. The applicant is of the view that the Commission erred in relying on the alleged opportunity to be heard in the context of the proceedings leading up to the adoption of the 2009 decision, since the matter at issue is a new single and continuous infringement, which is very different from the previous one. The applicant acknowledges that it is not contesting the factual findings made in relation to the naked restrictions, however, it is of the view that a number of issues remain unclear, such as the allegations of an overall strategy. The contents of the 2009 decision are insufficient for the applicant to be able to understand what remained applicable in respect of the naked restrictions only. The level of the fine could have been substantively different if the applicant's rights of defence had been observed.
- 55 In the reply, the applicant puts forward the argument that it had a right to be heard since the judgment of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19) materially affects the nature of the single and continuous infringement in respect of which the contested decision imposed fines, as compared with that set out in the statement of objections and in the supplementary statement of objections preceding the 2009 decision.
- 56 First of all, it should be recalled that Article 27(1) 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) implements the principle of respect for the rights of the defence, indicating that undertakings are to have the opportunity of being heard before a fine is imposed on them. Since it was not necessary for the Commission to send a new statement of objections or a supplementary statement of objections to the applicant (see paragraphs 51 to 53 above), it complied with the requirement in that provision to the requisite legal standard by sending the applicant the letter of 2 May 2023, in which it informed the applicant in detail of its intention to impose a new fine on it,

of the basis for that fine and the calculation method which it would apply. It also invited the applicant to submit its observations in that regard within four weeks.

- 57 Next, it is common ground that, at its request, the applicant benefited from a four-week extension to the period referred to in paragraph 56 above, which unquestionably put it in a position to understand and analyse the Commission's position by having sufficient time to do so.
- 58 Lastly, the applicant put forward, in the letter of 26 June 2023, all the observations which appeared to it to be useful. In that regard, it must be stated that, as the Commission has pointed out, in that letter the applicant put forward many of the arguments found in the application, which makes it possible, on reading the letter of 2 May 2023, to determine that it had fully understood what the coming decision would contain. That is all the more so since the applicant had, accurately, concluded that the amount of the fine resulting from the calculation method set out in that letter could be approximately EUR 376 million, such that there is no factual basis for the argument that it could not understand the basis for the fine.
- 59 As regards the assertion that, in the contested decision, the Commission imposed fines in respect of a new single and continuous infringement, that must be rejected for the reasons set out in paragraphs 29 to 31 above. It is important, moreover, to point out that the Commission stated very clearly, in the letter of 2 May 2023, that the single and continuous infringement for which the fine was imposed was that found in the 2009 decision, relating solely to the naked restrictions, which enabled the applicant to challenge that analysis. Furthermore, the content of the letter of 26 June 2023 demonstrates that the applicant made use of that opportunity.
- 60 The applicant is also not justified in relying on a supposed obligation on the Commission to organise a hearing in its favour. It should be noted that Article 12 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), as amended, inter alia, by Commission Regulation (EC) No 622/2008 of 30 June 2008 (OJ 2008 L 171, p. 3), requires a hearing to be held only where a statement of objections is sent. It follows clearly from paragraph 53 above that there was no need for the Commission, in the present case, to send such a statement of objections, which means, as a result, that the third part of the applicant's second plea must be rejected and, accordingly, that that plea must be rejected in its entirety.

The first plea: the level of the fine is disproportionate and unlawful

- 61 The applicant divides the first plea into eight parts. In the first seven parts, it sets out how the contested decision is, in its view, unlawful and fails to have regard to the principle of proportionality. Given that the eighth part (i) is expressly presented as a conclusion and therefore goes no further, as regards lawfulness, than summarising the arguments already set out in the first seven parts, setting out no new complaints in that regard, and (ii) presents considerations relating to the

appropriateness, proportionality and fairness of the fine, referring to the concept of fairness, it will be examined, as appropriate, as part of the form of order seeking to vary the contested decision. It is therefore justified, in the context of the Court's judicial review, to reduce the analysis of the first plea to its first seven parts.

- 62 In the first part of the plea, the applicant puts forward the fact that the naked restrictions referred to in Article 1(f) to (h) of the 2009 decision were significantly more limited than the other practices considered in that decision to be anticompetitive, since they were more specific in nature, affected fewer Original Equipment Manufacturers ('OEMs') over a shorter time period and, in respect of Acer and Lenovo, concerned only three specific models of notebook computers and, in respect of HP, only a 5% fraction of a subsegment of the desktop segment. The applicant gives details of the number of units globally affected by the naked restrictions and by the pricing practices and shows the much smaller nature, in terms of volume of units marketed (8% compared with 92%) and over time (19% compared with 81% of the total duration of the single and continuous infringement as described in the 2009 decision), of such units, which formed the basis for the new fine imposed.
- 63 In the view of the applicant, the disproportionality of the fine imposed in the contested decision is clear, since the fine is almost exactly 3/8 of the initial total fine of EUR 1.06 billion. Therefore, in the contested decision, the Commission treated each of the naked restrictions as equivalent to each of the pricing practices. That is plainly an unjustified and disproportionate outcome, since the naked restrictions related to 8.2% of the units in question and represented 35.5% of the amount of the initial fine.
- 64 In the second part of the plea, the applicant maintains that the nature and scope of the infringement referred to in the contested decision are very different from the nature and scope of the single and continuous infringement found in the 2009 decision and, overall, are far more limited. The Commission, accordingly, also disregarded point 22 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'), which requires account to be taken of 'the nature of the infringement'.
- 65 In the third part of the first plea, the applicant maintains that the Commission failed to recognise not only that the five most significant infringements had fallen away, but also that the three naked restrictions which remain are less impactful now as a whole than the three naked restrictions when they were part of the wider single and continuous infringement found in the 2009 decision.
- 66 In the fourth part of the first plea, the applicant maintains that the Commission failed to take account, when calculating the fine, of the geographic impact of its unlawful conduct consisting of the imposition of naked restrictions on Acer and Lenovo, given that that conduct took place outside the EEA.

- 67 The fifth part of the first plea concerns the relevant value of sales for the purposes of setting the basic amount of the fine. The applicant maintains that the approach adopted by the Commission in the contested decision does not comply with point 13 of the 2006 Guidelines, which requires the economic significance of the infringement to be measured. Accordingly, to use the value of all sales made by the applicant relating to all desktops and notebooks to all OEMs located in the EEA in 2006 is clearly disproportionate and is not consistent with the principles which underpin those guidelines. By using a value of sales of over EUR 2.9 billion on the wrong basis of the full CPU market for desktops and notebooks in 2006, and multiplying it by a factor representing the entire infringement period, the Commission grossly overstates the economic importance of the infringement formed by only the naked restrictions.
- 68 It is not possible to conclude that the naked restrictions or any of them affected directly or indirectly the entire x86 CPUs notebook and desktop segments.
- 69 In the sixth part of the first plea, the applicant observes that, while the Commission reduced the gravity factor of the infringement in order to take account of the annulment of the considerations set out in the 2009 decision relating to the unlawful nature of the pricing practices, that reduction is of only one percentage point, which represents a reduction of 20% of the gravity and therefore appears to indicate that 80% of the initial gravity factor reflected in the initial fine was due to the naked restrictions. That led the Commission to set a disproportionately high gravity factor, which failed to account for the limited nature, extent and scope of the naked restrictions.
- 70 The seventh part of the first plea concerns mitigating circumstances. The applicant argues that the Commission erred in asserting that there are no mitigating circumstances in the present case. The damage to the applicant's reputation during the 20 years of the proceedings on account of pricing practices which were wrongly regarded as anticompetitive is, however, a very relevant mitigating circumstance when determining the amount of the fine for the remaining unlawful conduct, which it does not dispute.
- 71 In the reply, the applicant maintains that, in the contested decision, the fine is calculated without taking into account the relative value of the naked restrictions compared with the total amount imposed by the 2009 decision. It disputes the Commission's assertion that it did not have to take that amount into consideration and the fact that the Commission simply responded that what mattered was whether the fine imposed for the naked restrictions was justified.
- 72 The Commission maintains that the first plea is unfounded.
- 73 It is necessary, at the outset, to reject the second part of the first plea, in so far as it is based on the incorrect premiss, as has been pointed out in paragraphs 29 to 31 above, that the Commission found, in the contested decision, that there was a new single and continuous infringement. In particular, the Commission cannot have

disregarded point 22 of the 2006 Guidelines, which requires it to take account of the nature of the infringement, since it made no new finding in that regard, simply observing the content of the judicial decisions relating to the 2009 decision.

- 74 In order to address the first and third to seventh parts of the first plea together, it is appropriate briefly to recall various factors relating to the method for determining the amount of the fine which the Commission followed when adopting the 2009 decision and the contested decision, which consist in taking into account the gravity and duration of the infringement, within the meaning of Article 23(3) of Regulation No 1/2003, in the context of the 2006 Guidelines' implementation of that provision.
- 75 In the first place, as regards the determination of the basic amount of the fine, the Commission had initially, for the value of sales, used the annual value of x86 CPU sales invoiced by the applicant to companies located in the EEA during 2007, as is apparent from recitals 1773 to 1777 of the 2009 decision. In the contested decision, the Commission took 2006 as the reference period, since the last non-price infringement dated from December 2006, and excluded sales for servers with x86 CPUs, since servers had not been the subject of naked restrictions, as explained at recitals 32, 33, 36, 39 and 41 to the contested decision.
- 76 In the second place, as regards the percentage of the value of sales intended to reflect the gravity of the infringement, that percentage went from 5 to 4%, as evidenced, respectively, by recital 1786 of the 2009 decision and recitals 49 and 55 of the contested decision. The Commission also amended the multiplier reflecting the duration of the infringement, which was 5.5 according to recital 1788 of the 2009 decision, and was subsequently set at 3.16, as is apparent from recitals 59 and 60 of the contested decision, in order to take account of the fact that the duration of the single and continuous infringement relating to the naked restrictions extended only from November 2002 to December 2006.
- 77 It must be observed that the Commission did not apply the additional amount for deterrence which could be applied under the second sentence of point 25 of the 2006 Guidelines when adopting the contested decision, and when adopting the 2009 decision.
- 78 The Commission also did not, when adopting the contested decision or the 2009 decision, adjust the basic amount of the fine to take into account any mitigating or aggravating circumstances or any deterrence factor.
- 79 In the light of those considerations, first, it must be stated that, contrary to the applicant's assertions, the Commission duly took into consideration the reduced duration of the infringement since only naked restrictions could be taken into account, as referred to in paragraph 76 above.
- 80 Second, in the light of the eight courses of conduct which had initially been alleged against it and the three naked restrictions which were not affected by the annulment in part of the 2009 decision, the applicant is also not justified in

maintaining that, in determining the amount of the new fine, the Commission placed on the same footing and attached the same importance to each infringing course of conduct, when it calculated the fine at 3/8 of the initial fine. Even if it is correct that the amount of the fine set in the contested decision, namely EUR 376 358 000, is close to 3/8 of the amount of the fine in the 2009 decision, namely EUR 1 060 000 000, it is clear from the methodology summarised in paragraphs 75 to 78 above that the Commission calculated the fine by taking into account the – now reduced – duration and substance of the single and continuous infringement, as implemented via the naked restrictions. The argument that it was impossible for the Commission to take account of the naked restrictions imposed on Acer and Lenovo must be rejected for the reasons, set out in paragraphs 19 to 34 above, which led to the third plea being rejected.

- 81 Third, the Commission did not fail to have regard to the principle of proportionality when it set the percentage of the value of sales intended to reflect the gravity of the infringement at 4%. In that regard, it must be recalled that the principle of proportionality requires the Commission to set the fine proportionately to the factors taken into account for the purpose of assessing the gravity of the infringement and also to apply those factors in a way which is consistent and objectively justified (see judgment of 5 October 2011, *Romana Tabacchi v Commission*, T-11/06, EU:T:2011:560, paragraph 105 and the case-law cited).
- 82 In the present case, first of all, it must be stated that the naked restrictions constitute, as is apparent from how they are described, openly anticompetitive conduct which was intended to result in the foreclosure from the market of one of the few competitors of the applicant, which justifies choosing a non-symbolic percentage, in order to penalise the seriousness of the infringement at issue.
- 83 In addition, in accordance with point 21 of the 2006 Guidelines, the Commission – which may apply a percentage of up to 30% of the value of sales and which could be appropriate only in exceptionally serious circumstances – adopted, notwithstanding that openly anticompetitive nature, a percentage reflecting the limited scope of the naked restrictions, as is apparent from recitals 48, 49 and 54 of the contested decision. Accordingly, it chose the percentage of 4%, which constitutes a one-point reduction from the percentage in the 2009 decision. The Commission stated, in recital 49 of the contested decision, that that percentage reflected its decision-making practice applied in 2009. In so doing, the Commission did not make an error of assessment, since such a percentage is neither exaggerated nor, conversely, is it insufficient.
- 84 Fourth, it must be recalled that, as is apparent from paragraphs 77 and 78 above, the Commission did not apply the additional amount for deterrence or a specific increase for deterrence.
- 85 Fifth, as regards the Commission's choice of 2006 as the reference year for determining the value of sales, first of all, it should be recalled that the second

sentence of point 13 of the 2006 Guidelines states that ‘[the Commission] will normally take the sales made by the undertaking during the last full business year of its participation in the infringement’. It follows that the Commission is not required to use that reference period and that it is simply possible for the Commission to use that period, since the use of the word ‘normally’ confirms a possibility, rather than an obligation.

- 86 While it is therefore open to the Commission to use other reference periods, such as another calendar period or an average of the various years over which the infringement was committed, that applies only in so far as those other possibilities enable it more accurately to achieve the objective which underpins point 13 of the 2006 Guidelines, which is to adopt as the starting point for the calculation of the fine imposed on an undertaking an amount which reflects the economic significance of the infringement and the size of the undertaking’s contribution to it (see, to that effect, judgment of 9 March 2017, *Samsung SDI and Samsung SDI (Malaysia) v Commission*, C-615/15 P, not published, EU:C:2017:190, paragraph 51 and the case-law cited).
- 87 In the present case, the applicant is of the view that a different reference period would have been better positioned to meet that objective. The applicant maintains, in paragraph 50 of the application, that an average of the value of sales during the infringement period would have been more appropriate, citing, in footnote 87 to the application, the Commission’s decision-making practice. When questioned on that subject at the hearing, the applicant confirmed that that method appeared to it to be preferable. However, in response to that argument, the Commission maintained, without the applicant effectively contradicting it, that to use such an average would result in the amount of the fine on the applicant increasing. That argument must therefore be rejected as ineffective, in so far as it does not support the head of claim seeking annulment.
- 88 Furthermore, the applicant is of the view that the Commission erred in calculating the value of sales by using all sales of x86 CPUs invoiced in the EEA, excluding servers. While it agrees with excluding servers, it argues that the Commission ought to have taken into account solely the sales of x86 CPUs connected with the infringement, namely three specific notebook models, representing only 8.2% of the units covered by the infringement, as found in the 2009 decision.
- 89 That argument cannot succeed, given that it follows from the objective of point 13 of the 2006 Guidelines, recalled in paragraphs 85 and 86 above, that the concept of the value of sales encompasses sales made on the market concerned by the infringement in the EEA, and it is not necessary to determine whether those sales were genuinely affected by that infringement, since the proportion of the overall turnover deriving from the sale of goods in respect of which the infringement was committed is best able to reflect the economic importance of that infringement (see judgment of 9 July 2015, *InnoLux v Commission*, C-231/14 P, EU:C:2015:451, paragraph 51 and the case-law cited).

- 90 Admittedly, while the concept of the ‘value of sales’ referred to in point 13 of the 2006 Guidelines cannot extend to encompassing sales made by the undertaking in question which in no way fall within the scope of the alleged infringement (see judgment of 9 July 2015, *InnoLux v Commission*, C-231/14 P, EU:C:2015:451, paragraph 55 and the case-law cited), it is clear that that is not so in the present case, since the Commission excluded from the value of sales the value of sales of x86 CPUs for servers, which were not affected by the naked restrictions.
- 91 It follows from the foregoing considerations that the applicant has not succeeded in establishing that the Commission’s choice of 2006 as the reference period for determining the value of sales was vitiated by an error of law or an error of assessment.
- 92 Sixth, the applicant cannot have the Commission take into account, as mitigating circumstances, the allegedly excessive duration of the administrative procedure and of the judicial proceedings, or the, in part, favourable outcome of those proceedings as concerns it.
- 93 In the first place, as regards the duration of the administrative procedure, the 2006 Guidelines and, in particular, point 29 thereof, which relates to mitigating circumstances, do not provide that the Commission is required to reduce the amount of the fine where the duration of the administrative procedure is excessive (see, to that effect, judgment of 11 July 2019, *Italmobiliare and Others v Commission*, T-523/15, not published, EU:T:2019:499, paragraph 156).
- 94 In that regard, it should be recalled that a breach of the principle of observance of a reasonable period is capable of justifying the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also constitutes an infringement of the rights of defence of the undertaking concerned (judgments of 9 June 2016, *CEPSA v Commission*, C-608/13 P, EU:C:2016:414, paragraph 61, and of 15 April 2021, *Italmobiliare and Others v Commission*, C-694/19 P, not published, paragraph 135). The penalty for a breach, by an EU institution, of its obligation under the second paragraph of Article 41 of the Charter of Fundamental Rights of the European Union to deal with the cases before it within a reasonable time must be an action for damages brought before the General Court, since such an action constitutes an effective remedy (see judgment of 11 July 2019, *Italmobiliare and Others v Commission*, T-523/15, not published, EU:T:2019:499, paragraph 159 and the case-law cited).
- 95 In the present case, the applicant has simply alleged that the duration of the administrative procedure gave rise to costs and to damage to its reputation. It must be held that such arguments are not capable of demonstrating that the amount of the fine set by the Commission in the contested decision is unlawful.
- 96 In the second place, as regards the duration of the judicial proceedings, which the applicant alleges is also excessive, it is apparent from the case-law that failure to

adjudicate within a reasonable time when examining a legal action brought against a Commission decision imposing a fine on an undertaking for infringing the EU law competition rules cannot lead to the annulment, in whole or in part, of the fine imposed by that decision and that a claim for damages brought against the European Union pursuant to Article 268 TFEU and the second paragraph of Article 340 TFEU constitutes an effective remedy of general application for asserting and penalising such a breach, since such a claim can cover all the situations where a reasonable period of time has been exceeded in proceedings (judgment of 26 November 2013, *Groupe Gascogne v Commission*, C-58/12 P, EU:C:2013:770, paragraphs 79 and 82).

- 97 It follows from all the foregoing considerations that the applicant errs in maintaining that the amount of the fine set by the Commission in the contested decision was disproportionate and unlawful. Therefore, the first part, together with the third to seventh parts, of the first plea must be rejected and, consequently, the first plea must be rejected in its entirety in so far as it supports the head of claim seeking the annulment of the contested decision, with the exception of the eighth part of the first plea, relating to the head of claim seeking to have the contested decision varied, which will, as appropriate, be examined when dealing with the claim for variation.
- 98 Having regard also to the rejection of the third and second pleas in paragraphs 34 and 60 above it is necessary to reject the applicant's head of claim seeking the annulment of the contested decision.
- 99 Given that the EU Courts may vary the contested act, even without annulling it, in order to cancel, reduce or increase the amount of the fine imposed, that jurisdiction being exercised by taking into account all the factual circumstances (see judgment of 4 July 2024, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen v Commission*, C-70/23 P, EU:C:2024:580, paragraph 39 and the case-law cited), it is now necessary to examine the applicant's head of claim seeking to have the contested decision varied.

The head of claim seeking to have the contested decision varied

- 100 The applicant complains that the Commission, in relation to the eighth part of the first plea, failed to 'take a step back' and properly assess the overall fairness and proportionality of the level of the fine, and that it did not 'properly respect' the full meaning and effect of the judgment of the General Court of 26 January 2022, *Intel Corporation v Commission* (T-286/09 RENV, EU:T:2022:19).
- 101 The Commission is of the view that that the applicant's invitation to 'take a step back' does not assist it; quite the reverse. Accordingly, the naked restrictions were imposed by an undertaking which was overwhelmingly dominant on the relevant market. The applicant's influence was enhanced by its substantial profit margins. In addition, the applicant had only one serious competitor, AMD, against which it had engaged in exclusionary abuses, on a market with high barriers to entry. The

General Court has already held, in such circumstances, that exclusionary abuses adopted by dominant undertakings can be as serious as cartels, warranting a gravity factor ‘at the higher end of the scale’. Consequently, the applicant’s request that the Court exercise its unlimited jurisdiction could result in an adjustment of the gravity factor, but it would not, according to the Commission, be a downward adjustment.

- 102 As a preliminary point, it should be recalled that, when they exercise their unlimited jurisdiction laid down in Article 261 TFEU and Article 31 of Regulation No 1/2003, the EU Courts are empowered, in addition to merely reviewing the legality of the penalty, to substitute their own assessment in relation to the determination of the amount of that penalty for that of the Commission, the author of the act in which that amount was initially fixed (see judgment of 4 July 2024, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen v Commission*, C-70/23 P, EU:C:2024:580, paragraph 39 and the case-law cited).
- 103 Accordingly, the unlimited jurisdiction enjoyed by the Court on the basis of Article 31 of Regulation No 1/2003, which allows it to cancel, reduce or increase the fine imposed by the Commission, relates and is limited to the amount of the fine initially imposed by the Commission (see judgment of 4 July 2024, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen v Commission*, C-70/23 P, EU:C:2024:580, paragraph 40 and the case-law cited).
- 104 In addition, where the EU Courts substitute their own assessment for that of the Commission, they replace, within the Commission decision, the amount initially fixed in that decision with the amount resulting from their own assessment. The Commission’s decision is therefore deemed, on account of the substitution effect of a judgment by the EU Courts, to have always been the decision that results from the latter’s assessment (see judgment of 4 July 2024, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen v Commission*, C-70/23 P, EU:C:2024:580, paragraph 42 and the case-law cited).
- 105 It should also be recalled that, in the exercise of its unlimited jurisdiction, the Court is in no way required to apply rules such as the 2006 Guidelines, since those guidelines bind only the Commission in the context of the methodology which it has bound itself to use in setting the amount of fines (see, to that effect, judgment of 22 May 2008, *Evonik Degussa v Commission and Council*, C-266/06 P, not published, EU:C:2008:295, paragraph 60 and the case-law cited), even if those rules may give guidance to it (see, to that effect, judgment of 21 January 2016, *Galp Energía España and Others v Commission*, C-603/13 P, EU:C:2016:38, paragraph 90 and the case-law cited).
- 106 Moreover, the Court may, in that context, in order to assess the appropriateness of the amount of the fines, take into account additional information which is not as such required by virtue of the duty to state reasons laid down in Article 296 TFEU (judgment of 16 November 2000, *KNP BT v Commission*, C-248/98 P, EU:C:2000:625, paragraph 40; see also, to that effect, judgment of 27 June 2012,

Microsoft v Commission, T-167/08, EU:T:2012:323, paragraphs 217 and 222), until the date on which it adopts its decision (see judgment of 11 July 2014, *Esso and Others v Commission*, T-540/08, EU:T:2014:630, paragraph 133 and the case-law cited).

- 107 In the present case, it must be held that, notwithstanding the amount of the fine set out in the contested decision being lawful, in particular in the light of the principle of proportionality, it is nevertheless possible, fair and appropriate to take account of other parameters, relating to both the duration of the infringement and its gravity, pursuant to Article 23(3) of Regulation No 1/2003 (see, to that effect, judgment of 21 January 2016, *Galp Energía España and Others v Commission*, C-603/13 P, EU:C:2016:38, paragraph 90 and the case-law cited), in order that that amount be set with increased precision, in other words to determine, from a number of possibilities which comply with EU law, the one which, in the General Court's assessment, sets that amount with the greatest relevance.
- 108 First of all, as regards the duration of the infringement, it is apparent from paragraph 76 above that the Commission was required, as stated in paragraph 31 above, to set a new amount of the fine which took into account only the naked restrictions, considered in the light of an overall strategy on the part of the applicant aimed at foreclosing its competitor AMD from the market.
- 109 In that regard, without prejudice to the considerations which led to the first plea being rejected, it must be noted that, as the applicant pointed out in its pleadings, a 12-month gap separated the naked restrictions which it requested HP to implement from those which it requested Lenovo to apply.
- 110 It is true, as is apparent from recitals 59 and 60 of the contested decision and the related footnotes, that the Commission took into account that period when the naked restrictions were not in effect in its determination of the multiplier reflecting the duration of the infringement, by excluding that period.
- 111 Nevertheless, it is appropriate to accentuate the weighing of that 12-month gap in the duration of the infringement.
- 112 Next, as regards the gravity of the infringement, reference must be made to the following considerations.
- 113 First, even though the Commission adopted in that respect a lower percentage in the contested decision than the percentage in the 2009 decision, it is important, in order to assess the gravity of the infringement, that its limited material scope be measured more accurately, beyond its intrinsic harmfulness.
- 114 In that regard, the Commission itself acknowledged at the hearing in the case which gave rise to the judgment of 12 June 2014, *Intel v Commission* (T-286/09, EU:T:2014:547, paragraph 260), in relation to Acer, 'that the quantity of computers concerned was modest', even though it disputed the figure of 4 000 units which the applicant had submitted in that case. Similarly, in that

judgment, in paragraph 290, the General Court found, in relation to Lenovo, that ‘the number of units concerned in the [region including Europe] was modest’.

- 115 In addition, in the context of the present case, the applicant was of the view that the naked restrictions concerned 8.2% of the units in question (see paragraph 63 above). The applicant has not been contradicted as regards the percentage of units affected by those restrictions, since the Commission simply provided an overall response, as it was justified in so doing, arguing that the parameter of the value of sales laid down in the 2006 Guidelines had been applied correctly (see paragraph 91 above).
- 116 However, regardless of the fact that, when applying the 2006 Guidelines, the Commission was entitled to take into account, as a reference, all sales of x86 CPUs invoiced in the EEA in 2006, the fact remains that it is necessary to take that specific factor into account more accurately in order to assess, in the exercise of its unlimited jurisdiction, the gravity of the infringement, without, however, failing to have regard to the fact that the infringement was committed by an undertaking which abused its dominant position in the EEA on the relevant market.
- 117 It is apparent from the considerations set out in paragraphs 114 to 116 above that the amount of EUR 376 358 000, which is set out in Article 1 of the contested decision and replaces the amount referred to in Article 2 of the 2009 decision, is not the most appropriate possible, in the light of the temporal and material scope of the infringement at issue, which is more limited than it was in the 2009 decision.
- 118 Therefore, it is necessary to take into account in a manner which is more equitable that the Commission’s consideration thereof (i) the significant 12-month gap between the naked restrictions which the applicant requested HP to implement and those which it requested Lenovo to apply and (ii) the relatively modest number of computers concerned. It is therefore appropriate, following an overall assessment of the gravity and duration of the infringement at issue in the exercise of its unlimited jurisdiction, to reduce the amount of the fine set out in Article 1 of the contested decision by 37%, setting that amount at EUR 237 105 540.
- 119 Lastly, as regards the applicant’s argument regarding the duration of the judicial proceedings taken as a whole, it must be recalled that the sanction for a breach, if established by a Court of the European Union, of its obligation under the second paragraph of Article 47 of the Charter of Fundamental Rights to adjudicate on the cases before it within a reasonable time must, notwithstanding the unlimited jurisdiction of the General Court recognised under Article 261 TFEU and Article 31 of Regulation No 1/2003, be an action for damages brought before the General Court, since such an action constitutes an effective remedy (judgment of 9 June 2016, *CEPSA v Commission*, C-608/13 P, EU:C:2016:414, paragraph 64). Such an argument is not therefore capable of resulting in a reduction in the amount of the fine imposed.

- 120 It follows from all of the foregoing that Article 1 of the contested decision must be varied so that the amount of the fine imposed on the applicant is set at EUR 237 105 540 and that the action must be dismissed as to the remainder.

Costs

- 121 Under Article 134(2) of the Rules of Procedure of the General Court, where there is more than one unsuccessful party the Court is to decide how the costs are to be shared. In those circumstances, it is appropriate to order the Commission to bear its own costs and to pay half of the applicant's costs.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Orders that Article 1 of Commission Decision C(2023) 5914 final of 22 September 2023 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (AT.37990 – Intel) be varied so that the amount of the fine therein is set at EUR 237 105 540;**
2. **Dismisses the action as to the remainder;**
3. **Orders the European Commission to bear, in addition to its own costs, half of the costs incurred by Intel Corporation Inc.**

Marcoulli

Schwarcz

Valasidis

Delivered in open court in Luxembourg on 10 December 2025.

V. Di Bucci

S. Papasavvas

Registrar

President