

# Excessive delay in hearing cartel cases no reason to cut fine

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Unlike lengthy cartel investigations by the Commission, excessively long proceedings before the General Court will not bring you the “bonus” of a reduced cartel fine. Instead, you need to apply for damages separately before the General Court itself.

Only two years ago, the General Court slapped the European Commission on the wrist for having offered too low a fine reduction as compensation for an excessively long administrative procedure. The General Court increased the reduction to 5% of the fine, “in order to grant the applicants fair satisfaction for the excessive length of the procedure”. Similarly, the [Court of Justice](#) reduced the amount of the fine in a case with protracted General Court proceedings “for reasons of economy of procedure and in order to ensure an immediate and effective remedy regarding a procedural irregularity of that kind”.

It was thus no surprise that in the appeals by three companies fined by the European Commission for involvement in a cartel in the industrial plastic bags sector, it was argued that the excessive duration of the proceedings before the General Court should lead to a reduction in the fines imposed on them. However, the Court of Justice [ruled](#) differently. Even though admitting it had earlier compensated the failure to adjudicate within a reasonable time with a fine reduction, the Court of Justice decided on a different route. It referred to a [later case](#) concerning a Commission decision finding that there had been abuse of a dominant position yet a fine was not imposed. In that case, the Court had held the General Court’s failure to adjudicate within a reasonable time should give rise to a claim for damages.

By choosing this route, the Court of Justice seems to no longer want to single out cartel cases by offering a reduced fine as a remedy for excessive delays. Instead, a general approach for effectively remedying excessive delays applies. Companies need to bring a separate action for damages before the General Court in all situations of excessive delay in proceedings and can no longer bank on a fine reduction as a remedy. It is subsequently up to the General Court to rule on these claims for damages, sitting in a different composition from that which heard the dispute giving rise to the procedure which duration is criticised.

This seems to be a setback for companies wanting compensation for undue delay in cartel cases, as they will now need to invest more resources to bring a separate action before the General Court and prove actual harm as a result of the delay. The Court of Justice’s change in course also leads to it parting ways with the remedies for excessively long national proceedings in the Netherlands. Failure to adjudicate within a reasonable time in Dutch national proceedings can still result in a fine reduction by the national courts based on a fixed rate per months of excessive delay.

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