



The Charter of Fundamental Rights does not prevent the Commission from bringing an action, on behalf of the EU, before a national court for compensation for loss caused to the EU by an agreement or practice contrary to EU law

When the European Commission adopts a decision finding there to be a cartel, that decision is binding on all public authorities, including the national courts.

In February 2007¹, the Commission imposed fines totalling more than €992 million on the Otis, Kone, Schindler and ThyssenKrupp groups for their participation in cartels on the market for the sale, installation, maintenance and renewal of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands.

The companies concerned brought actions before the General Court of the EU for annulment of the decision. By judgments of 13 July 2011², the General Court dismissed the actions brought by Otis, Kone and Schindler. So far as the companies in the ThyssenKrupp group were concerned, the General Court decided to reduce their fines.

Some of the companies within those four groups appealed to the Court of Justice seeking to have the judgments of the General Court set aside³.

In parallel, in June 2008, the Commission – representing the EU (at that time the European Community) – brought proceedings before the Brussels Commercial Court claiming €7 061 688 from Otis, Kone, Schindler and ThyssenKrupp. The Commission maintained that the EU had sustained financial loss in Belgium and Luxembourg as a result of the cartel in which those undertakings had taken part. The EU had entered into a number of contracts for the installation, maintenance and renewal of elevators and escalators in various buildings of the EU institutions

¹ Commission Decision C (2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 – Elevators and Escalators), a summary of which was published in the *Official Journal of the European Union* (OJ 2008 C 75, p. 19).

² Case [T-138/07](#) *Schindler Holding Ltd and Others v Commission*; Joined Cases [T-141/07](#) (*General Technic-Otis Sàrl v Commission*), [T-142/07](#) (*General Technic Sàrl v Commission*), [T-145/07](#) (*Otis SA and Others v Commission*) and [T-146/07](#) (*United Technologies Corp. v Commission*); Joined Cases [T-144/07](#) (*ThyssenKrupp Liften Ascenseurs NV v Commission*), [T-147/07](#) (*ThyssenKrupp Aufzüge GmbH and Others v Commission*), [T-148/07](#) (*ThyssenKrupp Ascenseurs Luxembourg Sàrl v Commission*), [T-149/07](#) (*ThyssenKrupp Elevator AG v Commission*), [T-150/07](#) (*ThyssenKrupp AG v Commission*) and [T-154/07](#) (*ThyssenKrupp Liften BV v Commission*); and Case [T-151/07](#) *Kone and Others v Commission* (see also Press Release No [72/11](#)).

³ Pending cases: *Schindler Holding Ltd and Others v Commission* ([C-501/11 P](#)) and *Kone and Others v Commission* ([C-510/11 P](#)). Cases removed from the register by order: orders of 24 April 2012 in *ThyssenKrupp Liften Ascenseurs v Commission* ([C-516/11 P](#)) and *ThyssenKrupp Liften v Commission* ([C-519/11 P](#)); orders of 8 May 2012 in *ThyssenKrupp Ascenseurs Luxembourg v Commission* ([C-504/11 P](#)), *ThyssenKrupp Elevator v Commission* ([C-505/11 P](#)) and *ThyssenKrupp v Commission* ([C-506/11 P](#)). Cases closed: orders of 15 June 2012 in *United Technologies v Commission* ([C-493/11 P](#)) and *Otis Luxembourg and Others v Commission* ([C-494/11 P](#)).

with offices in both countries, the price of which was allegedly higher than the market price as a consequence of the cartel declared unlawful by the Commission.

Against that background, the Brussels Commercial Court has decided to refer a number of questions to the Court of Justice for a preliminary ruling. It asks, in the first place, whether the Commission is entitled to represent the EU before a national court in the specific context of this case.

The Court considers that since the proceedings were commenced before the entry into force of the Treaty on the Functioning of the European Union (TFEU), representation of the EU is governed by the Treaty Establishing the European Community (EC). The Commission is thus entitled to represent the Community before the national court, there being no need for it to have specific authorisation for that purpose.

In the second place, the national court asks whether the Charter of Fundamental Rights of the EU precludes the Commission from bringing an action, on behalf of the EU, for damages for loss sustained by the EU as a result of anti-competitive conduct which has been found by a Commission decision to constitute an infringement.

The Court points out, first of all, that any person can claim compensation for the harm suffered where there is a causal link between that harm and a prohibited agreement or practice and that the EU may thus also avail itself of that right.

When that right is exercised, however, the fundamental rights of the parties, as safeguarded, *inter alia*, by the Charter, must be observed. With regard, in particular, to the right to effective judicial protection, the Court notes that it comprises a number of elements, including the right of access to a tribunal and the principle of equality of arms.

As regards the right of access to a tribunal, the Court states that the rule that national courts are bound by a finding of infringement made in a Commission decision does not mean that the parties do not have access to a tribunal. The Court points out, in that regard, that EU law provides for a system of judicial review of Commission competition decisions which affords all the safeguards required by the Charter of Fundamental Rights.

The Court also states that, although it is true that national courts are bound by the Commission's findings of anti-competitive conduct, the fact remains that they alone are competent to assess whether there is loss and a direct causal link between that conduct and the loss sustained. Even when the Commission has found it necessary to determine the precise effects of the infringement in its decision, it still falls to the national court to determine individually the loss caused to each of the persons to have brought an action for damages. For those reasons, the Commission is not judge and party in its own cause.

Finally, with regard to the principle of equality of arms, the Court recalls that the aim of that principle is to ensure a balance between the parties to proceedings, thereby guaranteeing that any document submitted to the court may be examined and challenged by any party to the proceedings. The Court observes that in the present case the information gathered by the Commission during the infringement procedure – information which the companies claim has not been brought to their knowledge – has not been provided to the national court by the Commission. In any event, EU law prohibits the Commission from using information collected in the course of a competition investigation for purposes other than those of the investigation.

Accordingly, the Court concludes that the Charter does not preclude the Commission from bringing an action before a national court, on behalf of the EU, for damages in respect of loss sustained by the EU as a result of an agreement or practice contrary to EU law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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