



An agreement intended to exclude a competitor is contrary to the competition rules even if the competitor is operating unlawfully on the market

The competition rules are intended to protect not only that competitor but also the structure of the market and, consequently, competition as such

In 2009 the Competition Authority of the Slovak Republic found that three major Slovak banks – Slovenská sporiteľňa a.s., Československá obchodná banka a.s. and Všeobecná úverová banka a.s. – had infringed the EU competition rules. They decided to terminate in a coordinated manner contracts concerning current accounts that the Czech company Akcenta CZ a.s. had with them and not to enter into any further contracts with it. Akcenta is a non-bank financial institution providing services involving cashless foreign exchange transactions¹. It therefore needs to have current accounts in banks in order to carry on its activities, which include foreign-exchange transfers from and to abroad, including for its customers in Slovakia. In the Competition Authority's view, the three banks colluded because of their dissatisfaction with the fact that their profits had fallen as a result of the business carried on by Akcenta which they regarded as a competitor providing services to their customers.

The Slovak authority imposed fines on Československá obchodná banka (€3 183 427), Slovenská sporiteľňa (€3 197 912) and Všeobecná úverová banka (€3 810 461) for infringing competition law.

One of the banks, Slovenská sporiteľňa, brought proceedings against the national authority's decision imposing a fine on it. The bank submits that it has not infringed the competition rules, as Akcenta cannot be regarded as its competitor. According to the bank, since Akcenta did not have the licence required under Slovak law for it to carry on its business, it was operating illegally on the Slovak market.

The Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), hearing the case, has asked the Court of Justice whether it is of legal relevance for the assessment of a restrictive agreement that a competitor adversely affected by such an agreement is operating illegally on the market.

In its judgment the Court of Justice observes that where an agreement has as its object the prevention, restriction or distortion of competition, there is no longer any need to take account of the concrete effects of the agreement in order to establish its unlawful nature. The Court also states that the EU competition rules are intended to protect not only the interests of competitors or consumers but also the structure of the market and thus competition as such.

In this case, the Court finds that the agreement in question specifically had as its object the restriction of competition. Consequently, **the fact that Akcenta was allegedly operating illegally on the Slovak market is irrelevant for the purpose of determining whether the conditions for an infringement of the competition rules are met**. Moreover, the Court points out that it is for public authorities – and not private undertakings or associations of undertakings – to ensure compliance with the competition rules.

¹ Exchange operations by book entries in a foreign currency account.

The Court also states that Slovenská sporiteľňa cannot avoid liability for the restrictive agreement on the ground that its employee who took part in the meeting at which the agreement was concluded had not been given authorisation. The Court observes in that regard that participation in unlawful agreements is more often than not clandestine and is not governed by any formal rules. It is thus rarely the case that an undertaking's representative attends a meeting with a mandate to commit an infringement.

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.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355