General Court of the European Union
PRESS RELEASE No 35/14
Luxembourg, 14 March 2014

Judgments in Cases T-292/11 Cemex and Others, T-293/11 Holcim (Deutschland) and Holcim, T-296/11 Cementos Portland Valderrivas, T-297/11 Buzzi Unicem, T-302/11 HeidelbergCement, T-305/11 Italmobiliare and T-306/11 Schwenk Zement v Commission

Press and Information

The General Court confirms, on the whole, the lawfulness of the requests for information sent by the Commission to cement manufacturers

The Court nevertheless partially accepts one of the actions on the basis of the inadequacy of the time-limit for responding and provides details on the assessment of the non-arbitrary nature of a request for information

In November 2008 and September 2009, the Commission carried out inspections on the premises of several companies operating in the cement sector.

On 6 December 2010, the Commission opened against several cement undertakings a procedure relating to presumed infringements consisting of 'restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, market-sharing, price coordination and related anti-competitive practices in the cement market and related product markets'. Within the framework of that procedure, on 30 March 2011 the Commission adopted several decisions in order to ask the undertakings concerned to respond, in a binding format, to a questionnaire relating to those presumptions of infringements.

The German companies Holcim Deutschland, HeidelbergCement and Schwenk Zement, the Swiss company Holcim, the Italian companies Buzzi Unicem and Italmobiliare, the Spanish company Portland Valderrivas and several companies belonging to the Cemex group[1] brought seven actions for annulment of those decisions. They allege, inter alia, that the Commission failed to provide an adequate explanation of the presumed infringements referred to in the contested decisions and that it imposed on them a disproportionate workload in relation to the volume of information requested and the particularly binding response format.

In its judgments of today's date, **the Court rejects those actions, with the exception of the action brought by the company Schwenk Zement, which is partially accepted.**

The Court takes the view that the presumed infringements, although set out in very general terms which might well have been made more precise, have the minimum degree of clarity in order to be able to be considered to be consistent with the requirements of EU law[2].

Likewise, the Court observes that the size of the workload caused by the volume of information and the very high degree of precision in the response format imposed by the Commission cannot be reasonably disputed. However, the Court concludes that that workload is not disproportionate in the light of the necessities of the enquiry and the extent of the presumed infringements.

The Court nevertheless takes the view that the time-limit of two weeks granted to **Schwenk Zement** to respond to the 11th series of questions is insufficient, so much so that the action brought

[1] Cemex SAB de CV (established in Mexico), New Sunward Holding BV (established in the Netherlands), Cemex España SA, Cemex Deutschland AG, Cemex UK, Cemex Czech Operations s.r.o., Cemex France Gestion and Cemex Austria AG.
[2] Article 18(3) of Council Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

by that company is partially accepted. The Court notes in that regard that the assessment of the sufficient nature of the time-limit for responding entails taking into account the risk of a fine or of a periodic penalty payment incurred by the addressee of the request not only where that addressee fails to provide information or provides incomplete or late information, but also where the information provided is considered by the Commission to be inaccurate or distorted. **The time-limit granted must**, therefore, **allow the addressee to give a substantive response, but also to ensure the complete, accurate and non-distorted nature of the information provided.**

Noting that the 11th series of questions entails the identification of all the contacts (including highly informal ones) established over several years by the employees of Schwenk Zement with the producers of cement and of related products or their representatives, the Court observes that the collection, organisation and verification of the information requested were not necessarily easy in the present case and infers from this that the time-limit of two weeks granted by the Commission was insufficient.

The company **Cementos Portland Valderrivas** disputed the arbitrary nature of the request for information, submitting that it is exploratory. It therefore asked the Court to order the Commission to produce the evidence which led it to make that request.

On this occasion, the Court notes that the requirement of protection against arbitrary or disproportionate interventions of public authorities in the sphere of private activities of a person (whether natural or legal) constitutes a general principle of EU law which must be respected in making any **request for information.** As a consequence, such a request **must seek to collect the necessary documentation in order to verify the truth and the scope of situations of fact and of law in respect of which the Commission already has information in the form of sufficiently serious evidence consistent with the suspicion of an infringement of the rules on competition.**

Whilst, in order not to compromise the effectiveness of its enquiry, the Commission is not obliged to mention that evidence in its request for information, the Court may verify its existence and review its sufficiently serious nature where an application to that effect is brought before it and where it considers that the company puts forward factors capable of casting doubt on the sufficiently serious nature of the evidence concerned. Taking the view that those conditions were satisfied in the present case, the Court carried out the verification applied for by Cementos Portland Valderrivas.

Within the framework of its assessment of the sufficiently serious nature of the evidence, the Court takes account of the fact that the contested decision is part of the framework of the preliminary investigation stage (the phase intended to allow the Commission to gather the relevant information confirming, or not, the existence of an infringement of the rules on competition and to adopt an initial position on the course and on the remainder of the procedure). The Court deduces from this that the Commission is not obliged, before making a request for information, to have in its possession information establishing the existence of an infringement. It is therefore sufficient that the evidence is such as to arouse a reasonable suspicion of the occurrence of an infringement so that the Commission may request additional information.

Since the evidence provided by the Commission satisfies that requirement, the Court rejects the action of Cementos Portland Valderrivas.

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 of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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.

The full texts of the judgments (T-292/11, T-293/11, T-296/11, T-297/11, T-302/11, T-305/11 and T-306/11) are published on the CURIA website on the day of delivery

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