Court of Justice of the European Union
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Press and Information

Judgment in Case C-428/14
DHL Express (Italy) S.r.l. and Others v Autorità Garante della Concorrenza e del Mercato and Others

In the field of competition law, the leniency programmes of the EU and of the Member States coexist autonomously

Those programmes reflect the system of parallel competences of the Commission and of the national competition authorities

EU law[1] seeks to ensure the coherent application of the competition rules in the Member States by means of a cooperation mechanism between the Commission and the national competition authorities. That mechanism is known as the 'European Competition Network' (ECN).

In 2006, the ECN adopted, at the European level, a Model Leniency Programme. In 2007, the Autorità Garante della Concorrenza e del Mercato (Authority responsible for competition compliance and enforcement of market rules, 'the AGCM') adopted, at the Italian level, a similar model providing for a 'summary' leniency application. Those programmes are intended, inter alia, to promote the uncovering of unlawful conduct by encouraging participants in cartels to report them. The leniency system is based on the principle that the competition authorities are to grant immunity from fines to the undertaking that reports its participation in a cartel if it is the first to submit evidence, inter alia, enabling the finding of an infringement of the competition rules.

In 2007 and 2008, DHL Express (Italy) and DHL Global Forwarding (Italy), Agility Logistic and Schenker Italiana submitted separate applications for leniency to the Commission and to the AGCM. They alleged that EU competition law had been infringed in the international freight forwarding sector.

On 15 June 2011, the AGCM found that several undertakings, including DHL, Schenker and Agility, had participated in a cartel in the international road freight forwarding sector affecting operations to and from Italy. In that decision, the AGCM recognised that Schenker was the first company to have applied to it for immunity from fines in Italy for road freight forwarding, since that company had submitted its application on 12 December 2007. Accordingly, under the national leniency programme, no fine was imposed on Schenker. DHL and Agility, however, were ordered to pay fines (which were subsequently reduced).

DHL brought an action before the Italian courts for annulment of the AGCM's decision. It argued, inter alia, the AGCM had erred in finding that it had not made the first national application for leniency and that it was therefore not entitled to immunity from fines. According to DHL, AGCM should have taken into account the leniency application submitted to the Commission on 5 June 2007, prior to the application made by Schenker to the AGCM.

The Consiglio di Stato (Council of State, Italy) asks the Court of Justice to interpret EU law concerning the relationships between the various procedures coexisting within the ECN.

In its judgment delivered today, the Court holds that instruments adopted in the context of the ECN, including the Model Leniency Programme, are not binding on national competition authorities, irrespective of the judicial or administrative nature of those authorities.[2]

[1] Council Regulation (EC) 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).

Furthermore, there is no legal link between the application for immunity submitted to the European Commission and the summary application submitted to a national competition authority in respect of the same cartel, with the result that the national authority is not required to assess the summary application in the light of the application for immunity and is not required to contact the Commission in order to obtain information on the purpose and results of the leniency procedure carried out at the European level.

Lastly, the Court notes that EU law does not preclude a national leniency system which allows the acceptance of a summary application for immunity from an undertaking which had submitted to the Commission, in parallel, not an application for full immunity, but rather a mere application for reduction of the fine. Consequently, national law must allow the possibility for an undertaking which was not the first to submit an application for immunity to the Commission and which, accordingly, was eligible, before the Commission, only for a reduction of the fine (and not full immunity), to submit a summary application for (full) immunity to the national competition authorities. That conclusion follows from the non-binding nature of the instruments adopted in the context of the ECN (including the ECN Model Leniency Programme) as regards the national competition authorities.

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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[2] In that respect, the Court clarified its existing case-law (see judgments in Case C-360/09 *Pfleiderer*, and C-557/12 *Kone and Others*).