



Press and Information

Court of Justice of the European Union

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Judgment in Case C-375/09

Prezes Urzędu Ochrony Konkurencji i Konsumentów v
Tele 2 Polska sp. z o.o., now Netia SA

In the area of competition, the Commission alone is empowered to make a finding that there has been no abuse on the EU's internal market

Authorising national competition authorities to take such 'negative' decisions would risk undermining the uniform application of the competition rules set up by the Treaty

According to Regulation 1/2003¹, where national competition authorities ('NCAs') or national courts apply national competition law to any abuse prohibited by Article 102 of the Treaty, they must also apply the provisions of that article. Applying that article in individual cases, NCAs may: require that an infringement be brought to an end, order interim measures, accept commitments, or impose fines, periodic penalty payments or any other penalty provided for in their national law. Furthermore, where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.

At the end of the procedure against Telekomunikacja Polska SA, the President of the Polish NCA found that the conduct of that undertaking did not constitute an abuse of a dominant position. Consequently, he took a decision under national law stating that the undertaking in question had not implemented any restrictive practice, whilst, with regard to the infringement of the Treaty, he brought the procedure to an end.

Tele2 Polska sp. z o.o., now Netia SA – a competitor of Telekomunikacja Polska SA – challenged that decision. Hearing an appeal on a point of law, the Sąd Najwyższy (Supreme Court of Poland) asked the Court of Justice whether European Union law precludes an NCA, where it finds that there has been no abuse on the basis of its national law, from taking a decision stating that there has been no breach of the Treaty provisions ('negative decision').

The Court recalls first of all that, in order to ensure the coherent application of the competition rules in the Member States, a cooperation mechanism between the Commission and the national competition authorities was set up by Regulation 1/2003, as part of the general principle of sincere cooperation.

The Court then observes that, where, on the basis of the information in the national competition authority's possession, the conditions for prohibition are not met, the Regulation indicates clearly that the power of that authority is limited to the adoption of a decision stating that there are no grounds for action.

Empowerment of national competition authorities to take decisions stating that there has been no breach of Treaty provisions on abuse of a dominant position would call into question the system of cooperation established by Regulation 1/2003 and would undermine the power of the Commission.

Such a negative decision on the merits would risk undermining the uniform application of the competition rules set up by the Treaty, which is one of the objectives of the Regulation, since such a decision might prevent the Commission from finding subsequently that the practice in question amounts to a breach of those rules.

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

The Court therefore considers that **the Commission alone is empowered to make a finding that there has been no breach of the prohibition of abuse of a dominant position**, even if a relevant provision of the Treaty is applied in a procedure undertaken by a national competition authority.

Moreover, the Court holds that **European Union law precludes national provisions which provide** in such circumstances **only for the possibility of adoption, by a national competition authority, of a negative decision on the merits.**

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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