



The Czech competition authority may penalise the effects of a world-wide cartel produced in the Czech Republic before its accession to the EU

The Commission does not have jurisdiction to penalise those effects of the cartel even if the latter did not end until after that accession

This case concerns an international cartel on the market for gas insulated switchgear ('GIS'¹) in which a number of European and Japanese undertakings in the electrical engineering sector participated for different periods between 1988 and 2004. Both the Commission² and the Czech competition authority dealt with certain aspects of this case in 2006 and 2007 and each imposed fines on the undertakings concerned. In that context, the Czech competition authority initiated proceedings after the Commission had done so, and its decision was adopted later than the Commission's decision. Both those sets of proceedings and the imposition of fines took place after 1 May 2004, the day of the accession of the Czech Republic to the European Union.

The Commission examined the anti-competitive effects of the cartel on the EU market and applied EU competition rules³. The Czech competition authority examined the effects of the cartel in Czech territory, applying Czech competition law. The Czech authority nevertheless limited itself to penalising the effects produced by the cartel in the Czech Republic before 1 May 2004.

Toshiba and other companies which had participated in the cartel brought an action against the decision of the Czech competition authority before the Czech courts. They consider that that decision is contrary to European competition rules (in this case, those of Regulation No 1/2003), according to which the competition authorities of the Member States automatically lose their jurisdiction when the Commission commences a proceeding for infringement of the competition rules. In that respect, they emphasise that, according to the Commission's findings, the cartel ended on 11 May 2004, after the accession of the Czech Republic to the Union, and that the Commission's decision also concerns the effects of the cartel in Czech territory. Those companies argue that they have been doubly penalised, the Czech competition authority having fined them for an infringement which had already formed the subject-matter of a decision at the European level. Such a practice infringes the rule against the accumulation of penalties for the same facts (the *ne bis in idem* principle).

The Krajský soud v Brně (Regional Court, Brno, Czech Republic) asked the Court of Justice whether the fact that the Commission, in its decision, took the view that the cartel had ended some

¹ GIS's are the main component of electricity substations, which are used to convert high-voltage current into low-voltage current and vice-versa. Their function is to protect the transformer from an overload and/or to isolate the circuit and a defective transformer.

² By its decision C(2006) 6762 final, of 24 January 2007, the Commission imposed fines totalling €750.71 million. The fined undertakings brought an action before the General Court for annulment of the Commission's decision and reduction of their fines; on the cases concerning European undertakings, see Cases [T-110/07 Siemens AG](#), [T-117/07 Areva](#), [Areva T & D Holding SA](#), [Areva T & D SA](#), [Areva T & D AG](#), [T-121/07 Alstom](#), and Joined Cases [T-122/07 to T-124/07 Siemens AG Österreich](#), [VA Tech Transmission & Distribution GmbH & Co. KEG](#), [Siemens Transmission & Distribution Ltd.](#), [Siemens Transmission & Distribution SA](#), [Nuova Magrini Galileo SpA v Commission](#); see also Press Release No [15/11](#); for the cases concerning Japanese undertakings, see Cases [T-112/07 Hitachi and Others](#), [T-113/07 Toshiba](#), [T-132/07 Fuji Electric Co. Ltd](#) and [T-133/07 Mitsubishi Electric v Commission](#); see also Press Release No [70/11](#).

³ The Commission initiated the procedure for the imposition of fines on the basis of Article 81 EC and Article 53 of the Agreement on the European Economic Area (the EEA Agreement), in combination with Regulation No 1/2003.

days before the accession of the Czech Republic to the European Union and that the Czech competition authority initiated a proceeding and adopted its decision before 1 May 2004, which was also the date on which Regulation No 1/2003 entered into force, implies that the Czech competition authority loses all jurisdiction to examine the cartel and penalise the effects which were produced before that accession.

The Court of Justice recalls, first, that EU law has been binding on the Czech Republic since its accession, on 1 May 2004, and that it is applicable in that State under the conditions laid down by the Treaties and the Act of Accession. In that respect, neither the Treaties nor the Act of Accession of the Czech Republic contain any indication that EU competition laws should be applied retroactively to anti-competitive effects which were produced in that country before its accession. In the absence of such an express indication, the principle of legal certainty requires that those effects be assessed in the light of legal rules which are contemporaneous with them, that is to say Czech law. The Court of Justice concludes that **the competition rules of EU law are not applicable to the anti-competitive effects that undertaking, the latter having been produced in the territory of the Czech Republic before its accession to the Union.**

Next, as regards the delimitation of the jurisdiction of the national authorities and of the Union in the area of cartels, the Court recalls that, in accordance with Regulation No 1/2003, jurisdiction to apply **EU competition rules** is shared between the Commission and the competition authorities of the Member States. The Court states nevertheless that the latter lose that jurisdiction if the Commission opens a proceeding tending to the imposition of a fine. Similarly, where the Commission has opened such a proceeding, the national authorities also lose the possibility of applying **provisions of national law prohibiting cartels.**

However, the Court points out that **EU competition rules do not indicate that the opening of a proceeding by the Commission permanently and definitively removes the national competition authorities' power to apply national legislation on competition matters.** On the contrary, the jurisdiction of the national authorities is restored once the proceeding initiated by the Commission is terminated, since EU law and national law on competition matters apply in parallel. Competition rules at the European and national levels consider restrictive practices from different angles, and their areas of application do not coincide. However, the Court states that national competition authorities cannot go against a decision adopted by the Commission.

Similarly, after the Commission has taken its decision, national authorities may rule on the cartel on the basis of EU competition law if they comply with the Commission's decision. In that respect, the Court emphasises that the jurisdiction of the competition authorities of Member States is restored not only when the Commission has decided not to apply EU competition rules to a cartel but also in respect of all conceivable decisions that the Commission may have adopted on the basis of Regulation No 1/2003.

Consequently, **the Court replies that the Czech competition authority may rule on the anti-competitive effects produced by the cartel in the Czech Republic before its accession.**

Finally, the Court finds that the Commission has penalised only the consequences of the cartel within the European Economic Area⁴ referring expressly to the Member States of the time and the States which were contracting parties' to the EEA Agreement. The Commission's decision does not therefore penalise the possible anti-competitive effects produced by that cartel in the territory of the Czech Republic during the period prior to its accession. That finding is moreover confirmed by the fact that the Commission, in its decision, did not take account of the States which acceded to the Union on 1 May 2004 in calculating the amount of the fines.

Given that the Czech competition authority penalised only the consequences of the cartel which were produced in Czech territory before 1 May 2004 and that the latter were not taken into consideration by the Commission when imposing the fines, the Court finds that, for lack of accumulation of penalties, **the principle of *ne bis in idem* has not been infringed.**

⁴ The European Union together with Iceland, Liechtenstein and Norway.

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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