



Press and Information

General Court of the European Union

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Luxembourg, 12 May 2015

Judgment in Case T-623/13

Unión de Almacenistas de Hierros de España v Commission

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**The General Court finds that documents exchanged between the Commission and a national competition authority in proceedings concerning an infringement of the competition rules are not, in principle, accessible to the public**

*Disclosure of those documents could in fact undermine the protection of the commercial interests of the undertakings concerned as well as the protection of the purpose of investigations*

According to the Treaty on the Functioning of the EU (TFEU), any EU citizen, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the EU's institutions, bodies, offices and agencies, whatever their medium. An EU Regulation<sup>1</sup> defines the principles and conditions in which this right may be exercised. The Regulation provides a number of exceptions to this right, particularly, (i) the exception regarding the protection of commercial interests and (ii) that regarding investigations.

The Unión de Almacenistas de Hierros de España (UAHE), a professional association, asked the Commission for access to all correspondence exchanged between the Commission and the Comisión Nacional de la Competencia (CNC, Spanish National Competition Commission) concerning two procedures opened by the CNC in Spain (the purpose of these investigation procedures was to gather information and sufficient evidence to penalise concerted practices which may affect trade between Member States and distort competition within the internal market).

The Commission granted access to some of the documents requested. However, it refused access to the CNC's draft decisions concerning the two national procedures in question and to the CNC's summaries of these cases in English. In order to do this, the Commission relied in essence on the existence of a general presumption according to which the disclosure of documents such as those requested in the case in question would undermine the protection of the commercial interests of the undertakings concerned and the protection of the purpose of investigations. According to the Commission, this presumption which is applicable in particular to proceedings relating to the control of concentrations, may apply by analogy to documents which are submitted to it by a national competition authority in proceedings concerning an infringement of competition rules.

The UAHE challenges the Commission's decision before the General Court and asks for it to be annulled.

**In today's judgment the General Court dismisses the UAHE's action.**

In its decision the Court finds that the Commission did not carry out a specific and individual examination of the application for access brought by the UAHE. However, the Commission justified its refusal to grant access to the documents requested on the basis of the general presumption mentioned above. **The Court takes the view that a general presumption does exist according to which the disclosure of documents submitted by a national competition authority in proceedings concerning an infringement of the competition rules may, in principle, undermine the protection of the commercial interests of the undertakings concerned as well**

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

**as the protection, which is closely linked, of the purposes of the national competition authority's investigation activities.**

As regards the UAHE's argument that the national procedures carried out by the CNC have been definitively closed, the Court takes the view that, as has been found in proceedings relating to merger control and cartels,<sup>2</sup> **the presumption applies independently of the question whether the request for access concerns an investigation procedure that is already closed or one that is pending.** Even if it takes place after the procedure is definitively closed, public access to sensitive information regarding the economic activities of the undertakings involved may undermine the commercial interests of these undertakings and adversely affect their willingness to cooperate. Furthermore, according to the regulation, exceptions relating to commercial interests or sensitive documents may apply for a period of 30 years, or even beyond that period if necessary.

The Court adds that **the effectiveness of the mechanism for the exchange of information, within the public authority network ensuring compliance with EU competition rules requires that the information exchanged shall remain confidential.** In addition, **the regulation does not state that this protection must end after the final closure of the investigation that has allowed this information to be gathered.**

The Court also finds that a limitation of the period during which the presumption applies cannot be justified in the present case by the right to compensation to which those harmed by an infringement of competition law are entitled. **The documents in question** (namely the decision contemplated by the national competition authority and the summary of the case) **do not concern an investigation by the Commission**, but an investigation carried out by a national competition authority. It is therefore the national authority's investigation file that could, where appropriate, provide the necessary evidence on which to base a claim for compensation.

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**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 EU 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.

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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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<sup>2</sup> Case: [C-404/10 P](#) *Commission v Éditions Odile Jacob* See also Press Release No: [92/12](#). Case: [T-380/08](#) *Netherlands v Commission* and Case: [T-534/11](#) *Schenker v Commission*.