General Court of the European Union
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Press and Information

Judgment in Case T-814/17
Lietuvos geležinkelai AB v *Commission*

The General Court upholds the Commission's decision finding that the national railway company of Lithuania abused its dominant position on the Lithuanian rail freight market

The fine imposed on that company for the infringement in question is, however, reduced from € 27 873 000 to € 20 068 650

Lietuvos geležinkeliai AB ('LG'), the national railway company of Lithuania, both manages railway infrastructure and provides trail transport services in Lithuania. In its capacity as a provider of rail transport services, LG concluded, in 1999, a commercial agreement with Orlen Lietuva AB ('Orlen'), a Lithuanian oil company owned by the Polish oil company PKN Orlen SA, to provide rail transport services to Orlen in Lithuania. That agreement concerned in particular the transport of oil products from a large refinery belonging to Orlen located in Bugeniai, in the north-west of Lithuania, close to the border with Latvia, to the Lithuanian seaport of Klaipėda for the purpose of transporting those products to Western Europe.

Following a dispute which arose in 2008 between LG and Orlen concerning the rates for rail transport services covered by the agreement, Orlen explored the possibility of switching its seaborne export business from Klaipėda to the seaports of Riga and Ventspils, in Latvia, and, in that context, to entrust the transport of its products from the Bugeniai refinery to Latvijas dzelzceļš, the national railway company of Latvia ('LDZ'). In order to transport its freight to the Latvian seaports, Orlen intended to use a railway line which ran from its refinery to Rengė, in Latvia ('the Short Route'), a line which it had until then used to serve the Estonian and Latvian markets.

By reason of a deformation of the track along several dozens of metres on the Short Route, LG, on 2 September 2008, in its capacity as railway infrastructure manager, suspended traffic on a 19 km long section of that route ('the Track in dispute'). From 3 October 2008, LG effected a complete removal of the Track in dispute which was concluded before the end of October 2008.

Subsequently, as it believed that LG did not intend to repair the Track in dispute in the short term, Orlen was forced to abandon its plans to use LDZ's services. [1]

Following a complaint lodged by Orlen, the Commission, by decision of 2 October 2017, concluded that, by removing the Track in dispute, LG had abused its dominant position as manager of Lithuanian railway infrastructure since it prevented LDZ from entering the market for rail transport of oil products from Orlen's refinery to the seaports of Klaipėda, Riga and Ventspils ('the market in question'). The Commission imposed on LG a fine in respect of that infringement of € 27 873 000 and ordered LG to bring the breach of EU competition law to an end.

LG brought an action against the Commission's decision before the General Court of the European Union.

By today's judgment, the General Court finds, first of all, that, in its capacity as Lithuania's railway infrastructure manager, in a dominant position, LG is responsible under EU law and national law

[1] At the hearing, LG and LDZ did, however, confirm that the work to reconstruct the Track in dispute had finally started and was supposed to be completed in December 2019 and that the Track in dispute was to be reopened to traffic before the end of February 2020.

for granting access to public railway infrastructure and for ensuring the good technical condition of that infrastructure, as well as for ensuring safe and uninterrupted rail traffic and, **in the event of disturbance to rail traffic, for taking all necessary measures to restore the normal situation.** Furthermore, that undertaking holds a dominant position on the market for the management of railway infrastructure which derives from a former statutory monopoly, and it has not invested in the railway network, which belongs to the Lithuanian State.

In that situation, the General Court takes the view that the conduct in question, namely the removal of the Track in dispute, **cannot be assessed in the light of the case-law established in relation to refusal to provide access to essential facilities**, which sets a higher threshold for finding that a practice is abusive than that applied in the contested decision. In fact, **such conduct must be analysed as an act capable of hindering market entry by making access to the market more difficult and thus leading to an anticompetitive foreclosure effect.**

Next, the General Court confirms that **LG was not able to demonstrate that,** after the Deformation in question on the Track in dispute had appeared and after the detailed assessment of the condition of the entire Track in dispute, **it was in a state which would justify its immediate and complete removal.** In that regard, the General Court considers that the Commission was correct in determining that problems relating to a 1.6 km section of the 19 km of the Track in dispute could not justify its complete and immediate removal. In any event, the applicable regulatory framework imposed on LG **not only the obligation to guarantee the safety of its railway network but also the obligation to minimise disruption and to improve the performance of that network.**

With regard to LG's argument that it was more economically advantageous immediately to remove the Track in dispute entirely and then immediately to reconstruct it in full, which LG claims to have initially intended, than to carry out immediate targeted repairs followed by a full but staggered reconstruction, the General Court observes that, **without having the necessary funds to begin the reconstruction work** and without having taken the normal preparatory steps for such works to be carried out, **LG had no reason to remove the Track in dispute in great haste.** Similarly, the Commission made no error in determining that removal of a railway track before the renovation works had even begun **constituted highly unusual conduct in the rail sector.**

In addition, the General Court confirms that, as LG had a dominant position not only as railway infrastructure manager but also on the market in question, it had a special responsibility not to impair genuine, undistorted competition on that market. Therefore, when deciding on the solution to the deformation of the Track in dispute, LG ought to have taken into account its responsibility and avoided eliminating all prospect of the Track in dispute being returned to service in the short term. Rather, by removing the entire Track in dispute, LG did not assume that responsibility since its conduct made access to the market in question more difficult.

As regards the impact of the removal of the Track in dispute on LDZ's ability to transport Orlen's oil products destined for seaborne export from the refinery to the Latvian seaports, the General Court finds that the fact of having to use a longer route in Lithuania which is busier than the Lithuanian section of the Short Route involved higher risks for LDZ of conflicts in train paths, uncertainty as to the quality and cost of additional rail services as well as risks arising from a lack of information and transparency regarding market entry conditions and, therefore, Orlen was **more dependent on the Lithuanian railway infrastructure manager**. In addition, the General Court notes that, in 2008 and 2009, the costs of transporting Orlen's oil products were higher on the longer routes to the Latvian seaports than on the route to Klaipėda. Consequently, the Commission cannot be accused of any error of assessment in reaching the conclusion that **the longer routes to the Latvian seaports would not have been competitive in comparison with the route to Klaipėda.**

In those circumstances, the General Court **dismisses**, essentially, **LG's action in its entirety**.

However, in the exercise of its unlimited jurisdiction to set the amount of fines, the General Court, having regard to the gravity and duration of the infringement, **considers it appropriate to reduce the amount of the fine imposed on LG from € 27 873 000 to € 20 068 650.**

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 and ten days 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.

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