



Press and Information

General Court of the European Union
PRESS RELEASE No 25/22
Luxembourg, 9 February 2022

Judgment in Case T-791/19
Sped-Pro v Commission

The General Court annuls the decision of the Commission rejecting a complaint against PKP Cargo, a company controlled by the Polish State, concerning an alleged abuse of its dominant position on the market for rail freight transport services in Poland

The General Court examines for the first time the impact of systemic or generalised deficiencies in the rule of law in a Member State on determining the competition authority that is best placed to examine a complaint

In the context of the exercise of activities in the forwarding services sector, the company established under Polish law Sped-Pro S.A. ('the applicant') used rail freight transport services supplied by PKP Cargo S.A., a company controlled by the Polish State.

On 4 November 2016, the applicant lodged a complaint against PKP Cargo with the European Commission. In that complaint, it submitted that PKP Cargo had abused its dominant position on the market for rail freight transport services in Poland on account of its alleged refusal to conclude with the applicant a multi-annual cooperation agreement on market conditions.

On 12 August 2019, the Commission rejected the complaint by Decision C(2019) 6099 final ('the contested decision'),¹ on the ground, in essence, that the Polish competition authority was best placed to examine it.

It is in those circumstances that the applicant brought an action before the General Court seeking annulment of the contested decision. In support of its action, it raised three pleas in law, alleging, respectively, infringement of its right to have its case handled within a reasonable time and failure to state reasons in the contested decision, breach of the principle of the rule of law in Poland, and manifest errors in assessing the EU interest in pursuing the examination of the complaint.

By its judgment of 9 February 2022, the General Court upholds the action and annuls the contested decision in its entirety. On this occasion, it examines for the first time the impact of systemic or generalised deficiencies in the rule of law in a Member State on determining the competition authority that is best placed to examine a complaint. It also provides important clarifications as regards the circumstances in which failure to comply with the reasonable time requirement is liable to lead to the annulment of a decision rejecting a complaint in the field of competition law.

Findings of the Court

In the first place, as regards the reasonable time principle, the General Court recalls, first, that observance of the reasonable time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of EU law. Article 41(1) of the Charter of Fundamental Rights of the European Union also reaffirms the reasonable time principle in respect of administrative procedures. Thus, the General Court points out that the Commission is under an obligation to decide on complaints in the field of competition law within a reasonable time.

¹ Commission Decision C(2019) 6099 final of 12 August 2019 (Case AT.40459 – *Rail freight forwarding in Poland – PKP Cargo*).

However, the General Court states, secondly, that breach of the reasonable time principle is liable to lead to the annulment of a decision rejecting a complaint only where the applicant shows that the failure to comply with the reasonable time requirement has had an impact on his or her ability to defend his or her position in that procedure, which would in particular be the case if that failure had prevented him or her from gathering or submitting before the Commission factual or legal material concerning the anticompetitive practices complained of or the EU interest in investigating the case.

In the light of those principles, the General Court finds that, in the present case, it is not necessary to rule on the European Commission's compliance with the reasonable time principle, since the applicant has not adduced any evidence capable of showing that the alleged failure to comply with that requirement had an impact on its ability to defend its position in that procedure. Consequently, the General Court rules that the complaint alleging breach of the reasonable time principle is unfounded.

In the second place, as regards the assessment of the EU interest in pursuing the examination of the complaint, the General Court points out that, in the present case, the Commission did not commit any manifest error of assessment by finding that the practices complained of concerned primarily the market for rail freight transport services in Poland, that the Polish competition authority had acquired detailed knowledge of the sector and that, on the basis of those factors, that authority was best placed to examine the complaint. Furthermore, the General Court states that the applicant is wrong to assert that, in the present case, the Commission should have also taken account of other factors for the purposes of assessing the EU interest in investigating the case. Consequently, the plea in law alleging manifest errors in assessing the EU interest in pursuing the examination of the complaint is also rejected as unfounded.

In the third place, as regards the question of compliance with the principle of the rule of law in Poland, the General Court examines the applicant's argument that the Commission was best placed to examine the complaint, having regard to the systemic or generalised deficiencies in the rule of law in Poland and, in particular, the lack of independence of the Polish competition authority and the national courts with jurisdiction in the field.

In the contested decision, the Commission verified whether such deficiencies prevented it from rejecting the complaint on the ground that the Polish competition authority was best placed to examine it. To that end, it applied, by analogy, the two-stage analysis required in the context of execution of European arrest warrants in order to safeguard the fundamental right to a fair trial, in accordance with the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*; ² that analysis consists in assessing, as a first step, whether there is a real risk of a breach of that right connected with a lack of independence of the courts of the Member State in question, on account of systemic or generalised deficiencies in that State, and, as a second step, whether the person concerned actually runs a real risk, having regard to the particular circumstances of the case.

In that regard, in the first place, the General Court points out that compliance with the requirements of the rule of law is a relevant factor which the Commission must take into account, for the purposes of determining the competition authority that is best placed to examine a complaint and that, to that end, the Commission was entitled to apply by analogy the analysis in question. While there are differences between the circumstances which gave rise to the abovementioned judgment and those which have given rise to the present case, several considerations of principle justify the application by analogy of the guidance provided in that judgment for the purposes of determining the competition authority that is best placed to examine a complaint concerning an infringement of Articles 101 and 102 TFEU. In that regard, the General Court states, first of all, that, like in the case of the area of freedom, security and justice, cooperation, for the purposes of applying Articles 101 and 102 TFEU, between the Commission, the competition authorities of the Member States and the national courts is based on the principles of mutual recognition, mutual trust and

² Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* ([C-216/18 PPU](#), see also [PR No 113/18](#)).

sincere cooperation. Next, the General Court finds that the case-law requires the Commission, before rejecting a complaint for lack of an EU interest, to ensure that the national authorities are in a position adequately to safeguard the complainant's rights. Lastly, the General Court points out that the fundamental right to a fair trial before an independent tribunal enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights is also, as in the abovementioned judgment, of particular importance for the effective application of Articles 101 and 102 TFEU, the national courts being called upon, first, to review the legality of the decisions of the national competition authorities, and secondly, directly to apply those provisions.

In the second place, the General Court points out that the Commission's examination of the second step of the abovementioned analysis was not consistent with EU law. In the present case, the applicant had submitted, during the administrative procedure, a body of specific evidence which, according to the applicant, taken together, is capable of showing that there were substantial grounds to believe that it ran a real risk of a breach of its rights should its case have to be examined by the national authorities. That evidence concerned allegations with regard to, in particular, the control exercised by the State over PKP Cargo, the dependence of the president of the Polish competition authority vis-à-vis the executive, the circumstance that PKP Cargo's parent company is one of the members of an association whose aim is to defend and promote the reform of the Polish judicial system, the leniency of the Polish competition authority towards PKP Cargo, the actions brought by the Public Prosecutor General against decisions of that authority concerning PKP Cargo, and the inability of the Polish national courts with jurisdiction in the field of competition law to remedy the deficiencies of the Polish competition authority on account of their own lack of independence. In the contested decision, the Commission failed to examine that evidence and confined itself, in essence, to asserting that it was unsubstantiated. Finding that the Commission failed to examine specifically and precisely the various pieces of evidence adduced by the applicant during the administrative procedure, the General Court rules that the Commission failed to comply with its obligations deriving from the abovementioned judgment and with its obligation to state reasons.

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 European Union 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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