



## PRESS RELEASE No 9/23

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Judgment of the Court in Case C-42/21 P | Lietuvos geležinkeliai v Commission

### **Abuse of a dominant position: The Court of Justice upholds the judgment of the General Court imposing a fine of approximately € 20 million on the Lithuanian national rail company**

*The Commission conducted a comprehensive analysis which makes it possible to establish to the requisite legal standard that the removal of railway infrastructure was capable of having anticompetitive effects*

Lietuvos geležinkeliai AB (LG), the Lithuanian national railway company both manages railway infrastructure and provides rail transport services in Lithuania. In 1999, LG concluded 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. Following a dispute between LG and Orlen which arose in 2008, 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 (LDZ), the national railway company of Latvia.

On account of a defect in the rail track of several dozens of metres in length on the short route to Latvia, LG suspended traffic on a 19-km section between Mažeikiai (Lithuania) and the border with Latvia. From 3 October 2008, LG undertook the complete removal of the track at issue which was concluded before the end of October 2008. Subsequently, since Orlen considered that LG did not intend to repair the track at issue in the short term, it had to abandon its plans to use LDZ's services.

By decision of 2 October 2017, the Commission imposed a fine of close to € 28 million on LG for abuse of a dominant position on the Lithuanian freight market. LG then brought an action seeking the annulment of the decision at issue and the reduction of the amount of the fine before the General Court of the European Union. By judgment of 18 November 2020, the General Court dismissed the appeal brought by LG and reduced the amount of the fine to € 20 068 650. LG brought an appeal before the Court of Justice, seeking to have the judgment of the General Court set aside.

In its judgment delivered today, the Court of Justice upholds the judgment of the General Court.

The Court points out, first of all, that 'abuse of a dominant position', as provided for in EU law, relates to the conduct of a dominant undertaking which has the effect of hindering the maintenance or growth of that competition. The Court also recalls that it follows from its case-law that a refusal to grant access to infrastructure developed by a dominant undertaking for the purposes of its own business and owned by it may constitute an abuse of a dominant position.

However, the Court states that the removal of the track which inevitably becomes unusable by competitors but also by the dominant undertaking itself, must not be analysed as a refusal of access. It can constitute an independent form of abuse.

In support of the forms of order seeking the annulment of the original judgment, LG complained, in addition, that the General Court erred in law in upholding the Commission's categorisation of the removal of the track as an 'abuse of dominant position' as provided for in EU law. In that regard, the Court of Justice rejects that ground of appeal as being unfounded since it is based on a reading of the judgment under appeal which is manifestly erroneous.

As regards the ground of appeal seeking to dispute the Commission's findings that the removal of the track gave rise to anticompetitive effects, the Court rejected that ground of appeal in its entirety.

As regards the calculation of the fine imposed on LG, the Court of Justice finds that the General Court exercised its unlimited jurisdiction by re-evaluating the amount of the fine and by reducing the amount imposed by the Commission.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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