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Judgments of the Court in Cases C-682/20 P | *Les Mousquetaires and ITM Entreprises v Commission*, C-690/20 P *Casino, Guichard-Perrachon and Achats Marchandises Casino v Commission* and C-693/20 P *Intermarché Casino Achats v Commission*

The Court sets aside in part the judgments of the General Court and, consequently, annuls the decisions of the Commission ordering inspections at the premises of a number of French undertakings in the distribution sector on account of suspicions of anticompetitive practices

The Commission ought to have recorded the interviews it conducted with suppliers of those undertakings so as to be able to use the information from those interviews as indicia of an infringement since, in view of their content and context, the purpose of those interviews was to collect information relating to the subject matter of an investigation.

After receiving information concerning exchanges of information between a number of undertakings and associations of undertakings in the food and non-food distribution sector, the Commission adopted, in February 2017, a series of decisions ordering several companies to submit to inspections. In those inspections, the Commission, inter alia, visited the premises of the relevant companies where copies of the content of computer equipment were taken. (CP 122/20)

The companies Les Mousquetaires, ITM Entreprises, Casino, Guichard-Perrachon, Achats Marchandises Casino and Intermarché Casino Achats brought actions before the General Court of the European Union seeking annulment of the aforementioned Commission decisions. By its judgments of 5 October 2020, ¹ the General Court upheld those actions only in part.

Those undertakings brought appeals before the Court of Justice against the judgments of the General Court.

By its judgments today, the Court observes that **the Commission is required to record any interview which it conducts in order to collect information relating to the subject matter of an investigation**. In that regard, the Court finds that **that obligation applies irrespective of whether the interview in question was conducted before the formal opening of an investigation**, in order to collect indicia of an infringement, **or afterwards**, for the purpose of collecting evidence of an infringement.

In that context, the Court adds that the Commission may record the interviews in any form, including oral, thereby ensuring the effectiveness and speed of the investigation.

In those circumstances, the Court finds that the General Court erred in law in holding that the obligation to record

¹ Judgments of the General Court of 5 October 2020, *Casino, Guichard-Perrachon and AMC v Commission*, [T-249/17](#), *Intermarché Casino Achats v Commission*, [T-254/17](#), *Les Mousquetaires and ITM Entreprises v Commission*, [T-255/17](#) (see also [PR No 122/20](#)).

did not apply to interviews conducted by the Commission with suppliers of the undertakings in question, on the ground that no investigation had yet been formally opened in respect of those undertakings.

The Court adds that, in order to determine whether those interviews came within the scope of the Commission's obligation to record, the General Court ought to have considered whether they were aimed at collecting information relating to the subject matter of an investigation, having regard to their content and context. Such an examination would have led to the conclusion that those interviews had to be recorded. Consequently, the Court **sets aside**, in part, **the aforementioned judgments of the General Court**.

Taking the view that it is in a position to give a final ruling on the dispute, the Court concludes that **since the information obtained in disregard of the obligation to record constituted the essential elements of the indicia on which the Commission's decisions are based, they are not substantiated by sufficiently serious indicia**. The Court accordingly **also annuls those decisions**.

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 judgments ([C-682/20 P](#), [C-690/20 P](#) and [C-693/20 P](#)) is published on the CURIA website on the day of delivery.

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