



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-117/20
bpost and C-151/20 Nordzucker and Others

Duplication of proceedings and penalties of a criminal nature in competition law: the Court specifies the protection against double jeopardy provided by EU law

The Charter of Fundamental Rights of the European Union ('the Charter') provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'. By two judgments delivered today, the Court of Justice rules on the scope of the protection afforded by that prohibition against double jeopardy (also known as the *non bis in idem* principle) in competition law.

bpost

The company bpost was successively fined by two national authorities. In July 2011, a first pecuniary penalty of €2.3 million was imposed on it by the Belgian postal regulator, which found that the rebate system applied by bpost from 2010 onwards discriminated against some of bpost's clients. In March 2016, that decision was annulled by the Brussels Court of Appeal, whose judgment has become final,¹ on the ground that the pricing practice at issue was not discriminatory.

In the meantime, in December 2012, the Belgian competition authority imposed a fine of almost €37.4 million on bpost for abuse of a dominant position because of the application of that same rebate system between January 2010 and July 2011. Bpost is disputing, in the Brussels Court of Appeal, the lawfulness of that second set of proceedings on the basis of the *non bis in idem* principle.

Nordzucker and Others

The Austrian Supreme Court is seised of an appeal by the Austrian competition authority in proceedings in which that authority seeks a declaration that Nordzucker, a German sugar producer, has infringed EU law on cartels and Austrian competition law, and also the imposition of a fine on Südzucker, another German sugar producer, for the same infringement. Those proceedings are based, inter alia, on a telephone conversation during which representatives of both undertakings discussed the Austrian sugar market. That conversation had already been referred to, by the German competition authority, in a decision which has become final. By that decision, the German authority found that the two undertakings had infringed both EU competition law and German competition law and imposed a financial penalty of €195.5 million on Südzucker.

The Court of Justice, sitting as the Grand Chamber, recalls, in both cases, that the application of the *non bis in idem* principle is subject to a twofold condition: first, there must be a prior final decision (the '*bis*' condition) and, secondly, that prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition).

¹ That judgment was delivered following a reference for a preliminary ruling to the Court of Justice (judgment of 11 February 2015, bpost, [C-340/13](#)).

The Court makes clear that, **in competition law matters, as in any other area of EU law, the relevant criterion for the purposes of assessing the existence of the same offence ('idem') is identity of the material facts**, understood as the existence of a set of concrete circumstances which are inextricably linked together and which have resulted in the final acquittal or conviction of the person concerned. It observes, however, that limitations may be imposed by law on the exercise of a fundamental right, such as that conferred by the prohibition against double jeopardy (the *non bis in idem* principle), as long as the limitations respect the essence of those rights, are necessary and genuinely meet objectives of general interest recognised by the European Union.

bpost

According to the Court, the protection conferred by the Charter does not, in view of that possible limitation of the application of the *non bis in idem* principle, **preclude** an undertaking from being penalised for an **infringement of competition law** where, on the same facts, it has **already been the subject** of a final decision for **failure to comply with sectoral rules** (for example, the postal sector rules governing the activities of bpost). That duplication of proceedings and penalties is, however, **subject** to there being **clear and precise rules** that make it possible to predict which acts or omissions are liable to be subject to such duplication, and also to predict that there will be **coordination between the two competent authorities**. Furthermore, the two sets of proceedings must have been conducted in a sufficiently coordinated manner within a **proximate timeframe** and **the overall penalties imposed must correspond to the seriousness of the offences committed**. **If that is not the case, the second public authority involved infringes the prohibition against double jeopardy by instituting proceedings.**

Nordzucker and Others

According to the Court, the *non bis in idem* principle **does not preclude** an undertaking from having proceedings brought against it by the competition authority of a Member State and being fined for an infringement, on the basis of **conduct** which has had **an anticompetitive object or effect** in the **territory of that Member State**, even though that conduct **has already been referred to**, by a competition authority of **another Member State**, in a **final decision**. The Court points out, however, that **that decision must not be based on a finding of an anticompetitive object or effect in the territory of the first Member State**. If that is the case, by contrast, **the second competition authority which institutes proceedings in relation to that object or effect infringes the prohibition against double jeopardy.**

By the final question referred in *Nordzucker and Others*, the Court is asked whether the *non bis in idem* principle applies to proceedings having involved the application of a leniency programme and in which a fine was not imposed. The Court states, in that regard, that the *non bis in idem* principle applies to proceedings for the enforcement of competition law, in which, owing to the participation of the party concerned in the national leniency programme, only a declaration of the infringement of that law can be made.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgments and résumés ([C-117/20](#) and [C-151/20](#)) is published on the CURIA website on the day of delivery.

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