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Judgment of the Court in Case C-57/21 | *RegioJet*

A national court may order the disclosure of evidence for the purpose of proceedings for damages connected with an alleged infringement of competition law, even if the proceedings have been stayed owing to the Commission's initiation of an investigation concerning the same infringement

That court must, however, ensure that the disclosure of evidence is actually necessary and proportionate for the purpose of the action for damages

In January 2012, the Czech competition authority initiated proceedings concerning the possible abuse of a dominant position by České dráhy, the national railway company owned by the Czech State. The alleged infringement of competition law consisted in the application of predatory pricing in the provision of rail passenger transport services in the Czech Republic, in particular on the Prague-Ostrava route. In 2015, RegioJet, an undertaking which, inter alia, offers rail passenger transport services on that route, brought an action for damages against České dráhy before the Czech courts, seeking compensation for the damage it had allegedly suffered owing to the infringement at issue.

In November 2016, the Commission opened formal investigation proceedings in that regard, following which the Czech competition authority stayed the proceedings it had initiated. In October 2017, RegioJet, in connection with its action for damages, submitted a request for the disclosure of documents, which it assumed to be in the possession of České dráhy, linked to the aforementioned anti-competitive conduct. In December 2018, the Czech courts stayed the proceedings for damages pending a decision by the Commission on the infringement allegedly committed by České dráhy.

The Czech Supreme Court raises several questions with the Court of Justice as regards the interpretation of the directive on actions for damages related to infringements of competition law,¹ concerning the disclosure of evidence in such proceedings. In particular, the Czech Supreme Court seeks to ascertain whether national courts may order the disclosure of documents related to an alleged infringement of competition law, even though the proceedings underlying that order, and which concern an action for damages in respect of the infringement at issue, have been suspended pending a decision by the Commission.

In today's judgment, the Court observes, first of all, that a national court may not adopt a decision which would conflict with a decision contemplated by the Commission in proceedings initiated on account of an alleged infringement of EU competition law. In that regard, the Court states that in so far as there is compliance with that requirement, **a national court may, in principle, order the disclosure of evidence for the purpose of**

¹ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1).

proceedings for damages related to such an infringement, even if those proceedings have been stayed pending a decision by the Commission on that infringement. That being said, the national court must **ensure that the disclosure of evidence is actually necessary and proportionate** for the purpose of assessing the claim for damages at issue.

Next, the Court finds that the fact that the Czech competition authority has stayed the proceedings it initiated owing to the Commission having opened investigation proceedings concerning the same circumstances **cannot be equated to that authority closing the first set of proceedings.** Consequently, such a stay of national proceedings **does not allow** the national court **to order the disclosure of evidence whose release is subject to the condition that the competent competition authority has closed the proceedings before it.**

Lastly, the Court holds that the Czech legislation which prohibits a national court, while proceedings are ongoing before the national competition authority, from ordering not only the disclosure of information ‘prepared’ specifically for the proceedings of the competition authority, as provided for in the directive, but also of all information ‘submitted’ for that purpose, **does not comply with that directive.** The harmonisation objective of the directive would be undermined if the Member States were able to introduce more restrictive rules in relation to the disclosure of evidence than those laid down in its provisions.

In addition, the directive allows the national court to order the disclosure of evidence that may contain information ‘prepared’ specifically for the proceedings of the competition authority in order to ascertain whether the documents concerned do indeed contain such information. However, the national court must ensure that the other parties concerned and third parties are granted access to those documents only in the light of the outcome of that review and in accordance with the directive.

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 judgment is published on the CURIA website on the day of delivery.

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