Newsletter

Weeks II-III : 9th to 20th January 2023

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All times are 9:30 unless otherwise stated.

Don't forget to check the diary on our website for details of other cases.

Week II – 9th to 13th January

Thursday 12th January

Judgment in Case C-883/19 P HSBC Holdings and Others v Commission

(Competition)

The HSBC Group is a banking group whose activities include investment banking, corporate banking and markets. HSBC Holdings is the parent company of HSBC France and HSBC France is the parent company of HSBC Bank. HSBC France and HSBC Bank are responsible for trading Euro Interest Rate Derivatives (EIRDs). HSBC France is responsible for rate submissions to the Euro Interbank Offered Rate (Euribor) panel.

Following inspections at the premises of a number of financial institutions, including HSBC, the Commission opened infringement proceedings against these financial institutions, including HSBC. By decision of 7 December 2016, the Commission found that Crédit Agricole, HSBC and JPMorgan Chase participated in a single and continuous infringement consisting of the restriction and/or distortion of competition in the IBRD sector. For this infringement, the Commission imposed a fine of € 33 606 000 on HSBC.

In its judgment of 24 September 2019, the General Court largely upheld the Commission's finding that HSBC had participated in an infringement of competition law. However, it annulled the fine imposed for insufficient reasoning.

By the present appeal, the companies of the HSBC group seek the partial annulment of the judgment of the General Court, in so far as the latter had dismissed their appeal. In addition, they ask the Court to annul the Commission's decision on the participation of the HSBC companies in a single and continuous infringement.

Background Documents C-883/19 P

There will be a press release in this case.

Thursday 12th January

Judgment in Joined Cases C-702/20 and C-17/21 DOBELES HES GM

(State Aid)

On 5 May 2005, Latvia adopted a law (in force from 8 June 2005 to 31 December 2014) to change the procedure for the sale of surplus production by electricity generators at a higher tariff. This law specified that producers of electricity from renewable energy sources who had already started their activity on that date would retain the benefit of the previous conditions, which were essentially more favourable as regards the prices charged for sale at the increased tariff. DOBELES HES SIA and GM SIA are two Latvian companies operating hydroelectric power plants producing electricity from renewable energy sources.

Following the entry into force of this law, the Latvian regulatory authority with the power to determine the average electricity tariff interpreted the law as meaning that it would have the effect of freezing the average electricity sales tariff for these producers at its value in force on 7 June 2005. The authority therefore ceased to update that tariff.

This led the applicant companies to claim from the regulator the payment of "damages" as compensation for the losses suffered as a result of the freezing of the tariff. The regulator refused to comply with these claims, but the Latvian administrative court partially upheld their appeal.

The Latvian Supreme Court, on appeal in cassation, asked the Court of Justice to interpret Articles 107(1) and 8(3) TFEU, the Regulation on *de minimis* aid (small amounts of State aid which do not have to be notified to the Commission) and the Regulation laying down detailed rules for the application of Article 108 TFEU.

Background Documents C-702/20
Background Documents C-17/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-42/21 P Lietuvos geležinkeliai v Commission

(Competition)

Lietuvos geležinkeliai AB (LG), the Lithuanian national railway company, is both a railway infrastructure manager and a provider of railway transport services in Lithuania (8). In 1999 LG concluded a commercial agreement with Orlen Lietuva AB (hereinafter 'Orlen'), a Lithuanian oil company owned by the Polish oil company PKN

Orlen SA, to provide rail transport services on Lithuanian territory. This agreement included the transport of oil products from a major refinery owned by Orlen located in Bugeniai, north-western Lithuania, close to the border with Latvia, to the sea terminal in Klaipėda (Lithuania) (CP 140/20; 10; 11). Following a dispute in 2008 between LG and Orlen, the latter considered redeploying its maritime export activities from Klaipėda to the maritime terminals in Riga and Ventspils (Latvia) and, in this context, entrusting the transport of its products from the Bugeniai refinery to Latvijas dzelzceļš (LDZ), the Latvian national railway company (CP 140/20; 16; 17).
Due to a deformation of the track by a few tens of meters on the short route to Latvia, LG suspended traffic on a 19 km section between Mažeikiai (Lithuania) and the border with Latvia (20). From 3 October 2008, LG proceeded with the complete dismantling of the disputed track, which was completed by the end of October 2008. Subsequently, considering that LG did not intend to repair the disputed track in the short term, Orlen had to abandon its plan to use the services of LDZ.
By decision of 2 October 2017, the Commission imposed a fine of almost EUR 28 million on LG for abuse of a dominant position on the Lithuanian freight market. LG then brought an action for annulment of the contested decision and reduction of the fine before the General Court of the European Union (47). By judgment of 18 November 2020 the Court of First Instance dismissed LG's action and reduced the amount of the fine to EUR 20 068 650 (52). LG appealed to the Court of Justice to have the judgment of the General Court set aside.

Background Documents C-42/21 P

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-57/21 RegioJet

(Competition)

In January 2012, the Czech Competition Authority opened proceedings into a possible abuse of dominance by České dráhy, a national rail carrier owned by the Czech State. This alleged infringement of competition law consisted of predatory pricing in the provision of rail passenger transport services in the Czech Republic and, in particular, on the Prague-Ostrava route.
In 2015, RegioJet, an undertaking which provides, inter alia, 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 allegedly suffered as a result of the infringement at issue.

In November 2016, the Commission opened a formal investigation procedure into the matter, following which the Czech competition authority suspended the proceedings before it. In October 2017, RegioJet, in the context of its action for damages, filed a

request for the production of documents that it assumed were in the possession of České dráhy, in connection with the above anti-competitive conduct. In December 2018, the Czech courts suspended the damages proceedings pending a decision by the Commission on the alleged infringement committed by České dráhy.

The Czech Supreme Court poses several questions to the Court of Justice as to the interpretation of the Directive on damages actions relating to infringements of competition law, with regard to the production of evidence in such proceedings. In particular, the Czech Supreme Court wishes to know whether national courts may order the production of documents relating to an alleged infringement of competition law, while the proceedings underlying such an order and relating to an action for damages in respect of the infringement in question have been suspended pending a decision by the Commission.

Background Documents C-57/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-132/21 Nemzeti Adatvédelmi és Információszabadság Hatóság

(Approximation of Laws)

In April 2019, BE attended the general meeting of a public limited company in which it is a shareholder and, on that occasion, asked questions to the members of the board of directors and other participants. Subsequently, BE asked the company to disclose the sound recording made at the general meeting. However, the company only made available to BE the excerpts of this recording reproducing its own speeches, excluding those of the other participants, even though the latter constituted the answers to its questions.

BE then asked the Hungarian supervisory authority responsible under the General Data Protection Regulation (GDPR) to order the company concerned to disclose the recording in question. The Hungarian supervisory authority rejected the request and BE lodged an administrative appeal against the rejection decision before the Budapest Capital Court. In parallel, it also brought an action before the Hungarian civil courts against the company's decision to refuse access. The latter action was based on a provision of the GDPR giving every person who considers himself or herself to be the victim of a breach of the rights guaranteed by that Regulation the right to an effective judicial remedy. The first of these proceedings is still pending, but the Hungarian civil courts in the second proceedings have already found in a final judgment that the above-mentioned company violated BE's right of access to his personal data.

The Budapest-Capital Court asks the Court of Justice whether, in the context of the review of the legality of the decision of the national supervisory authority, it is bound by the final judgment of the civil courts concerning the same facts and the same alleged violation of the GDPR by the company concerned. Furthermore, as parallel exercise of administrative and civil remedies may result in conflicting decisions, the Hungarian court is considering whether there is a possible priority of one of these remedies over the other.

Background Documents C-132/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-154/21 Österreichische Post (Informations relatives aux destinataires de données personnelles)

(Approximation of Laws)

A citizen asked the Österreichische Post, the main operator of postal and logistics services in Austria, to provide him with the identity of the recipients to whom it had communicated his personal data.

The request is based on the EU General Data Protection Regulation (GDPR). This regulation provides that a data subject has the right to obtain from the controller information relating to the recipients or categories of recipients to whom his personal data have been or will be communicated.

In response to the citizen's request, the Österreichische Post limited itself to indicating that it uses personal data, to the extent permitted by law, in the context of its activity as a publisher of telephone directories and that it offers this data to business partners for marketing purposes. The citizen then sued the Österreichische Post before the Austrian courts.

During the legal proceedings, the Österreichische Post further informed the citizen that his data had been passed on to customers, including advertisers in the mail-order and physical trade sector, IT companies, publishers of addresses and associations such as charities, non-governmental organizations (NGOs) or political parties.

The Oberster Gerichtshof (Supreme Court, Austria), hearing the dispute as a last resort, wishes to know whether the GDPR leaves the data controller free to choose to communicate either the concrete identity of the recipients or only the categories of recipients, or even if it offers the person concerned the right to know their concrete identity.

Background Documents C-154/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-356/21 TP (Monteur audiovisuel pour la télévision publique)

(Social Policy)

Between 2010 and 2017, a self-employed person produced audiovisual montages, trailers and soap operas for the self-promotional programmes of TP, a company operating a national public television channel in Poland. This collaboration was based on a series of consecutive short-term business contracts which the worker concluded in the context of his self-employed economic activity with TP.

In December 2017, this self-employed worker and his partner published a Christmas music video on YouTube aimed at promoting tolerance towards same-sex couples. Shortly after the video was published, the worker's periods of service were unilaterally cancelled by TP and subsequently no new contract of employment was concluded with him.

The worker considered himself to be a victim of direct discrimination on the grounds of his sexual orientation and brought an action for compensation before the District Court of the city of Warsaw (Poland). On the one hand, this court questioned whether the situation at issue in the main proceedings fell within the scope of Directive 2000/78/EC on equal treatment in employment and occupation. Secondly, the national court wishes to know whether that directive precludes national legislation which excludes, on the basis of the freedom of choice of the contractor, from the protection against discrimination to be conferred by that directive, the refusal to conclude or renew a contract with a self-employed person on the basis of that person's sexual orientation.

Background Documents C-356/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-395/21 D.V. (Honoraires d'avocat – Principe du tarif horaire)

(Consumer Protection)

M.A., as a consumer, concluded five contracts for legal services with D.V., in his capacity as a lawyer. Each of these contracts provided that the fees were calculated on the basis of an hourly rate, set at € 100 for consultations or legal services provided to M.A..

D.V. provided legal services during 2018 and 2019 and issued invoices for all services provided in March 2019. Not having received the full fees claimed, D.V. brought an action before the Lithuanian court of first instance seeking to order M.A. to pay € 9 900 for legal services rendered and E€UR 194.30 for costs incurred in the performance of the contracts. The court partially upheld D.V.'s claim. D.V.'s appeal was dismissed by the appellate court. In 2020 D.V. lodged an appeal in cassation with the Supreme Court of Lithuania.

This court asked the Court of Justice to interpret the provisions of EU law designed to protect consumers against unfair contract terms, in particular the scope of the requirement that a clause in a contract for the provision of legal services be drafted in a clear and comprehensible manner and the effects of a finding that a clause fixing the price of such services is unfair.

Background Documents C-395/21

There will be a press release in this case.

Thursday 12th January

Judgment in Case C-396/21 FTI Touristik (Canary Islands Package Tour)

(Consumer Protection - COVID)

Two travellers had purchased a two-week package tour to Gran Canaria from a German tour operator from 13 March 2020. They requested a 70% price reduction due to the restrictions that were imposed on the island on 15 March 2020 to combat the spread of the COVID-19 pandemic and their early return. Indeed, beaches were closed and a curfew was enforced, so that travellers were only allowed to leave their hotel rooms to eat. Access to the pools and sun loungers was prohibited and the entertainment programme was cancelled. On 18 March 2020, the two travellers were informed that they had to be ready to leave the island at any time, and the following day they had to return to Germany.

The organiser refused to grant them the price reduction, believing that he could not be held responsible for what constituted a "general risk of life". The two travellers then sued him before the German courts.

The Regional Court of Munich I, hearing the case at second instance, asked the Court of Justice to interpret the Package Travel Directive, which provides that the traveller is

entitled to an appropriate price reduction for any period of non-conformity of the services provided, unless the organiser proves that the non-conformity is attributable to the traveller.

Background Documents C-396/21

There will be a press release in this case.

Week III – 16th to 20th January

Tuesday 17th January

Judgment in Case C-632/20 P Spain v Commission

(External Relations)

The BEREC Regulation is the legal basis for the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC ('the BEREC Office').

Article 35 of the regulation governs, in particular, cooperation between those bodies and national regulatory authorities (NRAs) of third countries. Pursuant to that provision, the Commission decided, by the contested decision of 18 March 2019, (3) that the NRA of Kosovo was permitted to participate in the Board of Regulators and working groups of BEREC and the Management Board of the BEREC Office.

Spain challenges that decision and, specifically, takes the view that the participation of the NRA of Kosovo is precluded because some Member States, including Spain, have not recognised Kosovo as a sovereign State and, in addition, the European Union has not adopted a position on the matter. Furthermore, Spain questions the Commission's competence to make a unilateral decision on such participation.

Background Documents C-632/20

There will be a press release in this case.

Thursday 19th January

Judgment in Case C-680/20 Unilever Italia Mkt. Operations

(Competition)

The present request for a preliminary ruling from the Consiglio di Stato (Italy) has been made in the context of a dispute between Unilever Italia Mkt. Operations Srl (Unilever) and the Italian Competition Authority (AGCM) in relation to a fine imposed by the authority in question on said company for abuse of dominant position on the Italian market for the distribution of packaged ice creams to certain types of businesses, such as bathing establishments and bars which, in turn, resell such ice creams to final consumers.

The present case raises two questions asking the Court to clarify certain aspects relating to the interpretation and application of Article 102 TFEU.

The first question referred concerns the application of the concept of 'single economic unit' (hereinafter 'economic unit') to companies linked exclusively by contractual ties. More specifically, the referring court asks the Court to clarify the scope of that concept for the purposes of applying Article 102 TFEU and, in particular, its implementation within the framework of a distribution network organized exclusively on a contractual basis.

The second question concerns the possibility for a competition authority to consider that a practice consisting in inserting exclusivity clauses in distribution agreements has, by its nature, the capacity to restrict competition, within the meaning of Article 102 TFEU, without having to concretely demonstrate that this is the case for the contracts in question on the basis of the criterion of the "as efficient competitor".

Background Documents C-680/20

There will be a press release in this case.