



Reports of Cases

Case C-172/14

ING Pensii — Societate de Administrare a unui Fond de Pensii Administrat Privat SA v Consiliul Concurenței

(Request for a preliminary ruling from the Înalta Curte de Casație și Justiție)

(Reference for a preliminary ruling — Agreements, decisions and concerted practices — Arrangement for sharing clients on a private pension fund market — Whether there is a restriction of competition within the meaning of Article 101 TFEU — Effect on trade between Member States)

Summary — Judgment of the Court (Second Chamber), 16 July 2015

1. *Agreements, decisions and concerted practices — Adverse effect on competition — Criteria for assessment — The terms and objectives of an agreement and the economic and legal context in which it came about — Distinction between infringements by object and infringements by effect — Agreements to share clients between private pension funds — Anti-competitive object — Sufficient*

(Art. 101(1) TFEU)

2. *Agreements, decisions and concerted practices — Effect on trade between Member States — Criteria — Agreement covering the whole territory of a Member State*

(Art. 101(1) TFEU)

1. Article 101(1) TFEU must be interpreted as meaning that agreements to share clients, such as those concluded between obligatory private pensions funds, constitute agreements with an anti-competitive object, the number of clients affected by such an agreement being irrelevant for the purpose of assessing the requirement relating to the restriction of competition within the internal market.

That is the case, in particular, where:

- first, as regards the terms of such agreements, the participating members have colluded on the basis that an indeterminate number of persons concerned, that is, persons who have signed two different private pension fund affiliation applications (duplications), is to be shared on an equal basis between the private pension funds participating in that collusive conduct;
- second, as regards the objective pursued by the pension funds concerned, the purpose of those agreements is to affiliate the persons concerned to a limited group of operators, contrary to the statutory rules applicable, and thus to the detriment of other companies operating in the economic sector concerned. The purpose of those agreement is, therefore, to strengthen the position, on the market concerned, of each of those private pension funds by comparison with that of their competitors not participating in the collusive conduct in question and they thus pursue an objective that is clearly at odds with the proper functioning of normal competition;

— third, as a result of their collusion, the private pension funds concerned have deliberately circumvented statutory rules which provide for duplications to be affiliated, following intervention by the competent national authorities, and to be allocated on a random basis.

The number of persons actually affected by the agreements to share clients is, in such circumstances, irrelevant, given that a finding that an agreement to share clients has an anti-competitive object — in particular a finding that the agreement may have a negative impact on the market — does not depend on the actual number of clients who are in fact shared out but simply on the terms and the objective aims of the agreement, considered in the light of the economic and legal context in which the agreement was concluded.

(see paras 35, 37-39, 44, 54-56, operative part)

2. See the text of the decision.

(see paras 48, 49)