



Reports of Cases

Case C-428/14

**DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA
v
Autorità Garante della Concorrenza e del Mercato**

(Request for a preliminary ruling from the Consiglio di Stato)

(Reference for a preliminary ruling — Competition policy — Article 101 TFEU — Regulation (EC) No 1/2003 — International freight forwarding sector — National competition authorities — Legal status of instruments of the European Competition Network — Model Leniency Programme of that network — Application for immunity submitted to the Commission — Summary application for immunity submitted to national competition authorities — Relationship between those two applications)

Summary — Judgment of the Court (Second Chamber), 20 January 2016

1. *Competition — EU rules — Commission notices on cooperation and on immunity from fines and reduction of fines — Model leniency programme drawn up within the European Competition Network*

(Arts 101 TFEU and 102 TFEU; Council Regulation No 1/2003; Commission notices 2004/C 101/03 and 2006/C 298/11)

2. *Competition — EU rules — Commission notices on cooperation and on immunity from fines and reduction of fines — Model leniency programme drawn up within the European Competition Network — Autonomy between the EU leniency programmes and those of the Member States — Obligation of the undertakings concerned to submit different leniency applications to the Commission, on one hand, and the national authorities, on the other*

(Art. 101 TFEU; Council Regulation No 1/2003)

3. *Competition — EU rules — Commission notices on cooperation and on immunity from fines and reduction of fines — Model leniency programme drawn up within the European Competition Network*

(Art. 101 TFEU; Council Regulation No 1/2003; Commission notices 2004/C 101/03 and 2006/C 298/11)

4. *Competition — EU rules — Commission notices on cooperation and on immunity from fines and reduction of fines — Model leniency programme drawn up within the European Competition Network*

(Art. 101 TFEU; Council Regulation No 1/2003 Commission notices 2004/C 101/03 and 2006/C 298/11)

1. EU law, in particular Article 101 TFEU and Regulation No 1/2003, must be interpreted as meaning that the instruments adopted in the context of the European Competition Network, in particular the Model Leniency Programme of that network, are not binding on national competition authorities.

(see paras 33, 35, 36, 42, 44, operative part 1)

2. National competition authorities are free to adopt leniency programmes and each of those programmes is autonomous, not only in respect of other national programmes, but also in respect of the EU leniency programme. The coexistence and autonomy that thus characterise the relationships between the EU leniency programme and those of the Member States are a reflection of the system of parallel competence between the Commission and national competition authorities established by Regulation No 1/2003.

It follows that, in the case of a cartel the anti-competitive effects of which are liable to manifest themselves in several Member States and, consequently, may give rise to the intervention of various national competition authorities, as well as the Commission, it is in the interest of an undertaking which wishes to benefit from the leniency system in respect of its participation in the cartel in question to submit applications for immunity, not only to the Commission, but also to the national authorities potentially competent to apply Article 101 TFEU.

The autonomy of those applications follows directly from the fact that there is, at the EU level, no single system of self-reporting for undertakings that participate in cartels in breach of Article 101 TFEU. That autonomy cannot, moreover, be affected by the fact that the various applications concern the same infringement of competition law.

(see paras 57-60)

3. EU law, in particular Article 101 TFEU and Regulation No 1/2003, must be interpreted as meaning that there is no legal link between the application for immunity which an undertaking submits or is preparing to submit to the Commission and the summary application submitted to a national competition authority in respect of the same cartel, requiring that authority to assess the summary application in the light of the application for immunity. Whether or not the summary application accurately reflects the content of the application for immunity submitted to the Commission is, in that respect, irrelevant.

Such a legal link would call into question the autonomy of the various applications and, consequently, the rationale behind the system of summary applications. That system is based on the principle that there is not, at the EU level, a single leniency application or a 'main' application submitted in parallel to 'secondary' applications, but rather applications for immunity submitted to the Commission and summary applications submitted to the national competition authorities, the assessment of which is the exclusive responsibility of the authority to which the application in question is addressed.

Furthermore, where the summary application submitted to a national competition authority has a more limited material scope than the application for immunity submitted to the Commission, that national authority is not required to contact the Commission or the undertaking itself, in order to establish whether that undertaking has found specific examples of unlawful conduct in the sector allegedly covered by the application for immunity, but which is not covered by the summary application. Such an obligation would be liable to attenuate the duty of cooperation of leniency applicants, which is one of the pillars of any leniency programme. In those circumstances, it is for the undertaking applying to national competition authorities for leniency to ensure that any application which it submits is devoid of ambiguities as to its scope.

(see paras 61, 63, 64, 67, operative part 2)

4. EU law, in particular Article 101 TFEU and Regulation No 1/2003, must be interpreted as not precluding a national competition authority from accepting a summary application for immunity from an undertaking which had not submitted an application for full immunity to the Commission, but rather an application for reduction of the fine.

In that respect, the fact that the European Competition Network (ENC) Model Leniency Programme, does not expressly refer to the possibility for the undertakings that have submitted an application to the Commission for reduction of fines to lodge a summary application for immunity before the national competition authorities cannot be interpreted as precluding those authorities from accepting, in those circumstances, such a summary application. Given the non-binding nature of that programme, it follows, first, that Member States are not required to incorporate provisions of the ECN Model Leniency Programme in their leniency systems and, secondly, that they are also not precluded from adopting, at the national level, rules which are not present in that model programme or which diverge from it, in so far as that competence is exercised in compliance with EU law, in particular Article 101 TFEU and Regulation No 1/2003. In that respect, the effective application of Article 101 TFEU does not preclude a national leniency system which allows the acceptance of a summary leniency application submitted by an undertaking which had not submitted an application for full immunity.

In that context, it is possible that an undertaking which was not the first to submit an application for immunity to the Commission and which, consequently, is eligible only for a reduction of the fine may, by lodging a summary application for immunity, be the first to inform the national competition authority of the existence of the cartel concerned. In such a situation, in the event that the Commission does not pursue its investigation concerning the same matters as were reported to the national authority, the undertaking concerned could be granted full immunity under the national leniency programme.

(see paras 76, 77, 80, 83, 84, operative part 3)