



Reports of Cases

Case C-386/15 P(R)

Alcogroup SA

and

Alcodis SA

v

European Commission

(Appeal — Order for interim measures — Competition — Agreements, decisions and concerted practices — Order to submit to an inspection — Breach of professional secrecy — Refusal to suspend measures of investigation — Need to adopt interim measures — Absence — Inadmissibility)

Summary — Order of the Vice-President of the Court, 17 September 2015

1. *Application for interim measures — Suspension of enforcement — Conditions for granting — Serious and irreparable harm — Harm resulting from a taking into account, by the Commission, of confidential documents, consulted during an investigation on the basis of Article 20 of Regulation No 1/2003 — Absence of harm where information obtained is not disclosed or used*

(Art. 101 TFEU and 278 TFEU; Rules of Procedure of the Court, Art. 160(3); Council Regulation No 1/2003, Art. 20(4))

2. *Application for interim measures — Suspension of enforcement — Admissibility criteria — Application for interim measures in the main proceedings — Absence — Inadmissibility — Infringement of the principle of effective judicial protection — Absence*

(Art. 263 TFEU, 278 TFEU and 279 TFEU; Rules of Procedure of the Court, Art. 160(3); Council Regulation No 1/2003, Art. 20)

3. *Application for interim measures — Suspension of enforcement — Admissibility criteria — Interest of the applicant in obtaining the suspension sought — Application relating to a competition law act already executed — Harm having already arisen at the time of the adoption of the decision by the court hearing the application for interim measures — Application for interim measures cannot prevent further harm — No effect — Inadmissibility*

(Art. 101 TFEU and 278 TFEU; Rules of Procedure of the Court, Art. 160(3))

4. *Application for interim measures — Suspension of enforcement — Admissibility criteria — Interest of the applicant in obtaining the suspension sought — Application against a negative administrative decision — Suspension incapable of altering the applicant's situation — No interest in bringing proceedings — Inadmissibility*

(Art. 278 TFEU; Rules of Procedure of the Court, Art. 160(3))

1. The mere reading by the Commission of the information contained in documents allegedly covered by professional secrecy is not sufficient to establish the necessity of adopting interim measures, since that information is not disclosed to third parties and is not used in proceedings concerning an infringement of the EU competition rules. Furthermore, the possibility of a more detailed knowledge of the content of the documents in question, by the Commission, is not such as to determine the existence of serious and irreparable harm on the part of the companies concerned.

Therefore, *a fortiori*, the knowledge of the content of the documents covered by professional secrecy gained by the officials of the Commission during the inspection, but not retained by the Commission after that inspection, is not sufficient by itself to establish the necessity of adopting the provisional measures sought to ensure the full effectiveness of the judgment to be delivered on a possible annulment of the decision ordering an investigation. There is no possibility that those documents, which the Commission no longer has in its possession, would be disclosed to third parties or that they would be relied on as such in order to prove the existence of an infringement of the competition rules.

(see paras 24, 25)

2. The court hearing the application for interim measures should not be invited to exceed its powers by anticipating the consequences to be drawn by the Commission were two decisions of the Commission, the first ordering an inspection under Article 20(4) of Regulation No 1/2003 and the second requesting the immediate suspension of any investigations concerning the companies to be investigated, to be annulled by the General Court. Without prejudice to the decisions to be taken later by the EU court adjudicating on the substance in the main proceedings, as well as by the Commission at an administrative level, it cannot be excluded that appropriate measures consisting, inter alia, of removing certain documents from the Commission's file, brought to its knowledge at the time of that inspection, will be adopted in the future, if required, in order to repair a possible infringement of the rights of defence of these companies. Nor can it be ruled out that the Commission may decide not to pursue its investigations.

(see paras 27, 30)

3. In the context of assessing the existence of a legal interest in the application for interim measures and, more specifically, whether the interim measure is necessary to guarantee the full effectiveness of a future judgment annulling the contested decisions by the main proceedings, it must be found that a possible future usage, for the purposes of finding an infringement of the competition rules, of the documents seized by the Commission in the context of a competition investigation, read in conjunction with the unlawfully obtained information, is likely to cause harm to the company concerned. Nonetheless, even if the EU judicature were to order the suspension of the enforcement of the Commission's decision, which has already been fully executed by conducting that inspection, such a suspension would not prevent new harm from occurring, since it would have neither the purpose nor the effect of preventing the Commission from further analysing the documents already seized.

(see para 35)

4. See the text of the decision.

(see para 38)