



Reports of Cases

Judgment of the General Court (Sixth Chamber) of 12 April 2013 — AEPI v Commission

(Case T-392/08)

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

1. *Agreements, decisions and concerted practices — Adverse effect on competition — Reciprocal representation agreements between national copyright management societies — Exclusive membership clauses of copyright management societies linked with the nationality of authors — Anti-competitive object — Market-sharing arrangement — Partitioning of the market — Particularly serious infringements — Prohibition (Art. 81(1) EC) (see para. 58)*
2. *Agreements, decisions and concerted practices — Adverse effect on competition — Criteria for assessment — Anti-competitive object — Sufficient — Distinction between infringements by subject matter and by effect (Art. 81(1) EC) (see paras 59-61)*
3. *Competition — Administrative procedure — Powers of the Commission — Finding of an infringement which has been terminated — Legitimate interest in making the finding — Danger of a return to the incriminated practice requiring clarification of the legal position (Art. 81(1) EC; Council Regulation No 1/2003, Art. 7(2)) (see para. 62)*
4. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement borne by the Commission — Extent of the burden of proof (Art. 81(1) EC; Council Regulation No 1/2003, Art. 2) (see paras 64, 77, 123)*
5. *Union law — Principles — Fundamental rights — Presumption of innocence — Procedures in competition matters — Decision finding an infringement but not imposing a fine — Applicability (Art. 81(1) EC; Art. 6(2) EU; Charter of Fundamental Rights of the European Union, Art. 48(1)) (see paras 78-82)*

6. *Competition — Administrative procedure — Commission decision finding an infringement — Means of proof — Reliance on a body of evidence — Degree of evidential value necessary as regards items of evidence viewed in isolation — Evidence based solely on the conduct of undertakings — Evidential obligations of undertakings disputing the existence of the infringement — Obligations of the Commission challenging the plausibility of the explanations proposed by the undertakings (Art. 81(1) EC; Council Regulation No 1/2003, Art. 2) (see paras 83-87, 93, 146)*
7. *Agreements, decisions and concerted practices — Prohibition — Agreements which continue to produce their effects after they have formally ceased to be in force — Application of Article 81 EC (Art. 81(1) EC) (see para. 109)*
8. *Agreements, decisions and concerted practices — Concerted practice — Parallel conduct — Presumption that a concertation exists — Limits — Refusal by national copyright management societies to allow a user established in another Member State direct access to their repertoire — Adverse effect on competition (Art. 81(1) EC) (see para. 122)*

Re:

APPLICATION for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part

The Court:

1. Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE;
2. Annuls Article 4 of Commission Decision C(2008) 3435 final, to the extent that it refers to Article 3 of that decision, in so far as it concerns AEPI;
3. Dismisses the remainder of the action;
4. Orders the European Commission to bear its own costs and pay one half of AEPI's costs;

5. Orders AEPI to bear one half of its own costs;
6. Orders the Commission and AEPI to each bear their own costs relating to the interim relief proceedings.