



Reports of Cases

Judgment of the General Court (Sixth Chamber) of 12 April 2013 — *Stowarzyszenie Autorów ZAiKS v Commission*

(Case T-398/08)

(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 collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

1. *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 66, 114)*
2. *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 67-71)*
3. *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 para 72-75, 77, 83, 136)*
4. *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. 99)*
5. *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. 113)*
6. *Actions for annulment — Judicial review — Limits on jurisdiction (Art. 230 EC) (see para. 158)*

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 Stowarzyszenie Autorów ZAiKS);
2. Annuls Article 4(2) and (3) of Commission Decision C(2008) 3435 final, to the extent that they refer to Article 3 of that decision, in so far as they concern Stowarzyszenie Autorów ZAiKS;
3. Dismisses the remainder of the action;
4. Orders the European Commission to pay the costs relating to the main proceedings;
5. Orders Autorów ZAiKS and the Commission each to bear their own costs relating to the interim relief proceedings.