



## Reports of Cases

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

(Case T-410/08)

(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 68, 115)*
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 69-73)*
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 paras 74-78, 84, 137)*
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. 100)*
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. 114)*

**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 Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA);
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 GEMA;
3. Orders the European Commission to bear its own costs and to pay the costs incurred by GEMA, with the exception of the costs occasioned by the intervention;
4. Orders RTL Group SA, CLT-UFA, Music Choice Europe Ltd, ProSiebenSat.1 Media AG, Modern Times Group MTG AB, Viasat Broadcasting UK Ltd and Verband Privater Rundfunk und Telemedien eV (VPRT) to bear their own costs and to pay the costs incurred by GEMA relating to the intervention;
5. Orders GEMA, the Commission, RTL Group, CLT-UFA and Music Choice Europe each to bear their own costs relating to the interim relief proceedings.