



Reports of Cases

Case T-462/12R

Pilkington Group Ltd

v

European Commission

(Interim relief — Competition — Publication of a decision finding an infringement of Article 81 EC — Rejection of request for confidential treatment of information allegedly covered by business secrecy — Application for interim measures — Urgency — Prima facie case — Weighing up of interests)

Summary — Order of the President of the General Court, 11 March 2013

1. *Judicial proceedings — Intervention — Application for interim measures — Community law — Interest in the solution of the matter at the interim stage — Appraisal in relation to the consequences on the economic or legal situation of the interveners*

(Statute of the Court of Justice, Art. 40)

2. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Serious and irreparable damage — Cumulative nature — Balancing of all the interests involved — Discretion of the court hearing the application for interim relief*

(Arts 256(1) TFEU, 278 TFEU and 279 TFEU; Rules of Procedure of the General Court, Art. 104(2))

3. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Suspension of Commission decision concerning confidential treatment of information appearing in one of its decisions — Need to maintain the effectiveness of the decision of the General Court in the action in the main proceedings*

(Art. 278 TFEU)

4. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof — Serious and irreparable damage for the applicant — Interest of the applicant affected — Interests of employees of the applicant company affected — Not included*

(Art. 278 TFEU; Rules of Procedure of the General Court, Art. 104(2))

5. *Fundamental rights — Respect for privacy — Concept of private life — Application to undertakings — Scope*

(Charter of Fundamental Rights of the European Union, Art. 7)

6. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Urgency — Serious and irreparable damage — Risk of serious and irreparable damage to fundamental rights*

(Arts 6(1), first para., TEU, 278 TFEU and 279 TFEU; Charter of Fundamental Rights of the European Union, Arts 7 and 47)

7. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Damage arising from a Commission decision rejecting an application for protection of the confidentiality of documents copied during a verification based on Article 14 of Regulation No 17 — None*

(Art. 278 TFEU; Rules of Procedure of the General Court, Art. 104(2))

8. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Prima facie case — Examination prima facie of the pleas in law put forward in support of the main action — Action against a Commission decision refusing confidential treatment of information appearing in one of its decisions finding an infringement of Article 81 EC — Pleas concerning the confidentiality of information covered by business secrecy — Pleas not prima facie unfounded*

(Arts 278 TFEU and 339 TFEU; Charter of Fundamental Rights of the European Union, Arts 7 and 47)

9. *Competition — Administrative procedure — Professional secrecy — Establishing whether information is covered by professional secrecy — Balancing of the public interest in the transparency of EU action and the legitimate interests opposed to disclosure*

(Art. 339 TFEU; Parliament and Council Regulation No 1049/2001)

1. See the text of the decision.

(see paras 15-17, 20)

2. See the text of the decision.

(see paras 24, 25, 36)

3. See the text of the decision.

(see paras 28-33)

4. See the text of the decision.

(see para. 40)

5. See the text of the decision.

(see para. 44)

6. Having regard to the condition of urgency, and subject to examination of the condition relating to a prima facie case, the provisional measures sought must be granted where the fundamental rights of the applicant are capable of being seriously and irreparably harmed by a dismissal of the application for interim relief.

At least since the entry into force of the Treaty of Lisbon, which raised the Charter to the level of primary European Union law and provides that it is to have the same legal value as the Treaties, an imminent risk of a serious and irreparable breach of fundamental rights has had to be regarded, in itself, as harm justifying the grant of the interim protection requested.

(see paras 45, 53)

7. See the text of the decision.

(see para. 56)

8. The condition relating to a *prima facie* case is satisfied where at least one of the pleas in law put forward by the applicant for interim measures in support of the main action appears, *prima facie*, to be relevant and in any event not unfounded, in that it reveals the existence of difficult legal issues the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures but must be the subject of the main proceedings, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not immediately obvious.

In the context of an application for suspension of operation of a Commission decision dismissing the applicant's request that it refrain from publishing confidential information contained in one of its decisions, the court hearing the application for interim measures, if it is not to disregard the intrinsically ancillary and provisional nature of proceedings for interim measures and the imminent risk of negation of the fundamental rights relied on by the party seeking interim protection of those rights, may, as a rule, conclude that there is no *prima facie* case only where the information in question is obviously not confidential. That would be the case, for example, if the information for which protection is sought were published in the applicant's annual report or in a measure published in the *Official Journal of the European Union*.

(see paras 58, 59)

9. The court hearing the application for interim measures cannot exclude, *prima facie*, the possibility that the information at issue is known only to a limited number of persons and that its disclosure would be liable to cause serious harm to the applicant, even if that information is more than five years old. An interested party may demonstrate that, despite their age, those data still constitute essential elements of its commercial position. Nor can it clearly be ruled out that Article 4(7) of Regulation No 1049/2001, pursuant to which the confidentiality of commercial interests or sensitive documents may exceptionally be protected for a period of 30 years, possibly beyond that period if necessary, may have a bearing on the assessment to be carried out in the present case.

In that regard, assuming that the information at issue may be regarded as constituting business secrets of the applicant, the question whether that information is, objectively, worthy of protection will require the applicant's interest in the information not being disclosed to be weighed against the public interest that the activities of the EU institutions take place as openly as possible. Such a balancing of the various interests will call for delicate assessments which must be a matter for the court adjudicating on the substance of the case.

(see paras 70-72)