



Reports of Cases

Case C-278/13 P(R)

European Commission
v
Pilkington Group Ltd

(Appeal — Administrative procedure — Publication of a Commission decision concerning a cartel on the European market for glass for use in motor vehicles — Suspension of operation of a Commission decision rejecting in part the applicant's request that certain information in the decision concerning the cartel be treated as confidential)

Summary — Order of the Vice-President of the Court, 10 September 2013

1. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Cumulative nature — Serious and irreparable harm — Burden of proof*
(Arts. 278 TFEU and 279 TFEU; Rules of Procedure of the Court of Justice, Art. 160(3); Rules of Procedure of the General Court, Art. 104(2))
2. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable harm — Risk of infringement of fundamental rights — Risk not constituting in itself serious harm*
(Arts. 278 TFEU and 279 TFEU; Charter of Fundamental Rights of the European Union, Arts. 4, 7 and 47; Rules of Procedure of the Court of Justice, Art. 160(3); Rules of Procedure of the General Court, Art. 104(2))
3. *Appeals — Grounds — Grounds of a judgment vitiated by infringement of European Union law — Operative part well founded on other legal grounds — Rejection*
4. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable harm — Harm arising from the publication of information allegedly covered by the obligation of professional secrecy — Harm that may be remedied by payment of commensurate compensation — Remedy possible*
(Arts. 278 TFEU, 279 TFEU and 339 TFEU; Charter of Fundamental Rights of the European Union, Arts. 4, 7 and 47; Rules of Procedure of the Court of Justice, Art. 160(3); Rules of Procedure of the General Court, Art. 104(2))
5. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable harm — Financial loss — Harm that cannot be quantified — Harm that cannot be made good by means of an action for compensation — Remedy not possible*
(Arts. 268 TFEU, 278 TFEU, 279 TFEU, 339 TFEU and 340 TFEU; Rules of Procedure of the Court of Justice, Art. 160(3); Rules of Procedure of the General Court, Art. 104(2))

6. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case*

(Arts. 278 TFEU and 279 TFEU; Rules of Procedure of the Court of Justice, Art. 160(3))

1. See the text of the decision.

(see paras 35-38)

2. In an action for interim measures, it is not sufficient to allege infringement of fundamental rights in the abstract for the purpose of establishing that the harm which could result would necessarily be irreparable. That principle is not called into question by the enhanced protection of fundamental rights brought about by the Treaty of Lisbon, since those rights already enjoyed protection under European Union law before the entry into force of that treaty. It is true that breach of certain fundamental rights, such as the prohibition of torture and inhuman or degrading treatment or punishment enshrined in Article 4 of the Charter of Fundamental Rights of the European Union, may, on account of the very nature of the right violated, in itself give rise to serious and irreparable harm. However, it remains for the party seeking interim measures to set out and establish the likelihood of such harm occurring in his particular case.

(see paras 40, 41)

3. See the text of the decision.

(see para. 45)

4. The publication of specific commercial information relating to matters such as the identity of customers, the number of parts supplied, price calculations and price changes must be regarded as harm that is sufficiently serious to justify an interim measure. Moreover, as regards the question whether such harm is irreparable, once the confidential information has been published, any subsequent annulment by the General Court of the decision rejecting a request for confidential treatment, on grounds of breach of Article 339 TFEU and of the fundamental right to the protection of professional secrecy, would not reverse the effects of the publication of that information. As a consequence, a company would be denied effective judicial protection if the information at issue was disclosed before the resolution of the main action.

However, where any harm caused by the publication of commercial information has an adverse effect on the commercial and economic interests of the undertaking concerned, the payment of commensurate compensation should be sufficient to make good the damage alleged.

(see paras 46-48, 51)

5. Harm of a financial nature may be considered to be irreparable if the harm, even when it occurs, cannot be quantified. The uncertainty of obtaining compensation for pecuniary damage if an action for damages is brought cannot in itself be regarded as a factor capable of establishing that such damage is irreparable. At the interlocutory stage, the possibility of subsequently obtaining compensation for pecuniary damage if an action for damages is brought following annulment of the contested measure is necessarily uncertain. On the other hand, the situation is different where it is already clear, when the assessment is carried out by the judge hearing the application for interim measures, that, in view of its nature and the manner in which it will foreseeably occur, the harm alleged, should it occur, may not be adequately identified or quantified and that, in practice, it will not therefore be possible to make good that harm by bringing an action for damages. That may be the case, inter alia, in a situation involving the publication of specific commercial information that is purportedly confidential and relates to matters such as the identity of customers, the number of parts supplied, price calculations

and price changes. It would be impossible to identify the number and status of all the persons who in fact acquired knowledge of the information published and thus assess the actual impact which publication of that information might have on the commercial and financial interests of the company to which the information relates.

Nevertheless, it cannot be inferred from the foregoing that, where the Commission grants access to a statement of objections, that will necessarily cause serious and irreparable harm in the same way as the publication of a definitive decision finding an infringement. Where a party to administrative proceedings is given access to a version of the statement of objections which contains business secrets, such access is, in principle, granted to that party for the sole purpose of enabling him to participate effectively in those proceedings, so that he is not entitled to use the information contained in that document for other purposes. Moreover, the harm which may occur if a limited number of easily identifiable persons were granted access to the statement of objections cannot be compared — in particular as regards the possibility of assessing and, ultimately, quantifying the harm — with the harm which would arise as a result of the publication on the internet of a definitive decision which could be accessed by any person..

(see paras 52-55, 57, 58)

6. See the text of the decision.

(see paras 67, 68)