

NJORD case law news: The obligation to record interviews in antitrust proceedings before the initiation of the actual proceedings

The Court of Justice on the 9th of March, 2023 has adopted a decision in case No. C-693/20 P Intermarché Casino Achats v. Commission, looking at the appeal of the 5th October, 2020 General Court judgement (the full decision is not yet published). The court set aside in part the judgements of the General Court and thus annulled the Commission decisions ordering the inspections at the French supermarket undertakings due to the suspicions of the anticompetitive practices.

Within the proceedings multiple interviews of the supermarket chain undertakings were done, visiting the premises and collecting the computer data copies. The Court of Justice decided that the Commission had to record the interviews of the supermarket suppliers of the undertakings in order to be able to use the information from the interviews in the infringement proceedings. This obligation applies irrespective of whether the interview in question is being conducted before the formal opening of the investigation, in order to collect data for the starting of the proceedings, or afterwards, for the purpose of collecting evidence of the infringement for the prosecution of the parties. Thus, the interviews can be recorded in any form – including, in audio format for the oral and in a written form for the interviews in writing.

As in the particular case the Commission had not obtained the decisions based on the recorded interviews in the stage before the actual proceedings were initiated the court accordingly annulled the Commission decisions for the French supermarket undertaking submitting for the inspections.

Judgments of the Court in Cases No. C-682/20 P Les Mousquetaires and ITM Entreprises v. Commission, No. C-690/20 P Casino, Guichard-Perrachon and Achats Marchandises Casino v. Commission and No. C-693/20 P Intermarché Casino Achats v. Commission. Information available:
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-03/cp2300...>