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Press and Information

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Judgment of the Court of First Instance in Case T-474/04

Pergan Hilfsstoffe für industrielle Prozesse GmbH v Commission of the European Communities

THE COURT OF FIRST INSTANCE ANNULS THE DECISION REFUSING CONFIDENTIAL TREATMENT FOR THE PUBLISHED VERSION OF A COMMISSION DECISION ON CARTELS

For the Commission to be entitled to disclose to the public the details of an undertaking's infringement in respect of which proceedings are time barred, the infringement found must at least appear in the operative part of the decision and the decision must be addressed to the undertaking so that it may contest that infringement in court.

By its decision of decision of 10 December 2003 ('the peroxides decision')¹ the Commission imposed fines on five undertakings for their participation in cartels on the market for organic peroxides.

The Commission took the view that the proceedings against Pergan were time barred and that, therefore, there was no need to refer to that undertaking's participation in the infringement in the operative part of the peroxides decision, or to address the decision to it. In the grounds of the decision, however, the Commission described the role given to Pergan in the cartels.

The Commission had informed Pergan of its decision to close the proceedings against it. By letter of 18 February 2004, it sent Pergan a copy of the peroxides decision and informed it of its intention to publish a non-confidential version of the decision. Pergan then asked that all references to it be removed from the version intended for publication, in particular, as regards its alleged offending conduct, whose scope and duration it disputed. That request was finally submitted to the Commission's hearing officer. The hearing officer refused to remove from the definitive version the majority of the references made to Pergan on the ground that they were not business secrets.

¹ Decision 2005/349/EC of 10 December 2003 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E 2/37.857 — Organic peroxides) (OJ 2005 L 110, p. 44).

Subsequently, the Commission published, on the Internet site of its Directorate General for Competition, the non-confidential version of the peroxides decision, which contains the references disputed by Pergan.

Pergan's application is for annulment of the hearing officer's refusal to remove all references to its alleged offending conduct from the definitive published version of the peroxides decision.

In today's judgment, the Court of First Instance grants this application and annuls the decision in question. The Court holds that the hearing officer, in finding that the information disputed by Pergan was not worthy of protection and that its publication would not cause serious and unjust harm to the applicant's interests, misapplied the protection of professional secrecy.

The Court points out that the **although as a rule the institutions have power to publish acts which they adopt, compliance with the obligation of professional secrecy may prevent disclosure** of such acts or of certain information contained in them.

To this end, the Court states that the scope of the Commission's power to adopt and publish decisions and the scope of the protection of professional secrecy must be interpreted in the light of, in particular, the principle of presumption of innocence. This precludes any formal finding and even any allusion to the liability of an accused person for a particular infringement in a decision bringing the administrative procedure to an end, unless that person has been able to challenge the substance of that decision.

Therefore, if details of the offending conduct of an undertaking – against which proceedings are time barred – are to be disclosed, the infringement found must at least appear in the operative part of the decision and the decision must be addressed to the undertaking so that it may contest that infringement in court.

However, as the operative part of the peroxides decision did not contain a finding of Pergan's participation in the infringement, Pergan did not have standing to bring an action against the decision even though it contested the merits of the grounds of that decision in which its participation in the infringement was mentioned. Such a situation is contrary to the principle of the presumption of innocence and infringes the protection of professional secrecy.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE EN FR

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-474/04>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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