Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

30 September 2016*

(Competition — Abuse of dominant position — Decision finding an infringement of Article 102 TFEU — Setting of fees by the Split Port Authority for port services in respect of domestic traffic at maximum levels — Rejection of a complaint — Case being dealt with by a competition authority of a Member State — No EU interest)

In Case T-70/15,

Trajektna luka Split d.d., established in Split (Croatia), represented by M. Bauer, H.-J. Freund and S. Hankiewicz, lawyers,

applicant,

v

European Commission, represented by C. Giolito, C. Urraca Caviedes and I. Zaloguin, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU for the annulment of Commission Decision C(2014) 9236 final of 28 November 2014, rejecting the complaint lodged by the applicant concerning infringements of Article 102 TFEU allegedly committed by the Split Port Authority or of Articles 102 and 106 TFEU committed by the Republic of Croatia or the Split Port Authority (Case AT.40199 — Port of Split),

THE GENERAL COURT (Seventh Chamber),

composed, at the time of deliberation, of M. van der Woude, President, I. Ulloa Rubio (Rapporteur) and A. Marcoulli, Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: English.

Judgment[1]

Background to the dispute …

Procedure and forms of order sought …

Law

The jurisdiction of the General Court …

Substance …

The first ground, concerning the likelihood of establishing the existence of an infringement …

26 In the second place, whereas the applicant argues that, in order to rule out the existence of an EU interest, the Commission is precluded from arguing that the NCA had already dealt with the case, while acknowledging, moreover, that Article 13(2) of Regulation No 1/2003 did not apply to the present case, it should be recalled that that provision, as is the case for all of the provisions of that regulation, refers to the situations in which Articles 101 and 102 TFEU are implemented (judgment of 21 January 2015, *easyJet Airline* v *Commission*, T-355/13, EU:T:2015:36, paragraph 43).

27 Consequently, the Commission may reject a complaint on the basis of Article 13(2) of Regulation No 1/2003 only where it has been the subject of a review carried out in the light of EU competition law rules (judgment of 21 January 2015, *Easyjet Airline* v *Commission*, T-355/13, EU:T:2015:36, paragraph 44).

28 However, in the present case, although the parties agree on the fact that the NCA took its decision solely on the basis of Croatian law, it should be noted that, in paragraphs 14 and 15 of the contested decision, the Commission merely confirmed the argument presented by the applicant in its letter of 19 August 2014 that the provisions of Article 13(2) of Regulation No 1/2003 could not be used since the NCA took its decision solely on the basis of national law.

29 The Commission was therefore right to consider, in paragraphs 15 and 18 of the contested decision, that Article 13(2) of Regulation No 1/2003 was not applicable in the present case. …

33 In the third place, in respect of the applicant's argument that the NCA did not apply EU law and did not carry out a proper assessment of the situation, as just noted in paragraph 30 above the applicant does not dispute that the provisions of national law on which it based its complaint are equivalent to Articles 101 and 102 TFEU. Consequently, it must be held that the conclusions of the NCA would have been identical if that authority had carried out its own analysis in the light of those articles.

34 Moreover, economic operators which are allegedly victims of an infringement cannot regard the Commission as an appellate body capable of annulling the decisions of a national authority which has not upheld their complaint. The review of decisions of the competition authorities of Member States is a matter for national courts alone, which perform an essential function in the application of EU competition rules (see, to that effect, judgment of 21 January 2015, *easyjet Airline* v *Commission*, T-355/13, EU:T:2015:36, paragraph 20).

1 — Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

…

The second ground, concerning the assertion that the national courts and authorities appear best placed to deal with the questions raised. …

52 Thirdly, the applicant maintains that as the Commission did not yet have any experience of the ability of the Croatian national courts to deal with such a case, the Republic of Croatia being a relatively new member of the European Union, it was required to examine their ability in greater depth, since no national court had yet applied EU competition law.

53 It should be observed that the Republic of Croatia was able to join the European Union only after satisfying the political and economic criteria and the obligations incumbent upon candidate States, as established by the Copenhagen (Denmark) European Council of 21 to 22 June 1993. Those criteria require the candidate State, inter alia, to have the ability to take on the obligations of membership, in particular the ability to implement effectively the rules, standards and policies forming the EU legal framework.

54 Therefore, the ability of the Croatian courts to apply EU law cannot be called into question as a matter of principle.

55 In the present case, it must be stated that the applicant has not produced any specific evidence to demonstrate the inability of the Croatian courts to assess the situation at issue. …

The third ground, concerning the impact on the functioning of the internal market. …

The fact that the Commission has had other complaints referred to it concerning the same case …

Costs …

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. Dismisses the action;

2. Orders Trajektna luka Split d.d. to pay the costs.

Van der Woude Ulloa Rubio Marcoulli

Delivered in open court in Luxembourg on 30 September 2016.

[Signatures]