Wednesday, October 26, 2016

On 20 October 2016, the Italian Council of State (the “Council of State”) upheld the judgment of the Administrative Court of Lazio (“TAR”) on the cartel in the sector of international road freight forwarding to and from Italy and confirmed the ranking applied in granting the reduction of the fine. According to the Council of State, in order to access the national leniency program, a company should provide the Authority with all necessary information and elements for the uncovering of the infringement, and should take into account that all the relevant information and elements provided to other authorities, in the context of other leniency application, will not be considered by the Authority. Therefore, companies should be careful and verify that each leniency application submitted is prepared ad hoc for each jurisdiction and is not capable of raising doubts regarding its scope.

On 5 June 2007, DHL submitted to the European Commission an application for immunity from fines concerning several infringements of EU competition law in the sector of international freight forwarding. DHL received a conditional immunity. In addition, on 12 July 2007, DHL submitted to the Italian Competition Authority (the “Authority”) a summary application for immunity under the national leniency program. However, according to the Authority, the submitted application regarded only the international sea and air freight transport sectors, not the road transport sector. Therefore, on 23 June 2008, DHL decided to submit an additional summary application to the Authority in order to specifically extend that application to include international road freight forwarding. However, in the meantime (before the end of 2007), Deutsche Bahn AG (on behalf of Schenker Italiana) and Agility Logistic submitted the application for the leniency program to the Authority. Therefore, after the Authority concluded the proceeding, it imposed to DHL a fine reduced to 49% compared to the original amount. Then, DHL appealed the decision before the TAR, on the ground that DHL would have deserved the first place in the ranking provided by the Authority in the decision regarding the submitted leniency applications and therefore immunity from fines. However, the TAR upheld the Authority’s decision. Finally, DHL appealed the judgment of the TAR before the Council of State, which made a reference for a preliminary ruling to the European Court of Justice, where the key question was whether existed a legal link between the application for immunity which an undertaking submits or is preparing to submit to the European Commission and the summary application submitted to the Authority in respect of the same cartel which requires that authority to assess the summary application in the light of the application for immunity, where the summary application accurately reflects the content of the application for immunity submitted to the Commission.

The European Court of Justice concluded that there was no legal link between the application for immunity which an undertaking submits or is preparing to submit to the Commission and the summary application submitted to a national competition authority in respect of the same cartel, requiring that authority to assess the summary application in...
the light of the application for immunity”,

and, in answering to another question, added that in case of a different material scope of the application,

“the national authority is not required to contact the European Commission or the undertaking itself, in order to establish whether that undertaking has found specific examples of unlawful conduct in the sector allegedly covered by the application for immunity, but which is not covered by the summary application”.

Gabriele Giunta contributed to this blog post.

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