



Consultancy firms may be fined for restricting competition if they actively collaborate in the management of a cartel

Judgment of the Court of Justice of the European Union of 22 October 2015, Case C-194/14 P, AC-Treuhand

Background

Community competition law, as is well known, considers that agreements between companies, decisions by business associations and concerted practices that could potentially affect trade between Member States and that may prevent, restrict or distort competition in the internal market are inconsistent with said market and thus prohibits them. The Spanish Competition Law contains similar provisions.

When persecuting prohibited practices, the authorities tasked with ensuring compliance with these rules take a particularly aggressive stance when it comes to cartels, agreements between competitors that serve for market-sharing, to set prices or for similar practices. Normally, as part of a cartel, commercially sensitive information is exchanged between competitors. The judgment in question represents an excellent opportunity to go over the doctrine with respect to the liability that may be incurred by those offering services to companies that participate in cartels, aiding and partaking in their management.

Active participation

According to European case law, companies that contribute to the common objectives pursued by the participants in the cartel, when aware of said objectives or capable of having foreseen them, may be deemed guilty of an offence and fined as a result. For this purpose, it is irrelevant that the company in question is a

consultancy firm that does not compete in the same market as the participants in the cartel.

The case in hand serves to reaffirm this concept, originally addressed by the Commission in 1980; in this instance, the fined consultancy firm had played an essential role in the cartel by: organising meetings between those involved; actively participating in said meetings; gathering and communicating sales data without aggregating data; proposing its involvement as a moderator in the event of any disputes; and encouraging those involved to reach agreements. Accomplices of such an offence, as a result, may be accused of violating competition rules and be subject to a fine as a result.

Passive participation

The judgment also states that anybody attending a meeting at which agreements of an anti-competitive nature are discussed or signed must expressly object to such agreements and leave the meeting having made his/her opinion clear. Otherwise, his/her complicity may result in legal liability, as the tacit approval of an unlawful initiative without publicly distancing oneself from its content or reporting it to the administrative authorities is considered as tantamount to encouraging the corresponding parties to proceed with the infringement and hinders its detection.