The Supreme Court recognizes locus standi to appeal against the granting of a marketing authorization of a competing product

Judgement of the Supreme Court, Contentious-Administrative Chamber, of 8 October 2018

Introduction

As in the Judgement of the Spanish Contentious-Administrative Central Court No. 1, of 2 July 2018, commented in our Capsulas Nº 192, in this Judgement it is once again confirmed - now by the Supreme Court- the possibility of challenging the grant of a marketing authorization ("MA") of a competing product, thus changing with the position held by the Spanish Courts for the last years.

In this case, the Supreme Court recognizes locus standi (the right to bring an action or appeal before the competent authority or court, as applicable) to a company engaged in the marketing of plant protection products allowing it to appeal against the decision to grant a MA of a competing product. According to the appellant, said MA was granted without complying with the applicable law.

Locus standi

Initially, the appeal challenging the grant of the MA for the competing product was rejected by the Ministry of Environment and Rural and Maritime Affairs and, subsequently, by the High Court of Justice ("HCJ") of Madrid.

The Ministry and the HCJ of Madrid understood that the appellant lacked locus standi to challenge the decision to grant the MA. They both considered that the appellant did not had a legitimate interest to challenge the grant of the MA because the damage that the appellant could suffer would not be caused by the grant of the MA, but by the commercial effects that the marketing of the authorized competing product would cause. According to such Ministry and the HCJ, this was a private conflict which should remain outside the MA procedure and its judicial protection. They also pointed out that what the appellant was really pursuing was to use the procedure as a mean to expel an authorized competing product from the market and that this could not be allowed.

Additionally, both the Ministry and the HCJ highlighted the bilateral nature of the MA procedure, which only involved the applicant and the Ministry. According to them, such bilateral nature reinforces the idea that the appellant lacked locus standi.

In this Judgement, the Supreme Court rejects all the arguments held both by the Ministry and the HCJ. The Supreme Court recognized locus standi to the appellant on the grounds that the decision declaring whether the MA was legally or illegally granted would result in benefits or detriments to the appellant.

In addition, the Supreme Court pointed out that appealing against the decision to grant the MA of a competing product is not necessarily equivalent to using the procedure to expel a competing product from the market. On the contrary, the Supreme Court expressed that such appeal is meant to review whether the competing product was authorized in accordance with the applicable law or not.