



GC Agria Polska: EC should have opened in-depth probe into antitrust claims, firm says

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- Firm says EC should have looked for extra evidence following its tip-off
- Judge questions anticompetitive character of alleged conduct
- EC reaffirms not enough evidence to find infringement

The European Commission (EC) had enough evidence to open an in-depth probe into alleged antitrust breaches by 12 agrochemical firms and five trade bodies, the General Court (GC) heard today (28 February).

Piotr Graczyk, acting for Agria Polska, told a three-judge chamber that evidence it submitted with its complaint showed a direct anticompetitive effect on different EU markets. The EC should have further investigated instead of rejecting its claim, Graczyk said.

In a November 2010 complaint to the EC, Agria Polska and its subsidiaries flagged competition concerns in the market for distribution and trade of plant protection products (PPPs) by rival agrochemical firms and trade bodies. The firm called for an Article 101 TFEU and Article 102 TFEU probe.

According to Agria, between 2005 and 2006 its rivals requested national tax offices and chemical regulation authorities to raid the company in an attempt to squeeze it out of the Polish, Austrian, German and Luxembourgish markets. In 2010, the Polish watchdog rejected a similar complaint by Agria after finding that the alleged infringements were time-barred under Polish law.

In June 2015, the EC rejected the complaint finding it was unlikely it would find an infringement of competition law. Officials told Agria it could pursue its complaint nationally.

Two months later, Agria appealed the decision arguing that the EC was wrong to reject the complaint.

Today EC Agent Jan Szczodrowski reasoned that the facts submitted were insufficient to find an infringement. Evidence did not show that the firms went beyond what was necessary to protect their own rights or that the actions taken were aimed at driving Agria out of the market, he said.

Officials made an independent and detailed analysis of the information, Szczodrowski said, adding that the appellants failed to show that the agency made a manifest error of assessment.

The EC should have conducted an in-depth investigation to find direct evidence of competition law breaches, Graczyk countered. Agria only had indications but it was up to the EC to find the exact evidence, he claimed.



Sector: Industrials
Topics: Cartels & Horizontal Agreements, Abuse Of Dominance/Single Conduct, Vertical Restraints

Grade: Confirmed

Companies

Agria Polska Sp Zoo
AGRIA Beteiligungsgesellschaft MbH

Agencies

European Commission - Directorate General For Competition (EC - DG Comp)
European Commission
EU General Court

There are no files associated with this Intelligence

Judge Rapporteur Jesper Svenningsen was sceptical about how the companies could breach competition rules by contacting the national authorities.

Evidence showed that inspections took place once or twice in a year and Agria was not always found to breach regulatory rules, the judge said, asking Agria to explain how that rate of inspections could be deemed harassment.

Wojciech Ročlawski, also acting for Agria, told the judge that on one occasion the Polish agency launched a probe following a complaint by an anonymous rival without having evidence of any infringement.

Agria created a new operator in 2004 which was extraordinarily subjected to multiple inspections, he added.

Svenningsen further asked Agria why, following the rejection of its complaint by the Polish agency, it did not file a complaint with the Austrian competition authority. Graczyk countered that at that time the EC had already started a preliminary probe and confirmed its jurisdiction due to the cross-border impact of the allegations.

Agria also challenged the EC's recommendation that it should to pursue the complaint before the national courts. The firm argued that in Poland rulings by the country's appeal court cannot be appealed. Szczodrowski countered that Poland guarantees defence rights, as this was a condition required for the country to join the EU back in 2004.

Agria was represented by *Piotr Graczyk and Wojciech Ročlawski of Ročlawski Graczyk I Wspólnicy. Jan Szczodrowski, Josephine Norris-Usher and Anthony Dawes were the EC agents.*

The case is *T-480/15 KZ and Others v Commission before the General Court.*

by Luuk de Klein in Luxembourg

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