

Antitrust: A Commitment Decision is a Prima Facie Evidence of an Infringement, for the ECJ



Mr. Bruno Lebrun
Partner



Ms. Laure Bersou
Avocat

BLEBRUN@buylelegal.eu LBersou@buylelegal.eu

On 23 November 2017, the European Court of Justice (ECJ) decided that commitment decisions contain indications of an infringement of antitrust rules.

The ECJ rightfully explains that a commitment decision does not validate the company's conduct under antitrust rules. It also reminds that they do not prevent national competition authorities or courts from finding that the conduct or agreement concerned violates antitrust rules.

But, the Court added that national courts are required to take into account the preliminary assessment of the Commission and "to regard it as an indication, if not prima facie evidence, of the anticompetitive nature of the agreement at issue".

It is difficult to define the impact of such a judgment. It may, however, give a lot of weight to such a preliminary assessment and its evidentiary value. As rightfully pointed out by the ECJ, commitment decisions cannot create a legitimate expectation from the companies that their conduct complies with antitrust rules; but, we would contend that they create the expectation that national courts or agencies are not "required" to regard it as prima facie evidence.

The decisional nature of commitment decisions should, in our view, be limited to the binding character of the commitments proposed by companies. Defining the preliminary assessment as prima facie evidence would conflict with what companies may expect from a commitment process as defined in Regulation 1/2003.

[Judgment of 23 November 2017, Gasorba e.a., C-547/16](#)