

## CJEU clarifies "non bis in idem" in competition law

The "*non bis in idem*" principle ("**Principle**"), enshrined in Article 50 of the Charter of Fundamental Rights of the European Union ("**Charter**"), prohibits duplication of proceedings and criminal penalties for the same acts and against the same person. In two Grand Chamber judgments of 22 March 2022, the CJEU ruled on the scope of protection offered by that prohibition in competition law.

Factually, in preliminary ruling case *Bundeszweitsbewerbsbehörde v Nordzucker AG and Others* ([C-151/20](#)), a telephone conversation proving anti-competitive behaviour was mentioned in a fining decision of the German competition authority first. Thereafter, the same conversation was made the object of legal proceedings by the Austrian competition authority. Both legal proceedings were conducted on the basis of Article 101 of the Treaty on the functioning of the European Union ("**TFEU**"), which prohibits cartels. In the second preliminary ruling case, *Bpost SA v Autorité belge de la concurrence* ([C-117/20](#)), the Belgian postal services company Bpost was sanctioned for the same facts by two Belgian authorities. It was sanctioned by the postal regulator for the infringement of sectoral rules concerning the liberalisation of the relevant market as well as by the competition authority for an abuse of dominant position as prohibited by Article 102 TFEU.

In both cases, national courts asked the CJEU to rule on the limits of the application of the Principle in competition law cases.

In the *Nordzucker* case, the CJEU held, in essence, that it is possible for a national authority to open proceedings against anti-competitive conduct on its territory and, where appropriate, pronounce a fine with respect to this conduct, even though that same conduct had already been referred to by a competition authority of another Member State in a final decision in respect of that undertaking for infringement of Article 101 TFEU, provided that that decision is not based on a finding of an anti-competitive object or effect in the territory of the first Member State.

In the *Bpost* case, the CJEU further detailed the application of the Principle in competition law by stating that the duplication of proceedings for the same conduct under different types of legislation, sectoral and antitrust, pursuing distinct legitimate objectives, is not contrary to the Charter. However, in view of the principle of proportionality implying the strict necessity of the duplication of proceedings and penalties, the CJEU clarified that there should exist clear and precise rules making it possible to predict which acts or omissions may be subject to a duplication of proceedings

and penalties and that there will be coordination between the two competent authorities. In addition, the two sets of proceedings must be conducted in a sufficiently coordinated manner within a proximate timeframe and the overall penalties imposed must correspond to the seriousness of the offences committed.

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