



**TRIBUNAL TAL-APPELL GHALL-
KOMPETIZZJONI U GHALL-KONSUMATUR**

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-27 ta' Frar, 2013

Rikors Numru. 1/2011

Onorevoli Joe Mizzi

vs

Ufficju ghall-Kompetizzjoni

It-Tribunal,

Ra in-nota tad-Direttur Generali tal-Ufficju ghall-Kompetizzjoni tas-26 ta' Gunju 2012 fejn wara li esebixxa dokumenti li fuqhom l-Ufficju ibbaza l-assessment tieghu fuq ilment li sar mill-Onorevoli Joe Mizzi talab li ma jigux esebiti:

1. twegibiet tal-Awtorita Maltija ghar-Rizorsi ghal tal-talbiet ta' informazzjoni mitlub mill-Ufficju;
2. korrispondenza bejn l-AMR u l-Ufficju;
3. minuti ta' meeting li sar bejn l-AMR u l-Ufficju.

L-Ufficju jissottometti li din id-dokumentazzjoni ma ntuzatx biex l-Ufficju jasal ghad-decizjoni tieghu fejn ma sab ebda ksur tal-artikolu 5 u 9 tal-Att Dwar il-Kompetizzjoni fil-konfront tal-Korporazzjonijiet Enemalta u Servizi tal-Ilma.

Din it-talba giet opposta mill-Onorevoli Joe Mizzi u wara li t-Tribunal ha konjizzjoni tan-nota ta' sottomissjonijiet tal-partijiet fuq din il-kwistjoni jghid is-segwenti:

Dan it-Tribunal gia kellu okkazzjoni jiddelimita d-drittijiet u obbligi li ghandu kemm l-Ufficju ghall-Kompetizzjoni u tal-lanjant fi proceduri quddiem it-Tribunal fi provvedimenti fil-proceduri odjerni kif ukoll fil-proceduri Ufficju ghall-Kompetizzjoni vs Korporazzjoni Enemalta wara l-ilment ta' Attard Services Limited et li inghata fis-27 ta' Gunju 2012. It-Tribunal jirreferi ghal dan il-provvediment a skans ta' ripetizzjoni. Dak li ser jinghad f'dan il-provvediment ghandu jkun komplimentari ghaz-zewg provvedimenti fuq imsemmija. Dak li pero hu l-aktar rilevanti ghall-iskopijiet ta' din il-vertenza odjerna hu illi t-Tribunal ghandu jhares l-ewwel u qabel kollox lejn il-ligi nostrana dwar kif tirregola l-kweziti li jinsorgu waqt procediment. Hu fin-nuqqas ta' provvedimenti jew nuqqas ta' kjarezza li t-Tribunal allura ghandu jirrekorri ghal dak li jipprovdi l-paragrafu 13 tal-Iskeda tal-Kap. 379 cioe

"Fl-interpretazzjoni ta' dan l-Att, il-Kummissjoni tista' tirrikorri ghad-decizjonijiet precedenti taghha, decizjonijiet tal-Qorti ta' Prim'Istanza u tal-Qorti tal-Gustizzja tal-Komunita Ewropea. Hija ghandha wkoll tirrikorri ghad-decizjonijiet u dikjarazzjonijiet rilevanti tal-Kummissjoni Ewropea inkluzi l-avvizi interpretattivi fug id-disposizzjonijiet rilevanti tat-Trattat tal-KE u legislazzjoni sussidjarja relativa ghall-kompetizzjoni"

Sfortunatament il-ligi taghna hi siekta fuq dak li ghandu jew jista' jigi esebit mill-file tal-Ufficju wara lment li jkun sar. Billi din hi ligi specjali u l-istess ligi ma tispecificax mod iehor ghandhom japplikaw alluran l-fonti Ewropej rilevanti bhala dawl ghall-interpretazzjoni gusta kif jistipula l-paragrafu 13 tal-Iskeda tal-Kap. 379.

Dawn il-fonti huma enkapsulati principalment

- a. Regolament tal-Kunsill (KE) 773/04 dwar it-Tmexxija ta' proceduri mill-Kummissjoni skond l-artikolu 81 u 82 tat-Trattat (illum art. 101 u 102), u sussidjarjament;
- b. Commission Notice on the rules for access to the Commission in cases pursuant to articles 81 and 82 of the EC Treaty, articles 53, 54, 57 of the EEA Agreement and Council Regulation 139/2004;
- c. Commission Notice on the handling of complaints by the Commission under articles 81 and 82 of the EC Treaty.

Jinghad illi l-Kummissjoni ghandha kompitu kwazi ekwivalenti ghall-Ufficju ghall-Kompetizzjoni u dak li jirreferi ghal Kummissjoni ser jittiehed li jirreferi bl-istess mod ghall-Ufficju tal-Kompetizzjoni.

Regolament 773/04

Ir-regolament 773/2004 jaghmel distinzjoni netta bejn id-dritt tal-lanjant u d-drittijiet tal-parti jew partijiet li kontra taghhom tkun inghatat decizjoni ta' ksur (statement of objections).

Filwaqt li l-artikolu 15(1) ighid is-segwent:

If so requested, the Commission shall grant access to the file to the parties to whom it has addressed a statement of objections. Access shall be granted after the notification of the statement of objections.

L-artikolu 8 ighid hekk meta l-Kummissjoni tkun irrigettat ilment:

Where the Commission has informed the complainant of its intention to reject a complaint pursuant to Article 7(1) the complainant may request access to the documents on which the Commission bases its provisional assessment. For this purpose, the complainant may however not have access to business secrets and other confidential information belonging to other parties involved in the proceedings

Id-dritt tal-parti interessata cioe l-parti li kontra taghha jkun sar ilment jitqieghed f'pozizzjoni differenti mill-parti li jkun ghamel l-ilment fejn jidhol access ghal file. Inghad hekk f'zewz sentenzi tal-Qorti Ewropej:

the right of access to the file in competition cases is recognised solely so that the undertakings concerned can express their views effectively on the conclusions reached by the Commission in its statement of objections (**Atlantic Container line and others v. Commission**, cases T-191/98, T-213/98 and T-214/98, para 354)

It is clear from the case-law that the procedure for access to the file in competition cases is intended to allow the addressees of a statement of objections to examine evidence in the Commission's files so that they are in a position effectively to express their views on the conclusions reached by it in its statement of objections on the basis of that evidence. The right of access to the file is justified by the need to ensure that the undertakings in question are able properly to defend themselves against the objections raised in that statement (**Endemol v. Commission**, cases T-221/95, para 65)

Commission Notice on rules for access to the Commission file

Dan l-avviz japplika ghal access moghti lil persuni jew intraprizi li kontribom ikun inhareg statement of objections biss ghalkemm l-istess avviz jispecifika illi fejn jirrigwarda complainant jew terzi hemm sezzjoni specifika li tirrigwarda lilhom. Is-sezzjoni (III) ta' dan l-avviz ighid hekk:

A. "Provision of documents to complainants in antitrust proceedings;

30. The Court of First Instance has ruled that complainants do not have the same rights and guarantees as the parties under investigation. Therefore complainants cannot claim a right of access to the file as established for parties.

31. However, a complainant who, pursuant to Article 7(1) of the Implementing Regulation, has been informed of the Commission's intention to reject its complaint may request access to the documents on which the Commission has based its provisional assessment [...].

32. Complainants do not have a right of access to business secrets or other confidential information which the Commission has obtained in the course of its investigation. "

Commission Notice on the handling of complaints by the Commission under articles 81 and 82 of the EC Treaty

L-artikolu 69 ta' dan l-avviz ighid hekk:

69. Pursuant to Article 8(1) of Regulation 773/2004, the complainant has the right to access the information on which the Commission bases its preliminary view.

Kif issottometta l-Ufficju fin-nota ta' sottomissjonijiet tieghu fit-30 ta' Marzu 2012 il-Kummissjoni Ewropea ippublikat manwal rigward il-proceduri u rribadiet dak li hu gia stabbilit cioe

"5.5. Rejection of complaints: access to information on which the Commission has based the preliminary view

(102) The General Court has ruled that complainants do not have the same rights and guarantees as the parties under investigation. Therefore complainants cannot claim a right of access to the file on the same basis as parties under investigation.

(103) Nevertheless, the complainant has a right of access to information on which the Commission has based the preliminary view set out in the letter rejecting the complaint.

(104) Complainants do not have a right of access to business secrets or other confidential information which the Commission has obtained in the course of its investigation".

Din il-linja ta' hsieb u distinzjoni netta bejn dak li ghandu jkollu access ghalih lanjant u dak li ghandu jkollu access ghalih l-investigat li kontrih tkun inharget decizjoni ta' ksur hi riflessa fid-decizjoni ricenti **Omnis / Microsoft** case COMP/39.784 – 01/12/2010. Il-Qorti qalet hekk:

"5. By letter of 14 July 2010, Omnis Group requested access to the file or access to the documents included in the file. By letter of 22 July 2010, the Commission services responded to that request informing Omnis Group that the file did not contain accessible documents, which do not contain business secrets or other confidential information, which were not already in Omnis Group's possession or were not publicly available. By letter of 11 August 2010, Omnis Group repeated the request for access to the documents on which the Commission based its provisional assessment, under Article 8(1) of Commission Regulation (EC) 773/2004.

6. The complainant has a right in that context under Article 8(1) of Commission Regulation (EC) 773/2004 to request access only to the documents on which the Commission bases its provisional assessment. The Commission based its provisional assessment on documents which are all in Omnis Group's possession."

Din id-distinzjoni ghandha linja ta' hsieb car li gia dahal fih dan it-Tribunal f'decizjonijiet ohra u jikkonsisti f'dak li qalet tant tajjeb il-Qorti Ewropea fid-decizjoni **British-American Tobacco Company Ltd and R.J. Reynolds Industries Inc. v. Commission of the European Communities**, joined cases 142/84, 156/84:

19. The cases relied on by the applicants concern the right to a fair hearing of companies in respect of which the Commission carries out an investigation. Such an investigation, however, does not constitute adversary proceedings between the companies concerned; it is a procedure commenced by the commission upon its own initiative or upon application, in fulfillment of its duty to ensure that the rules on competition are observed. It follows that the companies which are the object of the investigation and the companies which have submitted an

application under article 3 of the regulation no 17/62, having shown that they have a legitimate interest in seeking an end to the alleged infringement, are not in the same procedural situation and the latter cannot invoke the right to a fair hearing as defined in the cases relied on

Dan iwassal ghal vertenza odjerna. L-Ufficju jissottometti illi d-dokumenti minnu imsemmija mhux obligat jesebihom billi dawn id-dokumenti ma ntuzawx biex wasluh ghad-decizjoni tieghu, decizjoni li kif jirrizulta kienet wahda bbazata primarjament fuq punti ta' ligi.

Hu l-obbligu tal-Ufficju li darba mgharraf b'ilment specifiku li jinvestiga tali lment. L-Ufficju ma ghandu ebda interess lejn ebda parti u l-iskop tieghu hu li ma jkun hemm ebda ksur tal-ligi tal-kompetizzjoni. Il-poteri tal-Ufficju huma wiesa' u darba li jinvetiga u jigbor l-informazzjoni kolha, ghandu juza dik l-informazzjoni li jidhirlu relevanti ghall-iskop tal-ilment. Dik l-informazzjoni li jqis relevanti u li tkun waslitlu ghad-decizjoni tieghu ghandha tkun accessibbli ghal min jaghmel l-ilment f'kaz fejn ma jinstabx ksur. Dak li l-Ufficju ma jqis relevanti u ma intuzatx biex twassal lill-Ufficju ghad-decizjoni, dejjem fl-ambitu tal-vertenza li qed tigi diskussa f'dan il-kaz partikolari, ma ghandhiex tintuza jew tingieb quddiem it-Tribunal billi min jaghmel l-ilment ma ghandu jkollu ebda interess dwar il-mod kif l-Ufficju jaghmel l-investigazzjoni tieghu, lil min jikkuntattja u kif, izda jista' jattakka biss id-decizjoni ta' nuqqas ta' ksur fuq dak li bbazza ruhu l-Ufficju. Kif gia inghad fid-decizjonijiet precedenti tieghu ta' dan it-Tribunal, l-Ufficju ghandu l-obbligu li jinvestiga bis-shih kull ilment u l-presunzjoni ghandha tkun li fil-fatt hekk sehh sakemm ma tirrizultax prova skjaccanti kuntrarja mill-parti li qed taghmel l-ilment. Il-mod kif l-Ufficju jgib l-informazzjoni, u x'kuntatti seta' kellu u ghamel, li ma jikkonfigurawx f'dak li wassal ghad-decizjoni tieghu ma ghandhomx jigu mistharrga. Mhux lecitu ghal ebda lanjant li jindahal fil-mekkanizmu tal-investigazzjoni tal-Ufficju biex jiskopri informazzjoni li tista' ma tkunx relevanti ghad-decizjoni mehuda jew li jgieghel l-Ufficju jisvela fonti investigattivi u proceduri investigattivi li l-kunfidenzjalita taghhom fi proceduri simili hi essenzjali biex l-Ufficju jkun jista' jaghmel xogholu u jadempexxi l-

oneri legali serji imposti fuqu b'serenita u bil-kumdata u kunfidenzjalita fl-interess tas-socjeta li mhux necessarjament dejjem jikkombacu mal-interess ta' terzi li jista' jkollhom motivi jew agenda differenti min dak li jidher prima facie, u li l-Ufficju ghandhu jinjora u t-Tribunal joqghod ferm attent li ma jsirx abbuz mill-procediment.

Dan ma jfissirx illi t-Tribunal ma ghandhux ebda diskrezzjoni f'dak li l-Ufficju jogghbu ma jizvelax ghax il-Kodici ta' Procedura taghna qua ligi generali fuq il-proceduri quddiem il-Qorti jaghti lit-Tribunal poteri fl-interess tal-gustizzja izda din id-diskrezzjoni trid tintuza b'mod ristrett hafna u biss fejn ic-cirkostanzi partikolari jimmeritaw kjarament mod iehor.

It-Tribunal ezamina b'reqqa n-nota meqjusa li saret mill-Onorevoli Joe Mizzi pero ihoss li ma jistax jaqbel li japplika b'mod esklussiv il-provvedimenti tal-Kodici ta' Procedura fejn jirrigwarda l-esebizzjoni ta' provi u dokumenti u jinjora ligijiet u provvedimenti ad hoc Ewropej li jirregolaw il-ligi tal-kompetizzjoni. Il-ligi ta' procedura nostrana ghandha tkun fonti ta' interpretazzjoni u uzu fil-materja ta' ligi tal-kompetizzjoni mehuda fil-linji gwida u generali taghha u dan biex issir gustizzja ma kulhadd fl-interess ta' dak li jissejjah il-gid komuni. F'dan is-sens ukoll ghandhom jitqiesu r-restrizzjonijiet tal-Att dwar il-Liberta tal-Infurmazzjoni wkoll senjalat mill-Onorevoli Mizzi pero l-perspettiva ghandha tittiehed mill-ottika tan-natura specjali tal-materia sub iudice. Bl-istess mod il-principji regolaturi ta' gustizzja naturali tal-Att dwar Il-Gustizzja Amministrattiva ghandhom jorbtu lit-Tribunal cioe d-dritt ghal smigh xieraq u armi ugwali tal-partijiet. Pero dan kollu ghandu jkun mifhum fil-qies u n-natura partikolari u sui generis tal-proceduri mehuda fl-isfond ta' dak li ghandu x'jaqsam mal-ligijiet tal-kompetizzjoni u konsumatur. Dawn il-ligijiet fuq imsemmija ghandhom ighinu mhux jirrestringu lit-Tribunal fis-soluzzjoni tal-vertenzi li jistghu jqumu quddiemu izda mhux kif qal l-Onorevoli Mizzi fin-nota tieghu jigu applikati ad litteram a skapitu ta' dak li jipprovdu regolamenti u fonti Ewropej specifikament relatati mal-kwistjoni quddiem it-Tribunal.

F'dan il-kaz jidher li d-dokumenti li waslu ghad-decizjoni tal-Ufficju gew esebiti u l-lanjant inghata kopja taghhom. Il-korrispondenza dwar dak li ntabab qua informazzjoni li talab l-Ufficju u minuti ta' laqgha li ghamel l-Ufficju u li dikjaratament skond in-nota tas-26 ta' Gunju 2012 ma ntuzawx fl-evalwazzjoni ghad-decizjoni mehuda ta' nuqqas ta' ksur ma jidhirx li huma ta' natura tali li dan it-Tribunal ghandu jmur kontra n-norma regolatrici Ewropea u juza d-diskrezzjoni tieghu skond il-ligijiet generali li nsibu fi-ligijiet Maltin billi jobbliga lil Ufficju jesebihom u ghalhekk qed jilqa' t-talba tal-Ufficju biex l-informazzjoni msemmija fin-nota tieghu tas-26 ta' Gunju 2012 ma tigix esebita.

< Sentenza In Parte >

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