

## European Court of Justice Expands European Commission's Powers in National Court Proceedings

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In a decision published last week, the European Court of Justice (ECJ) significantly expanded the European Commission's (the Commission's) power to intervene in national court proceedings (see Case No. C- 429/07, *X BV*) that raise issues relating to the application of European Union (EU) competition laws.

The Commission has long enjoyed the right to submit written observations on its own initiative to the national courts of Member States to ensure a coherent application of the EU competition rules throughout the EU. In the past, the Commission only exercised that right in cases directly involving application of European competition laws. The Commission's previous interventions sought to ensure that the national courts applied EU competition laws in a consistent and coherent manner.

The case at issue, however, involved application of Dutch tax law, rather than EU competition law. The defendant in the case had sought to deduct a competition law fine imposed by the Commission from its taxes. The Dutch court was considering whether such a deduction was permissible under Dutch tax law. The Commission submitted written observations urging the Dutch court to deny permission for deduction of competition law fines. The Dutch court responded by requesting a ruling from the ECJ as to the Commission's right to submit observations in cases that are not brought pursuant to EU competition law. The ECJ ruled that the Commission did have the right to intervene in such cases.

In its ruling, the ECJ noted the Commission's concern that allowing fines to be deducted would undermine the effectiveness of the penalties imposed by the Commission for antitrust infringements. This gave the Commission an interest in the outcome of the case and justified its right to intervene.

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