Case Details

Case Details

National ID	17475
Member State	Italy
Common Name	C. Larato v. Axa Assicurazioni S.p.a. and Isvap
Decision type	Other
Decision date	09/12/2002
Court	Corte di cassazione (Supreme court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Unfair Contract Terms Directive, Article 1, 1.

Headnote

1. In the Axa case, the Corte di Cassazione held in a widely discussed and much criticized decision that Italian competition law is meant to protect enterprises and that Article 33(2) of the Law no. 287 of October 10, 1990 ("Italian Competition Act - ICA") applies only to commercial enterprises.
As for the judges, end consumers who perceive them to have been damaged by the acts of a prohibited cartel may proceed according to the general rules on tort.

Facts

The decision arises from a proceeding brought by a consumer before a Giudice di Pace against an insurance company, "Axa", to recover an alleged premium overcharge he had been required to pay as a consequence of the motor vehicle cartel.
The insurance company asserted the defense of jurisdictional incompetence.
The Giudice di Pace rejected this defense, reasoning that article 33(2) ICA, and its remedy of annulment, referred to the upstream agreement and not to the downstream agreement, to which the ordinary rules of tort law apply.
The Judge explained that the anticompetitive overcharge was attributable to the upstream motor vehicle insurance cartel, which was in breach of competition rules and in contravention of the principle of good faith and fair dealing.
Axa appealed this decision to the Corte di Cassazione.

Legal issue

In 2000 the Autorità garante della concorrenza e del mercato (also "AGCM") sanctioned a cartel between a number of competing insurance companies holding that they had had infringed Art. 2 ICA, by entering into a complex horizontal agreement aimed at the "extended and pervading" exchange of strategic, sensitive, commercial information.
The Authority ascertained that the premium for motor vehicle civil liability insurance in Italy were significantly higher than in some of the major member States.
In reaction to this anti-competitive cartel, a large number of consumers individually sued their insurers before the Giudici di Pace (i.e. Justices of the Peace who function as small claims courts), relying on the Authority assertion

that the cartel had gained a large premium advantage by its anticompetitive acts.
The insurers asserted a defence by invoking the exception of jurisdictional incompetence relying on article 33(2) ICA. They claimed that only the Corte di Appello, and not the Giudice di Pace, had the necessary competence to decide the matter. Many Giudici di Pace rejected this defence and awarded the plaintiffs damages approximating 20% of the insurance premiums representing the overcharge as, allegedly, conceded by the AGCM. A variety of legal grounds were cited as the basis for these decisions and awards. Some Giudici di Pace argued that the reimbursement of the overcharge was a restitution grounded in the prohibition against unjustified enrichment; others argued that the overcharge was a breach of the principle of good faith and fair dealing; others relied on the bar to unfair contractual terms in consumer contracts; while still others relied on simple tort.
Whatever the validity of the reasoning supporting their decisions, whether they were grounded in inadequate knowledge of Italian competition law or the judges were influenced by a genuine desire to grant an effective remedy to consumers who had clearly been damaged by anticompetitive behaviour, the competence of the Giudici di Pace was rejected in the reported decision.
the Corte di Cassazione held in a widely discussed and much criticized decision that Italian competition law is meant to protect enterprises and that Article 33(2) ICA applies only to commercial enterprises.
As for the judges, end consumers who perceive them to have been damaged by the acts of a prohibited cartel may proceed according to the general rules on tort.
The Axa decision made no reference to the broader aims and perspective of EC competition law, which Italian competition law mirrors, and also ignored the ECJ decision in Courage, the process of modernization and decentralization of EC competition law, the lively European discussion on the fostering of private enforcement of competition law in the member States and the record of private antitrust litigation in the United States.

Decision

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