No Traction: Authorities Drop Antitrust Investigation into Italy's Long-Term Car Rental Sector

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In Short

The Situation: The Italian Competition Authority has closed an antitrust investigation into the alleged anticompetitive exchange of information by 16 operators in the long-term car rental market and their industry association.

The Result: The ICA, in an unprecedented decision, overturned the theory of harm put forward by its investigative team in its Statement of Objection—which found that the exchange of information constituted a hard-core restriction—and ultimately found that the practice did not breach EU competition rules.

The Investigation

The investigation was triggered by a customer complaint to the Italian Competition Authority ("ICA") about the alleged tendency of the major long-term car rental ("LTR") operators to offer very similar commercial terms to their clients and the practice of the LTR industry association, ANIASA, of distributing very granular reports containing each operator's sales data to its members.

LTR suppliers typically offer clients the vehicle rentals and a number of ancillary services such as insurance, roadside assistance, maintenance, and replacement cars.

The ICA focused its investigation on the structured information exchange put in place by ANIASA, which distributed reports to its members annually, quarterly, and monthly. These reports contained detailed information about each player's volumes of contracts and revenues generated in the reference period; geographic focus by region; client types (corporate, public, individual); sales of

used vehicles at the end of the rental contracts (in volume and value); the average duration of leases; the fleet's annual mileage; and new car registrations. According to the ICA, this data enabled the LTR suppliers to calculate each LTR operator's average price per kilometer (turnover/total mileage of the fleet), thereby facilitating anticompetitive coordination.

Theory of Harm

In its Statement of Objections ("SO"), the ICA argued that the exchange of information constituted a restriction by object and therefore was *per se* illegal under EU competition rules, with no need to analyze the concrete effects of the conduct on the market.

The ICA relied on C*artes Bancaires* jurisprudence, under which an anticompetitive practice is considered a restriction by object only if the terms of the agreement, its objectives, and the legal and economic context in which it takes place reveal "a sufficient degree of harm to competition."

According to the ICA, the "sufficient degree of harm" threshold was met since the statistics distributed by ANIASA allowed competitors to share sensitive information regarding their commercial strategies, leading to a collusive equilibrium in the market. Information sharing allowed LTR suppliers to learn sensitive information on the costs and the commercial performance of each player. Accordingly, given the nature of the data being exchanged (disaggregated by operator, commercially sensitive, and very recent) and the features of the market (oligopolistic and conducive to collusion), the practice had to be deemed restrictive by object and heavily fined like a cartel.

Defensive Arguments

During the proceedings, the parties developed their defense around the following points:

- The market for LTR services is heterogeneous. LTR suppliers offer many ancillary services together with a car rental. The rental lease consists of a significant and diversified number of cost components (costs for the rental and ancillary services).
- There has been no information sharing whatsoever among market players concerning those cost components.

- The market does not have oligopolistic features and is not conducive to collusion, given that it is a bidding market and is characterized by the presence of a significant number of suppliers and customer volatility.
- The by object test of "the sufficient degree of harm," as set forth in recent EU case law, requires extensive analysis of the economic context in which an alleged anticompetitive practice takes place, in line with a restrictive interpretation of the by object category. Only when the exchange of information concerns individualized competitors' intentions regarding future price and quantities can such a practice be considered a hard-core horizontal agreement with no need to conduct in-depth analysis.

ICA's Decision

The final decision the College of the ICA (the deciding body of the authority) rejected the theory of harm put forward in the SO by its investigative team and found that information sharing between LTR players did not breach competition rules. The ICA concluded that the information exchanged by the LTR players did not concern commercially sensitive data about the different components of the rental lease and therefore did not increase market transparency in a way that could be considered collusion.

Conclusions and Trends

The case is unprecedented since it is the first time the ICA has completely rejected the findings of the SO and found no infringement.

The decision marks a change in the ICA's approach toward information-exchange practices, which it has often treated harshly on the basis of superficial and formulaic analysis lacking consideration for the features of the market.

Jones Day assisted one of the LTR companies in the investigation.

Three Key Takeaways

1. Investigations into information exchanges as stand-alone restrictions of competition are growing at the EU and national level, with a focus (for the ICA) on information exchanged through the reports/statistics distributed by industry associations to their members.

2. This case could represent a shift in the approach followed by the ICA toward a more effect-based analysis, in line with recent ECJ case law on restrictions by object and information sharing.
3. The ICA's decision is unprecedented in that it completely rejects the findings of the SO and finds no infringement.

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