

No one-stop-shop in the EU for leniency applicants

⑦ Case C-428/14 of the European Court of Justice, *DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA v. Autorità Garante della Concorrenza e del Mercato*, January 20, 2016

On January 20, 2016, the European Court of Justice handed down a preliminary ruling concerning the relationship between the EU and Member State leniency programs.

The ruling followed a request by the Italian Supreme Court in a case concerning a cartel in the international road freight forwarding sector in Italy. In particular, the Italian watchdog sanctioned DHL for its participation in the cartel without taking into account the leniency application filed at the EU level. It argued that it was under no obligation to consider any leniency application other than the one filed at the national level.

The European Court confirmed the *Autorità Garante della Concorrenza e del Mercato's* reasoning by excluding the existence of any legal connection between European and national leniency programs. According to the Court,

leniency or immunity granted to a company in an EU cartel investigation does not guarantee the same benefit in a similar national investigation. In this case, the Commission sanctioned a cartel in the air freight forwarding services sector, whereas the Italian competition authority focused on a cartel in the road freight forwarding sector.

The recent decision has clearly brought out the difficulties linked to the absence of a centralized EU leniency program. Applicants should thus be very prudent in filing leniency applications. They should ensure that their applications cover the entire scope of conduct concerned and all relevant jurisdictions, bearing in mind that it would be impossible to rely on the scope of EU applications before national authorities.