

# Judicial review in Competition cases



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## Judicial review in Competition cases - Proceedings before the General Court



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- A/ Procedural Issues
  - Procedure before the GC and the Court
- B/ Admissibility of annulment actions
  - What acts can be challenged?
  - Reasons for an appeal before the GC
  - Who can bring an action and time limits for lodging a claim
  - What the applicant is required to do in the context of legal challenge?
- C/ Substantive standard of judicial review in competition cases
  - Evidences before the EU Court
  - „Control of legality” v. unlimited control
  - What needs to be proven?
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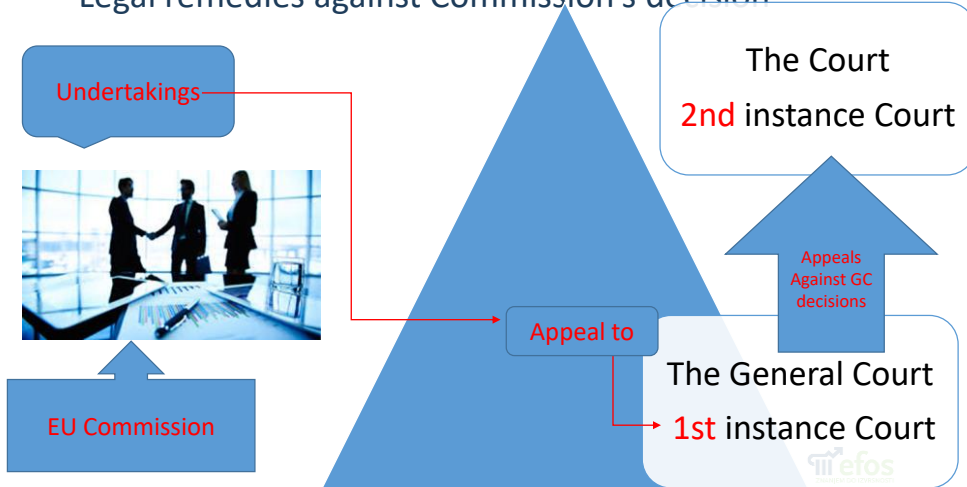


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## System of legal protection in EU competition cases



### Legal remedies against Commission's decision



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## A/Procedure before the GC



### ➤ Rules of Procedure of the GC 2015

#### ➤ Three types of actions:

- **Direct actions**
- Proceedings relating to intellectual property rights
- Appeals against decisions of the Civil Services Tribunal

#### ➤ **Procedue** before the GC is **written and oral**

- **Case starts:** a/ by lodging claim  
b/reply by the Commission  
c/ two rounds of pleadings  
d/ deliberation fo judgement/decision

- **Submissions** are made in any EU official language;
- Parties must be represented by lawyers

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## B/Admissibility of annulment actions



### What Commission's acts can be challenged?

Any Commission decisions intended to produce legal effects and bring a distinct change in the legal position of the claimant. ( Article 230 of the TFEU).

#### Example:

- decision establishing the existence of an infringement/ decision declaring that no infringement has been committed
- act by the Commission by which it terminates an investigation
- decision on fines
- decision imposing remedies

**QUESTION: Does the oral statement made by the Competition Commissioner's spokesman constituted a decision.**

X IN CASE Air France v. Commission the spokesman had declared that the proposed acquisition of Dan Air by British Airways did not need to be notified under EU merger rules. The CFI held that the oral statement produced legal effects and that the action was therefore admissible).

### What Commission's acts cannot be challenged?

- Preliminary steps towards a final decision are not a decision and cannot be challenged (STATEMENTS OF OBJECTIONS)

**HOWEVER: Some decisions taken during procedure can be challenged;**



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## B/ Admissibility of annulment actions



### Who can bring an action?

a/ **addressees** of the Commission decisions (in cartel cases, cases of abuse of dominant position and in merger cases)

b/ **third parties** have standing if they can show that the **decision is of direct and individual concern to them** (**How to interpret individual concern?**)

**PARTIES WHO DID NOT PARTICIPATED IN COMMISSIONS INVESTIGATION usually do not have standing!!**

### What time limits apply?

As a general rule, a claim must be lodged within **two months and ten days- starting from:**

- 1/ **for addressees** -starting from the day when the addressee is **notified** of the decision
- 2/ **for third parties** from the day when the decision is published in the OJ (if the decision is published) if not the time limits run from when the third party acquired actual knowledge of the decision.



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## Two types of judicial control in competition cases



**LIMITED REVIEW**  
„control of legality“

- The GC conducts „control of legality when it decides on the **existence on an infringements**
- Art. 263 TFEU: „ The Court of Justice shall **review the legality** of ...“

**FULL REVIEW** - unlimited review

- The GC has unlimited jurisdiction regarding fines
- Art. 31 of Regulation No 1/2003



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## Legal remedies against the General Court's judgement



- **Appeal** to The Court is limited to the **points of law** only.
- Separate set of procedural rules apply: Rules of procedure of the European Court of Justice (2012)
- Time-limits for making an appeal: two months from the delivery of judgement of the GC + 10 day on account of distance
- Procedure: written and oral with only one exchange of pleadings between parties ( i.e. a reply to the response submitted by an appellant and a rejoinder submitted by a defendant)
- Following the oral hearing the judges deliberate and decide on judgement (parties can give up oral procedure)



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