

CJEU judgment dismisses Valve Corporation's action against the European Commission regarding the geo-blocking of certain video games on Steam

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On 27 September 2023, the Court of Justice of the European Union delivered its judgment in Case T-172/21, *Valve Corporation v. Commission*.

An action had been brought before the General Court of the European Union by Valve Corporation ("Valve"), seeking the annulment of a decision of the European Commission regarding the geo-blocking of certain PC video games on the platform Steam, a video game digital distribution service and storefront developed by Valve. Acting on the basis of information it had received, the European Commission found that Valve and five games publishers (Bandai, Capcom, Focus Home, Koch Media and ZeniMax) had infringed EU competition law by participating in a group of anti-competitive agreements or concerted practices which were intended to restrict cross-border sales of certain PC video games by putting in place territorial control functionalities between 2010 and 2015, in particular in the Baltic countries and certain countries in Central and Eastern Europe. To seek the annulment of the decision, Valve argued that the Commission had failed to take into consideration the economic argument of passive sales being harmful to the proper functioning of competition, reducing output and increasing prices, to the detriment of consumers. Valve also argued that the Commission had failed to take into account the digital nature of the goods and services affected, making them fundamentally different from tangible goods. Both arguments sought to demonstrate the existence of reasonable doubt as to the allegedly sufficient degree of harm to competition caused by the agreements or concerted practices and their anti-competitive object.

In its judgment, the General Court dismissed the action, finding that the Commission had established "to the requisite legal standard the existence of an agreement or concerted practice between Valve and each of the five publishers having as its object the restriction of parallel imports through geo-blocking of keys enabling activation and, in certain cases, use of the video games at issue on the Steam platform", seeking to prevent the video games from being purchased at low prices by distributors or users located in countries where prices are higher. The geo-blocking was found not to pursue an objective of protecting the copyright of the publishers of the video games, but "to eliminate parallel imports of those video games and protect the high royalty amounts collected by the publishers, or

the margins earned by Valve”.

Responding to additional arguments made by Valve, the General Court also ruled on the relationship between EU competition law and copyright, observing that copyright does not guarantee the opportunity to demand the highest possible remuneration or to engage in conduct likely to lead to artificial price differences between the partitioned national markets.

Valve may bring an appeal before the Court of Justice against the decision of the General Court within the two months and ten days following the notification of the decision.

Judgment of the General Court in Case T-172/21

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