

## **Case C-441/07 P Commission v Alrosa, judgment of 29 June 2010**

**Facts:** The first applicant company was established in Russia, and was involved in the world market for the production and supply of rough diamonds. The second applicant was a company established in Luxembourg, and was the market leader in the market for the production and supply of rough diamonds. The applicants had notified the Commission of an agreement entered between them in order to get clearance in EU law.

The Commission, in reviewing this notification, concluded that the agreement was capable of breaching Art. 101 TFEU as it seemed anti-competitive, and so brought proceedings against the two companies. The Commission initiated a separate claim against the second applicant for abuse of dominant position under Art. 102 TFEU. Following negotiations with the Commission, the applicants submitted commitments to stop the second applicant from purchasing diamonds from the first applicant, which were accepted by the Commission.

However, the first applicant sought to annul that decision, and so initiated proceedings in the General Court. The General Court in turn annulled the decision on the basis that the Commission had failed to respect the right of the first applicant to a hearing regarding the individual commitments proposed by second applicant, and that it had not respected the principle of proportionality in taking this decision. The Commission appealed this result.

**Held:** The Court annulled the General Court's judgment. In particular, the Court felt that the General Court had erred in conflating the proportionality test used for Art. 7 of Regulation (EC) No 1/2003 (allowing for a finding of infringement) and Art. 9 of that same Regulation (on the proposal of commitments). The Commission would have no obligation to compare these commitments with measures which it could have imposed itself under Article 7 of the Regulation and to consider any commitment which goes beyond these measures as disproportionate.

In analysing the Commission's decision, the court could only consider if the Commission had made a manifest error in that decision, which would mean that the conclusion of the Commission was obviously unfounded, having regard to the facts established by it. By embarking on a more stringent review, the General Court had exceeded its mandate.