

Commission can use cartel intel from agencies active in areas other than competition

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The European Court of Justice recently confirmed that in proving a cartel, the Commission can rely on evidence legally transmitted to it by a national tax authority. Companies should thus beware that the Commission can tap new sources of information on possible competition law infringements through tip-offs by any national authority, not just competition authorities. This evidence may be gathered in the course of investigations unrelated to competition law. When faced with an investigation by regulatory or enforcement authorities, it is advisable for companies to check whether the information gathered during the investigation contains any reference to potentially anti-competitive activities.

In 2011, the [Commission](#) imposed a fine on Pacific Fruit for having participated in a banana cartel. In proving the cartel, the Commission had relied on documents transmitted by the Italian tax authorities. The Italian tax authorities had obtained these documents during an inspection of the home and office of one of Pacific Fruit's employees in the course of a national tax investigation. Pacific Fruit argued that the use of this evidence was unlawful, but the [European Court of Justice](#) disagreed.

The ECJ considered that the question of whether the evidence was transmitted lawfully by the Italian tax authorities is governed by national law. There is no general rule preventing the Commission from using information transmitted by national authorities other than the member states' competition authorities on the ground that the information was obtained for other purposes. According to the ECJ, such a rule would excessively hamper the Commission's role in supervising the enforcement of EU competition law.
