

Shop till you drop not possible under the European competition network

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complaint.

According to the General Court, the European Commission can reject a complaint which has already been examined by a national competition authority, irrespective of the outcome of that review. It is not necessary for the competition authority to have issued an actual decision, as long as it has reviewed the complaint on the basis of EU competition law. The General Court considers this consistent with the decentralised system for the application of EU competition rules within the European competition network, which was set up to remove both the risk of duplication of work and the incentive to file multiple complaints. This means that companies only get one shot at having their complaint reviewed and should carefully consider which competition authority they consider best suited to examine their complaint.

In 2008, air carrier easyJet complained to the (predecessor of the) Dutch Competition Authority ACM about Schiphol Airport allegedly charging discriminatory and excessive tariffs. The complaint was based on the Dutch Aviation Act as well as national and EU competition rules. In July 2009, the ACM [rejected](#) the complaint to the extent that it was based on the Dutch Aviation Act, because easyJet had failed to prove that Schiphol Airport's charges were not cost-orientated, non-discriminatory and reasonable. In reviewing the complaint under EU and national competition law, the ACM [found](#) that the concepts in the Dutch Aviation Act that had been referred to were similar to those in EU and national competition law. The ACM consequently rejected the complaint in accordance with its priority policy.

easyJet subsequently lodged a complaint with the European Commission claiming that the charges set by Schiphol violated EU competition law. It asserted that it had filed a number of complaints with the ACM at an earlier stage but that in its view, the ACM had not taken any final decision on the competition law merits of easyJet's complaint. The European Commission [rejected](#) the complaint on the basis of Article 13(2) [Regulation 1/2003](#) as a competition authority of a Member State had already dealt with the case. The General Court [agreed](#) with the Commission that it could reject a complaint which had previously been rejected by a national competition authority on priority grounds, as long as it had been reviewed by that authority according to EU competition rules. The General Court considered this interpretation in keeping with the objective of Article 13(2) Regulation 1/2003: to establish an optimal allocation of resources within the European competition network of competition authorities when applying EU competition rules.

Complainants should therefore choose wisely when considering which competition authority is best suited to review their