

Cour de cassation

Chambre commerciale

Audience publique du 3 juin 2008

N° de pourvoi: 07-17.147, 07-17.196

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Court of Cassation

Commercial Chamber

Public hearing, 3 June 2008

N° of Appeal: 07-17.147, 07-17.196

Published in the Bulletin

Cassation

CASSATION

THE FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

THE COURT OF CASSATION, COMMERCIAL CHAMBER, delivered judgment as follows:

.....

On the first ground of appeal, taken in its first argument, lodged by company Sony and the first ground of appeal, taken in its first argument, lodged by company Philips, heard together:

Having regard to Article 6 § 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms;

Whereas, the recording of a telephone communication made by a party without the knowledge of the author of the remarks made constitutes an unfair process making inadmissible its production as evidence;

Whereas, according to the judgment under appeal, as requested by company Avantage claiming anti-competition practices implemented by suppliers and distributors of consumer electronics, the Competition Council (the Council) declared, by decision n° 05-D-66 of 5 December 2005, established that several companies, among them company Philips France (company Philips) and company Sony France (company Sony), infringed the provisions of Article L. 420-1 of the Code of Commerce in implementing from November 1997 to the end of 1998 a collusion with their distributors regarding the application of recommended prices for a certain number of consumer electronics and imposed financial penalties of 16 millions euros on each of them;

Whereas, dismissing the appeals filed by these companies against the decision of the Council, the judgment holds that in absence of any text regulating the production of proof by the parties in proceedings before the Council on the basis of Articles L. 420-1 and L. 420-2 of the Code of Commerce, it was right that the Council, which enjoys a procedural autonomy as regards national private judicial law as well as community law, held, based on its mission of protecting the economic public order, on the repressive nature of these proceedings leading to pronouncement of financial penalties and on the efficiency expected thereof, that the

recordings of telephone communications, which were produced by the requesting party and not by the investigators or the rapporteur, should not be dismissed on the mere ground that they were obtained by unfair means, that they were receivable so long as they were subjected to cross-examination and that it was up to the Council sole to appreciate the probative value thereof;

Whereas, in so ruling, the Court of Appeal erred in its application of the provisions set out above;

FOR THESE REASONS, and with no need to decide upon the other grounds of appeal:

REVERSE AND ANNUL, in its entirety, the judgment handed down on 19 June 2007 between the parties by the Court of Appeal of Paris; return, consequently, the proceedings and the parties to their status quo ante and, for the proceedings to be determined in accordance with the law, remand them back to the Court of Appeal of Paris, composed differently;

Order the Ministry of Economy, Finance and Industry to pay the costs;

.....

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Decision under appeal: Court of Appeal, Paris, 19 June 2007

Catchwords and Resumes: EUROPEAN CONVENTION OF HUMAN RIGHTS - Article 6 § 1 - Equity - Violation - Case - Recording of a telephone communication without the knowledge of the author of the remarks made - Consequences.

The recording of a telephone communication made by a party without the knowledge of the author of the remarks made constitutes an unfair process making inadmissible its production as evidence.

PROOF - General rules - Means of proof - Illicit means - Various applications - Recording of a private telephone communication without the knowledge of the person concerned.

Precedents: IN THE SAME DIRECTION: Soc., 23 May 2007, Bulletin 2007 V, n° 85 (Dismissal), and the judgment cited. TO COMPARE: Crim. 31 January 2007, Bulletin 2007 Crim., n° 27 (Dismissal), and the judgments cited.

Law applied:

Convention on the Protection of Human Rights and Fundamental Freedoms, Article 6 §

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