

# THE HIGH COURT

[2025] IEHC 644

[2024 No. 1487 HP]

**Between:**

**RYANAIR DAC  
RYANAIR HOLDINGS PLC  
(each and both referred to hereafter as ‘Ryanair’)**

**Plaintiffs**

**- and -**

**THE COMPETITION AND CONSUMER PROTECTION COMMISSION  
(referred to hereafter as the ‘CCPC’)**

**Defendant**

## **JUDGMENT of Mr Justice Max Barrett delivered on 21<sup>st</sup> November 2025.**

1. Ryanair, by notice of motion dated 24<sup>th</sup> July 2024, applies for an order pursuant to O.31, r.18(1) of the Rules of the Superior Court Rules (RSC) and/or the inherent jurisdiction of the Court directing the first defendant to produce for inspection, in such place and manner as the Court deems appropriate, and to provide a copy of, the document identified in the plaintiffs’ notice to produce of 26<sup>th</sup> June 2024, namely the “formal request for assistance” sent by the Autorità Garante Della Concorrenza e Del Mercato (AGCM) to the CCPC on 27<sup>th</sup> February 2024 (the “Document”).

2. This application is one of three heard over a three-day period. My judgment as to the first application issued on 18<sup>th</sup> November, and the background facts set out therein form the factual backdrop to the present application. Certain relevant facts may, however, be stated or restated for present purposes.

3. Some preliminary observations may be made at the outset, each illustrating the weakness of Ryanair's present application.

4. *First, the CCPC has confirmed that the Document will not be placed in evidence.*

5. Ryanair contends that this does not answer its application, asserting that O.31, r.18 applies to documents merely referred to in an affidavit or pleading, even where the party does not intend to adduce the document in evidence. That contention is incorrect. A reference to a document in an affidavit does not confer an entitlement to inspect it under O.31, r.18, nor does it convert a notice to produce under r.15 into a compulsory production mechanism. Order 31, r.15 operates only to preclude a party from relying on a document in evidence if that party refuses production when asked; the CCPC's confirmation that it does not intend to adduce the Document fully complies with that rule. Inspection requires satisfaction of the separate and mandatory threshold in r.18, that inspection be necessary for the fair disposal of the case or for saving costs, which Ryanair has not met. The Document is, in any event, protected by public interest/executive privilege and by European Union (EU) law confidentiality rules governing communications between national competition authorities (NCAs), and is also irrelevant to the pleaded issues; each of these considerations independently precludes production. Further, r.18 confers a discretionary jurisdiction, and a mere reference to a document in an affidavit does not trigger any automatic right of inspection. On the circumstances presented, there is no basis to order production and every reason to refuse it.

6. *Second, it is not necessary for Ryanair to have sight of the Document to advance any aspect of its case.*

7. Ryanair argues that: (i) it should not be required to accept the CCPC's assessment of whether the Document might assist its case; (ii) it is unrealistic to suggest that the document that triggered the District Court application and search warrant might not be relevant to the lawfulness of the warrant; (iii) it is equally unrealistic to suggest that the Document is irrelevant

to whether the CCPC acted lawfully in acceding to the AGCM's request; and (iv) it is inherently probable that inspection is necessary to adjudicate fairly on the legality of the CCPC's assistance and the warrant, and that nothing in the CCPC's evidence displaces this starting presumption.

8. These contentions can be addressed as follows. First, the evidence before me indicates that the Document played no operative role in the legal decisions now under challenge: the warrant issued solely on the basis of the sworn information placed before the District Judge and certain related oral evidence. There is no suggestion in the evidence before me as to what transpired before the District Court that the Document was ever opened to, or by, the District Judge. Second, inspection of the Document is unnecessary for the advancement of either pleaded ground in the proceedings. An internal preliminary communication of this nature could not assist either claim. Third, the contention that the Document is inherently relevant to the lawfulness of the CCPC's decision to assist the AGCM is unfounded. As a matter of historical fact, the CCPC has never suggested that the Document was the principal basis for its decision. In any event, the Document is both irrelevant and protected by public interest/executive privilege as a confidential communication between NCAs. Fourth, the asserted starting *presumption* of necessity contradicts O.31, r.18, under which the burden lies squarely on Ryanair to *demonstrate* necessity. No such necessity has been shown. Fifth, the governing presumption is the EU-law presumption of confidentiality attaching to communications within the European Competition Network (ECN), as reflected in Art. 27(2) of Regulation 1/2003 and repeatedly affirmed by the Court of Justice of the European Union (CJEU). That presumption cannot be displaced here: disclosure would jeopardise NCA co-operation, and I lack visibility of the AGCM's interests sufficient to conduct the balancing exercise required by *Pfleiderer AG v Bundeskartellamt* (ECLI:EU:C:2011:389) and related authorities. Sixth, for these reasons, each limb of Ryanair's argument fails: the Document is irrelevant, unnecessary, played no operative role in any impugned decision, and is in any event privileged and confidential. There is therefore no basis on which production could be ordered.

9. *Third, the Document is not amenable to disclosure because it is a highly confidential communication between two European NCAs, exchanged in the context of an Italian regulatory investigation, and attracts public interest/executive privilege.*

**10.** Ryanair argues that no proper evidence supports the assertion that disclosure would jeopardise NCA cooperation, and submits that it would accept a redacted version of the Document. I respond as follows.

**11.** First, Ryanair’s assertion that there is no proper evidence of jeopardy to ECN cooperation is contradicted by the CCPC’s evidence regarding the sensitivity of the communication, and by the European Commission’s intervention in parallel Italian proceedings. In that intervention, the Directorate General expressed the deepest concern that disclosure of a formal request of this kind would “*severely compromise the efficacy of the network and the ongoing investigation,*” and would “*jeopardise the integrity and effectiveness of the investigative process, as well as working relationships between the competition authorities of the ECN.*” Second, the presumption of confidentiality is structural, arising from Art. 27(2) of Regulation 1/2003 of 16<sup>th</sup> December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, 1), Recital 14 of Directive 1/2019 of the European Parliament and of the Council of 11<sup>th</sup> December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ L 11, 14.1.2019, 3), and CJEU case law recognising a general presumption against disclosure of NCA to NCA communications, even after an investigation has concluded, in order to safeguard the effectiveness of EU competition enforcement. Within this framework, the suggestion that redactions could address the issue is misconceived: the confidentiality attaches to the category of communication itself, not to isolated sensitive passages. Disclosure (even in redacted form) would jeopardise the protected interests and cannot be authorised where no countervailing necessity has been demonstrated. Third, Ryanair’s contention therefore fails both factually and legally: the evidence of risk is compelling, and the governing EU legal framework makes clear that the Document cannot be disclosed, in whole or in part.

**12.** *Fourth, the CCPC has never indicated, contrary to Ryanair’s suggestion, that the Document was the principal document relied upon when deciding to accede to the AGCM’s request for assistance.*

**13.** Ryanair states in its written submissions that:

*“This is a confounding submission. The RFA was the formal request for assistance sent by the AGCM to the CCPC pursuant to Article 22(1) of Council Regulation (EC) 1/2003 and therefore the principal document upon which the CCPC could rely in making a decision to provide assistance to the AGCM. Shortly after the RFA was sent, the CCPC made a decision to provide investigative assistance to the AGCM. Given those undisputed facts, it was entirely reasonable...to state that the RFA was the principal document relied upon by the CCPC when it decided to assist the AGCM. With respect, that could be described as a statement of the obvious. Crucially, the CCPC has not in its replying evidence disputed the proposition that the RFA was the principal document relied upon when the CCPC decided to accede to the request for assistance. Additionally, the RFA was the only document which the CCPC could have plausibly relied upon in this regard.”*

**14.** I respond as follows. First, it is unclear why Ryanair is confounded. As a matter of historical fact, the CCPC has never stated that the Document was the principal basis of its decision to assist the AGCM. Second, as noted earlier, the evidence before me indicates that the Document played no operative role in the legal decisions now under challenge. The warrant issued on the basis of the sworn information placed before the District Judge along with certain associated oral evidence, and there is no evidence that the Document was ever opened to, or by, the District Judge. It cannot, therefore, have been operative in that decision. Third, Ryanair’s reasoning is conceptually flawed: the fact that the Document was the mechanism by which the AGCM initiated the mutual assistance process does not mean that it was the substantive basis of the CCPC’s decision. Fourth, Ryanair’s assertion that the Document was the only material on which the CCPC could plausibly have relied is directly contradicted by the findings in this judgment. These findings remove any basis for characterising the Document as central or dispositive in the CCPC’s analysis.

**15.** *Fifth, Ryanair contends that: (i) because an administrative decision to seek a search warrant may affect constitutional rights, the CCPC was required to conduct a proportionality assessment when deciding whether to accede to the AGCM’s request and seek a warrant, and to provide the District Court with sufficient information to assess proportionality; (ii) the CCPC has accepted that it must act reasonably and proportionately in exercising its regulatory powers; and (iii) the Court should not resolve the proportionality issue on an inspection motion, relying on Hartside v. Heineken [Ireland Ltd [2010] 1 JIC 1502; [2010] IEHC 3], where*

*Clarke J. cautioned against resolving “potentially contested issues at the preliminary stage”, the present application also being one made at a preliminary stage.*

**16.** I observe as follows. First, the evidence does not indicate that the Document played any operative role in the decisions under challenge. It is therefore not relevant to any pleaded issue. Second, Ryanair’s pleaded grounds cannot be assisted by disclosure of an internal, preliminary communication between NCAs. Proportionality is therefore, with respect, a ‘red herring’ in the context of inspection under O.31, r.18. Third, Ryanair cannot invoke a general proportionality requirement to create relevance where the governing statutory and EU-law framework imposes no such obligation on the CCPC in the context of Art. 22 assistance, and where the only operative legal test for the warrant was the sufficiency of the sworn information placed before the District Judge.

**17.** *Sixth, Ryanair’s suggestion that the District Judge should have been informed that she was required to undertake a proportionality analysis is, in my view, without merit.*

**18.** At least four reasons support this conclusion. First, as this judgment makes clear, proportionality plays no role in the statutory or EU-law framework governing the warrant application and has no bearing on the grounds available to the District Judge when determining whether to issue the warrant. Second, the evidence shows that the warrant issued solely on the basis of the sworn information and related oral evidence presented to the District Judge. The Document played no operative role, and the District Judge was under no statutory or doctrinal obligation to conduct the balancing exercise Ryanair posits. Third, proportionality cannot generate relevance or necessity where the underlying legal decision does not depend on proportionality. The District Judge’s task was limited to determining whether the statutory criteria for the warrant were met on the evidence before her. Fourth, nothing in the pleadings, legislation, or evidence suggests that a proportionality analysis was required. Ryanair’s contention is therefore without merit, as it seeks to impose an obligation unsupported by either law or fact.

**19.** *Seventh, the suggestion that the CCPC was required to form an independent view of the evidence is similarly misconceived.*

**20.** Ryanair has contended in this regard, of a like submission made by the CCPC, that that submission attempts to pre-judge the outcome of these proceedings, or at least the outcome of certain significant issues in the proceedings. This is because part of Ryanair's claim is that the CCPC was required to form its own view of the necessity and proportionality of agreeing to provide assistance to the AGCM. The CCPC, Ryanair maintains, is entitled to dispute that legal proposition at trial, but it is not entitled to ask the Court to find that it is as a matter of substance misconceived in an effort to avoid making the Document available for inspection.

**21.** To these contentions, I would observe as follows. First, Ryanair's claim that the CCPC's submissions pre-judge the substantive issues is misplaced. This is because I am not deciding any substantive proportionality or necessity issue; I am determining what might be described as a threshold procedural question under O.31 r.18. Second, in answering that procedural question, I must assess whether Ryanair's pleaded proportionality theory has any realistic foundation capable of generating relevance. I am not adjudicating on the merits of that theory. Third, when I find that arguments about proportionality and about any alleged duty on the CCPC to form its own proportionality assessment are misconceived, that is not a determination of the ultimate claim, but rather a finding that these alleged duties never formed part of the legal framework governing the District Judge's decision or the CCPC's Art.22 role and therefore cannot give rise to relevance or necessity for inspection of the Document. Fourth, because the warrant issued solely on the basis of sworn information placed before the District Judge and certain related oral evidence, and because nothing in the evidence before me suggests that the Document was relied on or even opened by the District Judge, I am entitled to conclude at the inspection stage that disclosure of the Document cannot assist any pleaded ground of challenge. This does not pre-judge the substantive issues, but simply reflects my finding on the evidence before me that the Document played no operative role in any decision under challenge. Fifth, I am not therefore assuming that the CCPC's view of proportionality is correct. I am, however, recognising that proportionality was never part of the legal decision-making process, and that Ryanair cannot create relevance or necessity by asserting an erroneous legal duty. Sixth, accordingly Ryanair's submission fails because it conflates my assessment of relevance and necessity (which is essential to an O.31 r.18 motion) with a substantive determination on the merits, which I expressly avoid making.

**22.** *Eighth, the suggestion that Ryanair should “manifestly” be entitled to see the basis for the serious allegations against it (on the footing that these were the AGCM’s suspicions conveyed to the District Judge as background to the warrant application) is unfounded.*

**23.** To this general observation, I would add the following points. First, Ryanair’s contention fails because, as emphasised throughout this judgment, the evidence indicates that the AGCM’s suspicions were not the legal basis on which the District Judge issued the warrant. Second, the evidence shows that the District Judge issued the warrant solely on the basis of the sworn information and certain associated oral evidence placed before her. There is no indication that the Document was ever opened to, or by, the District Judge. Third, it follows that the AGCM’s suspicions, however serious, were not operative when it came to the District Judge’s decision and therefore cannot ground any entitlement to disclosure. Fourth, Ryanair’s asserted entitlement to understand those suspicions is misplaced. They were background only and formed no part of the legal test the District Judge was required to apply; the issuance of the warrant turned on satisfaction of statutory criteria, not on the merits of a foreign authority’s suspicions. Fifth, critically, Ryanair has not advanced any pleaded ground that would render the content of those suspicions relevant. Sixth, because inspection under O.31, r.18 requires Ryanair to show that production is necessary to dispose of a pleaded issue, and because no pleaded issue requires examination of the AGCM’s suspicions, there is no pathway by which those suspicions or the Document could become relevant or necessary. Seventh, in short, Ryanair’s supposed entitlement is illusory: (i) the AGCM’s suspicions played no role in the judicial decision; (ii) they ground no cause of action in these proceedings; and (iii) the Document remains confidential, privileged, and irrelevant for the purposes of the challenge actually brought by Ryanair.

**24.** As mentioned, Ryanair served a Notice to Produce on 26<sup>th</sup> June 2024 pursuant to O.31, r.15 RSC. The only consequence of a failure to produce under that rule is that the party concerned may not subsequently rely on the non-produced document in evidence. This presents no difficulty for the CCPC, which has repeatedly confirmed that it does not intend to put the Document in evidence. Ryanair now seeks to enforce its demand under O.31, r.18 RSC, which provides that an order for inspection will not be made unless the Court is satisfied that inspection is “*necessary either for disposing fairly of the cause or matter or for saving costs.*”

**25.** In terms of applicable case law and commentary concerning the present application, I have, been referred to and accept, *inter alia*, the guidance proffered in *Taylor v. Anderton* [1995] 1 WLR 447 (as approved in *Cooper Flynn v. Raidió Teilifís Éireann* [2004] IESC 27; [2000] 3 IR 344), *O'Neill v. Governor of Castlerea Prison* [2004] 1 IR 298; 2004 WJSC-SC 9109, *Maye v. Adams* [2015] 7 JIC 3117; [2015] IEHC 530, Biehler et al, *Delany & McGrath on Civil Procedure*, 5<sup>th</sup> Ed., (Round Hall, 2023), para. 11-55, and (by way of foreign, but still helpful, commentary) Matthews and Malek, *Disclosure* 4<sup>th</sup> Ed., (Thomson and Reuters, 2023).

**26.** The requisite necessity has not been established by Ryanair on the evidence before me for the purposes of O.31, r.18 RSC. Moreover (and separately) the present application appears to have been overtaken to a significant degree by the CCPC's successful application to strike out elements of the plenary proceedings pursuant to s.15AAA of the Competition Act 2022. Nonetheless, I have proceeded in this judgment as though that separate application had not been made, and have considered Ryanair's present application at its highest. Even on that generous footing, the application must fail.

**27.** Ryanair's case against the CCPC rests, as I understand it, on two propositions: first, that the warrant should not have issued because certain allegedly relevant matters were not disclosed to the District Judge; and second, that allegedly irrelevant and commercially sensitive documents should not have been copied. It is difficult to see how either proposition could be advanced by disclosure of an internal communication created at a preliminary stage of the process.

**28.** As indicated, the Document is not amenable to disclosure in any event, being confidential and subject to public interest/executive privilege. In substance, Ryanair seeks what would amount to third-party discovery of the AGCM's information. The Document is, however, irrelevant to the issues in this case. It is clear that the District Judge issued the warrant on the basis of the sworn information presented to her, together with associated oral evidence.

**29.** There is, with respect, no evidence that the Document was ever opened to, or by, the District Judge. Even if relevance were established (which it is not) I would, in accordance with Clarke J.'s judgment in *Independent Newspapers v. Murphy* [2006] 3 I.R. 566; [2006] IEHC 276, be required to conduct a proportionality assessment and I would conclude that the CCPC's interests in investigating, or assisting in the investigation of, competition infringements, the

broader interests of the ECN, and the State's interest in enforcing regulatory obligations, would be significantly undermined if the confidential communications and methods of NCAs were disclosable to the target of the investigation. This is not a case in which, to adopt Clarke J.'s formulation in *Independent Newspapers*, “*the interests of justice...undoubtedly outweigh any duty of confidence.*”

**30.** As to public interest/executive privilege, reference has been made to *Murphy v. Dublin Corporation* [1972] I.R. 215, *Ambiorix v. Minister for Environment (No. 1)* [1992] 1 I.R. 277; [1991] IESC 163, and *Bradley v Minister for Justice* [2017] 5 JIC 2608 ;[2017] IEHC 422, the latter reaffirming that, although there is no zone of complete immunity attaching to communications between An Garda Síochána and the Prison Service, assertions of public interest/executive privilege must be assessed on an individual basis.

**31.** In the present case, the interests of the CCPC and of the AGCM, on whose behalf the CCPC was acting, are readily identifiable. The Plaintiffs have identified no reasonable countervailing interest. In my view, disclosure of the Document would jeopardise the network of co-operation among NCAs. This important interest must be protected, and production or inspection must therefore be refused on this ground also.

**32.** I am reinforced in this conclusion by the fact that, when a similar application arose in Italian proceedings, the Directorate General of the European Commission wrote to the AGCM expressing its concern that a formal request (here, the Document) would be disclosed to the subject of an investigation. That letter evinces the deepest concern, stating that release would “[i] severely compromise the efficacy of the network and...the ongoing investigation” and “[ii] jeopardize the integrity and effectiveness of the investigative process, as well as the working relationships between the competition authorities of the ECN.”

**33.** Ryanair submits that, while the Directorate General's views on the potential policy consequences of permitting inspection of the Document merit respect, they do not bear on the legal questions before the Court. Ryanair further contends that, insofar as the Directorate General purported to express a view on the requirements or provisions of EU law, those views are inadmissible.

**34.** Ryanair’s effort to minimise the significance of the Directorate General’s intervention is, in my view, misplaced. I do not see the Directorate General’s letter to be an authoritative exposition of EU law, nor does it purport to be such, nor do I understand it to have been offered as such. The applicable EU-law position is established by Art. 27(2) of Regulation 1/2003, Directive 1/2019, and CJEU jurisprudence. In that context, the Directorate General’s letter serves as a factual indicator of the risks that the EU confidentiality regime is designed to avert. It illustrates, from the perspective of the body charged with overseeing the operation of the ECN, that disclosure of a formal assistance request to an investigation target would severely compromise the network’s efficacy, jeopardise the integrity of an ongoing investigation, and damage working relationships between national competition authorities.

**35.** I enjoy a broad discretion under O.31, r.18 RSC, to be exercised by reference to the facts of each case. In exercising that discretion, I must consider the overall context of these proceedings, and the inherent sensitivity attached to a request for assistance from another European regulator. Having regard to that context and sensitivity, I see no basis for ordering production and every reason to refuse it.

**36.** Turning in more detail to the EU-law dimension of this application, the AGCM’s request for investigative assistance from the CCPC in February 2024 was made pursuant to Art. 22 of Regulation 1/2003.

**37.** Article 27(2) of Regulation 1/2003 is unequivocal as to the confidentiality attaching to such a formal request vis-à-vis the subject of the search, providing as follows:

*“The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission’s file, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the competition authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competition authorities of the Member States, or between the latter, including documents drawn up pursuant to Articles 11 and 14. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.”*

**38.** In a similar vein, Recital 14 of Directive 1/2019 of the European Parliament and of the Council of 11 December 2018, designed to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (O.J. L11, 14.1.2019, 3), states:

*“The right to access the file should be subject to the legitimate interest of undertakings in the protection of their business secrets and should not extend to confidential information and internal documents of, and correspondence between, the NCAs and the Commission.”*

**39.** Article 22(1) of Regulation 1/2003 permits a national competition authority to request the investigative assistance of another such authority in order to establish whether there has been an infringement of Arts. 101 and 102 TFEU.

**40.** It follows from the foregoing that Art. 27 applies to communications between the Commission and a NCA, and to those between NCAs.

**41.** Similarly, Recital 32 to Regulation 1/2003 provides:

*“The undertakings concerned should be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the undertakings concerned, in particular, the right of access to the file, it is essential that business secrets be protected. The confidentiality of information exchanged in the network should likewise be safeguarded.”*

**42.** Perhaps surprisingly, despite the default assumption of confidentiality provided for in the Regulation, the CJEU has permitted some deviation where necessity is demonstrated in respect of the documents claimed.

**43.** In relation to the EU law cited above, Ryanair makes the following submissions:

- Article 27 concerns European Commission proceedings, not domestic competition proceedings. Ryanair argues that Art. 27(2) applies only within the context of proceedings conducted by the Commission and is therefore irrelevant to the present domestic investigation.
- Article 27(2) concerns rights of defence in Commission cases, including the right of access to the Commission’s case file. Ryanair relies on Art. 27(1), which it says shows that the entire article is confined to Commission-led processes.
- Articles 27(3) and 27(4) reinforce this understanding, as both expressly concern proceedings brought by the Commission rather than domestic investigations.
- Recital 32 to Regulation 1/2003 is said by Ryanair to support its view, as the opening sentence indicates that the recital concerns Commission proceedings, not domestic NCA investigations.
- Accordingly, Ryanair contends that Art. 27(2) has no relevance to the AGCM’s investigation, and therefore imposes no prohibition on the High Court ordering inspection of the Document.
- Ryanair further submits that the Commission’s case-file rules, and any exception for correspondence between competition authorities, are irrelevant, even by analogy, to domestic proceedings concerning the legality of a search warrant and the CCPC’s decision to seek it pursuant to the Document.
- As to Recital 14 of Directive 1/2019, Ryanair notes that recitals do not have independent legal force, serving only as aids to interpreting substantive provisions.

**44.** Ryanair’s interpretation of Art. 27(2) is, in the abstract, arguable: the opening words of Art. 27 are framed by reference to Commission decision-making and the rights of defence in Commission proceedings. However, in my view, Ryanair’s contentions are ultimately incorrect. They fail to grapple with the plain wording of Art. 27(2), which does not confine its confidentiality carve-outs to Commission case files but expressly extends to “*correspondence between the Commission and the competition authorities of the Member States, or between the latter.*”

**45.** This unqualified language encompasses NCA to NCA cooperation within the ECN, including requests made under Art. 22. That broader reading is reinforced by Recital 32 of Regulation 1/2003 and Recital 14 of Directive 2019/1, both of which, in effect, emphasise the need to protect the confidentiality of information exchanged within the ECN as a structural element of EU competition enforcement. More significantly, it accords with consistent institutional practice, reflected in the Directorate General’s intervention, and with CJEU jurisprudence, including Case C-365/12 P *European Commission v. EnBW Energie Baden-Württemberg AG, Kingdom of Sweden, Siemens AG, ABB Ltd.* Ryanair’s attempt to limit Art. 27(2) solely to Commission proceedings overlooks, in my view, the text, purpose, and systemic architecture of Regulation 1/2003, as well as the settled understanding of the EU institutions and the courts. Its position, though arguable, cannot ultimately be regarded as correct.

**46.** By way of European caselaw, I have been referred to, *e.g.*, Case C-360/ *Pfleiderer AG v Bundeskartellamt* (ECLI:EU:C:2011:389) Case C-365/12 P *European Commission v. EnBW Energie Baden-Württemberg AG, Kingdom of Sweden, Siemens AG, ABB Ltd.*, and Case T-623/13 *Unión de Almacenistas de Hierros de España v. Commission*.

**47.** In *Pfleiderer*, the CJEU determined that Regulation 1/2003 cannot be construed as barring an individual who has suffered harm as a result of an infringement of EU competition law from seeking access to documents concerning that infringement, where such access is necessary to underpin a claim for damages. The Court held that a claimant in follow-on proceedings may, by reference to the applicable national rules, obtain disclosure of materials held by a national competition authority, including items furnished under a leniency programme, insofar as those documents are requisite to establish both the wrongdoing and the extent of the loss sustained. The CJEU nonetheless indicated that national courts are obliged to weigh the competing EU-law interests at stake when deciding whether disclosure ought to be permitted. In the present matter, I am not satisfied that I possess adequate information regarding the interests involved to undertake that balancing assessment, particularly as the holder of the relevant information (the AGCM) is not a participant in these proceedings, but is instead engaged in the Italian proceedings where this very question may be addressed.

**48.** In *EnBW*, the CJEU reaffirmed the general presumption that access to leniency materials may jeopardise the interests protected by the regulations implementing EU competition rules.

**49.** In *Unión de Almacenistas*, the materials in dispute comprised correspondence exchanged between the Commission and a national competition authority. The Court concluded that releasing such documents would prejudice the commercial interests of the undertakings implicated and that, as a result, they were not, in principle, open to public access. The General Court placed particular reliance on Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 concerning public access to documents of the European Parliament, Council and Commission (the Transparency Regulation) (O.J. L145, 31.5.2001, 43), Art.4(2) of which establishes an exception safeguarding, inter alia, the objectives of inspections, investigations, and audits.

The Court further held that a general presumption applies to the effect that disclosure of such categories of documents may compromise both the protection of the commercial interests of the undertakings concerned and the integrity of investigative processes, and it therefore upheld the refusal of access on those grounds.

**50.** The Court applied Art. 27 as follows:

*“Furthermore, Article 27(2) of Regulation No 1/2003 provides that even the parties subject to proceedings conducted by the Commission under Article 101 TFEU do not have access to documents drawn up pursuant to Article 11 of that regulation. A fortiori, Regulation No 1/2003 therefore prevents all persons from accessing such documents.”*

**51.** The Court proceeded on the premise that nationals of a Member State possess a broad entitlement, pursuant to Regulation 1049/2001, to obtain access to information held by EU institutions. It nonetheless determined that the confidentiality attaching to communications from NCAs must remain protected, irrespective of the fact that the underlying investigation has been brought to a close..

**52.** Given the public interest in confidentiality attaching to the Document as a matter of principle under EU law, I conclude that Ryanair has failed to demonstrate, to the requisite standard, how its legitimate interests warrant the production sought at this stage and in these proceedings.

**53.** In any event, the public body whose investigation is referenced in the Document is not a party to these proceedings. I therefore lack sufficient visibility of the interests engaged to undertake a meaningful balancing exercise as to whether the Document should be released.

**54.** Ryanair has reminded me that the CJEU has held that the EU is a community founded upon the rule of law: *Case 294/83 Les Verts v European Parliament (EU:C:1986:166)*. The rule of law and the right to an effective remedy are closely connected: *Union de Pequenos Agricultores v Council* [2002] ECR I-6677. As stated in *The EU Charter of Fundamental Rights* (2014, Hart Publishing), para. 47.81:

*“[I]t is now clear that the [effectiveness] principle precludes a provision of Member State law which entails an absolute ban on access to a (public law) competition proceedings file, absent the consent of the parties to those proceedings, when such access is sought to secure the effective judicial enforcement of Article 101 TFEU through a private law damages claim. What the principle of effectiveness requires is for the national judge to weigh up all the relevant factors ... in deciding which documents can be released. Such may be necessary to ensure that the right of individuals to obtain compensation from other individuals from other individuals is who breach EU competition law is not rendered nugatory through want of evidence.”*

**55.** Ryanair contends that the principles of legality and the rule of law require that inspection be permitted, and that, absent such inspection, its right to an effective remedy will be placed in serious jeopardy.

**56.** Of course, the rule of law does not guarantee that a party will invariably obtain the outcome it desires. Here, the extent of Ryanair’s reliance on the principle of effectiveness and the rule of law is, in my view, misplaced. The present case does not involve an absolute prohibition on access to a competition file; rather, it concerns a specific category of documents (communications exchanged between NCAs within the ECN) that EU law regards as confidential. Article 27(2) of Regulation 1/2003 expressly excludes all NCA to NCA correspondence from any right of access, and recital 32 of that Regulation, together with Recital 14 of Directive 2019/1, essentially confirm that the confidentiality of information exchanged within the network is an essential structural feature of EU competition enforcement,

not a discretionary matter for national courts. The CCPC's evidence further establishes that disclosure would jeopardise NCA co-operation, an assessment reinforced by the Directorate General's letter warning that release of an Art.22 request would severely compromise the efficacy of the network and the ongoing investigation. So, the position here is far removed from the scenario Ryanair invokes, in which national rules are said to impede access to evidence necessary to vindicate a private damages claim. Ryanair already possesses the material that actually grounded the District Judge's warrant (the sworn information) and a transcript of the associated oral evidence. Additionally, the evidence before me does not indicate that the Document played any operative role in the District Judge's decision. Refusing disclosure therefore does not impair Ryanair's right to an effective remedy; rather, it gives effect to the directly applicable EU-law confidentiality regime governing ECN communications, which this Court is bound to respect. In other words, the outcome accords with the rule of law, even if it may not align with Ryanair's preferred position.

**57.** The principle of effectiveness cannot override a substantive EU-law obligation. Once the substance of the EU-law framework (as outlined in this judgment) is applied, Ryanair's argument in this regard necessarily fails.

**58.** For each and all of the reasons outlined above, the application the subject of this judgment is respectfully refused.

**59.** I will hear the parties as to costs.