

By judgment of 27 October 2021, the French-speaking Business Court of Brussels asked the Belgian Competition Authority for its written observations concerning a dispute in the telehealth sector.

The question was whether the company's refusal to license a patented communication protocol to the company Victrix for communication between telecare devices and platforms infringes Article IV.2 of the CEL and Article 102 TFEU (abuse of dominant position) and/or Article 2/1 CEL (abuse of economic dependence).

Tunstall supplies reception units and platforms, i.e. telecare software, to organisations running call centres such as Télé-Secours, which in turn provide telecare services to elderly or vulnerable people wishing to remain in their own homes. Tunstall owns a patented communication protocol that allows reception units to communicate with the platforms. Victrix provides a competing telecare platform which Tele-Secours decided to use as a replacement for Tunstall's platform. Since then, Tunstall was concerned that Victrix would use the patented communication protocol to connect its own platform to Tele-Secours' customer care units that operate with the patented communication protocol. It therefore refused to grant Victrix a licence to use the patent protecting the protocol.

The BCA told the Court that a refusal by a dominant company to license the communications protocol may constitute an abuse if certain strict conditions are met. The BCA also examined Victrix and Télé-secours' claim that Tunstall's refusal was discriminatory because Tunstall had granted a licence to Victrix's competitors. Finally, the CBA analysed whether Tunstall's behaviour could constitute an abuse of economic dependence towards Victrix on the one hand and Télé-secours on the other.

By judgment of 26 July 2022, the Court decided that Tunstall abused the position of economic dependence of Victrix and Télé-Secours.

The request of the Court is based on Article IV.88 CEL which allows Belgian courts and tribunals to request an opinion on the application of competition law to the BCA.