INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. XV

Publications Division, Directorate-General of Information, Commission of the European Communities, 200, rue de la Loi, 1040 - Brussels.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

For a number of years, this bulletin, appearing as a quarterly periodical, has published information on the activities of the Court of Justice of the European Communities.

However, it is not the only document of information on the Court or on Community law, far from it. Below, the reader will find a complete list of these publications:

I Information on current matters - for general use

1. - Hearings of the Court - calendar of public hearings, drawn up on a weekly basis. It is sometimes necessary subsequently to change dates; also this calendar is only a guide.

It may be ordered from the Registry of the Court. In French. Free of charge.

2. - Proceedings of the Court of Justice of the European Communities - weekly summary of the judicial work of the Court, appearing in the six official languages of the Community.

Free of charge.

To be ordered from the Press and Legal Information Service, mentioning the language desired.

3. - The Judgments, Orders of the Court, Reports for the hearings, Opinions of the Advocates-General, in the form of roneoed documents - are sent to the parties and may be sent, on express request, to other interested persons once they have been delivered or lodged at the public hearing.

Free of charge.

Orders may be placed with the Registry for: Judgments, Orders, Reports for the hearings.

Opinions of the Advocates-General may be ordered from the Press and Legal Information Service.

II Information and technical documentation.

1. - Information on the Court of Justice of the European Communities - quarterly bulletin published by the Publications Division, Directorate-General of Information, Commission of the European Communities, Brussels.

Free of charge.

To be ordered from the Information Offices of the Community, whose addresses appear in this bulletin.

2. - Collection of texts on the organisation, powers and procedure of the Court.

The 1967 edition is completely out of print.

A new edition is being prepared; it will be available around the middle of 1974. The price remains to be determined.

Orders are to be placed, with an indication of the language desired, with the Publications Office of the European Communities or the bookshops whose addresses are set out below.

3. - Legal publications on European integration (bibliography) -

	BF	Dkr.	DM	FF	Lire	Fl	£
1966 reprint	300	-	24	29	3,750	22	-
1967 supplement	150	-	12	15	1,870	11	-
1968 supplement	150	-	12	15	1,870	11	-
1969 supplement	150	-	12	15	1,970	11	-
1970 supplement	150	-	11	17	1,900	11	-
1971 supplement	-	-	-	-	-	-	-

On sale at the addresses given below.

4. - Bibliography of European case law (1965) on judicial decisions relating to the Treaties establishing the European Communities -

	BF	Dkr.	DM	FF	Lire	Fl	£
1965 edition	100	-	8	10	1,250	7.25	-
1967 supplement	100	-	8	10	1,250	7.25	-
1968 supplement	100	-	8	10	1,250	7.25	-
1969 supplement	100	-	8	10	1,250	7.25	-
1970 supplement	100	-	7.50	11.50	1,250	7.25	-
1973 supplement	-	-	-	-	-	-	-

On sale at the addresses given below.

Germany:	Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1
Belgium:	Ets Emile Bruylant, Rue de la Regence 67, 1000 Brussels
Denmark:	Office des publications officielles des Communautes europeennes, Case postale 1003, Luxembourg
France:	Editions A. Pedone, 13, rue Soufflot, 75 Paris (5^e)
Ireland:	Office des publications officielles des Communautes européennes, Case postale 1003, Luxembourg
Italy:	Casa Editrice Dott. A. Giuffre, Via Statuto 2, I-20121 Milan
Luxembourg:	Office des publications officielles des Communautes européennes, Case postale 1003, Luxembourg
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, 's-Gravenhage
United Kingdom:	Office des publications officielles des Communautes européennes, Case postale 1003, Luxembourg
Other countries:	Office des publications officielles des Communautes européennes, Case postale 1003, Luxembourg.

5. - Europäische Rechtsprechung - Index of case law relating to the Treaties establishing the European Communities 1953-1972 (it exists in German and in French, the extracts of national decisions also appear in their original language), Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1, Federal Republic of Germany.

III Official publication.

Of course, the Recueil de la jurisprudence de la Cour remains the only authentic source for citing the case law of the Court of Justice. This Recueil, covering 20 years of case law (1953-1973), is on sale at the same addresses as the publications mentioned under heading II above. As from 1973, the Recueil is also published in English under the heading "Reports of Cases before the Court".

Composition of the Court of Justice of the European Communities for the judicial year 1973-1974

President	LECOURT (Robert)
Presidents of Chambers	DONNER (Andre) - 1st Chamber SØRENSEN (Max) - 2nd Chamber
Judges	MONACO (Riccardo) MERTENS DE WILMARS (Josse) PESCATORE (Pierre) KUTSCHER (Hans) O DALAIGH (Cearbhall) MACKENZIE STUART (Alexander John)
Advocates-General	TRABUCCHI (Alberto) MAYRAS (Henri) WARNER (Jean-Pierre) REISCHL (Gerhard)
Registrar	VAN HOUTTE (Albert)

SUMMARY REMINDER OF THE TYPES OF PROCEDURE BEFORE THE COURT OF JUSTICE

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties in the conditions laid down by the Treaties.

A. References for preliminary rulings

The national court submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) it desires to refer to the Court of Justice. This document is sent by the registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a dossier designed to make known to the Court of Justice the background and limits of the questions referred.

After a period of two months during which the Commission, the Member States and the parties to the national proceedings may address statements to the Court of Justice, they will be summoned to a hearing at which they may submit oral observations, through their agents in the case of the Commission and the Member States or through lawyers who are members of a Bar of a Member State.

After the Advocate-General has presented his opinion, the judgment given by the Court of Justice is transmitted to the national court through the registries.

B. Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (Case postale 1406, Luxembourg) by registered post.

Any lawyer who is a member of the Bar of one of the Member States or a professor holding a chair of law in a university of a Member State where the law of such State authorises him to plead before its own courts is qualified to appear before the Court of Justice.

The application must contain:

- the name and permanent residence of the applicant;
- the name of the party against whom the application is made;
- the subject matter of the dispute and a brief statement of the grounds on which the application is based;
- the submissions of the applicant;
- an indication of the nature of any evidence founded upon;
- the address for service in the place where the Court has its seat, with an indication of the name of the person who is authorised and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

- the measure the annulment of which is sought, or, in the case of an application against an implied decision, documentary evidence of the date on which an institution was requested to act;
- a document certifying that the lawyer is a member of the Bar of one of the Member States;
- where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to the defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them, followed by a reply on the part of the applicant and finally a rejoinder on the part of the defendants.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of the Community institutions or Member States).

After the opinion of the Advocate-General, the judgment is given. It is served on the parties by the Registry.

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 January 1974

(Rheinmühlen)

Case 166/73

PRELIMINARY RULING - REFERENCE TO THE COURT - JURISDICTION OF NATIONAL COURTS - EXTENT (Art. 177, EEC Treaty)

Power of the national judge to refer to the Court of Justice either of his own motion or at the request of the parties questions relating to the interpretation or the validity of provisions of Community law in a pending action is very wide. It cannot be taken away by a rule of national law whereby a judge is bound on points of law by the rulings of superior courts. It would be otherwise if the questions put by the inferior court were substantially the same as questions already put by the superior court.

Note

See below Case 146/73.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 February 1974

(Rheinmühlen)

Case 146/73

1. PRELIMINARY RULINGS - REFERENCE TO THE COURT - JURISDICTION OF NATIONAL COURTS - EXTENT (Art. 177, EEC Treaty)

2. AGRICULTURE - COMMON ORGANISATION OF THE MARKET - CEREALS - EXPORT - DOCUMENTS - COUNTRY OF DESTINATION - FALSE PARTICULARS - REFUND - (Art. 20(2) of Regulation No 19 of the Council)

1. A rule of national law whereby a court is bound on points of law by the rulings of a superior court cannot on this ground alone deprive the inferior courts of their power, provided for under Article 177, to refer questions to the Court for a preliminary ruling.

However, in the case of a court against whose decisions there is a judicial remedy under national law, Article 177 does not preclude a decision of such a court referring a question to this Court for a preliminary ruling from remaining subject to the remedies normally available under national law. Nevertheless, in the interests of clarity and legal certainty, the Court must abide by the decision to refer, which must have its full effect so long as it has not been revoked.

2. In the case where the country of destination of the goods does not correspond to the particulars given in the export documents:

(a) Article 20(2) of Regulation No 19/62 requires the national authorities to reduce the refund granted so that it does not exceed the maximum limits provided for such country of destination;

(b) subject to this obligation, it is for them to decide according to their national law the necessary further consequences.

Note

The Court of Justice has delivered judgment in a case for a preliminary ruling referred to it by the Fiscal Court of Hesse (Federal Republic of Germany). Earlier, on 16 January, it had delivered judgment in a case referred to it by the Federal German Fiscal Court. The two cases are closely linked.

Both were based on an action brought by a German exporter before the Fiscal Court of Hesse. As, in the course of proceedings, questions were raised about Community law, the German Court decided to refer them for a preliminary ruling to the Court of Justice.

Then, before the Federal Fiscal Court, the exporter challenged the order of the Fiscal Court of Hesse referring the questions to the European Court. Thus, the reference procedure provided for under the Common Market Treaty was called into question at national level. Thereupon, the Federal Fiscal Court requested the European Court to rule on the question whether a rule of internal law is able to prevent a national court from referring to the Court of the Communities for a preliminary ruling.

In its judgment, given in reply to the question put by the Federal Fiscal Court, the Court of Justice declared that the existence, under internal law, of a requirement that the decisions of a lower court must yield to the decisions of a higher court cannot deprive the lower court of the right accorded it by the Treaty to refer questions to the Court of Justice of the European Communities.

The Court gave the same ruling in its second judgment, in reply to the question put by the Fiscal Court of Hesse, coupled, however, with the observation that the Common Market Treaty does not preclude a decision of a lower court referring a question to the Court of Justice for a preliminary ruling from remaining subject to the remedies normally available under national law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 January 1974

(Kampffmeyer)

Case 158/73

1. AGRICULTURE - COMMON ORGANISATION OF THE MARKET - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - IMPORT LICENCE - LOSS - OBLIGATION TO IMPORT - CONTINUED EXISTENCE (Regulation No 1373/70 of the Commission, Art. 2(1)) (Regulation No 1373/70 of the Commission, Art. 15(4))

2. FORCE MAJEURE - CONCEPT - DEFINITION

3. AGRICULTURE - COMMON ORGANISATION OF THE MARKET - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - IMPORT LICENCE - LOSS - CASE OF FORCE MAJEURE - REQUIREMENTS - ASSESSMENT BY THE NATIONAL COURT (Regulation No 1373/70 of the Commission, Art. 18)

4. AGRICULTURE - COMMON ORGANISATION OF THE MARKET - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - IMPORT LICENCE - LOSS - SECURITY - REQUEST FOR CANCELLATION AND RELEASE - SUBMISSION AFTER PERIOD OF VALIDITY OF THE LICENCE HAS EXPIRED - ALLOWED (Regulation No 1373/70 of the Commission, Art. 18(1))

1. Articles 2(1) and 15(4) of Regulation (EEC) No 1373/70 of the Commission must not be interpreted as meaning that the loss of an import licence automatically entails the lapse of the obligation to import created by its issue.

2. Since the concept of force majeure differs in content in different areas of the law and in its various spheres of application, the precise meaning of this concept has to be decided by reference to the legal context in which it is intended to operate.

3. The loss of an import licence constitutes a case of force majeure within the meaning of Article 18 of Regulation No 1373/70 when such loss occurs despite the fact that the titular holder of the licence has taken all the precautions which could reasonably be expected of a prudent and diligent trader. It is for the competent national court to assess such behaviour in the light of factual circumstances.

4. Where an import licence is lost, a request for cancellation and release of the security may be submitted after the period of validity of the licence has expired.

Note

On several occasions the Court of Justice has been called upon to decide what constitutes force majeure in the context of transactions requiring import and export licences or involving refunds: ice on the canals of Holland which prevents barges loaded with agricultural produce from crossing the frontier within the period specified in the licence? A breakdown of dairy machinery which prevents a company from exporting powdered milk in accordance with its obligations?

This time the question is whether the loss of an import licence for 2,000 metric tons of wheat bran pellets necessarily entails forfeiture of deposit. (The licence is said to have disappeared in the course of transit by ordinary letter post.) In reply to a request by the Administrative Court of Frankfurt-on-Main for a preliminary ruling the Court of Justice ruled that within the meaning of the Community regulations the loss of an import licence ought not to be understood as necessarily entailing the automatic extinction of the obligation to import that was created by the issue of the licence. On the other hand, according to Community regulations, the loss of a licence clearly constitutes a case of force majeure where it occurs despite the fact that the holder of the licence has taken all the precautions which could reasonably be expected on the part of a prudent and careful merchant. It is for the competent national court, after weighing all the circumstances in which the merchant was placed, to determine whether as a matter of fact the merchant has so acted.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 January 1974

(Firma Hannoversche Zucker AG Rethen-Weetzen)

Case 159/73

1. AGRICULTURE - COMMON ORGANISATION OF THE MARKETS - RULES - NATURE - LACUNA - NO POWER OF MEMBER STATES TO REMEDY IT - APPLICATION OF COMMUNITY LAW (EEC Treaty, Art. 40)

2. AGRICULTURE - COMMON ORGANISATION OF THE MARKETS - SUGAR - PRODUCTION YEAR - EXPIRATION - EXCESSES - COMPUTATION OF THE PRODUCTION LEVY - REFERENCE PERIOD (Regulation No 1009/67 of the Council, Art. 27(1)) (Regulation No 142/69 of the Commission, Art. 3(1))

1. The rules of the common organisation of the market in sugar form a complete system in the sense that they do not leave the Member States the power to fill a lacuna by resorting to their national law. It is thus proper to seek a solution in the light of the aims and objectives of the common organisation of the market, taking account of considerations of a practical and administrative nature.

2. Sugar excesses which come to light after the expiration of the marketing year in which they were produced must be treated for the purpose of production levy as arising in the marketing year in which they were ascertained, even if they have been produced before the coming into force of the common organisation of the market in sugar.

Note

A set of Community regulations - to tell the truth, rather complex - concerning the common organisation of the markets in the sugar sector provides for a series of organisational measures dealing with the sugar marketing years. One of these regulations, which remains in force until 1975, is chiefly concerned with limiting the amounts taken up by the Community.

In order to share the amount out fairly the German Government, in accordance with the Community regulation, fixed a basic quota and a maximum quota for each producer. The producer who exceeds the basic quota without exceeding the maximum quota benefits from the intervention measures for the support of the market in their entirety. The producer who exceeds the maximum quota has to pay a tax called a production levy which cannot exceed a maximum fixed by the Council of the Community.

A German producer has raised the question whether - and if so, how - surpluses ought to be divided between the different years which could be taken into account. (Stocktaking in his warehouses led to the declaration of 3,109 quintals of white sugar in excess of that recorded in the fiscal register kept under German law.)

The Fiscal Court of Hamburg, faced with this question, referred it to the European Court, which in its turn has ruled that excess quantities of sugar declared after the expiration of the marketing year in which they were produced must be considered for the purposes of the production levy as falling within the marketing year in which they were discovered, even if they were produced before the implementation of the common organisation of the market in sugar.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

27 March 1974

(B.R.T. & SABAM v N.V. FONIOR)

Case 127/73

1. PRELIMINARY QUESTIONS - PROCEDURE - NATIONAL COURT - COMPETENCE (EEC Treaty, Art. 177) (Statute of the Court of the EEC, Art. 20)

2. COMPETITION - AGREEMENTS - DOMINANT POSITIONS WITHIN THE MARKET - PROHIBITION - DIRECT EFFECT - INDIVIDUAL RIGHTS - PROTECTION BY NATIONAL COURT (EEC Treaty, Arts. 85 and 86)

3. COMPETITION - AGREEMENTS - DOMINANT POSITIONS WITHIN THE MARKET - PROHIBITION - APPLICATION - AUTHORITIES OF THE MEMBER STATES - MEANING - NATIONAL COURTS - COMPETENCE (EEC Treaty, Arts. 85,86 and 88) (Regulation No 17 of the Council, Art. 9)

1. The Treaty confers on national courts the right to judge whether a decision on a point of Community law is necessary for their judgment.

   Consequently, the procedure under Article 20 of the Protocol on the Statute of the Court continues as long as the request of the national court has neither been withdrawn nor become devoid of object.

2. As the prohibitions of Articles 85 and 86 tend by their very nature to produce direct effects in relations between individuals, those Articles create rights directly in respect of the individuals concerned which the national courts must safeguard.

3. The fact that the expression "authorities of the Member States" appearing in Article 9(3) of Regulation No 17 includes, in certain Member States, courts especially entrusted with the task of applying domestic legislation on competition or that of ensuring the legality of that application by the administrative authorities cannot exempt a court, before which the direct effect of Articles 85 and 86 is pleaded, from giving judgment.

The competence of such a court to refer a request for a preliminary ruling to the Court of Justice cannot be fettered by Article 9 of Regulation No 17. Nevertheless, if the Commission initiates a procedure in application of Article 3 of Regulation No 17 such a court may, if it considers it necessary for reasons of legal certainty, stay the proceedings before it while awaiting the outcome of the Commission's action.

Note

In one of the first judgments delivered in 1974, the Court of Justice of the European Communities had to decide a competition case which (as if it were not already sufficiently complex) was further complicated by several questions of jurisdiction. Here is a brief summary of the facts.

The case arises out of proceedings brought before the court of first instance in Brussels by the Belgian Radio and Television Company, (BRT), and the Belgian authors', composers' and publishers' association, (SABAM), against the Fonior Company to prevent the latter company from reproducing a song the copyright of which had been assigned to SABAM and BRT by the composer and script writer. The question then arose before the Brussels court as to whether the fact that an undertaking, like SABAM, which enjoys de facto monopoly control over authors' rights in a Member State, insists upon the total assignment of all copyrights without distinction should be considered as constituting an abuse of a dominant economic position within the meaning of Article 86 of the EEC Treaty.

Hence referral to the European Court at Luxembourg.

The problems raised by this case are not limited to the questions set by the Brussels court. Two further questions arise. Firstly, the Brussels court informed the Court of Justice, while proceedings were pending, that an appeal might be lodged by SABAM. Would such an appeal have the effect of suspending the preliminary ruling proceedings in Luxembourg? Secondly, also while proceedings were pending, the Commission of the European Communities stated that it had begun an investigation of SABAM's rules with a view to examining

them in the light of the Community competition rules. Now, according to Article 9(3) of Regulation No 17, the "national authorities" are bound to refrain from all action in this field until the Commission has completed its investigation. Is an ordinary court to be considered a "national authority" within the meaning of this Regulation? Both SABAM and the Commission put forward the view that it is.

The Advocate-General, M. Henri Mayras, submitted in his opinion that the reference to the Court was premature and for this reason he did not give his opinion on the merits of the case.

The Court rejected these arguments. In so far as concerns its own jurisdiction to consider a question referred for a preliminary ruling, even when the judgment of the national court is the object of appellate proceedings, it recalls that the Treaty confers on the national court the power to decide whether a decision on a point of Community law is necessary in order for it to give judgment. Accordingly the preliminary ruling procedure continues so long as the national judge's request is neither withdrawn nor annulled.

Further, the competence of national courts to apply the provisions of Community law, particularly in competition suits, derives directly from these provisions. Since the prohibitions contained in Articles 85(1) and 86 by their very nature have a direct bearing on the relations of individuals, these Articles directly confer rights on interested parties which the national courts have a duty to safeguard. To deny these courts competence by virtue of Article 9 of Regulation No 17 quoted above would be to deprive individuals of rights which they derive from the Treaty itself.

As a result the Court has decided to hear the Advocate-General on the merits of the case before deciding the questions set by the Brussels Court.

In a second judgment relating to the merits of the case, the Court of Justice answered the question whether abuse of a dominant position can also consist in the fact that such an undertaking stipulates that an author shall assign his present and future rights, and in particular in the fact that, without having to give an account of its action, that undertaking may continue to exercise the rights assigned for five of the association's years following the withdrawal of the member. The Belgian court also asked how the expression "undertaking entrusted with the operation of services of general economic

interest" (Art. 90(2), EEC) should be understood and whether this expression implies that such an undertaking should have definite privileges which are denied to other undertakings. A final fourth question: Do the provisions of Article 90(2) of the Treaty create rights in respect of private parties which national courts must safeguard?"

In reply to these questions, the Court ruled:

1. (a) The fact that an undertaking entrusted with the exploitation of copyrights and occupying a dominant position within the meaning of Article 86 imposes on its members obligations which are not absolutely necessary for the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright can constitute an abuse.

   (b) If abusive practices are exposed, it is for the national court to decide whether and to what extent they affect the interests of authors or third parties concerned, with a view to deciding the consequences with regard to the validity and effect of the contracts in dispute or certain of their provisions.

2. An undertaking to which the State has not assigned any task and which manages private interests, including intellectual property rights protected by law, is not covered by the provisions of Article 90(2) of the EEC Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 February 1974

(Sotgiu)

Case 152/73

1. FREEDOM OF MOVEMENT - WORKERS - PRINCIPLE OF NON-DISCRIMINATION - EMPLOYMENT IN THE PUBLIC SERVICE - EXCEPTION - LIMITS - APPLICATION SOLELY TO MEASURES RESTRICTING ADMISSION - EQUALITY OF TREATMENT AS REGARDS REMUNERATION AND OTHER CONDITIONS OF WORK AND EMPLOYMENT (EEC Treaty, Art. 48(4))

2. FREEDOM OF MOVEMENT - WORKERS - PRINCIPLE OF NON-DISCRIMINATION - SEPARATION ALLOWANCE - REMUNERATION - SUPPLEMENT - CONDITIONS OF EMPLOYMENT AND WORK - MEANING (Regulation No 1612/68 of the Council, Art. 7(1) and (4))

3. FREEDOM OF MOVEMENT - WORKERS - PRINCIPLE OF NON-DISCRIMINATION - CRITERIA - COVERT DISCRIMINATION - SEPARATION ALLOWANCE - GRANT - CRITERIA - RESIDENCE - RESIDENCE IN ANOTHER MEMBER STATE - OBJECTIVE DIFFERENTIATION - LAWFULNESS (EEC Treaty, Art. 48; Regulation No 1612/68, Art. 7(1) and (4))

1. The interests which the exception in Article 48(4) of the Treaty allows Member States to protect are satisfied by the opportunity of restricting admission of foreign nationals to certain activities in the public service; this provision cannot justify discriminatory measures with regard to remuneration or other conditions of employment against workers once they have been admitted to the public service. The nature of the legal relationship between the employee and the employing administration is of no consequence in this respect.

2. Article 7(1) and (4) of Regulation No 1612/68 is to be interpreted as meaning that a separation allowance, intended to compensate for the inconveniences suffered by a worker who is separated from his home, represents supplementary remuneration and falls within the concept of "conditions of employment and work" without its being necessary to define whether the payment is made by virtue of an option or of an obligation, either statutory or contractual.

3. The rules regarding equality of treatment forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result. The taking into consideration, as a criterion for the grant of a separation allowance, of the fact that a worker has his residence in another Member State may, according to the circumstances, constitute a forbidden discrimination. This is not the case if the scheme relating to such an allowance takes account of objective differences in the situations of workers according to whether their residence at the time when they take up their employment is within the territory of the State concerned or abroad.

Note

The exceptions provided for under Article 48(4) of the EEC Treaty are concerned exclusively with access to posts in the public service. The nature of the legal relationship between the worker and the service (public contract or contract of service under private law) has no bearing on the matter.

This is what the Court of Justice of the European Communities has declared in a judgment in reply to a reference for a preliminary ruling brought before it by the Federal Labour Court of the Federal Republic of Germany.

Article 48 of the Treaty secures free movement of workers within the Community except, however, in the case of posts in the public service.

An Italian citizen, a skilled worker employed by the German Posts and Telegraphs, receives a separation allowance because his family continues to live in Italy (the same allowance is paid to Germans who work at a place which is not their place of residence). At the beginning of 1965, the allowance was increased, but not for workers whose residence is abroad. The Italian employee did not get the benefit of any increase, on the ground that the relevant Community provisions did not apply to those employed in the public service. Before the German Court, the individual concerned pleaded that even if this exception

applied to contracts under public law (civil servants) it was not applicable to employees enjoying a contract of service under private law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 March 1974

(Istituto Chemioterapico Italiano, S.p.A. and Commercial Solvents Corp. v Commission of the E.C.)

(Joined Cases 6 & 7/73)

1. COMPETITION - DOMINANT POSITION WITHIN THE MARKET - RAW MATERIAL - MANUFACTURE OF A PRODUCT - OTHER PROCESSES - SUBSTITUTION - NON-EXISTENCE (Art. 86, EEC Treaty)

2. COMPETITION - DOMINANT POSITION WITHIN THE MARKET IN RAW MATERIAL - ABUSE - REPERCUSSIONS WITHIN THE MARKET ON DERIVATIVES (Art. 86, EEC Treaty)

3. COMPETITION - DOMINANT POSITION WITHIN THE MARKET IN RAW MATERIAL - HOLDER - DERIVATIVES - PRODUCTION - PROTECTION - SUPPLY OF RAW MATERIAL - REFUSAL - ABUSE (Art. 86, EEC Treaty)

4. COMPETITION - DOMINANT POSITION WITHIN THE MARKET - ABUSE - PROHIBITION - IMPAIRMENT OF TRADE BETWEEN MEMBER STATES - MEANING (Art. 86, EEC Treaty)

5. COMPETITION - COMMUNITY RULES - INFRINGEMENT - PROHIBITION - APPLICATION - CRITERIA (Art. 2, Art. 3(f), Art. 85 and Art. 86 EEC Treaty)

6. COMPETITION - DOMINANT POSITION WITHIN THE MARKET - ABUSE - PROHIBITION - SCOPE - DUTIES OF THE COMMUNITY AUTHORITIES (Art. 86, EEC Treaty)

7. COMPETITION - DOMINANT POSITION WITHIN THE MARKET - ABUSE - PROHIBITION - APPLICATION - UNDERTAKINGS INVOLVED - BEHAVIOUR - COMMON ACTION - ECONOMIC UNIT - JOINT AND SEVERAL LIABILITY (Art. 86, EEC Treaty; Art. 3, Regulation No 17 of the Council)

8. COMPETITION - DOMINANT POSITION WITHIN THE MARKET - ABUSE - PROHIBITION - APPLICATION - POWERS OF THE COMMISSION (Art. 86, EEC Treaty; Art. 3, Regulation No 17 of the Council)

1. The dominant position within a market in raw material intended for the manufacture of a product is not diminished by the existence of other potential manufacturing processes of an experimental nature or practised on a small scale.

2. An abuse of a dominant position within the market in raw materials may have effects restricting competition in the market on which derivatives are sold, and these effects must be taken into account in considering the effects of an infringement, even if the market for the derivatives does not constitute a self-contained market.

3. An undertaking which has a dominant position within the market in raw materials and which, with the object of reserving such raw materials for manufacturing its own derivatives, refuses to supply a customer, which is itself a manufacturer of these derivatives, and therefore risks eliminating all competition on the part of this customer, is abusing its dominant position within the meaning of Article 86.

4. The prohibition on abuse of a dominant position, insofar as it may affect trade between Member States, is intended to define the sphere of application of Community rules in relation to national laws. It cannot therefore be interpreted as limiting the field of application of the prohibition which it contains to commercial and industrial activities supplying the Member States.

5. The prohibitions of Articles 85 and 86 must be interpreted and applied in the light of Article 3(f) of the Treaty, which provides that the activities of the Community shall include the institution of a system ensuring that competition in the Common Market is not distorted, and Article 2 of the Treaty, which gives the Community the task of promoting throughout the Community harmonious development of economic activities.

6. By prohibiting the abuse of a dominant position within the market insofar as it may affect trade between Member States, Article 86 covers abuse which may directly prejudice consumers as well as abuse which indirectly prejudices them by impairing the effective competitive structure as envisaged by Article 3(f) of the Treaty.

The Community authorities must therefore consider all the consequences of the conduct complained of for the competitive structure in the Common Market without distinguishing between production intended for sale within the Common Market and that intended for export.

7. Undertakings which hold a dominant position within the Common Market, and whose behaviour is characterized by united action, must be regarded as an economic unit and are jointly and severally liable.

8. Article 3 of Regulation No 17 must be applied in relation to the infringement which has been established, and its application may include an order to do certain acts or provide certain advantages which had been wrongfully withheld as well as a prohibition on the continuation of certain actions, practices or situations which are contrary to the Treaty. For this purpose the Commission may, if necessary, require the undertaking concerned to submit its proposals with a view to bringing the situation into conformity with the requirements of the Treaty.

Note

CSC, an American company manufacturing chemical products used in the preparation of antituberculosis drugs, acquired a controlling interest in an Italian company, ICHI.

The group to which these companies belong has a world monopoly in the production of nitroparaffin derivatives, in particular 1 - nitropane (nitropropane) and its derivative, 2 - amino-1-butanol (aminobutanol). These are intermediate products for the manufacture of ethambutol and specialities based on ethambutol, which are used as antituberculosis drugs.

Until 1970 ICHI sold in Italy aminobutanol manufactured by CSC to, among others, Laboratorio Chimico Farmaceutico Giorgio Zoja S.p.A. (Zoja).

When in 1970 ICHI itself began the production of specialities based on ethambutol, CSC decided that as a general rule it would no longer supply nitropropane or aminobutanol in the EEC, but that in their place it would

supply an intermediate product which ICHI would re-sell in the EEC and elsewhere, while at the same time using it for its own production of specialities.

Zoja, having found during the course of vain attempts to obtain supplies of aminobutanol on the world market that all its enquiries inevitably led to a single source of supply - namely CSC - made an application to the Commission on 8 April 1971 for a finding that there had been an infringement of Articles 85 and 86 of the EEC Treaty.

By Decision dated 14 December 1972 the Commission imposed jointly and severally on CSC and ICHI a fine of 200,000 units of account, payable within three months. At the same time it ordered the two companies under pain of a daily penalty payment of 1,000 units of account, beginning 31 days after receipt of the Decision, to supply 60,000 kg. of nitropropane or 30,000 kg. of aminobutanol to Zoja, to meet its most urgent needs, at a price not exceeding the maximum price previously charged for those two products. Under pain of a second daily penalty payment of 1,000 units of account the Commission ordered the two companies to submit to it, within two months after receipt of the Decision, proposals for the subsequent supply of Zoja.

The two companies applied to the Court of Justice for the annulment of this Decision. (During the course of the proceedings Zoja applied to intervene; one of the results of this intervention granted by the Court was the signing of a contract between Zoja on the one hand and CSC on the other relating to the supply of a certain quantity of aminobutanol. As a result of the contract Zoja discontinued its intervention; moreover the daily penalties have not been pursued. The present judgment therefore relates solely to the annulment of the Decision of the Commission and to the amount of the fine.)

In its judgment the Court ordered that

(1) the applications by CSC and ICHI for an annulment of the Decision of the Commission be rejected;

(2) that the fine imposed jointly and severally on the applicants by the Decision of the Commission of 14 December 1972 (O.J. L. 299, p. 51 et seq.) be reduced to 100,000 units of account, namely 62,500,000 lire;

(3) the applicants (CSC and ICHI) should pay the costs.

The Court has given the following grounds for the reduction in the amount of the fine: although the seriousness of the infringement justifies a heavy fine, the duration of the infringement (the refusal to sell to Zoja) should also be taken into account, which in the Decision was calculated as 2 years or more. But it might have been shorter if the Commission, which had been put on enquiry by the complaint by Zoja on 8 April 1971, that is six months after the first refusal to sell, had intervened more quickly.

The following is a summary of some particulars of the grounds given by the Court:

(a) Does CSC have a dominant position within the market?

The Court answered this question in the affirmative.

(b) Which is the market to be considered?

The Court stated that contrary to the arguments of the applicants it was possible to distinguish the market in raw material necessary for the manufacture of a product from the market on which the product is sold. An abuse of a dominant position on the market in raw materials may thus have effects restricting competition in the market on which derivatives of the raw material are sold and these effects must be taken into account in considering the effects of the infringement, even if the market for the derivatives does not constitute a self-contained market.

(c) Abuse of the dominant position?

An undertaking being in a dominant position as regards the production of raw material and therefore able to control the supply to manufacturers of derivatives cannot just because it decides to start manufacturing these derivatives (in competition with its former customers), act in such a way as to eliminate their competition. In the case in question, it would have amounted to eliminating one of the principal manufacturers of ethambutol in the Common Market. Since such conduct is contrary to the objectives expressed in Article 3(f) of the Treaty and set out in greater detail in Articles 85 and 86, it follows that an undertaking which has a dominant position within the market in raw materials and which, with the object of reserving such raw material for manufacturing its own derivatives, refuses to supply a customer,

which is itself a manufacturer of these derivatives, and thereby risks eliminating all competition on the part of the customer, is abusing its dominant position within the meaning of Article 86.

(d) The effects on trade between Member States?

The prohibitions of Articles 85 and 86 must be interpreted and applied in the light of Article 3(f) of the Treaty, which provides that the activities of the Community shall include the institution of a system ensuring that competition in the Common Market is not distorted, and Article 2 of the Treaty, which gives the Community the task of promoting "throughout the Community a harmonious development of economic activities". By prohibiting the abuse of a dominant position within the market insofar as it may affect trade between Member States, Article 86 therefore covers abuse which may directly prejudice consumers as well as abuse which indirectly prejudices them by impairing the effective competitive structure as envisaged by Article 3(f) of the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

21 March 1974

(Ireland v Council)

Case 151/73

1. ACT OF ACCESSION - AGRICULTURE - TRADE BETWEEN THE NEW MEMBER STATES AND THE ORIGINAL COMMUNITY - COMPENSATORY AMOUNTS - OBJECTIVE (Act of Accession, Articles 55(1)(a), 65 and 66).

2. ACT OF ACCESSION - AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - FRUIT AND VEGETABLES - COMPENSATORY AMOUNTS - CALCULATION - PRODUCER PRICE - REFERENCE TO COMMUNITY RULES - STRICT INTERPRETATION - CONVERSION FACTOR - CONDITIONS OF APPLICATION - EXPRESS PROVISION (Act of Accession, Article 65(2); Regulation No 159/66 of the Council, Article 4(2)).

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - FRUIT AND VEGETABLES - INTERVENTIONS ON THE MARKET - BASIC PRICE - FIXING - RELEVANT PRODUCT - COMMERCIAL CHARACTERISTICS - DEFINITION (Regulation No 159/66 of the Council, Article 4(2)).

1. The object of a system of compensatory amounts instituted by Articles 65 and 66 of the Act of Accession is essentially to facilitate, by means of transitional measures, the gradual adaptation by the new Member States to the rules in force within the Community as originally constituted.

   The compensatory amounts have the function of ensuring a measure of tariff protection which, if not identical to that enjoyed by the new Member States by reason of their national legislation before their accession to the Communities, is at least comparable thereto.

2. Since the adoption of conversion factors, by its very nature, affects the level of the relevant compensatory amount in a way which is unfavourable for the new Member State, such adoption can only be permissible if it is expressly provided by the Act of Accession or is clearly necessary for the fixing and correct application of the compensatory amount.

Article 65(2) of the Act of Accession, when it refers to the "principles" contained in Article 4(2) of Regulation No 159/66, is concerned solely with the criteria for calculation expressly defined by the last mentioned provision and does not include the possibility, which is envisaged by other provisions of the said Regulation, of employing conversion factors.

3. It is clear from the text and objective of Article 4(2) of Regulation No 159/66 that since the basic price is fixed for a product with defined commercial characteristics, the characteristics upon which the definition of the relevant product is based must be specified when the basic price is fixed and mentioned in the act by which that price is fixed.

Note

Following an application by the Government of Ireland, the Court of Justice has declared void an agricultural regulation of the Council insofar as it provides for a conversion factor to be applied to the producer price for tomatoes and, accordingly, fixes the compensatory amount to be applied by Ireland to tomatoes for delivery fresh to the consumer.

The Irish Government framed this application because it was of the opinion that the Council Regulation, adopted in May 1973, infringed certain transitional measures instituted by the Act annexed to the Treaty of Accession of Denmark, Ireland and the United Kingdom. In particular, tomato prices which the new Member States must notify under the terms of the Regulation in issue refer to glasshouse tomatoes, the characteristics of which are different from those of the products taken for the fixing of the Community basic price, which are open field tomatoes. (In "southern" countries of the Community, in Italy and in the south of France, tomatoes are grown in the open air, whereas, in the "northern" countries, Denmark, Ireland and the United Kingdom, they are grown under glass. In the Benelux countries and Germany both methods of cultivation are used.) Therefore the method of calculation laid down by the Council penalised Irish producers unjustly.
This was the first application introduced by one of the new Member States against an institution of the Community.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 April 1974

(Commission v French Republic)

(Case 167/73)

1. DEFAULT BY A STATE - EEC COMMISSION - LEGAL INTEREST - EXISTENCE

2. EEC TREATY - FUNDAMENTAL RULES - DEROGATION NOT EXPRESSLY PROVIDED FOR - INADMISSIBILITY

3. TRANSPORT - COMMON POLICY - FUNDAMENTAL RULES - APPLICATION - (EEC Treaty, Art. 74)

4. SEA AND AIR TRANSPORT - SYSTEM - FUNDAMENTAL RULES OF THE TREATY - APPLICATION (EEC Treaty, Art. 84)

5. WORKERS - FREEDOM OF MOVEMENT - COMMUNITY RULES - DIRECT APPLICABILITY - INDIVIDUAL RIGHTS - RESPECT (EEC Treaty, Art. 48; Regulation No 1612/68 of the Council)

6. WORKERS - FREEDOM OF MOVEMENT - COMMUNITY RULES - DIRECT APPLICABILITY - MAINTENANCE OF A NATIONAL PROVISION - UNCERTAINTY

7. WORKERS - FREEDOM OF MOVEMENT - DISCRIMINATION - PROHIBITION - NATURE - SCOPE (EEC Treaty, Art. 48(2))

1. The Commission, in the exercise of the powers which it has under Articles 155 and 169 of the Treaty, does not have to show the existence of a legal interest, since, in the general interest of the Community, its function is to ensure that the provisions of the Treaty are applied by the Member States and to note the existence of any failure to fulfil the obligations deriving therefrom, with a view to bringing it to an end.

2. Conceived as being applicable to the whold complex of economic activities, the basic rules set out in Part Two of the EEC Treaty can be rendered inapplicable only as a result of express provision in the Treaty.

3. When Article 74 refers to the objectives of the Treaty, it means the provisions of Articles 2 and 3, the attainment of which the fundamental provisions applicable to the whole complex of economic activities seek to ensure. Far from involving a departure from these fundamental rules, the object of the rules relating to the common transport policy is to implement and complement them by means of common action. Consequently the said general rules must be applied insofar as they can achieve these objectives.

4. Under Article 84(2), sea and air transport, so long as the Council has not decided otherwise, is excluded only from the rules of Title IV of Part Two of the Treaty relating to the common transport policy. It remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty.

5. Since the provisions of Article 48 and of Regulation No 1612/68 are directly applicable in the legal order of every Member State, and Community law has priority over national law, these provisions give rise, on the part of those concerned, to rights which the national authorities must respect and safeguard and as a result of which all contrary provisions of internal law are rendered inapplicable to them.

6. Although Article 48 and Regulation No 1612/68 are directly applicable in the territory of the French Republic, nevertheless the maintenance in these circumstances of the wording of the Code du Travail Maritime gives rise to an ambiguous state of affairs by maintaining, as regards those subject to the law who are concerned, a state of uncertainty as to the possibilities available to them of relying on Community law.

7. The absolute nature of the prohibition on discrimination under Article 48(2) of the EEC Treaty has the effect of not only allowing in each State equal access to employment to the nationals of other Member States, but also of guaranteeing to the State's own nationals that they shall not suffer the unfavourable consequences which could result from the offer or acceptance by nationals of other Member States of conditions of employment or remuneration less advantageous than those obtaining under the national law. It thus follows from the general character of the prohibition on discrimination in Article 48 and the objective pursued by the abolition of discrimination that discrimination is prohibited even if it constitutes only an obstacle of secondary importance as regards the equality of access to employment and other conditions of work and employment.

Note

In an action by the Commission of the European Communities, the Court of Justice found that the French Republic has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 4 of Regulation No 1612/68 of the Council of 15 October 1968 (freedom of movement for workers).

The failure consists in not amending the French law (Article 3(2) of the Code du Travail Maritime) which provides that "such proportion of the crew of a ship as is laid down by order of the Minister for the Merchant Fleet must be French nationals". Ministerial orders issued subsequently in implementation of this provision reserve, subject to special exemptions, employments on the bridge, in the engine room and in the wireless service on French vessels to persons of French nationality, and general employment on board is limited in the ratio of three French to one non-French.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 April 1974

(Giuseppe Sacchi Italian Republic)

Case 155/73

1. PRELIMINARY QUESTIONS - COMPETENCE OF THE COURT - LIMITS (EEC Treaty, Art. 177)

2. SERVICES - PROVISION - TELEVISION SIGNALS - TRANSMISSION - NATURE - MATERIAL PRODUCTS USED FOR THE PURPOSE OF DIFFUSION - RULES RELATING TO THE FREE MOVEMENT OF GOODS (EEC Treaty, Art. 60)

3. SERVICES - PROVISION - TELEVISION SIGNALS - COMMERCIAL ADVERTISING - UNDERTAKING OF A MEMBER STATE - EXCLUSIVE RIGHTS - ADMISSIBILITY - MANNER OF USE PROHIBITED (EEC Treaty, Art. 60)

4. QUANTITATIVE RESTRICTIONS - MEASURES HAVING AN EFFECT EQUIVALENT TO - MARKETING OF PRODUCTS - RESTRICTIVE EFFECTS PROHIBITED - TELEVISION - SERVICE OF PUBLIC INTEREST (EEC Treaty, Art. 30)

5. NATIONAL MONOPOLIES HAVING A COMMERCIAL CHARACTER - PROVISIONS OF THE TREATY (EEC Treaty, Art. 37)

6. COMPETITION - UNDERTAKINGS TO WHICH MEMBER STATES GRANT SPECIAL OR EXCLUSIVE RIGHTS - DOMINANT POSITION WITHIN THE MARKET - ADMISSIBILITY - (EEC Treaty, Art. 86, Art. 90)

7. COMPETITION - PUBLIC UNDERTAKINGS - UNDERTAKINGS TO WHICH MEMBER STATES GRANT SPECIAL OR EXCLUSIVE RIGHTS - DOMINANT POSITION WITHIN THE MARKET - ABUSE - PROHIBITION - DIRECT EFFECT - INDIVIDUAL RIGHTS - JUDICIAL PROTECTION (EEC Treaty, Art. 86, Art. 90)

8. SERVICES - PROVISION - TELEVISION SIGNALS - UNDERTAKING OF A MEMBER STATE - EXCLUSIVE RIGHTS - DISCRIMINATION BY REASON OF NATIONALITY - PROHIBITION (EEC Treaty, Art. 7)

1. Article 177, which is based on a clear separation of functions between the national courts and this Court, does not allow this Court to judge the grounds for the request for interpretation.

2. The transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services. However, trade in articles, sound recordings, films, apparatus and other products used for the diffusion of television signals is subject to the rules relating to freedom of movement for goods.
Consequently, although the fact that an undertaking enjoys a monopoly in television advertising is not, in itself, contrary to the principle of free movement of goods, such an undertaking does contravene this principle by discriminating in favour of national products and materials.

3. The exclusive rights which an undertaking enjoys to transmit advertisements by television is not incompatible with the free movement of products, the marketing of which such advertisements are intended to promote. It would however be different if the exclusive right were used to favour, within the Community, particular trade channels or particular economic concerns in relation to others.

4. Measures governing the marketing of products, the restrictive effects of which exceed the effects intrinsic to trade rules are prohibited. Such is the case, in particular, where the restrictive effects are out of proportion to their purpose, such as the organisation, according to the law of a Member State, of television as a service in the public interest.

5. Article 37 of the Treaty refers to trade in goods and cannot relate to a monopoly in the provision of services.

6. The fact that an undertaking to which a Member State grants exclusive rights within the meaning of Article 90, or extends such rights following further intervention by such State, has a monopoly, is not incompatible with Article 86 of the Treaty.

7. Even within the framework of Article 90 the prohibitions of Article 86 have a direct effect and confer on interested parties rights which national courts must safeguard.

8. The grant of the exclusive right to transmit television signals does not constitute a breach of Article 7 of the Treaty. Discrimination by undertakings enjoying such exclusive rights against nationals of Member States by reason of their nationality is incompatible with this provision.

Note

Under Italian law television is a monopoly granted by the state to Radio Audizione Italiana (hereinafter called RAI), which involves on the one hand the monopoly of televised commercial advertising and on the other hand the prohibition on any other person or undertaking from receiving, for the purpose of their retransmission, audio-visual signals either emitted from the national territory or coming from foreign stations.

Mr Sacchi, who has an unauthorised television relay undertaking (TELEVIELLA), alleged that this system did not conform with the EEC Treaty insofar as cable television was concerned. After he had refused to pay the licence fee on receivers for television relay, a refusal which Italian law treats as an offence, he was charged with "being in possession in premises open to the public outside his place of residence of some television sets used for reception of transmissions by cable without having paid the prescribed licence fee".

Since the national court queried the legality of this fee, should it appear that the monopoly enjoyed by RAI, in particular as regards relay television, was contrary to the EEC Treaty, the following questions were referred to the Court by order dated 6 July 1973:

1. Whether the principle of the free movement of goods within the Common Market and consequent prohibition against isolation of national markets, which would impede full realisation of a single market in Europe, as provided for in Articles 2 and 3(f) of the Treaty, are basic principles of the Community

giving rise to subjective rights in favour of individuals which, if infringed, even by Member States, can, under Article 5 of the Treaty, be protected by the national courts.

2. If the answer to question 1 is in the affirmative, whether it is a breach of those principles for a Member State to grant a limited company the exclusive right, extending over the whole of its territory, to transmit television broadcasts of all kinds including those transmitted by cable and those for commercial advertising purposes, in view of the fact that such exclusive right has the following consequences for other subjects of the Community:

   a) a ban on television advertisements (treated as products in their own right) being broadcast over the territory of the State concerned except through the agency of the Company exclusively authorised for the purpose;

   b) a ban on television advertisements (treated as necessary instruments for the promotion of trade) being broadcast for the purpose of advertising given products at regional or local centres within the territory concerned except through the company exclusively authorised for the purpose;

   c) a ban on export, hire or distribution in any manner in the country concerned of television films, television documentaries and other productions capable of being broadcast by television except for the purpose of the authorised company.

3. Whether Article 86, taken together with Articles 2 and 3(f) and Article 90(1) of the Treaty, should be taken to mean that, regardless of the means employed, to establish a dominant position in a substantial part of the Common Market is illegal and prohibited when the undertaking which does so eliminates all forms of competition in the field in which it operates and over the whole territorial area of the Member State, even though it is entitled to do so in law.

4. If the answer to question 3 is in the affirmative, whether a limited company on which a Member State has conferred by law the exclusive right,

over the whole territory of the State, to carry out television broadcasting of all kinds including those transmitted by cable, and those for commercial advertising purposes, holds within that territory a dominant position which is incompatible with Article 86 and is prohibited because, to the detriment of Community consumers who, in a wider sense, can be also regarded as users in general, the exclusive right beforementioned entails:

a) elimination of all competition as far as it involves:
   - broadcasting of advertisements (whether treated as products in their own right or as instruments for promoting trade)
   - the release for transmission of films, documentaries and other television programmes produced in the Community;

b) imposition of monopoly prices on television commercials (in the absence of any other competitor in the market), leading to the abuse of a dominant position;

c) ability to restrict at will broadcasts advertising products not approved of by the authorised company, whether on political or commercial grounds;

d) the possibility of preferential treatment for the advertising broadcasts of industrial or trade groups, again for reasons which are not strictly economic;

e) the fullest discretionary power in the choice and distribution for broadcasting of productions, such as films, documentaries and other programmes, whose use may wholly depend on the authorised company's decisions.

5. If the answer to question 4 is in the affirmative, whether individuals have a subjective right, enforceable in the national courts, to have the exclusive right, whose effects were described in 4, abolished.

6. Whether Article 37(1) and (2) of the Treaty also applies in the case of a limited company on which a Member State has conferred the exclusive right to transmit broadcasts of any kind on its territory

insofar as this affects:
a) advertising programmes as described in question 2 a) and b) above, and
b) broadcasts of films, documentaries etc., produced in other Member States.

7. If the answer to question 6 is in the affirmative, whether Article 37(1) of the Treaty should be taken to mean that, with effect from 31 December 1969, when the transitional period expired, the authority enjoying the monopoly should be reorganised so as to ensure that differences of treatment are eliminated as they arise, or interpreted to mean that the authority with a monopoly should be deprived of any possibility of exercising discrimination, its exclusive rights as compared with other Member States lapsing in consequence with effect from 1 January 1970.

8. Whether Article 37(1) and (2) of the Treaty is directly applicable and has created subjective rights for individuals which the national courts must protect.

9. If the answers to questions 7 and 8 are in the affirmative, whether, as from 1.1.1970, the exclusive rights conferred on a limited company to transmit television broadcasts of all kinds over the whole territory of a Member State must be regarded as having lapsed as far as advertisements, films and television documentaries coming from other Member States are concerned.

10. If the answer to question 8 is in the affirmative, whether the new measures prohibited by the "standstill" in paragraph 2 of Article 37, which is directly applicable, can include a wider interpretation of exclusive right (in the case in point, extension of the monopoly to television transmissions by cable.)

11. Whether it is a breach of Article 7 of the Treaty to reserve for a limited company in a Member State the exclusive right to transmit television advertisements over the whole territory of that Member State.

The Court in answer to the questions referred to it by the Tribunal de Biella by Order of 6 July 1973 ruled:

1. The transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services. However, trade in articles, sound recordings, films, apparatus and other products used for the diffusion of television signals are subject to the rules relating to freedom of movement for goods.

2. The fact that an undertaking of a Member State has the exclusive right to transmit advertisements by television is not as such incompatible with the free movement of products, the marketing of which such advertisements are intended to promote. It would however be different if the exclusive right were used to favour, within the Community, particular trade channels or particular economic concerns in relation to others.

3. Article 37 of the Treaty refers to trade in goods and cannot relate to a monopoly in services.

4. The fact that an undertaking to which a Member State grants exclusive rights within the meaning of Article 90, or renews such rights following further intervention by such State, has a monopoly, is not as such incompatible with Article 86 of the Treaty.

5. Even within the framework of Article 90 the prohibitions of Article 86 have a direct effect and give rise, as far as the subjects are concerned, to rights which the national courts must safeguard.

6. The grant of the exclusive right to transmit television signals does not as such constitute an infringement of Article 7 of the Treaty. Discrimination by undertakings enjoying such exclusive rights against nationals of Member States by reason of their nationality is however incompatible with this provision.