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Press and Information

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Judgment of the Court of Justice in Case C-217/05

Confederación Española de Empresarios de Estaciones de Servicio v. Compañía Española de Petróleos SA (CEPSA)

**THE COMMUNITY PROHIBITION ON AGREEMENTS, DECISIONS AND
CONCERTED PRACTICES APPLIES TO AN EXCLUSIVE FUEL DISTRIBUTION
AGREEMENT BETWEEN A SUPPLIER AND A SERVICE-STATION OPERATOR,
WHERE THE LATTER ASSUMES THE RISKS LINKED TO THE SALE OF GOODS
TO THIRD PARTIES**

*In such circumstances the imposition of a sale price on the service-station operator
constitutes a restriction on competition contrary to Community law.*

The Confederación Española de Empresarios de Estaciones de Servicio brought proceedings before the Spanish courts claiming that agreements concluded at the end of 1992 between CEPSA (a petroleum company) and certain undertakings operating service-stations have the effect of restricting competition. Those agreements provide, inter alia, that the service-station operator undertakes to sell only motor vehicle and other fuels from the supplier and to charge the retail price and comply with the conditions and sales and business methods stipulated by the supplier.

The Tribunal Supremo referred a question to the Court of Justice concerning the interpretation of the general prohibition on agreements, decisions and concerted practices laid down by the EC Treaty and of the regulation on exclusive purchasing agreements, which introduces a block exemption for that type of vertical agreement¹.

First of all, the Court of Justice indicates that the agreements between CEPSA and the service-station operators constitute vertical agreements between undertakings where the

¹ Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5), replaced by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21).

operator is to be regarded as an independent economic operator. In that connection, it is necessary to examine the agreement concluded with the supplier and, in particular, the clauses, implied or express, relating to the assumption of the financial and commercial risks linked to the sale of the goods to third parties.

Next, the Court sets out **the criteria enabling the national court to determine the actual allocation of the financial and commercial risks** between the service-station operators and the fuel supplier under the agreements concerned. The allocation of risk must be **analysed according to criteria such as ownership of the goods, the contribution to the costs linked to their distribution, their safe-keeping, liability for any damage caused to the goods or by the goods to third parties, and the making of investments specific to the sale of those goods.**

If the obligations imposed on the service station operators in the context of the sale of goods to third parties were not to be regarded as falling under agreements between undertakings prohibited by the Treaty, the obligation imposed on those operators to sell the fuel at a specific price would be inherent in CEPSA's ability to delimit the scope of the activities of its agents. That obligation would not therefore be prohibited by Community competition law.

Conversely, the Court observes that if the national court were to conclude that there was an agreement between undertakings prohibited by the Treaty, the imposition of the retail price is not one of the obligations which may be imposed on a reseller in accordance with the regulation on exclusive purchasing agreements. The stipulation by CEPSA of that price would constitute a restriction on competition not covered by the block exemption provided for in that regulation.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES, CS, DE, EN, FR, HU, SK

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-217/05>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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