

Case T-543/93 R

Gestevisión Telecinco SA

v

Commission of the European Communities

(Competition — Procedure for interim relief — Interim measures)

Order of the President of the Court of First Instance, 14 December 1993 II - 1411

Summary of the Order

1. *Competition — Administrative procedure — Adoption of interim measures — Interlocutory application for suspension, as an interim measure, of an agreement for the joint acquisition of television rights benefiting from a declaration of exemption under Article 85(3) of the Treaty — Powers of the Commission — Judicial review — Limits*
(EEC Treaty, Arts 85, 173 and 186; Council Regulation No 17, Art. 3(1))
 2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Economic harm not proven*
(EEC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104(2))
1. Under the scheme of distribution of powers laid down by the Treaty, it is for the Commission, exercising the supervisory powers in competition matters conferred on it by, in particular, Article 85 of the Treaty in conjunction with Article 3(1) of Regulation No 17, to adopt, if it considers it necessary, an interim measure suspending an agreement for the joint acquisition of television rights which has been granted an exemption under Article 85(3) of the Treaty. The role of the Community

judicature is to carry out a legal review of the Commission's action in those matters and not to act in the place of the Commission in the exercise of its powers under the abovementioned provisions.

Furthermore, in the case of proceedings for interim relief in an action for annulment of a Commission decision, the interim measures that the judge hearing the interlocutory application considers should be adopted must, as a rule, both fall within the scope of the final decision which the Court hearing the main action can make under Articles 173 and 176 and concern the relations between the parties to the case. That decision cannot in any event annul an agreement on joint acquisition of television rights entered into by undertakings which, moreover, are not parties to the case.

It follows that the claim is for an interim measure that does not fall within the jurisdiction of the Court in interlocutory proceedings and must therefore be dismissed as inadmissible.

2. The urgency of an application for interim measures under Article 104(2) of the Rules of Procedure of the Court of First Instance must be assessed in relation to the necessity for an interim order to prevent serious and irreparable harm to the party applying for the interim measure. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering harm which would involve serious and irreparable consequences.

By claiming in substance simply that the contested decision would cause it economic harm without providing any figures whatever as to its extent, when some of the evidence put forward by the defendant gives rise to doubts as to the reality of that harm, the applicant has not established that, if the interim measures applied for are not granted, the contested decision might cause it harm that could not be made good by enforcement of any judgment made in the main proceedings annulling that decision. The application for interim measures must therefore be dismissed.