

## Case C-126/97

**Eco Swiss China Time Ltd**

**v**

**Benetton International NV**

(Reference for a preliminary ruling  
from the Hoge Raad der Nederlanden)

(Competition — Application by an arbitration tribunal, of its own motion, of Article 85 of the Treaty (now Article 81 EC) — Power of national courts to annul arbitration awards)

Opinion of Advocate General Saggio delivered on 25 February 1999 . . . . . I-3057  
Judgment of the Court, 1 June 1999 . . . . . I-3079

### Summary of the Judgment

1. *Community law — Rights conferred on individuals — Protected by the national courts — National rules of procedure — Application for annulment of an arbitration award — Consideration by the court seised of a plea in law alleging infringement of Article 85 of the Treaty (now Article 81 EC)*  
(EC Treaty, Arts 85 and 177 (now Arts 81 EC and 234 EC))

2. *Community law — Rights conferred on individuals — Protected by the national courts — National rules of procedure — Application for annulment of an arbitration award — Examination of the validity under Article 85 of the Treaty (now Article 81 EC) of a contract held valid in the context of an interim arbitration award — Precluded under domestic rules of procedure concerning res judicata — Whether compatible with Community law*

(EC Treaty, Art. 85 (now Art. 81 EC))

1. Where domestic rules of procedure require a national court to grant an application for annulment of an arbitration award where such an application is founded on failure to observe national rules of public policy, it must also grant such an application where it is founded on failure to comply with the prohibition laid down in Article 85 of the Treaty (now Article 81 EC). That provision constitutes a fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community and, in particular, for the functioning of the internal market. Also, Community law requires that questions concerning the interpretation of the prohibition laid down in Article 85 should be open to examination by national courts when they are asked to determine the validity of an arbitration award and that it should be possible for those questions to be referred, if necessary, to the Court of Justice for a preliminary ruling.
2. Community law does not require a national court to refrain from applying domestic rules of procedure according to which an interim arbitration award which is in the nature of a final award and in respect of which no application for annulment has been made within the prescribed time-limit acquires the force of *res judicata* and may no longer be called in question by a subsequent arbitration award, even if this is necessary in order to examine, in proceedings for annulment of a subsequent arbitration award, whether an agreement which the interim award held to be valid in law is nevertheless void under Article 85 of the Treaty (now Article 81 EC), where the time-limit prescribed does not render excessively difficult or virtually impossible the exercise of rights conferred by Community law.