

JUDGMENT OF THE COURT
30 JANUARY 1974¹

**Belgische Radio en Televisie and Société belge des auteurs,
compositeurs et éditeurs
v SV SABAM and NV Fonior
(preliminary ruling requested
by the Tribunal de première instance de Bruxelles)**

'BRT — I'

Case 127/73

S u m m a r y

1. *Preliminary questions — Procedure — National court — Competence*
(EEC Treaty, Article 177; Statute of the Court of the EEC, Article 20)
2. *Competition — Agreements — Dominant positions within the market — Prohibition — Direct effect — Individual rights — Protection by national courts*
(EEC Treaty, Articles 85 and 86)
3. *Competition — Agreements — Dominant positions within the market — Prohibition — Application — Authorities of the Member States — Meaning — National courts — Competence*
(EEC Treaty, Articles 85, 86 and 88; Regulation No 17 of the Council, Article 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 judgments.

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20 of the Protocol on the Statute of the Court continues as long as the request of the national court has neither been withdrawn nor become devoid of object.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

¹ — Language of the Case: Dutch.

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.

In Case 127/73

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal de première instance of Brussels for a preliminary ruling in the actions pending before that court between

1. BELGISCHE RADIO EN TELEVISIE,

and

NV FONIOR;

2. SOCIÉTÉ BELGE DES AUTEURS, COMPOSITEURS ET ÉDITEURS,

and

NV FONIOR;

3. BELGISCHE RADIO EN TELEVISIE,

and

SV SABAM and NV FONIOR;

on the interpretation of Articles 86 and 90 (2) of the EEC Treaty,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and Lord Mackenzie Stuart (Rapporteur), Judges,

Advocate-General: H. Mayras

Registrar: A. Van Houtte

gives the following