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Press and Information

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Judgment of the Court of Justice in Case C-196/07

Commission of the European Communities v Kingdom of Spain

**SPAIN HAS INFRINGED COMMUNITY LAW BY NOT WITHDRAWING THE
CONDITIONS FOR E.ON'S ACQUISITION OF ENDESA**

The fact that E.ON's public offer failed does not render the action either devoid of purpose or interest and does not make it absolutely impossible to implement the Commission's decisions.

On 21 February 2006, E.ON, a German company specialising in the energy sector, launched a public offer for the acquisition of the Spanish company Endesa. The concentration had a Community dimension and, on 25 April 2006, the Commission approved it without imposing conditions.

On 27 July 2006, the Spanish Energy Regulator ('CNE') adopted a decision making approval of the planned concentration subject to 19 conditions.

In September 2006, the Commission adopted a decision finding that Spain had infringed the Merger Regulation by making the acquisition of Endesa subject to conditions that are incompatible with Community law. It requested Spain to withdraw those conditions 'without delay'.

A number of those conditions were modified by a decision adopted by the Minister for Industry, Tourism and Trade, which inter alia replaced those conditions with new obligations.

Finding that a number of those new obligations were incompatible with Community law, on 20 December 2006 the Commission adopted a second decision requiring that Spain withdraw those conditions before 19 January 2007.

Taking the view that Spain had not complied with the two decisions, the Commission brought an action for failure to fulfil obligations before the Court of Justice of the European Communities.

In its judgment, delivered today, the **Court finds that by not withdrawing within the periods prescribed a number of conditions** imposed by the decisions of the CNE and the Minister, which were found to be incompatible with Community law, **Spain has failed to fulfil its obligations under Community law.**

The Court recalls that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down by the reasoned opinion which, in the present case, was on 16 March 2007. Therefore, even though the concentration in issue was abandoned on 10 April 2007, this does not render the present action devoid of purpose.

In this respect, the Court emphasises that bringing proceedings for failure to fulfil obligations is the ultimate means of enforcing compliance with Community law by making the Community interests enshrined in the Treaty prevail, notwithstanding resistance on the part of the Member States.

In addition, Spain has not shown that it was absolutely impossible to implement the Commission's decisions. The fact that E.ON's public offer failed does not necessarily mean that it was absolutely impossible to implement the decisions, given that it was, for example, still possible formally to remove the provisions contrary to them.

Moreover, the Court emphasises that a Member State cannot plead the alleged unlawfulness of a decision addressed to it as a defence to an action for failure to fulfil obligations, based on non-implementation of that decision. In those circumstances, the argument advanced by Spain that the conditions in issue are not incompatible with Community law cannot be accepted.

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

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

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-196/07>

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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