

Press and Information Division

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Judgment of the Court of First Instance in Case T-319/99

*FENIN (Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental) v Commission*

**THE COURT OF FIRST INSTANCE DISMISSES THE ACTION BROUGHT BY  
FENIN AGAINST THE COMMISSION**

*Where a body or organisation purchases goods for use in connection with an activity which is not economic in nature, it may not be regarded as an undertaking for the purposes of Community competition law*

FENIN (Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental) is an association of the majority of undertakings which market medical goods and equipment in Spain. The bodies which run the Spanish health system (SNS) purchase from FENIN medical goods and equipment for use in Spanish hospitals. According to FENIN, the average delay in paying for those goods is 300 days. Yet FENIN is not able to exert any pressure on the SNS bodies because they enjoy a dominant position.

FENIN therefore brought a complaint before the Commission alleging that the SNS bodies were abusing their dominant position. However, on the view that the bodies running the SNS were not acting as undertakings, the Commission rejected that complaint. FENIN then brought an action before the Court of First Instance challenging the Commission's decision.

The Court began by pointing out that an **undertaking**, for the purposes of **Community competition law**, includes any body or organisation which carries on an **economic activity**, irrespective of its legal nature and the manner in which it is financed. **It is the business of offering goods or services in a particular market, rather than the simple fact of making purchases, which characterises an activity as an economic activity.** Thus, it is the nature of the use to which the goods purchased are subsequently put, that is to say, whether or not the use is part of an economic activity, which determines whether or not a purchase is made as part of an economic activity. Consequently, when a body or organisation purchases goods or equipment for use in an activity which is not economic in nature for example one which is

purely social, it is not acting as an undertaking, even if it wields considerable economic power.

The Court further observed that bodies whose function is purely social, which are founded on the principle of solidarity and which have no profit motive are not undertakings.

In the present case, the Court found that the **SNS in Spain operated according to the principle of solidarity** in that it was financed by social security contributions and offered free services to its members, the general public.

On those two grounds, **the SNS bodies could not be regarded as undertakings for the purposes of Community competition law, neither in so far as they managed the SNS, nor in so far as they purchased goods or services in that connection.**

The Court thus found it unnecessary to consider the arguments put forward by FENIN concerning the alleged abuse of a dominant position, and dismissed the action.

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*For the full text of the judgment, please consult our Internet page [www.curia.eu.int](http://www.curia.eu.int) at  
approximately 3 p.m. today.*

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