

Case T-289/01

Der Grüne Punkt — Duales System Deutschland GmbH

v

Commission of the European Communities

(Competition — Agreements, decisions and concerted practices — Collection and recovery system for packaging marketed in Germany bearing the Der Grüne Punkt logo — Decision granting exemption — Obligations imposed by the Commission to ensure competition — Exclusivity granted by the system operator to the collection undertakings used — Restriction of competition — Need to guarantee the access of competitors to the collection facilities used by the system operator — Commitments given by the system operator)

Judgment of the Court of First Instance (First Chamber), 24 May 2007 . . . II - 1694

Summary of the Judgment

1. *Competition — Agreements, decisions and concerted practices — Not allowed — Exemption — Commitment given during the administrative proceedings*
(Art. 81 EC)

2. *Competition — Agreements, decisions and concerted practices — Not allowed — Exemption — Conditions*
3. *Competition — Agreements, decisions and concerted practices — Not allowed — Exemption — Conditions*
(Art. 81(1) and (3) EC; Council Regulation No 17, Art. 8(1))
4. *Competition — Community rules — Application by national courts*
(Art. 81(1) EC)
5. *Competition — Undertakings entrusted with the operation of services of general economic interest*
(Art. 86(2) EC)

1. A commitment given by an undertaking during the administrative proceedings to address the concerns voiced in such proceedings by the Commission has the effect of clarifying the content of the agreements notified for the purposes of obtaining negative clearance or exemption under Article 81 EC, by showing the Commission the way in which that undertaking intends to act in the future. The Commission is thus entitled to take account of that commitment in adopting its decision, and it is not the task of the Court of First Instance to examine the legality of that decision in the light of a right which the undertaking waived during the administrative proceedings.

undertaking's competitors, the Commission may oblige that undertaking, as a condition for granting negative clearance or an exemption under Article 81 EC, to allow shared use of those facilities between itself and its competitors, since otherwise the latter would be deprived of any real opportunity of entering, and remaining on, the market in question.

(see paras 107, 112, 113)

(see paras 87-89)

2. Where facilities belonging to the contractual partners of an undertaking which handles the greater part of demand form a bottleneck for that
3. Article 8(1) of Regulation No 17 provides that conditions and obligations may be attached to decisions granting exemption without stipulating under what conditions the Commission must choose a particular one of those possibilities. In addition, since Article 81(3) constitutes, for the benefit of undertakings, an exception to the general prohibition contained in Article 81(1)

EC, the Commission enjoys a large measure of discretion in relation to the detailed rules to which it may subject the exemption, while at the same time having to act within the limits imposed upon its competence by Article 81 EC.

decisions running counter to that of the Commission, even if the latter's decision conflicts with a decision given by a national court of first instance.

(see para. 197)

The fact that, in certain cases, the Commission has preferred to impose conditions rather than obligations is not sufficient, in itself, to call into question the possibility provided for in Regulation No 17 of coupling a decision granting exemption with obligations rather than conditions.

(see paras 153, 154)

4. Where national courts rule on agreements or practices which are already the subject of a decision by the Commission, acting within the competence conferred upon it to enforce the Community competition rules, they cannot take

5. Even if an undertaking managing a collection and recovery system for sales packaging is entrusted with a service of general economic interest within the meaning of Article 86(2) EC, the fact that the Commission has imposed an obligation on it not to impede collection undertakings from concluding with that undertaking's competitors contracts authorising them to use their bins and other collection and sorting facilities for packaging and to apply those agreements does not in any way prove that the attainment, on economically acceptable conditions, of the take-back and recovery service entrusted to that system is threatened.

(see paras 207, 208)