

Case T-12/93 R

Comité Central d'Entreprise de la Société Anonyme Vittel and Comité d'Établissement de Pierval

v

Commission of the European Communities

(Competition — Procedure for interim relief —
Suspension of operation — Interim measures)

Order of the President of the Court of First Instance, 6 July 1993 II - 787

Summary of the Order

Applications for interim measures — Suspension of operation — Total or partial suspension of operation, at the request of employees' representative bodies, of a decision authorizing, subject to certain conditions, a concentration between undertakings — Conditions for granting — Serious and irreparable damage — Weighing of all the interests involved — No risk of damage for employees such as to justify interim measures

(EEC Treaty, Arts 185 and 186; Rules of Procedure of the Court of First Instance, Art. 104(2); Council Regulation No 4064/89; Council Directive 77/187, Arts 3 and 4)

Where the effect of suspending the operation of a Commission decision authorizing, at the request of employees' representative bodies in some of the undertakings concerned, a concentration between undertakings pursuant to Regulation No 4064/89 would be to

suspend the authorization granted throughout the course of the proceedings before the Court, and where the effect of granting the interim measures applied for in the alternative would be to prolong the existence of a dominant position liable to have irreversible

repercussions on competition in the sector concerned, it is incumbent on the judge hearing the application for interim measures to weigh all the interests involved. Accordingly, not only must the interests of the applicants be balanced against the Commission's interest in restoring effective competition but regard must also be had to the interests of third parties, in particular the undertakings concerned, so as to avoid both the creation of an irreversible situation and serious and irreparable damage to one of the parties to the proceedings or to a third party or else to the public interest.

In circumstances such as those, there is no justification for granting the measures sought unless it appears that the employees represented by the applicants would otherwise be exposed to a situation jeopardizing their future position.

In this case, the decision at issue cannot, in principle, have repercussions on the rights of the employees of the undertakings concerned and there is no risk of direct damage to them such as to justify the grant of interim measures.

As regards the damage which the employees of the transferor allege would result from the fact that, in their view, the transfer runs counter to their right to maintenance of the assets of the undertaking, the applicants, merely referring to the minimal amount of the financial consideration given for the

transfer, have not shown how a decrease in the assets of that undertaking would be liable, at first sight, to entail a risk of serious and irreparable damage regarding the maintenance of employment within the undertaking. In any event, it is common ground that the transfer price derives not from the Commission decision but from the negotiations undertaken by the undertakings concerned.

As regards the damage that the employees of the undertaking to be transferred allege they would suffer by ceasing to enjoy the social advantages conferred on them either by their individual contracts or by the collective agreement in force in the transferor undertaking, Articles 3 and 4 of Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings provide that a transferor's rights and obligations arising from a contract of employment or from an employment relationship are transferred to the transferee. Moreover, under the applicable domestic employment legislation, any collective employment agreement of indefinite duration may be repudiated by the parties to it under the conditions laid down therein. It follows that, even if the alleged damage appears sufficiently certain, it cannot be a direct result of the Commission decision. Just as the decision does not require the new employers to call in question the collective agreement applicable to the employees of the undertaking transferred, suspension of its transfer would not provide any protection against the possibility of repudiation of the collective agreement in force.