

JUDGMENT OF THE COURT (FOURTH CHAMBER)
12 JULY 1984¹

**Hydrotherm Gerätebau GmbH
v Compact del Dott. Ing. Mario Andreoli & C. sas
(reference for a preliminary ruling
from the Bundesgerichtshof)**

(Regulation No 67/67 — Block exemption for exclusive dealing agreements)

Case 170/83

1. *Competition — Agreements, decisions and concerted practices -Undertaking — Meaning of the term — Economic unit — Exclusive dealing agreement — Legally independent undertakings participating in an agreement as a single contracting party — Regulation No 67/67 — Application
(EEC Treaty, Art. 85; Regulation No 67/67 of the Commission)*
2. *Competition — Agreements, decisions and concerted practices -Prohibition — Block exemption — Exclusive dealing agreements -Agreement also covering countries outside the Community -Regulation No 67/67 — Applicability
(Regulation No 67/67 of the Commission)*
3. *Competition — Agreements, decisions and concerted practices -Prohibition — Block exemption — Exclusive dealing agreements -Restrictions concerning the exercise of industrial property rights — Eligibility for exemption — Exclusion — Conditions
(Regulation No 67/67 of the Commission, Art. 3 (b) (1))*

1. In competition law, the term “undertaking” must be understood as designating an economic unit for the purposes of the subject-matter of the agreement in question even if in law that economic unit consists of several persons, natural or legal. Regulation Nr 67/67 of the Commission on the application of Article 85 (3) of the

Treaty to categories of exclusive dealing agreements must be applied even if several legally independent undertakings participate in the agreement as one contracting party provided that those undertakings constitute an economic unit for the purposes of the agreement. In those circumstances competition between

¹ — Language of the Case: German.

the persons participating together, as a single party, in the agreement in question is impossible.

2. Regulation No 67/67 is applicable where the obligations entered into cover not only a defined area of the Common Market but also countries outside the Community.

3. Article 3 (b) (1) of Regulation No 67/67 must be interpreted as excluding an agreement from block exemption only if it is clear from the

actual terms of the agreement or from the conduct of the parties that they intend to use, or are in fact using, an industrial property right in such a way as to prevent or impede, with the aid of that right, parallel imports into the territory covered by the exclusive dealership. The fact that an agreement does not contain any provision to prevent abuse of an industrial property right is not in itself a sufficient reason for excluding that agreement from the application of Regulation No 67/67.

In Case 170/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesgerichtshof [Federal Court of Justice] for a preliminary ruling in the action pending before that court between

HYDROTHERM GERÄTEBAU GMBH, having its registered office in Dieburg, Federal Republic of Germany,

and

COMPACT DEL DOTT. ING. MARIO ANDREOLI & C. SAS, having its registered office in Savigno, Bologna, Italy,

on the interpretation of Articles 1 and 3 of Regulation No 67/67/EEC of the Commission of 22 March 1967 on the application of Articles 85 (3) of the Treaty to certain categories of exclusive dealing agreements,

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keefe and G. Bosco, Judges,

Advocate General: C. O. Lenz

Registrar: H. A. Rühl, Principal Administrator

gives the following