

Case T-18/97

Atlantic Container Line AB and Others

v

Commission of the European Communities

(Competition — Liner conferences — Agreement fixing the price of inland transport in the context of intermodal transport — Regulation No 1017/68 — Notification — Immunity — Admissibility)

Judgment of the Court of First Instance (Third Chamber), 28 February 2002 II - 1128

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects — Commission decision aimed at withdrawing immunity from fines relating to a notified agreement — Notification not giving rise to immunity — Excluded*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC); Council Regulation No 1017/68)

2. *Competition — Agreements, decisions and concerted practices — Notification — Effects — Benefit of immunity from fines — Need for express provision — Immunity not provided for in Regulation No 1017/68 — Existence of a general principle of Community law — No such principle*
(EC Treaty, Art. 85(1) (now Art. 81(1) EC) and Art. 87(2) (now, after amendment, Art. 83(2) EC); Council Regulations Nos 17, 1017/68, 4056/86 and 3975/87)
3. *Competition — Agreements, decisions and concerted practices — Notification — Agreement fixing inland transport rates in the context of intermodal transport services — Agreement notified under Regulation No 4056/86 but falling within the scope of Regulation No 1017/68 — Consequences — Benefit of immunity from fines — Excluded*
(EC Treaty, Arts 85 and 86 (now Arts 81 EC and 82 EC); Council Regulations Nos 1017/68 and 4056/86)

1. Only measures the legal effects of which are binding on and capable of affecting the interests of the applicant by bringing about a distinct change in his legal position may be the subject of an action for annulment under Article 173 of the Treaty (now, after amendment, Article 230 EC).

between shipping companies containing provisions fixing inland transport rates in the context of intermodal transport services that fall within the scope of Regulation No 1017/68, which does not provide for immunity from fines in the event of notification of an agreement.

A Commission decision the aim of which is to withdraw from undertakings which have notified an agreement immunity from fines is capable of producing binding legal effects only if notification of the agreement did in fact confer upon the undertakings concerned the benefit of such immunity.

(see paras 41-42, 44, 48)

That is not the case where the decision is concerned with an agreement

2. Since Regulation No 1017/68 contains no provision granting immunity from fines in the event of notification, notification of agreements falling within the scope of that regulation does not confer immunity on undertakings notifying such agreements.

Any immunity from fines that may be provided for in secondary legislation and that arises, subject to certain limits, from notification is a form of derogation or exception. It would be wrong to conclude that such immunity might find application in the absence of express provision as a general principle of Community law. The mere fact that Regulations Nos 17, 4056/86 and 3975/87 all contain provision for immunity from fines in the event of notification does not imply the existence of any such general principle.

such a way as to extend their effects beyond cases expressly provided for.

(see paras 48, 51)

The fact that Regulation No 1017/68, unlike those three regulations, contains no express provision for immunity from fines indicates, on the contrary, that notification of an agreement that falls within the scope of Regulation No 1017/68 does not give rise to immunity. Indeed, having regard to the general principle prohibiting anti-competitive agreements laid down in Article 85(1) of the Treaty (now Article 81(1) EC) and the right, laid down in Article 87(2) of the Treaty (now, after amendment, Article 83(2) EC), to impose fines in order to ensure the effectiveness of that prohibition, provisions which derogate from that principle, such as those providing for immunity from fines in the event of notification, cannot be interpreted broadly and cannot be construed in

3. The various regulations laying down detailed rules for the application of Articles 85 and 86 of the Treaty (now Articles 81 EC and 82 EC) apply only to those agreements which fall within their specific scope. Given that the provisions of an agreement fixing inland transport rates in the context of intermodal transport services falls within the scope of the regulation on inland transport, namely Regulation No 1017/68, the undertakings concerned cannot rely on the provisions of Regulation No 4056/86 on maritime transport on the basis that the agreement was notified under that regulation. The consequences attaching to notification of an agreement flow from the regulation by which the agreement is governed, rather than the regulation under which the parties to the agreement may have mistakenly notified it. It would be quite wrong to allow parties to an agreement to cause provisions relating to immunity from fines to be applied for their benefit simply by selecting the regulation under which they notify the agreement.

(see para. 62)