

Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93

Métropole Télévision SA and Others

v

Commission of the European Communities

(Competition — Decisions of associations of undertakings —
Agreements between undertakings — Exemption decision)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 11 July 1996 II - 652

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision exempting under Article 85(3) of the Treaty the statutes of a trade association of radio and television organizations — Action brought by a competing television company excluded from the advantages resulting from membership of the association — Admissibility*
(EEC Treaty, Art. 173; Regulation No 17, Art. 19(3))
2. *Competition — Cartels — Prohibition — Exemption — Conditions — Indispensable nature of restrictions of competition — Membership conditions of a trade association of radio and television organizations — Prior consideration whether they are objective and sufficiently determinate so as to enable them to be applied uniformly in a non-discriminatory manner to all potential members — Duty of the Commission — Exemption based solely on fulfilment of a particular public mission — Not permissible*
(EEC Treaty, Arts 85(3)(a) and 90(2))

1. In so far as a Commission decision granting exemption under Article 85(3) of the Treaty to the statutes of a trade association of radio and television organizations enables a television company competing with that association and all its members in the common market to be excluded from the benefit of the competitive advantages arising out of membership of that association, it affects the competitive position of the company in question. Accordingly, that company must be classed as an interested third party within the meaning of the first sentence of Article 19(3) of Regulation No 17 and be entitled to be associated by the Commission with the administrative procedure for the adoption of the decision. In that same capacity, it has to be regarded as being individually concerned by the decision within the meaning of Article 173 of the Treaty.

In this regard, it is irrelevant that the company merely attended the hearing held by the Commission without adopting any specific position or that it did not avail itself in this case of its procedural rights under Article 19(3). On the one hand, the procedural right provided for by Article 19(3) is not subject to any condition relating to the manner of its exercise. On the other, if the capacity to bring proceedings of specified third parties who enjoy procedural rights in the administrative procedure were made subject to their actually taking part in that procedure, this would be tantamount to introducing an additional condition of admissibility in the form of a compulsory pre-litigation procedure, which is not provided for in Article 173 of the Treaty.

Moreover, the company in question is directly concerned by the decision where there is a direct causal link between the decision, which requires no implementing measure, and effects on the company's competitive position.

2. The grant by the Commission of an individual exemption pursuant to Article 85(3) of the Treaty supposes that the agreement or the decision by an association of undertakings fulfils all four conditions set forth in that provision. It is sufficient for one of the four conditions not to be met in order for exemption to have to be refused. In order to assess, more specifically, whether the restrictions of competition resulting from the membership rules of a trade association of radio and television organizations which afford competitive advantages to its members are indispensable within the meaning of the aforesaid provision, the Commission must first consider whether those membership rules are objective and sufficiently determinate so as to enable them to be applied uniformly and in a non-discriminatory manner *vis-à-vis* all potential active members. The indispensable nature of the restrictions in question cannot be correctly assessed unless that prior condition is fulfilled.

In the same context, the Commission is not entitled to use as a criterion for granting exemption, without other justification, simply the fulfilment by the members of the association of a particular public mission defined essentially by reference to the mission of operating services of general economic interest

referred to in Article 90(2) of the Treaty, inasmuch as that provision is not applicable. Whilst, in the context of an overall assessment, the Commission is entitled to base itself on considerations connected with the pursuit of the public interest in

order to grant exemption under Article 85(3) of the Treaty, it must show that such considerations make it indispensable for the restrictions of competition entailed by the rules of the association to exist.