

Case T-513/93

Consiglio Nazionale degli Spedizionieri Doganali

v

Commission of the European Communities

(Competition — Customs agents — Definition of undertaking and association of undertakings — Decision by an association of undertakings — Fixing of tariffs — State rules — Applicability of Article 85(1) of the EC Treaty (now Article 81 EC))

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 30 March 2000 II - 1810

Summary of the Judgment

1. *Competition — Agreements, decisions and concerted practices — Undertaking — Concept*
(EC Treaty, Art. 85 (now Art. 81 EC))
2. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings or associations of undertakings — National professional organisation comprising all customs agents — Setting of tariffs for professional services — Decisions of an association of undertakings*
(EC Treaty, Art. 85 (now Art. 81 EC))

3. *Competition — Community rules — Scope ratione materiae — Conduct imposed by State measures — Exclusion — Conditions — National legislation imposing the setting of a uniform tariff by an organisation comprising the representatives of customs agents (EC Treaty, Art. 85 (now Art. 81 EC))*
4. *Competition — Agreements, decisions and concerted practices — Effect on trade between Member States — Setting by a national professional organisation of a single tariff binding on all customs agents (EC Treaty, Art. 85 (now Art. 81 EC))*

1. The concept of an undertaking within the meaning of Article 85 of the Treaty (now Article 81 EC) covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Any activity consisting in offering goods and services on a given market is an economic activity.

(see para. 36)

2. Since the activity of customs agent is an economic activity and customs agents must therefore be regarded as undertakings within the meaning of Article 85 (now Article 81 EC), a professional organisation comprising the representatives of the profession must be regarded as an association of undertakings within the meaning of that article and its application cannot be precluded by its public-law status.

(see paras 39, 55-56)

Moreover, since under national law the members of such an organisation can-

not be characterised as independent experts and are not required, under the law, to set tariffs taking into account the general interest and the interests of undertakings in other sectors or users of the services in question as well as the interests of the undertakings or associations of undertakings which have appointed them, the decisions under which that organisation establishes the tariffs of professional services must be regarded not as State decisions by means of which that body performs public functions but as decisions of an association of undertakings capable of coming within the scope of Article 85(1) of the Treaty.

3. Articles 85 and 86 of the EC Treaty (now Articles 81 and 82 EC) apply only to anti-competitive conduct engaged in by undertakings on their own initiative. If anti-competitive conduct is required of undertakings by

national legislation or if the latter creates a legal framework which itself eliminates any possibility of competitive activity on their part, Articles 85 and 86 do not apply. In such a situation, the restriction on competition is not attributable, as those provisions implicitly require, to the autonomous conduct of the undertakings. However, Articles 85 and 86 may apply if it is found that the national legislation does not preclude undertakings from engaging in autonomous conduct which prevents, restricts or distorts competition. Moreover, the possibility of excluding specific anti-competitive conduct from the scope of Article 85(1), on the ground that it was required of the undertakings in question by existing national legislation or that any possibility of competitive activity on their part has been eliminated, has been applied restrictively by the Community judicature.

necessarily to be taken into account in establishing the tariff; nor does the national legislation define the criteria on the basis of which that professional organisation is to draw up the tariff.

To the extent to which such an organisation has room for manoeuvre in performing the obligations imposed on it by the national legislation within which it could and ought to have acted in such a way as not to restrict the existing level of competition, the restrictive effects on competition resulting from a tariff set by it may originate in its conduct.

(see paras 58-62, 72)

In that connection, even though national legislation, which requires a professional organisation comprising all the representatives of customs agents to adopt a uniform and mandatory tariff, imposes major limitations on competition and makes it difficult in practice for there to be real competition in terms of prices between customs agents, it does not as such preclude the continued existence of a certain amount of competition capable of being prevented, restricted or distorted by the autonomous activity of customs agents, inasmuch as it does not lay down specific price levels or ceilings

4. The decisions by which a professional organisation comprising all the representatives of the customs agents of a Member State sets a uniform, compulsory tariff for all customs agents are capable of affecting intra-Community trade, even since attainment of the single market, because various types of import or export operations within the Community may still require customs formalities to be carried out.

(see paras 81, 83)