

JUDGMENT OF THE COURT  
21 FEBRUARY 1973 <sup>1</sup>

Europemballage Corporation and Continental Can Company Inc.  
v Commission of the European Communities

Case 6/72

S u m m a r y

1. *Competition — Community rules — Application — Hearing of interested parties — Statement of objections — Obligations of the Commission (Regulation No 99/63/EEC of the Commission, Article 4)*
2. *Acts of an Institution — Notification — Meaning (EEC Treaty, Article 191)*
3. *EEC — Language rules — Documents addressed by the Institutions — Addressee — Registered office in a third country — Links with a Member State — Language of that state — Official language (Regulation No 1/58 of the Council, Article 3)*
4. *Competition — Community rules — Subsidiary — Distinct legal personality — Parent company — Liability (EEC Treaty, Articles 85, 86)*
5. *Competition — Community rules — Territorial application — Criteria (EEC Treaty, Articles 85, 86)*
6. *Competition — Undertakings — Measures having an effect on the market — Measures of a structural nature*
7. *Competition — Article 3 (f) — Legal force*
8. *Competition — Article 3 (f) — Scope*
9. *Competition — Permissible restrictions — Limits — Articles 2 and 3*
10. *Competition — Articles 86 — Interpretation*
11. *Competition — Community rules — Relationship between Articles 85 and 86 — Object identical*
12. *Competition — Dominant position — Abuse — Meaning (EEC Treaty, Article 86)*

1 — Language of the Case: German.

13. *Competition — Dominant position — Abuse — Link of causality not necessary for the prohibition*
14. *Competition — Relevant market — Definition*
15. *Competition — Relevant market — Definition — Dominant position on such market — Condition of its existence*

1. In the statement of objections in the decision taken in application of the Community rules on competition the Commission must set out in a clear, even if concise, manner the essential facts on which the decision is based; it is not however obliged to refute all the arguments adduced during the administrative proceedings.
2. A decision is properly notified within the meaning of the Treaty if it reaches the addressee and puts the latter in a position to take cognisance of it.
3. If a legal person has its registered office in a third country the choice of official language in which the decision is addressed to it must take account of the relations it has within the Common Market with a Member State of the Community.
4. Recognition that a subsidiary has its own legal personality does not suffice to exclude the possibility that its conduct might be attributed to the parent company. This is true in those cases particularly where the subsidiary company does not determine its market behaviour autonomously but in essentials follows directives of the parent company.
5. Community law is applicable to a transaction which influences market conditions within the Community irrespective of the question whether the business in question is established within the territory of one of the Member States of the Community.
6. The distinction between measures which concern the structure of the undertaking and practices which affect the market is not decisive, for any structural measure may influence market conditions if it increases the size and the economic power of the undertaking.
7. The argument that Article 3 (f) merely contains a general programme devoid of legal effect ignores the fact that Article 3 considers the pursuit of the objectives which it lays down to be indispensable for the achievement of the Community's tasks.
8. By providing for the institution of a system ensuring that competition in the Common Market is not distorted, Article 3 (f) requires *a fortiori* that competition must not be eliminated.
9. The restraints on competition which the Treaty allows under certain conditions because of the need to harmonize the various objectives of the Treaty are limited by the requirements of Articles 2 and 3. Going beyond this limit involves the risks that the weakening of competition would conflict with the aims of the Common Market.
10. The spirit, general scheme and wording of Article 86 as well as the system and objectives of the Treaty must all be taken into account. Problems of this kind cannot be solved by comparing this Article with certain provisions of the ECSC Treaty.

11. Articles 85 and 86 seek to achieve the same aim on different levels, viz. the maintenance of effective competition within the Common Market. The restraint of competition which is prohibited if it is the result of behaviour falling under Article 85 cannot become permissible by the fact that such behaviour succeeds under the influence of a dominant undertaking and results in the merger of the undertakings concerned.
12. The list of abuses contained in Article 86 of the Treaty is not an exhaustive enumeration of the abuses of a dominant position prohibited by the Treaty.  
 Article 86 is not only aimed at practices which may cause damage to consumers directly, but also at those which are detrimental to them through their impact on an effective competition structure such as is mentioned in Article 3 (f) of the Treaty. Abuse may therefore occur if an undertaking in a dominant position strengthens such position in such a way that the degree of dominance reached substantially fetters competition, i.e. that only undertakings remain in the market whose behaviour depends on the dominant one.  
 If it can, irrespective of any fault, be regarded as an abuse if an undertaking holds a position so dominant that the objectives of the Treaty are circumvented by an alteration to the supply structure which seriously endangers the consumer's freedom of action in the market, such a case necessarily exists if practically all competition is eliminated.
13. The question of the link of causality between the dominant position and its abuse is of no consequence, for the strengthening of the position of an undertaking may be an abuse and prohibited under Article 86 of the Treaty regardless of the means and procedure by which it is achieved, if it has the effect of substantially fettering competition.
14. The definition of the relevant market is of essential significance, for the possibilities of competition can only be judged in relation to those characteristics of the products in question by virtue of which those products are particularly apt to satisfy an inelastic need and are only to a limited extent interchangeable with other products. In order to be regarded as constituting a distinct market, the products in question must be individualized not only by the mere fact that they are used for packing certain products, but by particular characteristics of production which make them specifically suitable for this purpose.
15. A dominant position on the market for light metal containers for meat and fish cannot be decisive as long as it has not been proved that competitors from other sectors of the market for light metal containers are not in a position to enter this market by a simple adaptation, with sufficient strength to create a serious counterweight.

In Case 6/72

EUROPEMBALLAGE CORPORATION, Brussels (Belgium), and CONTINENTAL CAN COMPANY INC., New York (USA), represented by Alfred Gleiss, Helmuth Lutz, Christian Hootz, Martin Hirsch and Partners, of the Stuttgart Bar, and Jean Loyrette, Advocate at the Court of Paris, having chosen their address for