

Case C-323/93

Société Civile Agricole du Centre d'Insémination de la Crespelle
v
Coopérative d'Élevage et d'Insémination Artificielle
du Département de la Mayenne

(Reference for a preliminary ruling
from the French Cour de Cassation)

(Artificial bovine insemination —
Geographical monopoly)

Opinion of Advocate General Gulmann delivered on 4 May 1994 I - 5080
Judgment of the Court, 5 October 1994 I - 5097

Summary of the Judgment

1. *Competition — Public undertakings and undertakings to which Member States grant special or exclusive rights — Artificial insemination of bovine animals — Geographical monopoly — Dominant position — Abuse arising from national provisions — None — Permissible (EEC Treaty, Arts 86 and 90(1))*

2. *Competition — Dominant position — Abuse — Undertaking enjoying a statutory monopoly — Artificial insemination of bovine animals — Additional costs arising from the supply of semen from other Member States passed on to users — Assessment criteria*
(EEC Treaty, Art. 86)

3. *Free movement of goods — Exceptions — Purpose — Existence of directives on the approximation of legislation — Effects*
(EEC Treaty, Arts 30 and 36)

4. *Free movement of goods — Exceptions — Protection of animal health — Obligation on importers of bovine semen to deliver the imported product to one of the approved centres for storage and insemination — Permissible*
(EEC Treaty, Arts 30 and 36; Council Directives 77/504 and 87/328)

1. Articles 86 and 90(1) of the Treaty do not preclude a Member State from granting to approved bovine insemination centres certain exclusive rights within a defined area.

The mere creation of a dominant position by the granting of an exclusive right within the meaning of Article 90(1) of the Treaty is not as such incompatible with Article 86 of the Treaty. A Member State contravenes the prohibitions contained in those two provisions only if, in merely exercising the exclusive right, the undertaking in question cannot avoid abusing its dominant position. That is not the case with regard to a national provision which merely allows approved centres enjoying a statutory monopoly to require breeders

who request the centres to provide them with semen from other production centres to pay the additional costs entailed by that choice. Although it leaves to the insemination centres the task of calculating those costs, such a provision does not lead the centres to charge disproportionate costs and thereby abuse their dominant position.

2. Article 86 of the Treaty must be interpreted as not precluding insemination centres which alone are authorized to operate within a defined area from charging additional costs to users who request them to supply semen from production centres in other Member States, provided that those costs were actually incurred by

the insemination centres in meeting the requests of those users.

in question, provided that the restrictions on intra-Community trade are in proportion to the aim in view.

3. Article 36 of the Treaty provides that the prohibition of restrictions on imports is not to preclude measures of this nature if they are justified on grounds of the protection of health and life of humans and animals. Where, however, in application of Article 100 of the EEC Treaty, Community directives provide for the harmonization of the measures necessary to ensure the protection of animal and human health and establish Community procedures to check that they are observed, reliance on Article 36 is no longer justified. It is, however, necessary that harmonization should be complete, since, if that is not the case, Member States may rely on health grounds in impeding the free movement of the goods

4. In the case where health conditions in intra-Community trade in bovine semen have not yet been fully harmonized at Community level, Articles 30 and 36 of the EEC Treaty, considered together, Article 2 of Directive 77/504 on pure-bred breeding animals of the bovine species and Article 4 of Directive 87/328 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species must be interpreted as not precluding national rules that require economic operators who import semen from a Member State of the Community to deliver it to an approved insemination or production centre.