

JUDGMENT OF THE COURT
6 FEBRUARY 1973¹

SA Brasserie de Haecht
v the spouses Wilkin-Janssen
(preliminary ruling requested by Tribunal de Commerce de Liège)

'Haecht II'

Case 48/72

S u m m a r y

1. *Agreements prior and subsequent to Regulation No 17 — Notification — Effects — Prohibition — Competence of national court*
(*Regulation of the Council No 17, Arts. 4, 5, 9*)
2. *Agreements — Competence of the Commission — Exercise — Meaning*
(*Regulation of the Council No 17, Art. 9*)
3. *Agreements — Standard contract — Notification — Effect*
(*EEC Treaty, Art. 85*)
4. *Agreements — Prohibition — Nullity — Effects*
(*EEC Treaty, Art. 85*)

1. When an agreement prior to the implementation of Article 85 by Regulation No 17 has been notified in accordance with the provisions of that regulation, the general principle of contractual certainty requires that a court can only declare the agreement to be void after the Commission has given its decision under that regulation.

Notifications in accordance with the provisions of Article 4 of Regulation No 17 in respect of agreements entered into after the application of Article 85 by this regulation do not have suspensive effect.

The court, which, by virtue of the principle of legal certainty, must take into account, in applying the

prohibitions of Article 85, any delay by the Commission in exercising its powers, has however an obligation to decide on the claims of interested parties who invoke the automatic nullity.

These considerations apply equally to agreements exempted from notification, such exemption being merely an inconclusive indication that the agreements concerned are generally less harmful to the smooth functioning of the Common Market.

2. The initiation of a procedure within the meaning of Article 9 of Regulation No 17 implies an authoritative act of the Commission, evidencing its intention of taking a decision under Articles 2, 3 or 6. It

1 — Language of the Case: French.

- follows therefore that the simple acknowledgment of a request for a negative clearance or of notification for the purposes of obtaining exemption under Article 85 (3) of the Treaty cannot be considered as initiating a procedure under Articles 2, 3 or 6 of Regulation No 17.
3. Due notification of a standard contract is to be considered as due notification of all contracts in the same terms, even prior ones, entered into by the same undertaking.
 4. A declaration of nullity under Article 85 (2) is of retroactive effect.

In Case 48/72

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Commerce (Commercial Court) of Liège for a preliminary ruling in the action pending before that court between

SA BRASSERIE DE HAECHT, whose registered office is situated at Boortmeerbeek

and

the spouses WILKIN-JANSSEN, both resident at Esneux,

on the interpretation of Article 85 of the EEC Treaty and Articles 2, 3, 4, 5, 6 and 9 of Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the EEC Treaty, OJ 1972, pp. 204/62 et seq.,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur) and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following