

**Judgment of the Court (Third Chamber) of 6 March 2008 —  
Commission v Spain**

**(Case C-196/07)**

(Failure of a Member State to fulfil obligations — Competition policy — Concentrations — Failure to comply with obligations imposed by the Commission — E.ON/Endesa)

1. *Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see paras 25, 26)*
2. *Actions for failure to fulfil obligations — Subject-matter of the dispute — Determined by the reasoned opinion — Time-limit communicated to the Member State — Default subsequently remedied — Interest in continuing the proceedings — Possible liability of the Member State (Art. 226 EC) (see paras 27, 28)*
3. *Actions for failure to fulfil obligations — Failure to comply with a Commission decision relating to a concentration — Defences — Absolute impossibility of implementation — Criteria for assessment — Difficulties in implementing — Obligation on the Commission and the Member State to cooperate in seeking a solution consistent with the Treaty (Arts 10 EC and 226 EC) (see para. 30)*
4. *Actions for failure to fulfil obligations — Failure to comply with a Commission decision relating to a concentration — Defences — Legality of the decision called in question — Inadmissibility — Limits — Non-existent measure (Arts 226 EC, 227 EC, 230 EC and 232 EC) (see paras 34-38)*

**Re:**

Failure of a Member State to fulfil obligations — Failure to comply with Article 2 of Commission Decision of 26 September 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006) 4279 final) and Article 2 of Commission Decision of 20 December 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006) 7039 final).

**Operative part**

The Court:

1. declares that by not withdrawing:
  - the conditions 1 to 6, 8 and 17 imposed by the decision of the National Energy Committee which were declared incompatible with Community law by Article 1 of the Commission Decision of 26 September 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006) 4279 final), and
  - conditions 1, 10, 11 and 15, as amended, imposed by decision of the Ministry of Industry, Tourism and Trade which were declared incompatible with Community law by Article 1 of the Commission Decision of 20 December 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006) 7039 final),

the Kingdom of Spain has failed to fulfil its obligations under Article 2 of each of those decisions;

2. Orders the Kingdom of Spain to pay the costs.