

The applicants submit that, in the consultation procedure, the Commission failed to take any account of the comments on the abovementioned publications made by the sectors concerned.

First plea in law: lack of competence/ *ultra vires*/ breach by the Commission of essential procedural requirements:

With regard to vertical agreements, Articles 2, 3, 4 and 5 of the contested regulation introduce 'a *posteriori* control'. This control has consequences solely for the future. In addition, abuses attributable to economic dependence are not taken into consideration.

The abolition of the automatic nullity of agreements prohibited under Article 81 EC constitutes an infringement of the Treaty. The new rules create conditions under which the entire free market can, with impunity, be restricted to approved dealers and supplies to non-approved dealers can be excluded.

Second plea in law: the consultations which preceded the adoption of the regulation were not conducted in a manner consistent with the spirit of the Treaty:

The new rules have been presented by the Commission as constituting no more than a modernisation of procedures, whereas the spirit, if not the letter, of the Treaty has been ignored. The scope of the modernisation programme has, moreover, been considered only from the point of view of facilitating the tasks of the European Commission.

Action brought on 17 March 2000 by Compagnia Portuale Pietro Chiesa v Commission of the European Communities

(Case T-59/00)

(2000/C 149/72)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance on 17 March 2000 by Compagnia Portuale Pietro Chiesa, represented by Giuseppe Michele Giacomini and Barbara Della Barile, of the Genoa Bar.

The applicant claims that the Court of First Instance should:

- Annul the letter of 22 December 1999, reference D17587, of the European Commission, Competition DG;

- Order the Commission to pay the costs.

Pleas in law and main arguments

The present proceedings are directed against the final decision contained in the letter of 22 December 1999, reference D17587, in which the Commission rejected complaint No IV/37332 Compagnia Portuale Pietro Chiesa v Italian Republic, Autorità Portuale del Porto di Genova and Compagnia Unica Lavoratori Merci Varie (C.U.L.M.V.), relating to an infringement of Article 86 of the EC Treaty in conjunction with Article 82 thereof, deriving from an alleged abuse by C.U.L.M.V. of its dominant position, resulting from its *de facto* monopoly in the Port of Genoa as regards the conduct of port operations and the supply of port labour.

In support of its claim, the applicant alleges, first, a failure to undertake investigative measures, in so far as the defendant did not commence proceedings under Council Regulation No 17/62 either against C.U.L.M.V. or against the Genoa Port Authority. The applicant alleges in that regard that the contested practices derive:

- From the conduct of C.U.L.M.V. which, carrying on business simultaneously as a terminal operator and an undertaking supplying labour, hampers access to those markets by competitors. The Port Authority is aware of this situation.
- From administrative measures and/or failure to act by the Port Authority, which the applicant criticises as being contrary to the Community competition rules.

The applicant also alleges breach of the principle *audi alteram partem* and submits that the statement of the reasons for the contested decision is contradictory.

Action brought on 16 March 2000 by Continental and Overseas Investments NV against the Commission of the European Communities

(Case T-64/00)

(2000/C 149/73)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 16 March 2000 by Continental and Overseas Investments NV (formerly 'Jubertrade NV'), established in Antwerp, represented by Y. Van Gerven and J. Bernaerts, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, of the Luxembourg Bar, 11 Rue Goethe.