

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 28 February 1991

in Case C-234/89 (reference for a preliminary ruling by the Oberlandesgericht Frankfurt am Main): Stergios Delimitis v. Henninger Bräu AG ⁽¹⁾

(Competition — Beer-supply agreements — Effects on intra-Community trade — Block-exemption — Jurisdiction of the national courts)

(91/C 86/05)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-234/89: reference to the Court under Article 177 of the EEC Treaty by the Oberlandesgericht [Higher Regional Court] Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between Stergios Delimitis and Henninger Bräu AG — on the interpretation of Article 85 of the EEC Treaty and Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive purchasing agreements ⁽²⁾ — the Court, composed of O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and M. Diez de Velasco, Presidents of Chambers, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges; W. Van Gerven, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 28 February 1991, the operative part of which is as follows:

1. *A beer-supply agreement is prohibited under Article 85 (1) of the EEC Treaty if two cumulative conditions are satisfied. In the first place, access to the national market for the distribution of beer on premises for the sale and consumption of drinks must, in the economic and legal context of the agreement at issue, be difficult for competitors who might establish themselves in that market or enlarge their share of it. The fact that, in that market, the agreement at issue is one of a number of similar agreements having a cumulative effect on competition is merely one of several factors for determining whether access to the market is indeed difficult. In the second place, the agreement at issue must contribute significantly to the obstructive effect of the contracts viewed as*

a whole in their economic and legal context. The scale of the contributory rôle played by the individual agreement depends on the position of the contracting parties in the market in question and on the duration of the agreement.

2. *A beer-supply agreement which permits the reseller to buy beer from other Member States is not liable to affect trade between those States, provided that the permission corresponds to a real possibility that a national or foreign supplier will supply the reseller with beers originating in other Member States.*
3. *The conditions governing the application of Article 6 (1) of Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive purchasing agreements are not satisfied if the drinks covered by the exclusive purchasing terms are not listed in writing in the agreement itself but are stated to be those set out in the price-list used by the brewery or its subsidiaries, as amended from time to time.*
4. *The block-exemption under Regulation (EEC) No 1984/83 does not apply to an agreement for supplying beer for premises used for the sale and consumption of drinks leased to the reseller or otherwise made available to him by the supplier, when that agreement includes an undertaking to purchase drinks other than beer, unless it meets the requirement laid down in Article 8 (2) (b) of the Regulation.*
5. *A national court may not extend the scope of Regulation (EEC) No 1984/83 to beer-supply agreements which do not explicitly meet the conditions for exemption contained in it. Similarly, the national court may not by virtue of Article 85 (3) declare Article 85 (1) of the Treaty to be inapplicable to such an agreement. It may, however, declare the agreement void under Article 85 (2) if it is convinced that the agreement could not be the subject of a decision exempting it under Article 85 (3).*

⁽¹⁾ OJ No C 238, 16. 9. 1989.

⁽²⁾ OJ No L 173, 30. 6. 1983, p. 5.