NATIONAL LAW (MATCHES): THE CIF / AGCM CASE

Subject: National law

Industry: Matches
(Implications for other industries)

Parties: Consorzio Industrie Fiammiferi (CIF)
Autorità Garante della Concorrenza e del Mercato (AGCM)

Source: Judgment of the Court of Justice of the European Communities, dated 9 September 2003, in Case C-198/01 (Consorzio Industrie Fiammiferi v Autorità Garante della Concorrenza e del Mercato)

(Note. Where undertakings engage in conduct contrary to Article 81(1) of the EC Treaty and where that conduct is required or facilitated by national legislation which legitimises or reinforces the effects of the conduct, a national competition authority, one of whose responsibilities is to ensure that Article 81 is observed, has a duty to "disapply" - that is, disregard - the national legislation. The report below consists of a selection of key paragraphs and of the ruling itself.)

1. By order of 24 January 2001, received at the Court on 11 May 2001, the Regional Administrative Court, Lazio, referred to the Court for a preliminary ruling under Article 234 of the EC Treaty two questions on the interpretation of Article 81.

2. Those questions have arisen in proceedings by which the Consorzio Industrie Fiammiferi, the Italian consortium of domestic match manufacturers (the CIF), challenges a decision of the Autorità Garante della Concorrenza e del Mercato, the Italian national competition authority (the Authority) of 13 July 2000, which declared the legislation establishing and governing the CIF contrary to Articles 10 and 81 of the EC Treaty, found that the CIF and the undertakings which were members of it (the member undertakings) had infringed Article 81 through the allocation of production quotas and ordered them to terminate the infringements found.

45. ... although Articles 81 and 82 of the EC Treaty are, in themselves, concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, those articles, read in conjunction with Article 10, which lays down a duty to cooperate, none the less require the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings (see Case 13/77, *GB-Inno-BM*, paragraph 31; Case 267/86, *Van Eycke*, paragraph 16; Case C-185/91, *Reiff*, paragraph 14; Case C-153/93, *Delta Schiffahrts- und Speditionsgesellschaft*, paragraph 14; Case C-96/94, *Centro Servizi Spediporto*, paragraph 20; and Case C-35/99, *Arduino*, paragraph 34).

46. The Court has held in particular that Articles 10 and 81 are infringed where a Member State requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 81 or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (see *Van Eycke*, paragraph 16; *Reiff*, paragraph 14; *Delta Schiffahrts- und Speditionsgesellschaft*, paragraph 14; *Centro Servizi Spediporto*, paragraph 21; and *Arduino*, paragraph 35).

47. Moreover, since the Treaty on European Union came into force, the EC Treaty has expressly provided that in the context of their economic policy the activities of the Member States must observe the principle of an open market economy with free competition (see Articles 4(1) and 98).

48. It is appropriate to bear in mind, second, that in accordance with settled case law the primacy of Community law requires any provision of national law which contravenes a Community rule to be disapplied, regardless of whether it was adopted before or after that rule.

49. The duty to disapply national legislation which contravenes Community law applies not only to national courts but also to all organs of the State, including administrative authorities (see, to that effect, Case 103/88, *Fratelli Costanzo*, paragraph 31), which entails, if the circumstances so require, the obligation to take all appropriate measures to enable Community law to be fully applied (see Case 48/71, *Commission* v *Italy*, paragraph 7).

The Court hereby rules: 1. Where undertakings engage in conduct contrary to Article 81(1) EC and where that conduct is required or facilitated by national legislation which legitimises or reinforces the effects of the conduct, specifically with regard to price-fixing or market-sharing arrangements, a national competition authority, one of whose responsibilities is to ensure that Article 81 EC is observed: has a duty to disapply the national legislation; may not impose penalties in respect of past conduct on the undertakings concerned when the conduct was required by the national legislation; may impose penalties on the undertakings concerned in respect of conduct subsequent to the decision to disapply the national legislation, once the decision has become definitive in their regard; and may impose penalties on the undertakings concerned in respect of past conduct where the conduct was merely facilitated or promoted by the national legislation, whilst taking due account of the specific features of the legislative framework in which the undertakings acted.
2. It is for the referring court to assess whether national legislation such as that at issue in the main proceedings, under which competence to fix the retail selling prices of a product is delegated to a ministry and power to allocate production between undertakings is entrusted to a consortium to which the relevant producers are obliged to belong, may be regarded, for the purposes of Article 81(1) EC, as precluding those undertakings from engaging in autonomous conduct which remains capable of preventing, restricting or distorting competition. ■