

European Judicial Training Network

Antitrust Damages, European Competition Law and Judges: Private and Public Enforcement. Articles 101, 102 and 107 of TFEU and National Judges (REFJ1224)

Barcelona: 20th, 21th and 22th June 2012

Room 9-10
Spanish Judicial School
Carretera de Vallvidrera 43-45
08017-Barcelona

Director of the course
David Ordóñez Solís
Doctor of Law
Senior Judge. Administrative
Court Number 4 of Oviedo

Thursday, 21th June 2012

11:30 h. Motorway Service Stations Saga before Spanish Civil Courts

Mr Francisco Marín Castán.
Senior judge
Civil Supreme Court (Spain)

Francisco Marín Castán

Address: Actions of responsibility for anti-competitive damages: the saga of service stations in Spanish civil courts.

SUMMARY

At the beginning of the decade of the year 2000 the Civil Section of the Supreme Court considered that it was competent to rule on the nullity of private contracts between those responsible for the running of service stations and fuel suppliers for the infringement of the community law on competition. It was previously considered to be an administrative matter that did not correspond to civil jurisdiction, which in Spain extends to mercantile matters.

Subsequently, this European law put an end to any doubt regarding the possibility of courts dealing with private law to try these cases, and in Spain there have been many conflicts brought before civil and mercantile law courts between those responsible for the running of service stations and fuel suppliers.

This has given rise, on the one hand, to the posing of prejudicial questions by Spanish courts of appeal before the CJEU; and, on the other hand, to the Civil Section of the Supreme Court passing a large number of sentences on the possible nullity of exclusive supply contracts, which on some occasions are presented in a simple form but on other occasions appear in connection to contracts where property or other right in relation to the service station is transferred to the supplier.

The jurisprudence of the Civil Section of the Supreme Court has been interpreting Regulation (EEC) No. 1984/83 and Regulation (EEC) No. 2790/99 depending on the doctrine established by the CJEU.

Thus, it has had to decide on the condition of economically-independent operator on the part of the party running the service station, on the clauses relating to the sale price to the public, on the contracts included in commission decisions approving commitments of the *Repsol* oil company or, lastly, on the *de minimis* regulation.

The majority of the sentences of the Civil Section of the Spanish Supreme Court have been unfavourable towards requests for nullity from those responsible for the running of service stations, for reasons based not only on Union Law but also on general principles relating to contracts.

In short, in many cases those responsible for the running of service stations invoke Union Law in order to release themselves from contracts when they believe that they can enter into contracts under better conditions with other suppliers, and cases have even been judged where the intention has appeared to be a freedom to raise prices above the maximum levels allowed by the supplier, that is, in prejudice to consumers.