



SUPREME ADMINISTRATIVE COURT

PROCESS: 028316

REDACTOR: AZEVEDO MOREIRA

DATE: 10/02/1999, APPENDIX 04/05/2001

THEMATIC: STATE AIDS

LEGISLATION AT ISSUE: DECREE-LAW NO. 422/83 OF 3RD DECEMBER (PRESENT LAW NO. 19/2012 OF 8 MAY); ARTICLES 85, 87, 90 AND 92 OF THE EEC TREATY (PRESENT ARTICLES 101, 103, 106 AND 108 OF TFEU)

DECISION SUMMARY:

Vila Nova de Gaia's Fortified Douro Wine Depot's "private" nature, that is to say, its exclusive assignment to store and explore this kind of wine as established in article 1 of Decree no. 12.007, did not change because of subsequent legislation coming into effect, namely Decree-Laws nos. 422/83 of 3 December and 86/86 of 7 May and the Rome Treaty.

PROCEEDINGS' RELEVANCE IN COMPETITION LAW ENFORCEMENT:

Butler Nephew, Plaintiff, now Appellant, had requested the Defendant, Secretary of State for Food, to assess the absence of any obstacle in the usage its own facilities in Vila Nova de Gaia's Fortified Douro Wine Depot concerning storing, bottling and commercialization of grapeseed wine.

The application was dismissed on grounds that such space had been legally established in Vila Nova de Gaia solely and exclusively for Douro wine to store and export wine from the Douro demarcated region, according to Decree no. 12 007 of 31 July of 1926.

The Plaintiff filed an appeal arguing that, *inter alia*, maintaining the interdiction on installing grapeseed wine warehouses in Vila Nova de Gaia Depot, given its private and unique nature, was illegal, infringing not only national competition law (specifically, Decree-Law no. 422/83 of 3 of December), but also EU competition law (namely, articles 85, 87, 90 and 92 of the Rome Treaty).

The Appellant claimed the existence of an imbalanced situation given the fact that other undertakings (which were already grapeseed wine commercial facilities owners inside the Depot by the time Decree no. 12 007 was issued) had been granted the right to continue commercializing their products there, under the special regime set out by article 2 of Decree no. 16 330.

Even though the Supreme Administrative Court acknowledged that a series of legal amendments had caused the unique nature of Vila Nova de Gaia's Depot to end, it also concluded that its private nature had remained intact, contrarily to what had been argued by the Appellant.

The Court explained that Decree-Law no. 422/83 did not preclude the existence of an area allocated to a certain type of commerce or industry – the Depot in hand is an example of that, as set out by Decree no 12 007. It added that such interdiction, created in respect of public interest,

did not jeopardize the principle of free competition, since all undertakings were given the same conditions to develop their economic operations.

Therefore, the Supreme Administrative Court concluded that neither national, nor EU competition law was applicable, since its application “(...) would only impose, in a logical reasoning, the elimination of the privilege under Decree no. 16 330 that originated such inequality and never a tacit revocation or expiration of the private regime as the appellant intended.” As a matter of fact, “(...) *considering the facts description presented by the appellant, the competition freedom was caused not by the private nor the exclusivity regime legally invoked in the judicially contested order, but by the opposed normative exemption to which that act is completely unaware of*”.

In conclusion, whereas article 85 of the Rome Treaty was simply not applicable, the Court decided that, regarding article 90, the law in question did not grant any kind of exclusive or special rights to any undertaking since the Depot is solely an area in which any undertaking may develop its economic activity, provided that all the legal requirements are fulfilled by the undertaking in respect of the Depot’s specific purpose.