



## Judgment of the Supreme Court of Justice (Supremo Tribunal de Justiça)

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**PROCESS:** 04B4031

**REDACTOR:** ARAÚJO BARROS

**DATE:** 13/01/2005

**THEMATIC:** CARTELS | AGREEMENTS, CONCERTED PRACTICES AND DECISIONS BY ASSOCIATIONS OF UNDERTAKINGS

**LEGISLATION AT ISSUE:** DECREE 371/93 OF 29 OCTOBER (REVOKED AND REPLACED BY LAW 18/2003 OF 11 JUNE, LATER REVOKED AND REPLACED BY LAW 19/2012 OF 8 MAY) AND REGULATION 1984/83

### DECISION SUMMARY:

1. According to the adversarial principle, established in Article 3 (3) of the Civil Procedural Code, surprise-decisions are not admitted, *i.e.*, a decision based on an argument that was not brought up by either party on the process.
2. The violation of the adversarial principle set in the general clause about procedural voids (Article 201 (1) Civil Procedural Code) is not a void that the Court can establish on its own initiative. Therefore, it is settled as remedied if it is not brought up by an interested party within 10 days after an intervention that is relevant for it in the proceedings (Article 203 (1), 205 (1) of the Civil Procedural Code).
3. According to Article 713 (5) of the Civil Procedural Code, the Appeal Court cannot, by merely referring to the arguments made on the first instance decision, expect to distance itself from its constitutional duty to substantiate its decisions.
4. Therefore, the Appeal Court's decision cannot substantiate itself on the appealed decision when there are either arguments referred for the first time, there was no opportunity for the party to bring them up earlier, or if they result from the application of the appealed decision.
5. The Appeal Court's decision is considered void on the basis of omission of pronouncement (Article 668 (1) (d) Civil Procedural Code).

### PROCEEDINGS' RELEVANCE IN COMPETITION LAW ENFORCEMENT:

The Plaintiff, Central de Cervejas, sued its retailer (relation based on a commercial contract) for the violation of the exclusivity clause and of the minimum purchase clause agreed upon.

In the first stage of the proceedings, the seller called upon violation of Article 101 TFEU and a block exemption regulation (Regulation 1984/83). The Court considered that the contract was void not under European law, but under national law.

In the Appeal Court's decision, the first instance's decision was validated.

In its turn, the Supreme Judicial Court deliberated that not having considered the questions brought up by the appellant, the Appeal Court's decision did not pronounce about the relevant questions, therefore violating Article 660 (2) of the Civil Procedural Code.



In this particular case, the Supreme Court of Justice justifies the existence of omission of pronouncement based on the following claim: in contracts such as this, taking into account the small impact on the relevant market, there is no possibility of affecting competition rules and, as such, there is no irregularity that can justify the void of an exclusivity clause as agreed in the contract in discussion. This exclusivity clause is in no position to prevent, restrain or forge competition in the relevant market.

Therefore, the Supreme Court of Justice overwrote the appealed decision and determined that the proceedings ought to move forward in Lisbon's Court of Appeal, if possible with the same judges that could redact a new decision considering their knowledge on the arguments already risen by the parties that were not dwelled upon.