



The existence of similar contractual conditions may imply a restriction on competition

Judgment of the Supreme Court, Contentious-Administrative Chamber, of 13 November 2015

Background

The judgment we discuss is the result of a sanctioning procedure brought by the Spanish Competition Authority (CNMC) against several cinema distributors.

The CNMC, in a ruling of 10 May 2006, and the Spanish National High Court, in a judgment of 5 June 2013, declared that there had been a breach of competition law as the sanctioned distributors had established uniform commercial policies.

They considered it proven that the conditions being offered to exhibitors were the same and that there was a database shared among the distributors from which it could be inferred that there was an exchange of information.

The Supreme Court confirms the position taken by the court of instance and determines that Sony Pictures Releasing de España, S.A. (the only one of the sanctioned companies that took the case to the Supreme Court) effectively participated in anti-competitive practices.

Doctrine on indirect or presumptive evidence

The company defended itself by claiming that all of the facts that were considered proven were inferred from circumstantial evidence, and maintained that the doctrine of indirect evidence was erroneously applied, and that

provisions of Spanish and community law had been breached. In order to defend its position, Sony argued that the relevant market was highly competitive and had a large trading volume, which caused the standardisation of commercial conditions, and that the mere existence of a database did not necessarily prove that there had been an exchange of information.

In reply to said line of reasoning, the Court recalls the doctrine on indirect evidence, according to which the right to the presumption of innocence does not impede the possible sanctioning of anti-competitive behaviours on the basis of circumstantial evidence, as long as the underlying facts have been proven and that the reasoning that leads to the conclusion that a breach has been committed has been provided. The Court reiterates that this reasoning must be logical, coherent and rational, in such a way that the proven circumstantial evidence can only be explained as a necessary element of the breach.

The Court thus concludes that the existence of an anti-competitive behaviour can be reasonably inferred from the factual elements of the case and that the fact that the distribution occurs in a highly competitive market can justify a similarity in the conditions, but not their practical identity.