

Art. 101 para. 1 TFEU - decisions


- A. Associations of Undertakings.
- B. Decisions by Associations of Undertakings.
- C. Conclusion

A. Associations of Undertakings.

1

According to Art. 101 para. 1 of TFEU decisions made by association of undertakings can be anti-competitive and can fall under the prohibition laid down in the Art. 101 para. 1 TFEU.


Treaty does not define the meaning of association of undertakings itself, however in the Opinion of Advocate General, case *J.C.J. Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*

 **Unbekanntes Makro: 'footnote'**

the association of undertakings is defined as "association that consists of undertakings of the same general type and makes itself responsible for representing and defending their common interests vis-à-vis other economic operators, government bodies and the public in general." From this definition we can say that association of undertakings can be trade associations, agricultural cooperatives, association of lawyers.

2

Since associations of undertakings usually comprise many undertakings, establishing their rules of behavior applicable to their members, which may affect the state of competition, such as agreeing on pricing policies of their members, and may even result in the elimination of competition in a substantial part of the market. Thus, Case (C-309/99), is defined the concept of association of the undertakings "... it seeks to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate their conduct on the market. To ensure that this principle is effective, Art. 85 para. 1 EC-T (now Art. 101 para. 1 TFEU) covers not only direct methods of coordinating conduct between undertakings (agreements and concerted practices) but also institutionalised forms of cooperation, that is to say, situations in which economic operators act through a collective structure or a

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common body." The association of undertakings are only considered to fall under Art. 101 para. 1 TFEU if they make economic decisions or these economic decisions effect competition.

B. Decisions by Associations of Undertakings.


3

A decision made by the association of undertakings must be understood as any initiative, irrespective of its form, which is taken by the association and which has the object or effect of influencing the commercial behavior of its members.

Decisions by association of undertakings can be found in Recommendations, for example in Case *IAZ International Belgium and others v Commission*

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it is mentioned that recommendation by an association, even it has no binding effect on undertakings, will be considered as a decision under Art 101 para. 1 TFEU if the recommendation itself is intended to determine effect on competition or

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market. Similarly in *FENEX* case the Court took account of three factors in concluding that a tariff recommendation was anticompetitive:

- - the common interest of the members of the association in putting the market on a viable footing by means of an increase in premiums,
- - the nature of the recommendation, which, although described as non-binding, laid down in mandatory terms a collective increase in premiums,
- - the statutes of the association, which empowered it to coordinate the activities of its members.

Decisions by Association of Undertakings can also be found in certification schemes, constitutions of associations.

C. Conclusion

3

To summarise, the main idea of existing the 'decisions by association of undertakings' in Art. 101 para. 1 TFEU is to make sure that the effectiveness of the Act will cover not only the agreements between undertakings but it will go broader and cover all the decisions that can be determined by associations which may have effect on competition.



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