

JUDGMENT OF THE COURT
8 NOVEMBER 1983 ¹

**NV IAZ International Belgium and Others
v Commission of the European Communities**

(Competition law — ANSEAU-NAVEWA conformity label)

Joined Cases 96 to 102, 104, 105, 108 and 110/82

1. *Competition — Administrative procedure — Purpose — Grant to the undertakings concerned of the opportunity to bring the practices complained of into line with the rules of the Treaty*
(Regulation No 17 of the Council)
2. *Measures adopted by the institutions — Decision — Decision made public before being notified to the addressees — Factor not affecting the validity of the decision*
3. *Competition — Agreements, decisions and concerted practices — Prohibition — Scope — Recommendation of an association of undertakings — Inclusion — Conditions*
(EEC Treaty, Art. 85 (1))
4. *Competition — Agreements, decisions and concerted practices — Notification — Exemption — Conditions — Agreements not relating either to imports or to exports between Member States — Concept*
(EEC Treaty, Art. 85 (3); Regulation No 17 of the Council, Art. 4 (2))
5. *Measures adopted by the institutions — Statement of reasons — Obligation — Purpose — Scope*
(EEC Treaty, Art. 190)
6. *Competition — Community rules — Infringements — Fines — Infringement committed “intentionally” — Criteria*
(EEC Treaty, Art. 85 (1); Regulation No 17 of the Council, Art. 15 (2))
7. *Competition — Community rules — Infringements — Fines — Determination — Criteria*
(Regulation No 17 of the Council, Art. 15 (2))

¹ — Languages of the Case: Dutch and French.

8. *Competition — Community rules — Infringements — Fines — Individual fixing of the penalty — Criteria — Infringement committed by a number of undertakings — Prior fixing of a maximum aggregate amount of the fines to be imposed — Whether permissible*

(Regulation No 17 of the Council, Art. 15 (2))

9. *Competition — Community rules — Infringements — Fines — Determination — Criteria — Financial situation of the undertaking concerned — Whether to be taken into account — Obligation — None*

(Regulation No 17 of the Council, Art. 15 (2))

1. The purpose of the preliminary administrative procedure is to prepare the way for the Commission's decision concerning the infringement of the competition rules although that procedure also provides the undertakings concerned with an opportunity to bring the practices complained of into line with the rules of the Treaty.

2. The fact that the Commission made a decision public before notifying it to the addressees, however regrettable such conduct might be, does not affect the validity of the decision. Once a decision has been adopted, it cannot be affected by acts subsequent to its adoption.

3. Article 85 (1) of the Treaty applies also to associations of undertakings in so far as their own activities or those of the undertakings affiliated to them are calculated to produce the results which it aims to suppress. A recommendation of an association of undertakings, even if it has no binding effect, cannot escape that article where compliance with the recommendation by the undertakings to which it is addressed has an appreciable influence on competition in the market in question.

4. The condition laid down by Article 4 (2) of Regulation No 17 that an agreement must not relate either to

imports or to exports between Member States if it is to qualify for exemption from notification must be interpreted with reference to the structure of Article 4 and its aim of simplifying administrative procedure, which it pursues by not requiring undertakings to notify agreements which, whilst they may be covered by Article 85 (1) of the Treaty, appear in general, by reason of their special characteristics, to be less harmful from the point of view of the objectives of that provision.

That is not the case where an agreement has as its purpose appreciably to restrict parallel imports into a Member State and thus tends to isolate the national market in a manner which is incompatible with the fundamental principles of the common market.

5. The requirement that a decision adversely affecting a person should state the reasons on which it is based, laid down by Article 190 of the EEC Treaty, is intended to enable the Court to review the legality of the decision and to provide the person concerned with details sufficient to allow him to ascertain whether the decision is well founded or whether it is vitiated by a defect which will allow its legality to be contested. Accordingly, that requirement is

satisfied where the decision refers to the matters of fact and of law on which the legal justification for the measure is based and to the considerations which led to its adoption.

6. If the parties which took part in the drawing-up of an agreement were aware that the agreement as drafted, regard being had to its terms, to the legal and economic context in which it was concluded and to the conduct of the parties, had as its purpose to restrict parallel imports and that it was capable of affecting trade between Member States inasmuch as it was capable of making parallel imports more difficult, if not impossible, they acted deliberately by signing the agreement, whether or not they were aware that, in so doing, they were infringing the prohibition laid down by Article 85 (1) of the Treaty.
7. In assessing the gravity of an infringement regard must be had to a large number of factors, the nature and importance of which vary according to the type of infringement in question and the particular circumstances of the case. Those factors may, depending on the circumstances, include the volume and value of the goods in respect of which the infringement was committed and the size and economic power of the undertaking and, consequently, the influence which the undertaking was able to exert on the market.
8. Where an infringement has been committed by a number of undertakings, the prior fixing of a maximum aggregate amount of the fine, fixed in relation to the seriousness of the danger which the agreement represented to competition and trade in the common market, is compatible with the individual fixing of the penalty.
9. The Commission is not obliged in calculating the amount of the fine to take account of the adverse financial situation of the undertaking concerned. Recognition of such an obligation would be tantamount to conferring an unjustified competitive advantage on undertakings least well adapted to the conditions of the market.

In Joined Cases 96 to 102, 104, 105, 108 and 110/82,

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