

Case C-279/95 P

Langnese-Iglo GmbH

v

Commission of the European Communities

(Competition — Article 85 of the EC Treaty —  
Exclusive purchasing agreements for ice-cream — Comfort letter —  
Prohibition on concluding exclusive agreements in the future)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 13 November 1997 .....	I - 5611
Judgment of the Court (Fifth Chamber), 1 October 1998 .....	I - 5627

Summary of the Judgment

1. *Appeals — Pleas in law — Incorrect assessment of the facts — Inadmissible — Review by the Court of Justice of assessment of evidence — Excluded unless the sense of evidence has been distorted*  
(*EC Treaty, Art. 168a; EC Statute of the Court of Justice, Art. 51, first para.*)
2. *Competition — Agreements, decisions and restrictive practices — Commission decision to close the procedure — Legal nature — Subsequent re-opening of infringement procedure — Consideration of events pre-dating the decision to close the procedure — Conditions*  
(*Council Regulation No 17*)

3. *Competition — Administrative procedure — Cessation of infringements — Commission's power — Prohibition of an undertaking from concluding, in the future, exclusive agreements — Excluded*

(*EC Treaty, Art. 85; Council Regulation No 17, Art. 3*)

1. By virtue of Article 168a of the Treaty and the first paragraph of Article 51 of the Statute of the Court of Justice, an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts.

As regards matters of evidence, it is for the Court of First Instance alone to assess the value which should be attached to the evidence adduced before it, save where the sense of that evidence has been distorted.

2. Having regard to the legal nature of comfort letters, the sending of such a letter, in which the Commission has reserved the right to re-open the procedure in the event of there being any appreciable change affecting certain matters of law or of fact

on which its assessment had been based, cannot entail the consequence that the Commission, when actually re-opening the procedure, would no longer be entitled to take account of a factual situation which existed before the comfort letter was sent but was brought to its notice only later, particularly in connection with a complaint lodged at a later stage.

3. Since Article 3 of Regulation No 17 is to be applied according to the nature of the infringement found, although the Commission may by decision require undertakings and associations of undertakings to bring to an end an infringement of Article 85 of the Treaty deriving from an exclusive purchasing agreement, it may not prohibit the conclusion of any such agreements in the future.