

Case T-56/99

Marlines SA

v

Commission of the European Communities

(Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Price fixing — Proof of participation in a cartel — Duration — Error of assessment as to the facts)

Judgment of the Court of First Instance (Fifth Chamber), 11 December 2003 II - 5228

Summary of the Judgment

1. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Meaning (EC Treaty, Art. 85(1) (now Art. 81(1) EC))*

2. *Competition — Community rules — Undertakings — Infringements of Articles 85 or 86 of the Treaty (now Articles 81 EC and 82 EC) — Evidence — Correspondence between third parties*
(EC Treaty, Arts 85 and 86 (now Arts 81 EC and 82 EC))
3. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Proof of an undertaking's participation — Perception by other undertakings of its importance for establishing a common position*
(EC Treaty, Art. 85(1) (now Art. 81(1) EC))
4. *Competition — Agreements, decisions and concerted practices — Undertaking — Meaning — Economic unit — Attribution of the infringements*
(EC Treaty, Art. 85 (now Art. 81 EC))
5. *Competition — Agreements, decisions and concerted practices — Participation in meetings held by undertakings for an anti-competitive purpose — Sufficient basis for concluding that, if an undertaking has not distanced itself from the decisions taken, it participated in the subsequent arrangements*
(EC Treaty, Art. 85(1) (now Art. 81(1) EC))

1. In order for there to be an agreement within the meaning of Article 85(1) of the Treaty (now Article 81(1) EC), it is sufficient for the undertakings in question to have expressed their joint intention to conduct themselves in the market in a particular way. Such an agreement need be in no particular form, whether written or verbal; nor need it be governed by any particular rules. Communication of an agreement to the parties and its tacit acceptance suffice to prove the existence of an agreement contrary to Article 85 of the Treaty. Even tacit acceptance may, where the person concerned does not

distance itself, be treated as acceptance of and participation in a prohibited agreement.

(see paras 20-21, 30)

2. The Commission may accept as evidence of the conduct of an undertaking, contrary to the competition rules, correspondence exchanged between

third parties; it follows that a document is not deprived of probative value simply because the undertaking against which the complaint has been made is not the addressee of that document. The fact that an undertaking is not mentioned in an inculpatory document does not constitute evidence that it did not participate in a cartel where that is evidenced or corroborated by other documents and where the absence of any reference to it does not throw a different light upon the various pieces of documentary evidence which the Commission relies on to establish its participation in the cartel. Finally, the fact that inculpatory documents were not found at the premises of the undertaking against which complaint has been made does not cast doubt on their probative value.

(see paras 46, 57)

3. Being perceived by its partners as an undertaking whose opinion should be ascertained in order to establish a common position is a factor which tends to prove an undertaking's participation in an agreement contrary to the competition rules.

(see para. 59)

4. Where an agent works for his principal, he can in principle be regarded, for the purposes of applying Article 85 of the Treaty (now Article 81 EC), as an auxiliary organ forming an integral part of the latter's undertaking bound to carry out the principal's instructions and thus, like a commercial employee, forms an economic unit with this undertaking.

(see para. 60)

5. In order to establish the existence of a cartel, the Commission is not obliged to take account of the actual effects of the agreement in question provided that its purpose is to prevent, restrict or distort competition. Moreover, the fact that an undertaking does not abide by the outcome of meetings which it has attended and which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings.

(see para. 61)