

Case C-260/09 P

Activision Blizzard Germany GmbH

v

European Commission

(Appeal — Article 81 EC and Article 53 of the EEA Agreement — Market for Nintendo video games consoles and games cartridges — Limitation of parallel exports in that market — Agreement between a manufacturer and an exclusive distributor — Distribution agreement allowing passive sales — Proof of a concurrence of wills in the absence of direct documentary evidence that passive sales were to be restricted — Standard of proof necessary to establish the existence of a vertical agreement)

Judgment of the Court (First Chamber), 10 February 2011 I - 422

Summary of the Judgment

1. *Appeals — Grounds of appeal — Incorrect assessment of the facts — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the evidence has been distorted*
(Art. 225 EC; Statute of the Court of Justice, Art. 58(1))
2. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Proof of the existence of an agreement*
(Art. 81(1) EC)
3. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Agreement intended to hinder parallel exports*
(Art. 81(1) EC)

4. *Appeals — Grounds of appeal — Inadequate statement of reasons — Reliance by the General Court on implicit reasoning — Whether permissible — Conditions*
 (Art. 225 EC; Statute of the Court of Justice, Arts 36 and 53; Rules of Procedure of the General Court, Art. 81)

1. It is clear from Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice that the Court has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and that the general principles of law and the rules of procedure relating to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value that should be attached to the evidence produced before it. Save where the clear sense of the evidence has been distorted, that appraisal does not, therefore, constitute a point of law subject, as such, to review by the Court of Justice. Furthermore, the distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts and the evidence.

(see paras 51, 53)

of an anti-competitive agreement in the framework of a vertical relationship is, as a matter of principle, no higher than that which is required in the framework of a horizontal relationship. It is indeed true that factors which, in the context of a horizontal relationship, can sometimes suggest the existence of an anti-competitive agreement between competitors may prove inadequate for the purposes of establishing the existence of such an agreement in the framework of a vertical relationship between a manufacturer and a distributor, given that, in such a relationship, a certain measure of contact is lawful. However, the fact none the less remains that, for the purposes of assessing whether there is an illegal agreement, regard must be had to all the relevant factors, as well as to the economic and legal context specific to each case. The question whether it can be inferred from certain evidence that an agreement contrary to Article 81(1) EC has been concluded cannot therefore be addressed in abstract terms, according to whether the relationship involved is vertical or horizontal, with that evidence being considered separately from the context and the other factors characterising the case.

2. The standard of proof required for the purposes of establishing the existence

(see paras 71-72)

3. In order for the General Court to arrive at a finding that an agreement intended to hinder parallel exports and therefore prohibited under Article 81(1) EC has been concluded, it is not necessary in all cases to determine whether a system for monitoring and imposing penalties had been set up.

account which addresses exhaustively, one after the other, all the arguments put forward by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know the reasons for the General Court's decision and provides the Court of Justice with sufficient material for it to exercise its power of review.

(see para. 77)

4. The obligation to state reasons does not require the General Court to provide an

(see para. 84)