not listed among the decisions which, pursuant to Article 19 (1) of Regulation No 99/63/EEC, the Commission cannot take before giving those concerned the opportunity of exercising their right of defence.

In Case 136/79

NATIONAL PANASONIC (UK) LTD, represented by David Vaughan, Barrister of the Inner Temple, and D. F. Gray, Solicitor of Lovell, White and King, with an address for service in Luxembourg at the Chambers of J. C. Wolter, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, John Temple Lang, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission of the European Communities, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission Decision of 22 June 1979 concerning an investigation to be made pursuant to Article 14 (3) of Regulation No 17/62 of the Council,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

National Panasonic (UK) Limited (hereinafter referred to as "Panasonic") a company formed under English law with its registered office in Slough, Berkshire (United Kingdom), is a 100% subsidiary of the Matsushita Electric Trading Company Limited, a company formed under Japanese law which in turn belongs to the Japanese industrial Matsushita group.

Panasonic's company object is the distribution in various countries (the United Kingdom, including the Channel Islands, Ireland and Iceland) of electrical and electronic goods produced by other undertakings of the Matsushita group.

On 27 June 1979 at approximately 10 a.m. two officials of the Commission, duly authorized agents, arrived without prior notice at Panasonic's sales offices in Slough and notified the directors of the undertaking of a Commission decision of 22 June 1979 authorizing an on-the-spot investigation of all the company's documents. The assistant to Panasonic's managing director asked those officials to await the arrival of the undertaking's solicitor who had to travel from Norwich and they replied that they had full authority to commence the investigation immediately. The inspection therefore began at 10.45 a.m. in the absence of Panasonic's solicitor who only arrived three hours later and the inspection lasted approximately seven hours. At about 5.30 p.m. the Commission's agents left Panasonic's offices with copies of several documents and notes which they had made.

By application of 23 August 1979, which was received at the Court Registry on 24 August 1979, Panasonic appealed against the decision authorizing the investigation.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

Panasonic requests the Court:

"(a) To declare this application admissible;

(b) To annul the Commission Decision 22 June 1979 "concerning an investigation to be made at National Panasonic (UK) Limited, Slough, Berks., pursuant to Article 14.3 of Regulation No 17 (Case AF 420)";

(c) To order the Commission to comply with the order of this Court by

(i) returning to National Panasonic all National Panasonic's documents copied by the officials of the Commission or by destroying such copies,

(ii) destroying all notes made by the officials at the time of or

subsequent to the investigation and in relation thereto, and

(iii) undertaking not to make any further use of such documents or notes or information obtained during the course of the unlawful investigation;

(d) To order the Commission to pay National Panasonic's costs."

The Commission of the European Communities contends that the Court should dismiss the application and order Panasonic to pay the costs.

III — Submissions and arguments of the parties

In support of its conclusions, Panasonic puts forward four submissions, two of which (failure to comply with the procedure laid down in Article 14 of Regulation No 17/62 and infringement of fundamental rights) relate to general questions, whereas the others (failure to state the reasons upon which the decision was based or an insufficient statement of those reasons and infringement of the principle of proportionality) refer to the facts of the case.

The procedure laid down in Article 14 of Regulation No 17/62

Article 14 of Regulation No 17/62 provides as follows:

"1. In carrying out the duties assigned to it by Article 89 and by provisions adopted under Article 87 of the Treaty, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorized by the Commission are empowered:

(a) to examine the books and other business records;

(b) to take copies of or extracts from the books and business records;

(c) to ask for oral explanations on the spot;

(d) to enter any premises, land and means of transport of undertakings.

2. The officials of the Commission authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject-matter and purpose of the investigation and the penalties provided for in Article 15 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject-matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 15 (1) (c) and Article 16 (1) (d) and the right to have the decision reviewed by the Court of Justice."

According to *Panasonic*, this article on its proper construction provides for an obligatory two-stage procedure and does not therefore permit the Commission to

carry out an investigation at an undertaking on the basis of a decision without previously trying to do so by virtue of a simple authorization.

Within the context of Regulation No 17/62, Article 14 is in fact structured in the same way as Article 11 concerning the requests for information which the Commission may send to undertakings. It first gives the Commission and its authorized officials certain powers of informal investigation and secondly it empowers the Commission to take a decision requiring undertakings to submit to investigation. Both articles therefore provide for a two-stage procedure. This is also evident from the wording of Article 13 (1) which distinguishes between investigations ordered by the Commission informally and those ordered by means of a decision. However, as there is no doubt that the procedure laid down by Article 11 is obligatory, it is necessary to acknowledge that Article 14, although it does not contain similar words, also requires an obligatory two-stage procedure.

If that were not the case, the Commission, by taking a decision under Article 14 (3) and by requiring in the course of the investigation "such explanation regarding the subject-matter of the investigation as the said officials may require" (see Article 1 of the Decision of 22 June 1979), could avoid the necessity of making use of Article 11 with regard to requests for information and deprive the undertakings concerned of their rights under that article.

Moreover, in construing a measure, it is relevant to consider the intentions and objectives of the authors thereof. In the present case, since it is a rule which as such was proposed by the Commission to the Council and was adopted by the latter after consultation with the European Parliament, it is necessary to take into account both the Commission's statements and the reports by the Parliament. However, during the debate which took place in the European Parliament on the proposal for Regulation No 17/62, both Mr Deringer, in the report of the Committee on the Internal Market of the Parliament, and Mr Von der Groeben, a member of the Commission of the European Communities, made statements (which Panasonic quotes *in extenso)* which show clearly that both had no doubt that that proposal provided for an obligatory two-stage procedure also as regards investigations.

Once more, if Article 14 were interpreted as meaning that it did not require a two-stage procedure, it would deny those concerned the "right to be heard" which, as a fundamental right, forms an integral part of Community law.

Finally, the practice followed hitherto by the Commission and of which Panasonic quotes several examples, has always been to give undertakings an opportunity of being heard before any decision to compel investigation was taken with regard to them.

The *Commission* contests the statement that Article 14 is drafted in the same way as Article 11. It claims that there is nothing in Article 14 which requires the Commission to seek to carry out an investigation with a written authorization before adopting a decision. That procedure may in fact be used but it is not obligatory. On the contrary, Article 11 provides expressly that the Commission may take a decision only if the undertaking does not supply the information requested.

The reasons why, in contrast to Article 11, a single-stage procedure is authorized under Article 14 are not difficult to see. Where the Commission sees a need to inspect a company's documents *in situ*, only a visit without previous warning can enable the risk to be avoided that the undertaking concerned might remove incriminating material. If that possibility of action were prohibited, the Commission would not be able to ensure the application of the rules on competition and Community law would not be interpreted so as to give full effect to its purpose.

As regards the argument based on Article 13 of the Regulation, it is necessary to observe that that article, whilst mentioning two types of investigation, does not suggest that it is necessary to carry out one of them before the other.

As regards the alleged connexions between Article 14 on the one hand and Article 11 on the other, these are in fact two provisions which have different purposes and therefore lay down different procedures. There is nothing in Regulation No 17 to suggest that there must be a link between the two procedures or that the procedure under Article 11 must be used before that of Article 14. Moreover, safeguards are built into both procedures.

The Commission moreover puts forward the following arguments in support of its view:

— Article 19 of Regulation No 17/62 lists the circumstances in which the Commission is required to give the undertaking an opportunity of being heard before a decision is adopted but does not refer to Article 14. The fact that it does not mention Article 11 either is irrelevant since that article already makes clear what procedure it requires;

— Article 2 (1) (b) of Regulation (EEC) No 2988/74 of the Council on limitation periods in proceedings and the enforcement of sanctions under the EEC competition rules recalls amongst the actions which interrupt the running of the period of limitation "written authorizations to carry out investigations issued to their officials by the Commission or by the competent authority of any Member State at the request of the Commission or a Commission decision ordering an investigation". If it were necessasry for written authorizations always to precede decisions of the Commission ordering an investigation, the limitation period would always be interrupted by those authorizations and the mention of decisions would be completely pointless.

The Commission's point of view is moreover confirmed on many occasions in the case-law of the Court of Justice and in the works of learned authors. By judgment of 4 April 1960 in Case 31/59, *Acciaieria e Tubificio di Brescia* v *High Authority* [1960] ECR 71, the Court of Justice categorically rejected an argument very similar to that adduced by Panasonic according to which Article 47 of the ECSC Treaty necessitated a two-stage procedure to enable information to be collected and investigations to be carried out by the High Authority. As regards the work of learned authors, most of them share the Commission's opinion.

The Commission replies to the argument based on its practice that that practice merely shows that an informal investigation is authorized and not that it is obligatory. It is necessary moreover to

state that contrary to Panasonic's allegation, this is not the first time that the Commission has carried out an investigation on the basis of decisions which were not previously notified to the undertaking concerned, since that procedure has been used in 24 other cases since 1973.

Although it is not appropriate to look at the legislative history of a regulation when the terms of it are clear, it may be shown that even the examination of the Parliamentary debates on Regulation No 17/62 in no way supports the applicant's arguments. Mr Deringer in fact explained the two-stage procedure but in no way stated that it was obligatory. Mr Von der Groeben did not state his opinion on the crucial question of whether Article 14 prohibits the Commission from adopting a decision without first attempting an investigation on the basis of a written authorization. The legislative history of the Regulation was therefore at the very least ambiguous and inconclusive and certainly does not support Panasonic's viewpoint.

In its reply *Panasonic*, after stating that the true interpretation of Article 14 does not depend solely on the actual wording of the text but also its spirit and purpose within the general objective of the Regulation, so that the differences between the wording of Articles 11 and 14, which the Commission points to, are not decisive, observes that the eighth recital of the preamble to Regulation No 17/62 treats the procedure under Article 11 and that of Article 14 identically, without making any distinction. It then acknowledges that a decision ordering an investigation must not necessarily be preceded by a request for information but recalls that in any case the Commission should not be allowed to avoid the safeguards laid down in Article 11 by using Article 14. Thirdly, it quotes once more the statements made by Mr Von der Groeben, in particular the following sentences: "We foresee first of all that information is given voluntarily. If it is not, the Commission will have to take a decision. The same applies to the subsequent verification". In Panasonic's opinion, there is no doubt that Mr Von der Groeben intended by these words to refer to an obligatory two-stage procedure.

The interpretation defended by the Commission is moreover incompatible with the preservation of fundamental rights because if it were possible to adopt a decision of investigation without warning the undertaking concerned, that undertaking would be deprived of an opportunity to make its views known before a decision was taken, and to prepare itself for the investigation, to protect its rights by applying to the Court of Justice before the decision was implemented and, if appropriate, to seek a stay. According to the case-law of the Court of Justice, all provisions of Community law should, in case of doubt, be interpreted in the way that is most liberal towards fundamental rights and most restrictive towards the powers of the Commission.

As regards the Commission's practice, Panasonic states that it could obviously not be aware of unpublished decisions. In any case, it is necessary to point out that 18 of the 24 decisions mentioned by the Commission were taken in or about June 1979 with regard to manufacturers or exclusive distributors of electronic equipment, in other words within the same context and during the same period as the decision concerning Panasonic, whereas some of the six other decisions seem to have been taken early in 1979. The argument adduced by Panasonic therefore remains wholly valid.

The judgment in *Acciaieria di Brescia* is cited in error by the Commission. Quite apart from the fact that it is very dangerous to interpret a regulation adopted on the basis of the EEC Treaty in the light of an article of the ECSC Treaty, it should be sufficient to recall that Acciaieria di Brescia had in fact claimed that the High Authority should take a preliminary decision to obtain information before taking a decision to verify. It was not open to that undertaking to argue that a decision had to be preceded by an informal request, as it had already refused on two occasions voluntarily to provide information which the High Authority had "informally requested". It is therefore submitted that no comparison may be made with the argument adduced by Panasonic in this case.

The writers mentioned by the Commission rely on no authority for their propositions, except, in some cases, for the *Brescia* case, which, as explained above, is not in point. Those writers may be countered by numerous other Community law specialists who interpret Article 14 as meaning that it provides for a mandatory two-stage procedure.

The Commission claims that a two-stage procedure sometimes creates too great a risk that compromising documents will be destroyed or amended. However, it admits that it is only recently that such a risk has arisen and that it has become aware of it. Clearly, recent developments cannot be relevant to the interpretation of a regulation adopted in 1962. If, in view of the present situation, the Commission feels that Regulation No 17 does not give it adequate powers, the only course open to it is to initiate new legislation.

Article 19 of Regulation No 17 gives no support to the Commission's argument. The eleventh recital in the preamble to that regulation states in general terms that undertakings are entitled to be heard before a decision is taken with reference to them. There is therefore no reason why Article 14 alone should exclude that right, especially as the Commission agrees that that right is recognized by Article 11, which itself is not mentioned in Article 19.

Panasonic also rejects the argument based on Article 2 (1) (b) of Regulation (EEC) No 2988/74 of the Council, first because a regulation adopted in 1974 cannot be a guide for the interpretation of a regulation adopted in 1962, and secondly because substantially similar wording is used in paragraph (1) (a) of the same article which refers to the two-stage procedure of Article 11 which is admitted to be obligatory.

In its rejoinder, the *Commission* notes that Panasonic's first submission is based on the proposition that Article 14 is drafted in the same terms as Article 11. If Panasonic is unable to prove that assertion all the consequences which it draws from it must fail. However, for the purposes of such proof it is not sufficient to state that, despite the incontestable textual differences between the two articles, their structural similarity results from the spirit and aim of Article 14 in the context of the overall objective of Regulation No 17, since an interpretation which would amount to preventing the Commission from obtaining proof of infringement of the rules on competition could hardly be in conformity with the objective pursued by that regulation.

Contrary to the applicant's opinion, the eighth recital of the preamble to Regulation No 17 distinguishes between the power to require information (Article 11) and the power to undertake investigations (Article 14). More importantly, it explains that Article 14 gives the Commission all the powers "necessary to bring to light" any unlawful conduct. Panasonic's interpretation would mean that the Commission would never have the powers necessary to bring evidence to light if the firm concerned was willing to conceal or destroy the evidence. It is quite wrong to suggest that if the said recital does not explain the reason for the difference between the procedure of Article 11 and that of Article 14 no such difference can exist. Recitals explain the broad purposes of the articles which follow but they do not give a detailed explanation of the provisions of those articles. Moreover, the reason for the difference between the two articles is obvious in this case and does not need to be stated.

It is not true to say that the Commission may obtain information by requiring explanations on the spot at the time of an investigation by means of a decision under Article 14 and thus avoid the safeguards of the procedure under Article 11. In fact officials of the Commission undertaking an investigation are empowered to require explanations of specific concrete questions arising out of the books ans business records which they examine, which has nothing to do with the power to ask general questions requiring careful consideration and perhaps gathering of information by the firm.

In the Commission's opinion the statements made by Mr Von der Groeben in the parliamentary debates are not necessarily to be interpreted as Panasonic maintains. At all events, whatever interpretation is to be put upon them, it cannot override the weight of the other arguments of the Commission in this case.

It is not true to say that a single-stage procedure would provide "no safeguards" for the undertakings concerned. On the contrary, any investigation procedure involves numerous guarantees, namely:

— Officials required by the Commission to undertake an investigation may not do so without a written authorization;

— No investigation within the meaning of Article 14 (3) may be undertaken without a formal decision of the Commission;

— No investigation may be undertaken unless it is "necessary";

— The decision must state adequate reasons;

— The Commission is obliged to consult the competent authority of the Member State involved and to inform it of the investigation;

— The decision must call attention to the right of the firm to challenge its validity before the Court;

— If the decision is successfully challenged before the Court, the Commission could not make use of the documents which had come into its possession as a result of an investigation undertaken on the basis of that decision;

— In appropriate circumstances, the firm concerned could seek damages under Article 215 of the EEC Treaty.

A safeguard requiring the undertaking concerned to be given prior notice of a decision in order to make its views known would, however, deprive any subsequent investigation ordered of all practical effect. For similar reasons, it cannot be accepted that an undertaking is entitled to prepare itself for an investigation nor to prevent the investigation from commencing until its legal adviser is present. As regards the judicial safeguard, although in fact the undertaking is not in a position to apply to the Court before the Commission implements its decision, it is entitled to apply at once when it receives that decision and, where appropriate, to apply to the Court for the adoption of interim measures under Articles 185 and 186 of the EEC Treaty.

As regards the Commission's practice, decisions for investigation have been taken in several other instances since 1 January 1973. It is worth mentioning that none of those decisions gave rise to any protest or claim that the Commission was not following a proper procedure.

In the Commission's opinion and contrary to that of Panasonic, the reference to the *Brescia* judgment is completely relevant. In that judgment the Court of Justice stated that Article 47 of the ECSC Treaty does not prohibit "information being obtained and a check being made at the same time". That amounts to saying that an investigation under Article 47 of the ECSC Treaty must not necessarily be preceded by an "informal request" or by a prior decision under Article 86 of that Treaty. In those circumstances, it is correct to state that the question at issue in *Brescia* was in all essential respects similar to that which is the subject-matter of these proceedings.

As far as learned writers are concerned, those cited by Panasonic do not provide it with a great measure of support, since in general they do not take account of the point as to whether a two-stage procedure is mandatory, or else they express ambiguous views in this respect. Thus the academic opinion which carries most weight is without doubt that put forward by the Commission.

The argument to the effect that the Commission is interpreting Regulation No 17 in the light of developments subsequent to its adoption is totally unfounded. It runs counter to common sense to assume that at the time when rules concerning investigation or search powers were adopted the Council and the Commission did not envisage the necessity of preventing the destruction or concealment of evidence.

As regards Article 19 it should be mentioned that it makes no reference to Article 11, *inter alia* because that article does not give the undertaking a right to argue that no decision obliging it to provide information should be adopted, but primarily gives that undertaking an opportunity voluntarily to provide the information requested or to state that it has no such information.

In response to Panasonic's attempt to refute the arguments put forward by the Commission on the basis of Regulation No 2988/74, it should be recalled that later legislation may always be used to show that a given interpretation of earlier legislation was accepted by the legislature.

Moreover, a comparison between subparagraphs (a) and (b) of Article 2 (1) of Regulation No 2988/74 does not necessarily lead to the conclusions put forward by Panasonic. It is in fact quite possible in the context of Article 11 that

a request for information with which an undertaking had not complied should not be followed by a decision if the Commission had for example obtained sufficient information for immediate purposes as the result of similar requests sent at the same time to other undertakings. If, after a certain period of time, the Commission wished to take a decision obliging the undertaking to provide the same information as that previously requested, it would (or at least it might in certain circumstances) be open to the Commission to do so without making a second request for information. It would be appropriate in that case to mention the decision as a measure interrupting the prescription period. On the other hand, the written authorization under Article 14 is always drafted so as to require an inspection visit to begin on or about a specified date.

It would in fact be improper if the Commission were to purport to authorize an inspector to visit an undertaking at any time during a period of months or years following the date of the authorization. Also, once the Commission had decided that it was necessary to have an inspection, it would always carry it out, either by way of a written authorization or on the basis of a decision if the undertaking concerned did not co-operate spontaneously. There cannot therefore be a considerable time lag between the authorization and the decision to investigate so that it is unnecessary to mention the decision separately as a measure interrupting the prescription period. The conclusion must therefore be drawn that the reference in paragraph (1) (b) can only concern decisions adopted without prior recourse to the procedure of the written authorization.

Finally, the fact that all the other undertakings which submitted to investigation without notice did not challenge the decisions taken with reference to them in circumstances where, if Panasonic were correct, they were entitled to do so, indicates that they did not share the applicant's opinion on this matter, which is certainly relevant.

Infringement of fundamental rights

The second submission of a general nature put forward by *Panasonic* relates to the right of all individuals to be heard before a decision is taken which appreciably affects their interests. That right, which is said to be one of those fundamental rights which form an integral part of Community law, is particularly important where a decision is to be taken which imposes "considerable obligations having far-reaching effects". A decision under Article 14 has such effects because it gives officials of the Commission very wide powers of investigation and exposes the undertaking to fines and/or periodic penalty payments if it refuses to comply.

In proceedings under Article 14 the undertaking concerned is entitled, pursuant to the foregoing principle, to:

— be given notice of the Commission's intention to take a decision;

— be given sufficient notice of the Commission's intention to implement the decision;

— have the opportunity of obtaining such legal advice as is reasonably necessary to protect its interests.

Since those rights were not respected by the Commission, Panasonic was unable

to take advice as to its rights and obligations in the event of an investigation or to ascertain whether any documents were of such a nature as not to be subject to the Commission's power of inspection. Furthermore, it was unable to prepare itself so as to collaborate fully in the investigation.

The *Commission* replies that the principle relied on by Panasonic does not give the undertaking which is to be investigated a right to prior notice of the investigation. No authority is cited for Panasonic's argument, in Community law or in national law. The Community institutions know of no authority stating that there is a right to be warned in advance of a duly authorized and entirely lawful search under express legislative powers for documents required for the investigation of a serious infringement of public law.

The right to respect for private and family life, home and correspondence is subject to a certain number of exceptions in all legal systems. This applies, to take as an example only Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the assumption (which is not entirely free from doubt) that the principle laid down in that article may be regarded as applying not only to natural persons but also to legal persons. Moreover, as regards Community law, it is clear from the case-law of the Court of Justice that fundamental rights are not absolute but are subject to limitations laid down in accordance with the public interest or justified by the overall objectives pursued by the Community.

Having said that, the Commission agrees that the investigation of a company on the spot is never a trivial matter and should not be undertaken without adequate reason.

Panasonic claims that a decision obliging a company to allow an investigation "imposes considerable obligations having far-reaching effects" on that company. But in fact the only obligation imposed on the company is that of allowing the investigation. A decision cannot authorize Commission officials to copy documents irrelevant to the investigation or subject to legal or professional privilege. If its rights were violated in the course of an investigation the undertaking concerned would clearly have a legal remedy. Where a company refused to comply with the decision it would naturally render itself liable to fines; the latter could not, however, be inflicted without a further decision, before which the company would certainly have a right to be heard. Finally, the Commission thinks it useful to point out its powers of investigation are substantially limited in comparison with those enjoyed by many national authorities of EEC Member States and other democratic States.

The statement that the undertaking which is to be investigated is entitled to delay the investigation until its lawyer arrives was not given by Panasonic as one of its four grounds of application. It may, however, be briefly examined. It should be noted, first, that in the present case the fact that the officials of the Commission did not await the arrival of the solicitor before commencing the investigation in no way prejudiced Panasonic's interests. Having said that, it should be emphasized, on the one hand, that Panasonic was unable to cite any

provision (whether of Community law, the law of a Member State of the EEC or of the law of a non-member country) in support of its view and, on the other hand, that if it is accepted that an undertaking is not entitled to receive prior notification of an investigation, it must also be recognized that it is not entitled to delay that investigation until the lawyer of its choice is available. If it were otherwise, the same risk of destruction or amendment of documents would arise as was precisely sought to be avoided by an investigation without prior notice.

In its reply, *Panasonic* states that if the right of the undertaking to be heard during the procedure within the meaning of Article 11 before a decision is taken is, as the Commission accepts, a fundamental right, the same right must be guaranteed in the procedure under Article 14.

The undertaking's right to prepare for the investigation and to appeal before the investigation took place are said to be confirmed:

— by the fact that Article 14 (3) provides that the Commission in its decision shall appoint the date of the investigation, which, in Panasonic's opinion, is intended, *inter alia*, to ensure that the undertaking should know beforehand the date on which the investigation is to begin so as to be able properly to prepare itself and, where appropriate, to appeal against the decision;

— by the fact that all decisions taken pursuant to Regulation No 17 are subject to review by the Court of Justice under the conditions specified in the Treaty, which include the power, which is conferred on the Court of Justice under Article 185 of the EEC Treaty, to suspend application of a contested act.

Such rights are also recognized by academic writers.

As regards the right to seek legal advice, it does not necessarily seek to suggest that that is a fundamental right separate from those mentioned above. However, due observance of the fundamental right to receive sufficient notice of the intention to take and to implement a decision at the same time ensures respect for that right.

Finally, the fact that the defendant's powers are more limited than those of the authorities of Member States cannot be a reason to deny an undertaking protection for its fundamental rights in relation to the Commission.

In its rejoinder, the *Commission* claims that Panasonic's argument is based on the quite incorrect assumption that an investigation is a drastic, damaging and permanent action which adversely affects the interests of the firm involved. In fact, inspectors decide nothing and draw no conclusions. An investigation is similar to a duly authorized official search under national law, not to any judicial procedure. Furthermore, Panasonic forgets that the Commission takes a decision to inspect a firm's books and business records in pursuance of an investigating power, not a judicial power. That being the case, the undertaking is quite clearly not entitled to be heard.

As regards Article 11, the Commission has never said that it gives a right to be heard or, consequently, that it creates a fundamental right.

Article 11 in fact quite simply gives an opportunity to comply on a voluntary basis with the request for information made by the Commission. However that may be, it cannot be accepted that there is a fundamental right to be heard before an investigation occurs, since such a right would undermine the effectiveness of the investigation.

For the same reasons it cannot be accepted that an undertaking is entitled to prepare for the investigation.

As for Panasonic's statement in its reply to the effect that an undertaking's right to be notified in sufficient time of the Commission's intention to implement a decision of investigation should enable the undertaking to appeal, it is sufficient to recall that to admit of the necessity of granting a period of notice between the adoption of a decision and its implementation would be entirely inconsistent with the provisions of the Treaty and with the case-law of the Court and the practice of the Commission.

The requirement that the decision should fix a date for the investigation is not intended to make that date known to the undertaking concerned. That construction could be placed upon it only if it were proved that the decision must be notified to the undertaking.

The argument based on Article 185 must also be rejected. Since even commencing an action before the Court does not suspend the implementation of a Commission decision, it is difficult to understand how the mere possibility of bringing an action might be said to have such suspensory effect. Moreover, the undertaking subject to investigation is also protected since, even in the event of an action being brought subsequent to the investigation, it could request, and the Court would order, that documents copied by the Commission's officials should not be used before the Court had given final judgment.

Finally, in recalling that its own powers are limited, the Commission did not mean to say that there is no need to protect fundamental rights in relation to the powers which it exercises, but quite simply that an interpretation which seeks further to restrict those powers, to the point of rendering them totally ineffective, should be avoided.

Total or partial failure to state reasons

According to *Panasonic*, the Commission failed to state or to state properly the reasons on which its decision was based.

In the present case, according to the established case-law of the Court of Justice, the statement of reasons should have been detailed, since the decision at issue was one involving a particularly serious measure depriving the undertaking concerned of its fundamental rights, exposing that undertaking to fines or to periodic penalty payments and involving a departure from the Commission's previous practice.

In the decision the Commission gave no reasons whatsoever to justify proceeding under Article 14 (3) without first making an informal investigation. It merely stated that "a decision must be adopted", which certainly amounts to a failure to state reasons. Even if such matters as were actually referred to in the decision could be construed as reasoning the decision fails to disclose the principles of

law and of fact upon which it was based and which should disclose why the Commission did not first make use of the informal procedure.

The absence of proper or adequate reasoning is an additional ground on which the Court should annul the decision.

The *Commission* replies that, since it was not required to proceed by first undertaking an informal investigation, it was not required to give reasons for not having followed that procedure. It did, however, give reasons why an investigation was necessary (namely information which gave grounds for believing that there was an export prohibition), and this amounts to a sufficient statement of reasons. When the Commission has a choice between several courses of action, it must give reasons in its decision for the course of action which it chooses to adopt, but surely need not discuss why it did not prefer any of the others.

Moreover, the contested decision is not a particularly grave step, nor does it deprive the undertaking of its fundamental rights, nor does it depart from previous practice, all of which enables the Commission to confine itself to a somewhat summary statement of reasons.

A summary statement of reasons was held to be sufficient by the Court of Justice in the case of a decision ordering an investigation in the judgment in Case 31/59, *Acciaieria di Brescia,* cited above.

In its reply, *Panasonic* observes that, even if the Commission had a choice between several courses of action (which is denied by the applicant), it should have stated in its decision the reasons for which it chose one course of action rather than another. The Commission seeks to meet this point by contending that it cannot be required to give reasons to explain why it did not adopt other courses of action open to it. It is nevertheless true that it is obliged to state why it preferred a certain course of action.

The obligation to give reasons is particularly important in this case since the decision marks a complete departure from previous published practice and the previous decisions to the same effect were not only very rare but have in fact not been published. The Commission has stated that a decision under Article 14 (3) may be taken without first informally requesting an investigation either "where it is known from contacts with the enterprise involved that it will not agree to an investigation on a voluntary basis" or where "there is reason to believe that important evidence is likely to be concealed or destroyed either by the enterprise in question ... or by some other enterprise involved in the suspected infringement". Nowhere in the decision is there even a suggestion that either of these requirements was satisfied in relation to the present case. It would indeed have been impossible for the Commission to claim that Panasonic would not agree to an investigation on a voluntary basis because, prior to the investigation, the Commission had no contact with that company. As for the second condition, the Commission had no reason to believe that important evidence was likely to be concealed or destroyed by Panasonic.

Finally, the Commission's reference to the *Acciaieria di Brescia* case is not relevant to this application since that was a situation in which the High Authority had no choice of procedures similar to

that which the Commission contends is available to it under Article 14.

In its rejoinder, the *Commission* recalls that a decision to investigate adopted without prior notice is justified whenever a serious infringement of Community law such as an export ban is suspected. However, since Panasonic appears to believe that such a decision is justified only if the undertaking concerned has supplied the Commission with incorrect or misleading information, it is a simple matter to show that the condition also was fulfilled in this case. The contested decision expressly states that the Commission had been informed of the fact that Panasonic had required trade customers not to export. It also states that, when its distribution agreement was notified to the Commission, National Panasonic Vertriebsgesellschaft mbH, a German company in the Panasonic group made no mention of a ban on exports to Germany from the United Kingdom. In this connexion it should be borne in mind that when an undertaking notifies an agreement within the meaning of Regulation No 17/62 it is under a legal obligation not to supply incorrect information, that a ban on exports from the United Kingdom would no doubt have benefited Panasonic GmbH and that Panasonic GmbH and Panasonic UK are 100% subsidiaries of the same parent company. It is therefore clear from the decision that the undertaking which was to be subjected to the investigation seemed already to have concealed from the Commission a factor of some importance for the assessment of its competitive behaviour.

Panasonic further maintains that the statement of reasons is insufficient in that a decision which departs from previous "published practice" should contain a very full statement of reasons. But the contested decision was not a departure — as has already been shown — from the previous practice of the Commission. Furthermore, inspection decisions need not be published. Finally, provided that such a decision is properly reasoned it cannot be seriously claimed that it is invalid because other similar decisions in the past have not been published.

The applicant claims that nowhere in the decision is there a suggestion that Panasonic was likely to conceal evidence. But the fact that National Panasonic Vertriebsgesellschaft mbH in its notification had not mentioned the fact that there was a ban on exports entitled the Commission to believe that Panasonic was prepared, if necessary, to conceal evidence relating to that ban. The inaccuracy of the notification made by National Panasonic Vertriebsgesellschaft mbH was mentioned in the decision. Clearly, the best proof that an undertaking is liable to conceal evidence would be proof that it has done so in the past — but such proof is, for several obvious reasons, not normally available and the Commission is therefore obliged to assess that possibility on the basis of the evidence available to it at the time.

According to Panasonic, the Commission had no reason to consider it likely that it would conceal important evidence. But there is indeed such a reason, namely that the Panasonic group had already concealed an important fact.

Finally, contrary to Panasonic's view, Article 47 of the ECSC Treaty expressly gives the High Authority a choice as to procedure between obtaining information and undertaking a check. Article 47 is thus in this essential respect similar to Article 14 of Regulation No 17.

The argument on proportionality in relation to the decision

According to *Panasonic* the principle of proportionality, as outlined in the case-law of the Court of Justice, requires that measures and provisions taken by the institutions must be "appropriate and necessary to attain the objectives sought". A decision to investigate which is not preceded by an informal request fulfils those conditions only if the situation is very grave, if there is extreme urgency and if there is need for complete secrecy before the investigation is carried out. The recitals in the preamble to the decision in dispute do not however disclose any such circumstance, so that the decision itself must be held to be contrary to the principle of proportionality.

The *Commission* believes, on the other hand, that the principle of proportionality requires quite simply a reasonable relationship between the measure and "what is appropriate and necessary to attain the objectives sought", to prevent onerous measures being adopted for insufficient objectives. In the present circumstances, the procedure followed by the Commission was without doubt appropriate and necessary; indeed, it was the only procedure which was capable of preventing the concealment or destruction of possible proof of a serious infringement of Community law.

Panasonic replies that the criteria which it proposed as a guide in the assessment of the proportionality of a decision under Article 14 (3) are taken in essence from a passage in Thiesing, Schröter, Hochbaum (in *Agreements and dominant positions in EEC law),* which the Commission itself quoted with approval in its defence.

Panasonic also adopts the reasoning of Mr Advocate General Roemer in *Brescia.* Mr Roemer noted in that case that if several measures are equally appropriate the measure adopted should be the one which obtains the best possible result with the least effort and imposes the least burden on the citizen. He added that an investigation following a decision "may only be exercised where a special need is shown in a special case, that is, for example, if information has been refused or if there is good reason to suspect that the information obtained is incomplete or incorrect". Those conditions do not obtain in this case, there having been neither such a refusal nor a previous supply of information.

The *Commission* notes, in its rejoinder, that the authors cited by Panasonic, far from supporting the applicant's point of view, illustrate conditions which are precisely those obtaining in this case.

As for the criteria set out in the opinion of Mr Advocate General Roemer, it should be noted, without its being necessary to discuss the applicability of those criteria to Panasonic's case, where the investigation did not constitute "far-reaching intervention" into its activities, that:

— a procedure which offered an undertaking which had already concealed important facts from the Commission

the opportunity to destroy or conceal could not be said to be "appropriate" and such as to obtain "the best possible result";

— the condition relating to the refusal to provide information or the notification of inaccurate or misleading information is fulfilled in the case in point in that a company related to the applicant made an incomplete notification to the Commission.

If a misleading reply to a request for information may make it necessary and appropriate to undertake an investigation without prior notice, it cannot seriously be argued that the situation is substantially different in the case of an incorrect notification.

IV — Oral procedure

National Panasonic (UK) Limited, represented by David Vaughan, Barrister of the Inner Temple, and the Commission of the European Communities, represented by its Legal Adviser, John Temple Lang, acting as Agent, presented oral argument at the hearing on 18 March 1980.

The Advocate General delivered his opinion at the sitting on 30 April 1980.

Decision

1 By application of 24 August 1979, National Panasonic (UK) Limited, a company incorporated in the United Kingdom (hereinafter referred to as "National Panasonic"), requests, under Articles 173 and 174 of the EEC Treaty, the annulment of the Commission decision of 22 June 1979 concerning an investigation to be made pursuant to Article 14 (3) of Regulation No 17/62 of the Council. By the same application, the applicant requests in addition that the Commission should be ordered to return to National Panasonic all documents copied by the officials of the Commission during that investigation, to destroy the notes made at that time and to undertake not to make any further use of such documents or notes or information.

2 The applicant is a company formed under English law and a subsidiary of the Japanese Matsushita Electric Industrial Company and the exclusive distributor in the United Kingdom of National Panasonic and Technics electronic goods intended for sale to consumers. Another subsidiary of the Matsushita group is National Panasonic Vertriebsgesellschaft mbH, which is incorporated in the Federal Republic of Germany and distributes Panasonic products in that Member State.

3 On 11 January 1977 National Panasonic Vertriebsgesellschaft mbH notified the Commission of an agreement relating to the distribution of National Panasonic products and requesting negative clearance or an exemption under Article 85 (3) of the Treaty.

4 Although the notification did not indicate whether or not the agreement contained a prohibition on exports to another Member State, information obtained by the Commission showed that National Panasonic required its re-sellers not to re-export National Panasonic and Technics products to other Member States.

5 On the basis of that information, the Commission considered that it was necessary to believe that the applicant had participated and was still participating in agreements and concerted practices contrary to Article 85 of the EEC Treaty and therefore decided to carry out an investigation pursuant to Regulation No 17 of the Council and more particularly to Article 14 (3) thereof. For that purpose on 22 June 1979 it adopted the contested decision, Article 3 of which provided *inter alia* that it would be notified by being handed over personally immediately before the investigation was to begin to a representative of the undertaking by the Commission's officials authorized for the purposes of the investigation.

6 The investigation in question was carried out on 27 June 1979 by two officials authorized by the Commission who, accompanied by an official of the Office of Fair Trading, which is the competent authority in the United Kingdom and which must be heard under Article 14 (4) of Regulation No 17, arrived at National Panasonic's sales offices in Slough, Berkshire, and, after notifying their decision by handing it over personally to the directors of the company, in fact carried out the investigation without awaiting the arrival of the company's solicitor. They left the company's offices on the same day with copies of several documents and notes made during the investigation.

7 The applicant contests the validity of that investigation, maintaining that the Commission decision ordering it is unlawful. It puts forward four submissions in support of its application, alleging that that decision is in breach of Article 14 of Regulation No 17 and of fundamental rights, that it

failed to state reasons properly or at all for the decision and that it violates the doctrine of proportionality.

(a) The infringement of Article 14 of Regulation No 17

8 The applicant maintains first of all that the contested decision is unlawful because it does not comply with the spirit and letter of the provisions of Article 14 (3) of Regulation No 17 of the Council. To this end it maintains that on a proper construction those provisions provide for a two-stage procedure which permits the Commission to adopt a decision requiring an undertaking to submit to an investigation only after attempting to carry out that investigation on the basis of a written authorization to its own officials. This interpretation is confirmed, according to the applicant, by Article 11 of the same regulation which is similar in structure and provides for a two-stage procedure and by Article 13 (1) which makes a distinction between an investigation carried out by the Commission informally and that ordered by decision.

9 These arguments do not appear to be well-founded. In order to enable the Commission to accomplish its task of ensuring that the rules of competition in the common market are complied with, the eighth recital of the preamble to Regulation No 17 provides that it "must ... be empowered, throughout the common market, to require such information to be supplied and to undertake such investigations as are necessary to bring to light any agreement, decision or concerted practice prohibited by Article 85 (1) or any abuse of a dominant position prohibited by Article 86". For this purpose, that regulation provides for separate procedures, which shows that the exercise of the powers given to the Commission with regard to information and investigations is not subject to the same conditions.

10 Article 11 (2), (3) and (5), which concerns the Commission's power to request the information it considers necessary, provides as follows:

"2. When sending a request for information to an undertaking or association of undertakings, the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose

territory the seat of the undertaking or association of undertakings is situated.

3. In its request the Commission shall state the legal basis and the purpose of the request and also the penalities provided for in Article 15 (1) (b) for supplying incorrect information.

...

5. Where an undertaking or association of undertakings does not supply the information requested within the time-limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time-limit within which it is to be supplied and indicate the penalties provided for in Article 15 (1) (b) and Article 16 (1) (c) and the right to have the decision reviewed by the Court of Justice."

It follows from those provisions that the article in question in fact stipulates, for the exercise of that power, a two-stage procedure, the second stage of which, involving the adoption by the Commission of a decision which specifies what information is required, may only be initiated if the first stage, in which a request for information is sent to the undertakings or associations of undertakings, has been carried out without success.

11 On the other hand, Article 14 of the same regulation on the "investigating" powers of the Commission is different in structure. Article 14 (2) and (3), which defines the conditions for the exercise of those powers, provides as follows:

"2. The officials of the Commission authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject-matter and purpose of the investigation and the penalties provided for in Article 15 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by a decision of the Commission. A decision shall specify the subject-matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalities provided for in Article 15 (1) (c) and Article 16 (1) (d) and the right to have the decision reviewed by the Court of Justice."

This provision does not of course prevent the Commission from carrying out an investigation solely pursuant to a written authorization given to its officials without adopting a decision, but in other respects it contains nothing to indicate that it may only adopt a decision within the meaning of Article 14 (3) if it has previously attempted to carry out an investigation by mere authorization. Whereas Article 11 (5) expressly makes the adoption of a Commission decision subject to the condition that the latter has previously asked for the necessary information by means of a request addressed to those concerned and specifies in Article 11 (3) the essentials which such a request must contain, Article 14 makes the investigating procedure by means of a decision subject to no preliminary of this kind.

12 The applicant wrongly relies in support of its argument on the wording of Article 13 (1) of the same regulation which provides that, at the request of the Commission, the national authorities must undertake the investigations which the Commission considers to be necessary under Article 14 (1) or which it has ordered by decision pursuant to Article 14 (3). By making a distinction between the two investigatory procedures, that provision clearly shows by the use of the word "or" that those two procedures do not necessarily overlap but constitute two alternative checks the choice of which depends upon the special features of each case.

13 The difference in the rules on this subject contained in Articles 11 and 14 is explained, moreover, by the diversity of the needs met by those two provisions. Whereas the information which the Commission considers necessary to know may not as a general rule be collected without the co-operation of the undertakings and associations of undertakings possessing this information, investigations, on the other hand, are not necessarily subject to the same condition. In general they aim at checking, by measures

such as those listed in the second subparagraph of Article 14 (1) of Regulation No 17, the actual existence and scope of information which the Commission already has and do not therefore necessarily presuppose previous co-operation by undertakings or associations of undertakings in possession of the information necessary for the check.

14 The applicant maintains in another connexion that if it were necessary to interpret Article 14 differently from Article 11, that is, as meaning that it permits the Commision to adopt an investigation decision without previously carrying out an investigation such as that provided for in Article 14 (2) the Commission might, by having recourse to the procedure laid down in the same article for requests for information, escape the conditions laid down in Article 11 and thus evade the guarantees given by the latter to the undertakings and associations of undertakings concerned.

15 Such arguments do not however take into account the distinction made by the regulation itself between the "information" referred to in Article 11 and the "investigation" referred to in Article 14. The fact that the officials authorized by the Commission, in carrying out an investigation, have the power to request during that investigation information on specific questions arising from the books and business records which they examine is not sufficient to conclude that an investigation is identical to a procedure intended only to obtain information within the meaning of Article 11 of the regulation.

16 For all these reasons, it is necessary to dismiss the first submission as unfounded.

(b) The infringement of fundamental rights

17 The applicant then claims that by failing previously to communicate to it beforehand the decision ordering an investigation in question, the Commission has in this instance infringed fundamental rights of the applicant, in particular the right to receive advance notification of the intention to apply a decision regarding it, the right to be heard before a decision adversely affecting it is taken and the right to use the opportunity given to it under Article 185 of the Treaty to request a stay of execution of such a decision. The applicant relies in particular on Article 8 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 whereby "everyone has the right to respect for his private and family life, his home and his correspondence". It considers that those guarantees must be provided *mutatis mutandis* also to legal persons.

18 As the Court stated in its judgment of 14 May 1974 in Case 4/73, *J. Nold, Kohlen- und Baustoffgroßhandlung* v *Commission of the European Communities* [1974] ECR 491 at p. 507, fundamental rights form an integral part of the general principles of law, the observance of which the Court of Justice ensures, in accordance with constitutional traditions common to the Member States and with international treaties on which the Member States have collaborated or of which they are signatories.

19 In this respect it is necessary to point out that Article 8 (2) of the European Convention, in so far as it applies to legal persons, whilst stating the principle that public authorities should not interfere with the exercise of the rights referred to in Article 8 (1), acknowledges that such interference is permissible to the extent to which it "is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".

20 In this instance, as follows from the seventh and eighth recitals of the preamble to Regulation No 17, the aim of the powers given to the Commission by Article 14 of that regulation is to enable it to carry out its duty under the EEC Treaty of ensuring that the rules on competition are applied in the common market. The function of these rules is, as follows from the fourth recital of the preamble to the Treaty, Article 3 (f) and Articles 85 and 86, to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers. The exercise of the powers given to the Commission by Regulation No 17 contributes to the maintenance of the system of competition intended by the Treaty which undertakings are absolutely bound to comply with. In these circumstances, it does not therefore appear that Regulation No 17, by giving the Commission the powers to carry out investigations without previous notification, infringes the right invoked by the applicant.

21 Moreover, as regard more particularly the argument that the applicant was in this instance denied the right to be heard before a decision was taken regarding it, it is necessary to state that the exercise of such a right of defence is chiefly incorporated in legal or administrative procedures for the termination of an infringement or for a declaration that an agreement, decision or concerted practice is incompatible with Article 85, such as the procedures referred to by Regulation No 99/63/EEC of the Commission of 25 July 1963 (Official Journal, English Special Edition 1963 to 1964, p. 47). On the other hand, the investigation procedure referred to in Article 14 of Regulation No 17 does not aim at terminating an infringement or declaring that an agreement, decision or concerted practice is incompatible with Article 85; its sole objective is to enable the Commission to gather the necessary information to check the actual existence and scope of a given factual and legal situation. Only if the Commission considers that the data for the appraisal thereof collected in this way justify the initiation of a procedure under Regulation No 99/63/EEC must the undertaking or association of undertakings concerned be heard before such a decision is taken, pursuant to Article 19 (1) of Regulation No 17 and to the provisions of Regulation No 99/63/EEC. Precisely this substantive difference between the decisions taken at the end of such a procedure and decisions ordering an investigation explains the wording of Article 19 (1) which, in listing the decisions which the Commission cannot take before giving those concerned the opportunity of exercising their right of defence, does not mention that laid down in Article 14 (3) of the same regulation.

22 Finally, the argument that the absence of previous information deprived the applicant of the opportunity of exercising its right under Article 185 of the Treaty to request the Court for a stay of execution of the decision in question is contradicted by the very provisions of Article 185. That article presupposes in fact that a decision has been adopted and that it is effective whereas the previous notification, which the applicant complains that the Commission did not send it, should have preceded the adoption of the contested decision and could not have been binding.

23 In view of these considerations, the second submission is not well founded.

(c) Absence of a statement of the reasons upon which the decision was based

24 The applicant also maintains that the contested decision is irregular in that it failed to state or to state properly the reasons on which it was based, in particular because it in no way indicates the reasons why the Commission applied Article 14 (3) of Regulation No 17 in this instance without attempting first of all to carry out an informal investigation.

25 Article 14 (3) of Regulation No 17 itself lays down the essential constituents of the statement of the reasons upon which a decision ordering an investigation is based by providing that it "shall specify the subject-matter and the purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 15 (1) (c) and Article 16 (1) (d) and the right to have the decision reviewed by the Court of Justice".

26 It is an established fact that the preamble to the contested decision states the purpose, which is to check facts which might show the existence of an export ban contrary to the Treaty, and indicates the penalties laid down in Articles 15 (1) (c) and 16 (1) (d) of Regulation No 17. It is also established that Articles 1 and 2 of that decision state the subject-matter of the investigation decided upon and the place where and date on which that investigation will be carried out. Finally, the second paragraph of Article 3 of the decision indicates the possibilities of instituting proceedings before the Court of Justice against such a decision in accordance with Article 173 of the Treaty.

27 In view of these factors, it follows that the contested decision fulfils the requirements laid down in Regulation No 17 as regards the statement of the reasons upon which it is based and that it is necessary to dismiss this submission as unfounded.

(d) The violation of the principle of proportionality

28 The applicant points out in addition that the principle of proportionality, as established by the case-law of the Court of Justice, implies that a decision ordering an investigation adopted without the preliminary procedure may only be justified if the situation is very grave and where there is the greatest

urgency and the need for complete secrecy before the investigation is carried out. It points out, finally, that the contested decision violates such a principle by not indicating in the statement of the reasons upon which it is based that any of those facts exists.

29 The Commission's choice between an investigation by straightforward authorization and an investigation ordered by a decision does not depend on the facts relied upon by the applicant but on the need for an appropriate inquiry, having regard to the special features of the case.

30 Considering that the contested decision aimed solely at enabling the Commission to collect the necessary information to appraise whether there was any infringement of the Treaty, it does not therefore appear that the Commission's action in this instance was disproportionate to the objective pursued and therefore violated the principle of proportionality.

31 For all these reasons, since this last submission cannot be accepted either, it is necessary to dismiss the application as unfounded.

Costs

32 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party should be ordered to pay the costs.

33 Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application as unfounded;

2. Orders the applicant to pay the costs.

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 26 June 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 30 APRIL 1980

My Lords,

This action is brought under Article 173 of the EEC Treaty by an English company, National Panasonic (UK) Limited, to challenge a decision of the Commission dated 22 June 1979 requiring it to submit to an investigation pursuant to Article 14 (3) of Regulation No 17.

Article 14 of Regulation No 17 is, so far as material, in these terms:

"Investigating powers of the Commission

1. In carrying out the duties assigned to it ... by provisions adopted under Article 87 of the Treaty, the Commission may undertake all necessary investigations into undertakings ... To this end the officials authorized by the Commission are empowered:

(a) to examine books and other business records;

(b) to take copies of or extracts from the books and business records;

(c) to ask for oral explanations on the spot;

(d) to enter any premises, land and means of transport of undertakings.

2. The officials of the Commission authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject-matter and