

JUDGMENT OF THE COURT
18 MAY 1982 ¹

**AM & S Europe Limited
v Commission of the European Communities**

(Legal privilege)

Case 155/79

1. *Competition — Administrative procedure — Commission's investigatory powers — Power to require production of business records — Concept of "business records" — Communications between lawyer and client — Inclusion — Conditions*
(Regulation No 17 of the Council, Art. 14)
2. *Competition — Administrative procedure — Commission's investigatory powers — Power to demand production of the documents whose disclosure it considers necessary — Power to decide whether or not a document must be produced*
(Regulation No 17 of the Council, Art. 14)
3. *Competition — Administrative procedure — Commission's investigatory powers — Power to demand production of communication between lawyer and client — Limits — Protection of the confidentiality of such communications*
(Regulation No 17 of the Council, Art. 14)
4. *Competition — Administrative procedure — Commission's investigatory powers — Refusal of the undertaking to produce communications with its lawyer on the ground of confidentiality — Powers of the Commission*
(Regulation No 17 of the Council, Art. 14)

¹ — Language of the Case: English

1. Article 14 (1) of Regulation No 17 empowers the Commission when investigating an undertaking to require production of "business records", that is to say, documents concerning the market activities of the undertaking, in particular as regards compliance with those rules. Written communications between lawyer and client fall, in so far as they have a bearing on such activities, within that category of documents.
2. Since by virtue of Article 14 (1) of Regulation No 17 the Commission may demand production of the documents whose disclosure it considers "necessary" in order that it may bring to light an infringement of the Treaty rules on competition, it is in principle for the Commission itself, and not the undertaking concerned or a third party, to decide whether or not a document must be produced to it.
3. The national laws of the Member States protect, in similar circumstances, the confidentiality of written communications between lawyer and client provided that, on the one hand, such communications are made for the purposes and in the interests of the client's rights of defence and, on the other hand, they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment. Viewed in that context Regulation No 17 must be interpreted as protecting, in its turn, the confidentiality of written communications between lawyer and client subject to those two conditions, and thus incorporating such elements of that protection as are common to the laws of the Member States. Such protection must, if it is to be effective, be recognized as covering all written communications exchanged after the initiation of the administrative procedure under Regulation No 17 which may lead to a decision on the application of Articles 85 and 86 of the Treaty or to a decision imposing a pecuniary sanction on the undertaking. It must also be possible to extend it to earlier written communications which have a relationship to the subject-matter of that procedure. The protection thus afforded must apply without distinction to any lawyer entitled to practise his profession in one of the Member States, regardless of the Member State in which the client lives.
4. However, the principle of confidentiality does not prevent a lawyer's client from disclosing the written communications between them if he considers that it is in his interests to do so.
4. Since disputes concerning the application of the protection of the confidentiality of written communications between lawyer and client affect the conditions under which the Commission may act in a field as vital to the functioning of the common market as that of compliance with the rules on competition, their solution may be sought only at Community level. If, therefore, an undertaking which is the subject of an investigation under Article 14 of Regulation No 17 refuses, on the ground that it is entitled to protection

of the confidentiality of information, to produce, among the business records demanded by the Commission, written communications between itself and its lawyer, and the Commission is not satisfied that proof of the confidential nature of the documents has been supplied, it is for the Commission to order, pursuant to Article 14 (3) of the abovementioned regulation, production of the com-

munications in question and, if necessary, to impose on the undertaking fines or periodic penalty payments under that regulation as a penalty for the undertaking's refusal either to supply such additional evidence as the Commission considers necessary or to produce the communications in question whose confidentiality, in the Commission's view, is not protected by law.

In Case 155/79

AM & S EUROPE LIMITED, represented by J. Lever, QC, of Gray's Inn, C. Bellamy, Barrister, of Gray's Inn, and G. Child, Solicitor, of Messrs Slaughter and May, London, with an address for service in Luxembourg at the Chambers of Messrs Elvinger and Hoss, 15 Côte d'Eich,

applicant,

supported by

THE UNITED KINGDOM, represented by W. H. Godwin, Principal Assistant Treasury Solicitor, acting as Agent, assisted by the Rt. Hon. S. C. Silkin, QC, of the Middle Temple, and by D. Vaughan, QC, of the Inner Temple, with an address for service in Luxembourg at the British Embassy, 28 Boulevard Royal,

and

THE CONSULTATIVE COMMITTEE OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY, represented by D. A. O. Edward, QC, of the Scots Bar, and J.-R. Thys, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of T. Biever and L. Schiltz, 83 Boulevard Grande-Duchesse Charlotte,

intervenors,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, J. Temple Lang, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, M. Cervino, Jean Monnet Building, Kirchberg,

defendant,