

**Action brought on 21 March 1980 by C. Melchers & Co. against the Commission of the European Communities**

(Case 101/80)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 March 1980 by C. Melchers & Co., having its registered office at Bremen, Germany, represented by Messrs. Walter van Gerven and Ivo Van Bael, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Messrs. Elvinger & Hoss, 15 Côte d'Eich.

The action is directed against Commission Decision 80/256/EEC (IV/29.595) (1).

The applicant claims that the Court should:

1. declare Article 1 of the Commission Decision void;
2. alternatively, annul Article 3 (3) of the Decision in so far as it imposes a fine of DM 3 596 667 on the applicant;
3. alternatively, reduce the fine;
4. order any such measure of inquiry as may appear appropriate including the personal appearance of the general partners of Melchers and the examination of the witnesses named by the applicant in this application;
5. order the Commission to pay the costs of this action.

*Contentions and main arguments*

- Three essential findings of the Commission's Decision relating to the Applicant's alleged participation in a concerted practice — refusal to deliver goods to a new customer, this refusal resulting from a concerted practice between the Applicant, Pioneer and MDF, and request for a written undertaking, by the said new customer, not to export — are not borne out by the facts nor supported by adequate evidence. The Commission, instead of being guided by the utmost caution, appears to have systematically relied on the complainant's version of the facts.
- The Commission has not adequately shown how the behaviour imputed to the Applicant, Pioneer and MDF had as its object or effect to appreciably restrict competition within the common market and to affect trade between Member States.
- The fine imposed on the Applicant violates Article 15 (5) of Regulation No 17 in that it punishes conduct conforming with contractual commitments entered into by the Applicant and properly notified to the Commission.
- The Applicant's right to be heard was violated in that the Commission has failed to inform the Applicant of the criteria used for the determination of the fine before imposing such fine.
- The reasoning supporting the imposition of a fine on the Applicant is inadequate and inaccurate and as such amounts to a lack of reasoning with respect to an essential element of the Decision.
- The fine imposed on the Applicant violates the limit provided for in Article 15 (2) of Regulation No 17, in that the amount of the fine reaches 18 % of the Applicant's turnover in the relevant product and it violates the principles of proportionality and non-discrimination in that it takes into account the Applicant's total turnover including that relating to other sectors of business.

(1) OJ No L 60, 5. 3. 1980, p. 21.

- The fine imposed on the Applicant does not conform to the findings of the Commission regarding the respective degrees of guilt of the participants in the alleged infringement.
  - The findings that the infringement allegedly committed by the Applicant was deliberate is not supported by any evidence.
  - The fine imposed on the Applicant is of a confiscatory nature and as such violates fundamental rights.
  - The Commission failed to consider as mitigating factor the responsibility it bears in this Case.
-