

Case C-73/95 P

Viho Europe BV

v

Commission of the European Communities

(Competition — Groups of companies — Article 85(1) of the Treaty)

Opinion of Advocate General Lenz delivered on 25 April 1996	I - 5459
Judgment of the Court (Sixth Chamber), 24 October 1996	I - 5482

Summary of the Judgment

- 1. Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Concept — Agreements between a parent company and its non-autonomous subsidiary companies — Not within that concept — Possible application of Article 86 of the Treaty*
(EC Treaty, Arts 2, 3(c) and (g), 85(1) and 86)
- 2. Appeals — Pleas in law — Mere repetition of the pleas in law and arguments submitted to the Court of First Instance — Inadmissibility — Rejection*
(EC Statute of the Court of Justice, Art. 49; Rules of Procedure of the Court of Justice, Art. 112(1)(c))

1. When a parent company and its subsidiaries form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their course of action in the market, but carry out the instructions issued to them by the parent company which wholly controls them, the fact that the parent company's policy,

which consists essentially in dividing various national markets between its subsidiaries, might produce effects outside the ambit of the group which are capable of affecting the competitive position of third parties cannot make Article 85(1) applicable, even when it is read in conjunction with Article 2 and Article 3(c) and (g) of the Treaty. On the other hand, such unilateral conduct could fall under Article 86 of the Treaty if the conditions for its application were fulfilled.

2. It follows from Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must specify the alleged flaws in the judgment of the Court of First Instance which it applies

to have set aside and the legal arguments which specifically support that request.

That requirement is not satisfied by an appeal which confines itself to repeating or reproducing word-for-word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court; in reality, such an appeal amounts to no more than a request for a re-examination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court of Justice by virtue of Article 49 of the Statute of the Court of Justice.