

## Case T-113/89

### Nederlandse Associatie van de Farmaceutische Industrie 'Nefarma' and Bond van Groothandelaren in het Farmaceutische Bedrijf

v

### Commission of the European Communities

(Competition — Omni-Partijen Akkoord — Admissibility —  
Nature of contested act)

Judgment of the Court of First Instance (First Chamber), 13 December 1990 ..... 798

#### Summary of the Judgment

*Action for annulment of measures — Measures against which actions may be brought — Letter addressed by a Member of the Commission to a Member State expressing an opinion as regards the compatibility of an agreement between undertakings with the competition rules of the Treaty — No binding legal effects — Exclusion — Taking account thereof by addressee Member State when adopting national measures — Immaterial*

*(EEC Treaty, Arts 5, 85 and 173; Regulation No 17 of the Council)*

A letter addressed to the authorities of a Member State by a Member of the Commission which merely represents an initial evaluation, by the Commission's departments, of an agreement between undertakings with regard to Article 85 of the Treaty and confines itself to suggesting amendments thereto, without producing binding legal effects such as those resulting from a decision granting exemption, a decision ordering interim measures or a

request for information, the procedural rights of the parties to the agreement and any person who has lodged a complaint against it being expressly reserved, cannot be regarded as an act whose annulment may be sought in an action under Article 173 of the Treaty.

The fact that the said letter led the national authorities to which it was addressed to

adopt measures of domestic law does not alter its legal nature. The Commission has no power either under Article 85 of the Treaty or Regulation No 17 or under Article 5 of the Treaty to address a binding

decision to a Member State as regards the conduct to be adopted by the national authorities in connection with an agreement between undertakings falling under Article 85 of the Treaty,

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)  
13 December 1990 \*

In Case T-113/89,

**Nederlandse Associatie van de Farmaceutische Industrie 'Nefarma'**, whose registered office is in Utrecht,

and

**Bond van Groothandelaren in het Farmaceutische Bedrijf**, whose registered office is in Amsterdam,

represented by B. H. Ter Kuile of the Hague Bar, and E. H. Pijnacker Hordijk, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8, rue Zithe,

applicants,

v

**Commission of the European Communities**, represented by B. J. Drijber, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

\* Language of the case: Dutch.