

Case T-5/93

Roger Tremblay and Others

v

Commission of the European Communities

(Competition — Copyright — Regulation No 17 — Rejection of a complaint — Obligations regarding the investigation of complaints — Community interest)

Judgment of the Court of First Instance (Second Chamber), 24 January 1995 ... II - 188

Summary of the Judgment

1. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision implementing competition rules*
(*EC Treaty, Art. 190; Council Regulation No 17, Art. 3*)
2. *Acts of the institutions — Statement of reasons — Contradictory — Effect*
(*EC Treaty, Art. 190*)
3. *Competition — Administrative procedure — Examination of complaints — Commission's obligation to adopt a decision as to the existence of an infringement — None*
(*EC Treaty, Arts 85 and 86*)

4. *Competition — Administrative procedure — Examination of complaints — Consideration of the Community interest in investigating a case — Criteria for assessment of that interest (EC Treaty, Arts 85 and 86)*

1. The statement of reasons on which a decision adversely affecting a person is based must, first, be such as to enable the person concerned to ascertain the matters justifying the measure adopted so that, if necessary, he can defend his rights and verify whether the decision is well founded and, secondly, enable the Community judicature to exercise its power of review as to the legality of the decision. However, the Commission is not obliged, in stating the reasons for the decisions which it takes to ensure the application of the competition rules, to adopt a position on all the arguments relied on by the persons concerned in support of their application for a finding of an infringement of those rules; it need only set out the facts and legal considerations which are of decisive importance in the context of the decision.

A statement of the reasons for a Commission decision rejecting a complaint comprising three allegations, which deals with two of those allegations but does not disclose why the complaint was rejected in respect of the third allegation, does not meet the requirements of Article 190 of the Treaty.

2. A contradiction in the statement of the reasons on which a decision is based constitutes a breach of the obligation laid down in Article 190 of the Treaty such as to affect the validity of the measure in question if it is established that, as a result of that contradiction, the addressee of the measure is not in a position to ascertain,

wholly or in part, the real reasons for the decision and, as a result, the operative part of the decision is, wholly or in part, devoid of any legal justification.

3. Articles 85(1) and 86 of the Treaty produce direct effects in relations between individuals and create direct rights for individuals which the national courts must safeguard. In view of that division of powers between the Commission and the national courts and of the resulting protection available to individuals before the national courts, it must be concluded that Article 3 of Regulation No 17 does not confer upon a person who lodges an application under that article the right to obtain from the Commission a decision, within the meaning of Article 189 of the EC Treaty, regarding the existence or otherwise of an infringement of the abovementioned provisions of the Treaty, even if the Commission has become persuaded that such an infringement has occurred. The position would be different only if the complaint fell within the exclusive purview of the Commission, as in the case of the withdrawal of an exemption granted under Article 85(3) of the Treaty.

4. The Commission is entitled to reject a complaint where it finds, either before

commencing an investigation or after taking investigative measures, that the case does not display sufficient Community interest to justify further investigation of it. In order to assess that interest, the Commission must take account of the circumstances of the case and in particular the matters of fact and law to which its attention is drawn. It must, in particular, balance the significance of the alleged infringement as regards the functioning of the Common Market, the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required for it to perform, under the best possible conditions, its task of making sure that Articles 85 and 86 of the Treaty are complied with. The fact that a national court or national competition authority is already dealing with a case concerning the compatibility of an agreement or practice with Article 85 or 86 of the Treaty is a factor which the Commission may take into account in evaluating the extent

to which a case displays a Community interest.

In particular, where the effects of the infringements alleged in a complaint are essentially confined to the territory of one Member State and where proceedings in respect of those infringements have been brought before the courts and competent administrative authorities of that Member State by the complainant, the Commission is entitled to reject the complaint through lack of a Community interest, provided however that the rights of the complainant can be adequately safeguarded by the national courts — which presupposes that the latter are in a position to gather the factual information necessary in order to determine whether the practices at issue constitute an infringement of the abovementioned provisions of the Treaty.