

Case T-1/89

Rhône-Poulenc S.A.

v

Commission of the European Communities

(Competition — Concepts of agreement and concerted practice —
Collective responsibility)

Opinion of Judge Vesterdorf, acting as Advocate General, delivered on 10 July 1991	II - 869
Judgment of the Court of First Instance (First Chamber), 24 October 1991	II - 1034

Summary of the Judgment

1. *Competition — Cartels — Agreements between undertakings — Meaning — Common purpose as to the conduct to be adopted on the market.*
(EEC Treaty, Art. 85(1))
2. *Competition — Cartels — Concerted practice — Meaning — Coordination and cooperation incompatible with the obligation upon each undertaking to determine independently its conduct on the market — Meetings between competitors having as their purpose the exchange of information decisive for the elaboration of the marketing strategy of the participants.*
(EEC Treaty, Art. 85(1))
3. *Competition — Cartels — Complex infringement involving elements of agreements and elements of concerted practices — A single characterization as 'an agreement and a concerted practice' — Whether permissible — Consequences as regards the proof to be adduced.*
(EEC Treaty, Art. 85(1))

4. Competition — Administrative procedure — Single decision ruling on a series of unlawful actions not uniformly imputable to all the undertakings to which it is addressed — Whether permissible — Condition — Each undertaking to be able to identify the complaints made against it.

(EEC Treaty, Art. 85(1))

1. In order for there to be an agreement within the meaning of Article 85(1) of the Treaty, it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way. This is the case where there are common intentions between a number of undertakings to achieve target prices and sales volume targets.

2. The criteria of coordination and cooperation which enable the concept of a concerted practice to be defined must be understood in the light of the concept inherent in the competition provisions of the Treaty according to which each economic operator must determine independently the policy which he intends to adopt on the common market. Although this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between such operators the object or effect thereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.

The participation in meetings having as their purpose the fixing of price and sales volume targets during which information is exchanged between competitors on the

prices which they intend to charge, their profitability thresholds, the sales volume restrictions they judge to be necessary or their sales figures constitutes a concerted practice since the information thus disclosed is bound to be taken into account by the participating undertakings in determining their conduct on the market.

3. Since Article 85(1) of the Treaty does not provide for a specific characterization for an infringement which, whilst being complex, remains a single infringement because it consists of continuous conduct characterized by a single purpose and involving at one and the same time factual elements to be characterized as 'agreements' and factual elements to be characterized as 'concerted practices', such an infringement may be given the characterization of 'an agreement and a concerted practice' and proof is not required, simultaneously and cumulatively, that each of those factual elements presents the constituent elements of an agreement and of a concerted practice.

4. There is nothing to prevent the Commission from adopting a single decision on a series of infringements of Article 85 of the Treaty in which various undertakings to which the decision is addressed did not participate in an identical manner, provided that the decision allows each addressee to obtain a clear picture of the complaints made against it.