

Case T-241/97

Stork Amsterdam BV

v

Commission of the European Communities

(Competition — Administrative procedure — Examination of complaints —
Infringement of Article 85 of the EC Treaty (now Article 81 EC) — Comfort
letters — Reopening the procedure — Statement of reasons — Duty to
provide — Extent — Cooperation agreement — Exclusive mutual supply
clause — No-compete clause)

Judgment of the Court of First Instance (Fourth Chamber), 17 February
2000 II- 313

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Definition — Measures producing binding legal effect — Administrative procedure for applying the competition rules — Preliminary observations of the Commission — Notification provided for by Article 6 of Regulation No 99/63 — Preparatory acts — Comfort letter emanating from a member of the Commission's staff — Actionable measure*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC); Commission Regulations Nos 17, Art. 3(2), and 99/63, Art. 6)

2. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision of the Commission to reopen the procedure for examining a complaint of infringement of the competition rules*
(EC Treaty, Art. 190 (now Art. 253 EC); Commission Regulations Nos 17, Art. 3(2) and 99/63, Art. 6)
3. *Actions for annulment — Pleas in law — Inadequate statement of reasons — Court's examination of its own motion*
4. *Competition — Administrative procedure — Examination of complaints — Commission's decision to take no further action — Effect on the national courts' assessment of the agreement at issue*
(EC Treaty, Art. 85 (now Article 81 EC); Commission Regulations Nos 17, Art. 3(2) and 99/63, Art. 6)

1. Any measure the legal effects of which are binding on and capable of affecting the interests of the applicant, by bringing about a distinct change in his legal position, is an act or a decision which may be the subject of an action for annulment, regardless of the particular form in which it is adopted. In particular, in cases of acts or decisions drawn up in a procedure involving several stages, and particularly at the end of an internal procedure, it is in principle only those measures which definitively determine the position of the institution upon the conclusion of that procedure which are open to challenge and not intermediate measures whose purpose is to prepare for the final decision.

In the context of the procedure for considering a complaint alleging infringement of the competition rules brought under Article 3 of Regulation No 17, which comprises three successive stages, neither the preliminary

observations, if any, made in the context of the first of those stages, nor notifications under Article 6 of Regulation No 99/63, can be regarded as measures open to challenge. On the other hand, comfort letters definitively rejecting a complaint and closing the file may be the subject of an action, since they have the content and effect of a decision, inasmuch as they close the investigation, contain an assessment of the agreements in question and prevent the applicants from requiring the reopening of the investigation unless they put forward new evidence.

Commission letters that contain a clear appraisal of the agreement in question and, in particular, of its economic importance and which inform the persons concerned of the Commission's intention to take no further action on the matter belong to the last stage of the procedure and may therefore be the subject of an action for annulment, even if they emanate from a member of the Commission's staff rather than from the Member of the Commission

responsible for competition matters, since all the indications are that the decision to take no further action on the matter constitutes the final step in the administrative procedure and finally determines the Commission's position.

economic importance at Community level, decides to reopen the procedure.

(see paras 73, 76-77, 82)

(see paras 49, 52-53, 63)

2. The extent of the obligation to state reasons depends on the nature of the measure in question and on the context in which it was adopted. The statement of reasons must disclose in a clear and unequivocal fashion the reasoning of the institution, in such a way as to give the persons concerned sufficient information to enable them to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested, and to enable the Community judicature to carry out its review of the legality of the measure.

(see para. 74)

In particular, there must be a statement of reasons for any decision whereby the Commission, going back on its initial position to take no further action on a complaint of infringement of the competition rules because of its limited

3. The obligation to state the reasons for a measure with sufficient precision, enshrined in Article 190 of the Treaty (now Article 253 EC), is one of the fundamental principles of Community law which the Court has to ensure are observed, if necessary by considering of its own motion a plea of failure to fulfil that obligation.

4. Comfort letters concerning a complaint of infringement of the competition rules, which reflect the Commission's assessment and bring its examination to an end, do not have the effect of preventing a national court before which the agreement in question is alleged to be incompatible with Article 85 of the Treaty (now Article 81 EC), from reaching a different finding as regards that agreement on the basis of the information available to it.

Whilst such letters do not bind the national court, the opinion expressed in them constitutes a factor which a national court may take into account in considering whether the agreement or conduct in question is compatible with

the provisions of Article 85 of the Treaty.

(see para. 84)