

Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01,
T-251/01 and T-252/01

Tokai Carbon Co. Ltd and Others

v

Commission of the European Communities

(Competition — Cartel — Graphite electrodes market — Price-fixing and market-sharing — Calculation of fines — Concurrent sanctions — Guidelines on the method of setting fines — Applicability — Gravity and duration of the infringement — Aggravating circumstances — Attenuating circumstances — Ability to pay — Cooperation during the administrative procedure — Arrangements for payment)

Judgment of the Court of First Instance (Second Chamber), 29 April 2004 II - 1200

Summary of the Judgment

- 1. Competition — Administrative procedure — Respect for the rights of the defence — Access to the file — Obligation to make the entire file available — Limits — Documents containing business secrets and internal documents — Exception — Communication of internal documents in exceptional circumstances*
(Arts 81(1) EC and 82 EC; Council Regulation No 17)

2. *Competition — Administrative procedure — Respect for the rights of the defence — Statement of objections — Production of further evidence after the statement of objections has been sent — Admissibility — Conditions*
(Council Regulation No 17, Art. 19(1))

3. *Competition — Administrative procedure — Hearings — Obligation for the hearing officer to draw up a final report on respect for the right to be heard — Scope*
(Commission Decision 2001/462, Arts 15 and 16)

4. *Actions for annulment — Pleas — Challenge to the facts held by a decision penalising infringement of the competition rules — Admissibility — Condition — No admission of those facts during the administrative procedure*
(Art. 230 EC)

5. *Competition — Fines — Amount — Reduction in return for cooperation consisting in not contesting the reality of certain facts — Challenge to those facts before the Court of First Instance — Possibility that the Court, in the exercise of its unlimited jurisdiction, may increase the amount of the fine*
(Council Regulation No 17, Art. 15)

6. *Competition — Fines — Community penalties and penalties imposed by the authorities of a Member State or a non-member State for infringement of national competition law — Infringement of the principle ‘non bis in idem’ — None — Concurrent sanctions — Admissible — Obligation on the Commission to take account, when determining the amount of the fine, of the penalty imposed in a Member State on the basis of the same facts — Obligation not transposable to the case of a penalty imposed in a non-member State*
(Charter of Fundamental Rights of the European Union, Art. 50; Protocol No 7 to the European Convention on Human Rights, Art. 4; Council Regulation No 17, Art. 15)

7. *Competition — Fines — Amount — Determination — Possibility of increasing the fines in order to strengthen their deterrent effect — Obligation to take into account, in that regard, the fines already imposed in a non-member State — None*
(Arts 81(1) EC and 82 EC; EEA Agreement, Art. 53(1); Council Regulation No 17, Art. 15(2))

8. *Community law — Principles — Protection of legitimate expectations — Conditions — Assurances given by the Director-General responsible for competition matters concerning the setting of the amount of the fine — Excluded owing to the exclusive competence of the College of Commissioners*
(Internal rules of the Commission, Art. 1)

9. *Competition — Fines — Amount — Commission's discretion — Unlimited jurisdiction of the Court of First Instance — Possibility, in that context, to take into consideration additional information which is not mentioned in the decision imposing the fine*
(Art. 229 EC; Council Regulation No 17, Art. 17)

10. *Competition — Fines — Amount — Determination — Legal framework — Article 15 (2) of Regulation No 17 — Introduction by the Commission of guidelines which are innovative by reference to its previous practice in taking decisions — Breach of the principles of non-retroactivity and legal certainty — None*
(Council Regulation No 17, Art. 15(2); Commission Communication 98/C 9/03)

11. *Competition — Community rules — Infringements — Fines — Amount — Determination — Criteria — Increase in the general level of fines — Admissibility — Conditions*
(Council Regulation No 17, Art. 15(1) and (2))

12. *Competition — Fines — Amount — Determination — Turnover to be taken into consideration in calculating the fine — Commission's discretion while respecting the limit set down in Article 15(2) of Regulation No 17*
(Council Regulation No 17, Art. 15(2); Commission Communication 98/C 9/03)

13. *Competition — Fines — Amount — Determination — Criteria — Taking into account of worldwide turnover from the goods forming the subject-matter of the infringement — Admissibility — Limits*
(Council Regulation No 17, Art. 15)

14. *Competition — Fines — Amount — Determination — Criteria — Assessment of the gravity of an infringement by reference to its impact — Account to be taken of the effects of the whole of the infringement and not of the individual conduct of the undertakings participating in the cartel*
(Council Regulation No 17, Art. 15; Commission Communication 98/C 9/03, point 1.A)
15. *Competition — Fines — Amount — Determination — Division of an overall amount between different groups of undertakings — Admissibility — Conditions*
(Council Regulation No 17, Art. 15(2))
16. *Competition — Fines — Amount — Determination — Calculation method set out in the Commission's guidelines — Commission decision to apply that method in a particular case — Consequences — Obligation to state reasons for any departure*
(Council Regulation No 17, Art. 15(2); Commission Communication 98/C 9/03)
17. *Competition — Fines — Decision imposing fines — Obligation to state reasons — Scope — Statement of the factors by which the Commission assessed the gravity and duration of the infringement — Sufficient statement*
(Art. 253 EC; Council Regulation No 17, Art. 15(2))
18. *Competition — Community rules — Infringements — Attribution — Legal person responsible for the operation of the undertaking at the time of the infringement*
(Art. 81(1) EC)
19. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringements — Respective roles of the undertakings involved*
(Council Regulation No 17, Art. 15)
20. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringements — Attenuating circumstances — Passive or 'follow-my-leader' role of the undertaking*
(Council Regulation No 17, Art. 15; Commission Communication 98/C 9/03)

21. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringements — Attenuating circumstances — Whether Commission obliged to adhere to its previous decision-making practice — No such obligation — Setting-up by an undertaking of a competition compliance programme — Poor financial situation of the sector in which an undertaking operates*
 (Art. 81(1) EC; Council Regulation No 17, Art. 15)
22. *Competition — Fines — Amount — Limit fixed by Article 15(2) of Regulation No 17 — Implementing procedures*
 (Council Regulation No 17, Art. 15(2))
23. *Competition — Fines — Amount — Determination — Criteria — Financial situation of the undertaking concerned — May be taken into consideration — Whether the Commission is obliged to adhere to its previous decision-making practice — No such obligation*
 (Council Regulation No 17, Art. 15)
24. *Competition — Administrative procedure — Request for information — Rights of the defence — Absolute right of silence — None — Right to refuse to provide answers that imply admission of an infringement*
 (Council Regulation No 17, Art. 11(5))
25. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine in return for cooperation by the undertaking involved — Cooperation in the context of the reply to a request for information — Taken into account*
 (Council Regulation No 17, Art. 15(2); Commission Communication 96/C 207/04)
26. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine in return for cooperation by the undertaking involved — Concept of ‘evidence’*
 (Council Regulation No 17, Art. 15(2); Commission Communication 96/C 207/04)

27. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine in return for cooperation by the undertaking involved — Information on the existence of a disloyal Commission official — Taken into account*
(Council Regulation No 17, Art. 15(2); Commission Communication 96/C 207/04)
28. *Competition — Fines — Commission's discretion — Scope — Power to determine the arrangements for payment of the fines — Imposition of default interest*
(Council Regulation No 17, Art. 15(2))

1. In order to allow the undertakings concerned to defend themselves effectively against the objections raised against them in the statement of objections, the Commission is required to make available to them the entire investigation file, except for documents containing business secrets of other undertakings, other confidential information and internal documents of the Commission.

both before the Community Court and in the administrative procedure conducted by the Commission.

(see paras 38, 40)

As regards the latter, a restriction on access to them is justified by the need to ensure the proper functioning of the Commission when it deals with infringements of the Treaty competition rules; internal documents can be made available only if the exceptional circumstances of the case so require, on the basis of serious evidence which it is for the party concerned to provide,

2. The statement of objections must allow those concerned to have effective knowledge of the conduct in respect of which they are accused by the Commission, that requirement being met when the final decision does not find that the undertakings concerned have committed infringements different from those referred to in the statement of objections and establishes only facts on which the persons concerned have had the opportunity to explain themselves.

However, there is no provision that prevents the Commission from sending to the parties concerned after the statement of objections fresh documents which it considers support its argument, subject to giving the undertakings the necessary time to submit their views on the subject.

required to communicate to the College of Commissioners only the objections relevant to the assessment of the lawfulness of the conduct of the administrative procedure.

(see paras 52, 53)

(see paras 45, 47)

3. Under Articles 15 and 16(1) of Decision 2001/462 on the terms of reference of hearing officers in certain competition proceedings, the hearing officer is to prepare a final report on the respect of the right to be heard, which also considers whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views and which is to be attached to the draft decision submitted to the Commission, in order to ensure that, when it reaches a decision, the Commission is fully apprised of 'all relevant information' as regards the course of the procedure and respect of the right to be heard.
4. Where an undertaking involved in an infringement of the competition rules does not expressly acknowledge the facts, the Commission must prove the facts and the undertaking is free to put forward, in the procedure before the Court, any plea in its defence which it deems appropriate. On the other hand, that is not the case where the undertaking expressly, clearly and specifically acknowledges the facts: where it explicitly admits during the administrative procedure the substantive truth of the facts which the Commission alleges against it in the statement of objections, those facts must thereafter be regarded as established and the undertaking estopped in principle from disputing them during the procedure before the Court.

It follows that the hearing officer is not responsible for collecting all the objections of a procedural nature put forward by the parties concerned during the administrative procedure. He is

(see para. 108)

5. The Court of First Instance cannot be prohibited, in any circumstances, in the exercise of its unlimited jurisdiction, from increasing the amount of the fine imposed on an undertaking which, after having the benefit of a reduction in its fine in return for not having disputed the substantive truth of the facts established by the Commission during the administrative procedure, calls in question the veracity of those facts for the first time before the Court of First Instance.

(see para. 113)

6. The principle *ne bis in idem*, also enshrined in Article 4 of Protocol No 7 to the European Convention on Human Rights, is a general principle of Community law upheld by the Community judicature. In the field of Community competition law, the principle precludes an undertaking from being sanctioned by the Commission or made the defendant to proceedings brought by the Commission a second time in respect of anti-competitive conduct for which it has already been penalised or of which it has been exonerated by a previous decision of the Commission that is no longer amenable to challenge.

None the less, the possibility of concurrent sanctions, one a Community sanction, the other a national one,

resulting from two sets of parallel proceedings, each pursuing distinct ends, is acceptable because of the special system of sharing jurisdiction between the Community and the Member States with regard to cartels. However, a general requirement of natural justice demands that, in determining the amount of a fine, the Commission must take account of any penalties that have already been borne by the undertaking in question in respect of the same conduct where these were imposed for infringement of the law relating to cartels of a Member State and where, consequently, the infringement was committed within the Community.

That possibility of concurrent sanctions is justified where the national and Community proceedings pursue different ends. In those circumstances, the principle *ne bis in idem* cannot, a fortiori, apply in the case of procedures conducted and penalties imposed by the Commission on the one hand and the authorities of non-member States on the other which clearly did not pursue the same ends. The aim of the first was to preserve undistorted competition within the European Union or the European Economic Area, whereas the aim of the second was to protect the market of a non-member State. The application of the principle *ne bis in idem* is subject not only to the infringements and the persons sanctioned being the same, but also to the unity of the legal right being protected.

That conclusion is supported by the scope of the principle that a second penalty may not be imposed for the same offence, as laid down in Article 4 of Protocol No 7 to the European Convention on Human Rights. It is clear from the wording of Article 4 that the intended effect of the principle is solely to prevent the courts of any given State from trying or punishing an offence for which the person concerned has already been acquitted or convicted in that same State. On the other hand, the principle *ne bis in idem* does not preclude a person from being tried or punished more than once in two or more different States for the same conduct.

It is true that Article 50 of the Charter of Fundamental Rights of the European Union provides that no one may be tried or punished again in criminal proceedings for an offence of which he has already been finally acquitted or convicted within the Union in accordance with the law. However, that charter is clearly intended to apply only within the territory of the Union and the scope of the right laid down in Article 50 is expressly limited to cases where the first acquittal or conviction was handed down within the Union.

(see paras 130-135, 137)

7. The Commission's power to impose fines on undertakings which, intentionally or negligently, infringe the provisions of Article 81(1) EC or Article 82 EC is one of the means conferred on the Commission to enable it to carry out the task of supervision entrusted to it by Community law. That task includes the duty to pursue a general policy designed to apply, in competition matters, the principles laid down by the Treaty and to guide the conduct of undertakings in the light of those principles.

It follows that the Commission has power to decide the level of fines so as to reinforce their deterrent effect where infringements of a given type, although established as being unlawful at the outset of Community competition policy, are still relatively frequent on account of the profit that certain of the undertakings concerned are able to derive from them.

The objective of deterrence which the Commission is entitled to pursue when setting fines is intended to ensure that undertakings comply with the competition rules laid down in the Treaty when conducting their activities within the Community or the European Economic Area (EEA). Consequently, the deterrent effect of a fine imposed for infringement of the Community competition rules cannot be assessed by

reference solely to the particular situation of the undertaking sanctioned or by reference to whether it has complied with the competition rules in non-member States outside the EEA.

It is therefore permissible for the Commission to impose on an undertaking a fine of a sufficiently deterrent level within the limits laid down in Article 15(2) of Regulation No 17, without being required to take account for the purpose of determining those limits of the sanction imposed on that undertaking in non-member States.

(see paras 144, 145, 147-148)

In that regard, an undertaking cannot reasonably expect that a decision adopted by the College of Commissioners, in accordance with the principle of collegiality established in Article 1 of the Rules of Procedure of the Commission of 29 November 2000, imposing a fine on it in order to sanction its participation in a cartel active on a worldwide scale would be delegated, as a 'management or administrative measure' within the meaning of Article 14 of those Rules of Procedure, to the Director-General competent for competition matters. It follows that a Director-General cannot have provided an undertaking with 'precise assurances from [an] authorised, reliable source' as regards the imputation of the sanctions imposed on it in a non-member State, as his powers are limited to submitting proposals to the College which the College is at liberty to accept or reject.

(see paras 152, 153)

8. The principle of protection of its legitimate expectations extends to any individual in a situation where the Community authorities have caused him to entertain legitimate expectations, it being understood that no one may plead infringement of that principle unless he has been given precise, unconditional and consistent assurances, from authorised, reliable sources, by the administration.
9. Although the Commission has a discretion when determining the amount of each fine, and is not required to apply a precise mathematical formula, the Court none the less has, pursuant to Article 17 of Regulation No 17, unlimited jurisdiction within the meaning of Article 229 EC in actions brought against the decisions whereby the Commission has fixed a fine and may therefore cancel, reduce or increase the

fine imposed. In that context, its assessment of the appropriateness of the fine may, independently of any manifest errors of assessment made by the Commission, justify the production and taking into account of additional information which is not mentioned in the Commission decision.

increase in the general level of fines but which does not go beyond the legal framework of sanctions as defined in Article 15(2) of Regulation No 17, cannot be regarded as an aggravation, with retroactive effect, of the fines as provided for in that provision.

(see paras 190, 191)

(see para. 165)

10. The change which the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty made by reference to the Commission's previous administrative practice does not constitute an alteration of the legal framework determining the level of fines which can be imposed that is contrary to the principles of non-retroactivity of legislation and legal certainty. First, the Commission's previous practice does not itself serve as a legal framework for the fines imposed in competition matters, since that framework is defined solely in Regulation No 17. Second, having regard to the wide discretion which Regulation No 17 leaves the Commission, the fact that the latter introduces a new method of calculating fines, which may lead to an

11. The fact that in the past the Commission imposed fines of a certain level for certain types of infringement does not mean that it is estopped from raising that level within the limits indicated in Regulation No 17 if that is necessary to ensure the implementation of Community competition policy and to strengthen the deterrent effect. The proper application of the Community competition rules requires, on the contrary, that the Commission may at any time adjust the level of fines to the needs of that policy.

(see paras 192, 216)

12. As regards the setting of the amount of fines in competition cases, the only express reference to turnover in Article 15(2) of Regulation No 17 concerns the

upper limit that a fine cannot exceed, and that that limit is taken to refer to worldwide turnover. Provided that it remains within that limit, the Commission may in principle choose which turnover to take in terms of territory and products in order to determine the fine, without being obliged to adhere precisely to the worldwide turnover or turnover in the geographic market or the relevant product market. Last, although the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty do not provide that fines are to be calculated according to a specific turnover, they do not preclude such a figure from being taken into account, provided that the choice made by the Commission is not vitiated by a manifest error of assessment.

(see para. 195)

cartel to harm competition within the EEA, on the understanding that, whatever turnover is taken, disproportionate importance must not be ascribed to it by comparison with the other elements of assessment.

(see paras 200, 201)

14. Where the Commission relies on the impact of the infringement in order to assess its gravity, in accordance with point 1.A, first and second paragraphs, of the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, the effects to be taken into account in that regard are those resulting from the entire infringement in which all the undertakings participated, so that consideration of the individual conduct or figures particular to each undertaking is not relevant in that regard.

(see para. 203)

13. The fact that the Commission has the power to impose sanctions only within the European Economic Area (EEA) does not preclude it from taking into consideration worldwide turnover derived from sales of the relevant product in order to evaluate the economic capacity of the members of the

15. As regards the setting of the amount of fines for infringement of the competition rules, the Commission's approach of dividing the members of a cartel into

several categories, with the consequence that a flat-rate starting amount was fixed for all the undertakings in the same category, although such an approach ignores the differences in size between undertakings in the same category, cannot in principle be condemned. The Commission is not required, when determining fines, to ensure, where fines are imposed on a number of undertakings involved in the same infringement, that the final amounts of the fines reflect any distinction between the undertakings concerned in terms of their overall turnover.

However, such a division by categories must comply with the principle of equal treatment, according to which it is prohibited to treat similar situations differently and different situations in the same way, unless such treatment is objectively justified. Furthermore, the amount of the fine must at least be proportionate in relation to the factors taken into account in the assessment of the gravity of the infringement.

It follows that, where the Commission divides the undertakings concerned into categories for the purpose of setting the amount of the fines, the thresholds for

each of the categories thus identified must be coherent and objectively justified.

(see paras 217, 219, 220)

16. Where the Commission decides, for the purpose of setting the amount of the fines to be imposed on economic operators which have infringed the competition rules, to apply the differentiation method laid down in the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, it is required to adhere to them, and must set out expressly its reasons should it depart from those Guidelines in any particular regard. Accordingly, while the Commission may take a multitude of factors into consideration in determining the final amount of a fine and is not required to apply mathematical formulae when doing so, it must, where it deemed it appropriate and equitable to have recourse, at a certain stage of that exercise, to mathematical calculations, apply its own method in a manner which is correct, coherent and, in particular, non-discriminatory. Once it has voluntarily chosen to apply such an arithmetical method, it is bound by the

rules inherent therein, unless it provides express reasons for not doing so, in regard to all members of the same cartel.

to set out a more detailed account or the figures relating to the method of calculating the fine.

(see paras 250, 252)

(see paras 231, 232, 352)

17. The statement of reasons on which an individual decision is based must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The assessment of the requirement to state reasons depends on the circumstances of each case. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to the wording of the measure but also to the context in which the measure was adopted.

In that regard, the Commission fulfils its obligation to state reasons when it indicates, in a decision imposing sanctions for infringement of the Community competition rules, the factors which enabled it to measure the gravity of the offence, without being required

18. The rule that it falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking, must be interpreted as meaning that an undertaking — that is to say, an economic unit consisting of personal, tangible and intangible elements — is directed by the organs provided for in its articles of association and that any decision imposing a fine on it may be addressed to the management as provided for in the undertaking's articles of association (management board, management committee, chairman, manager, etc.), even though the financial consequences of the fine are ultimately borne by its owners. That rule would not be observed if the Commission, faced with unlawful conduct on the part of an undertaking, were always required to ascertain who is the owner exercising a decisive influence on the undertaking and were allowed to impose a sanction only on that owner.

(see paras 280, 281)

19. Where an infringement has been committed by a number of undertakings, it is necessary, in determining the amount of the fines, to establish their respective roles in the infringement throughout the duration of their participation in it. It follows, in particular, that the role of 'ringleader' played by one or more undertakings in a cartel must be taken into account for the purposes of calculating the amount of the fine, in so far as the undertakings which played such a role must therefore bear special responsibility in comparison with the other undertakings.

significantly more sporadic nature of its participation in the meetings by comparison with the ordinary members of the cartel, and also the existence of express declarations to that effect made by representatives of other undertakings which participated in the infringement. In any event, it is necessary to take account of all the relevant circumstances in each particular case.

(see paras 330, 331)

(see para. 301)

20. According to the third indent of point 3 of the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, an 'exclusively passive or "follow-my-leader" role' played by an undertaking in the infringement may, if established, constitute an attenuating circumstance.

21. Where it is required to set the amount of the fines to be imposed on the members of an anti-competitive cartel, the Commission is not required, when taking attenuating circumstances into account, to adhere to its previous practice in taking decisions. It is therefore under no obligation, even if it has done so in the past, to take into account as an attenuating circumstance the fact that an undertaking has set up a competition compliance programme or the fact that the sector in which an undertaking operates is in a poor financial situation.

In that regard, the factors capable of revealing the passive role of an undertaking within a cartel may include the

(see paras 343, 345)

22. The maximum limit of 10% referred to in Article 15(2) of Regulation No 17 which is not to be exceeded by the amount of a fine imposed on an undertaking for infringement of the competition rules refers to the total turnover of the undertaking concerned, which alone gives an indication of that undertaking's size and influence on the market. It is only the fine ultimately imposed that must be reduced to that limit, in accordance with Article 15 of Regulation No 17; that provision does not prohibit the Commission from referring, during its calculation, to an intermediate amount higher than that limit, provided that the amount of the fine eventually imposed does not exceed it.

decisions that it was appropriate to take account of the financial difficulties of a given undertaking does not mean that it is obliged to do so in a subsequent decision.

Furthermore, the fact that a measure taken by a Community authority leads to the insolvency or liquidation of a given undertaking is not prohibited as such by Community law.

(see paras 370, 372, 484)

(see para. 367)

23. In a competition matter, the Commission is not required when determining the amount of the fine to take account of an undertaking's financial losses since recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings least well adapted to the conditions of the market. The fact that the Commission has found in previous

24. An absolute right to silence cannot be recognised to an undertaking to which a decision requiring information within the meaning of Article 11(5) of Regulation No 17 is addressed. To acknowledge the existence of such a right would be to go beyond what is necessary in order to preserve the rights of defence of undertakings, and would constitute an unjustified hindrance to the Commission's performance of its duty to ensure that the rules on competition within the common market are observed. A right to silence can be recognised only to the extent that the undertaking concerned would be compelled to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to establish.

In order to ensure the effectiveness of Article 11 of Regulation No 17, the Commission is therefore entitled to compel the undertakings to provide all necessary information concerning such facts as may be known to them and to disclose to the Commission, if necessary, such documents relating thereto as are in their possession, even if the latter may be used to establish the existence of anti-competitive conduct. This power of the Commission to obtain information does not fall foul of either Article 6(1) and (2) of the European Convention on Human Rights or the case-law of the European Court of Human Rights.

produced by him have a different meaning from that ascribed to them by the Commission.

(see paras 402-404, 406)

25. The fact that a request for information was sent to an undertaking under Article 11(1) of Regulation No 17 cannot minimise the cooperation provided by that undertaking under point D, paragraph 2, first indent, of the Notice on the non-imposition or reduction of fines in cartel cases.

(see para. 410)

In any event, the mere fact of being obliged to answer purely factual questions put by the Commission and to comply with its requests for the production of documents already in existence cannot constitute a breach of the fundamental principle of respect for the rights of defence or impair the right to fair legal process, which offer, in the field of competition law, protection equivalent to that guaranteed by Article 6 of the European Convention on Human Rights. There is nothing to prevent the addressee of a request for information from showing, whether later during the administrative procedure or in proceedings before the Community Courts, that the facts set out in his replies or the documents

26. Oral information provided to the Commission by an undertaking may constitute valid evidence for the purposes of the first indent of point D(2) of the Notice on the non-imposition or reduction of fines in cartel cases. That provision states that not only 'documents' but also 'information' may serve as 'evidence' which materially contributes to establishing the existence of the infringement. It follows that the information need not necessarily be provided in documentary form. Furthermore, the practical utility of

purely oral information is indisputable when it allows the Commission, for example, to find direct evidence of the infringement or when, owing to its precision, it encourages the Commission to continue an investigation which, not having sufficient evidence available at that time, it would have abandoned without that information.

(see paras 430, 431)

27. A reduction in the fine may be granted in respect of any cooperation which enabled the Commission to establish the existence of an infringement more easily and, where relevant, to bring it to an end. While it is true that the Notice on the non-imposition or reduction of fines in cartel cases provides, in point 3, only for a reduction 'in the fine which would have been imposed upon [the undertakings cooperating with the Commission]', it does not require that each individual item of information must relate to an infringement of competition law in respect of which a separate sanction may be imposed. In order to be able to benefit from that notice, it is sufficient that, by revealing its involvement in an infringement, the undertaking minded to cooperate

exposes itself to sanctions, while whether the various items of information may be taken into consideration for the purposes of a possible reduction in the fine depends on how useful they are to the Commission in its task of establishing the existence of the infringement and putting an end to it.

In that last regard, where a disloyal Commission official is in a position to sabotage its mission by supporting the members of an illegal cartel and may thus considerably complicate the investigation carried out by the Commission, for example by destroying or manipulating evidence, by informing the members of the cartel of a forthcoming unannounced investigation and by revealing the entire investigation strategy drawn up by the Commission, information about the existence of such an official must, in principle, be regarded as being capable of making it easier for the Commission to carry out its task of establishing an infringement and putting an end to it. Such information is particularly useful when it is provided at the beginning of the investigation opened by the Commission into possible anti-competitive conduct.

(see paras 435, 436)

28. The power conferred on the Commission by Article 15(2) of Regulation No 17 covers the power to determine the date on which the fines are payable and that on which default interest begins to accrue, the power to set the rate of such interest and to determine the detailed arrangements for implementing its decision by requiring, where appropriate, the provision of a bank guarantee covering the principal amount of the fines imposed plus interest. If the Commission had no such power, the advantage which undertakings might be able to derive from late payment of fines would weaken the effect of penalties imposed by the Commission

when carrying out its task of ensuring that the rules on competition are applied. Thus, the charging of default interest on fines is justified by the need to ensure that the Treaty is not rendered ineffective by practices applied unilaterally by undertakings which delay paying fines imposed on them and to ensure that those undertakings do not enjoy an advantage over those which pay their fines within the period laid down.

(see paras 475, 476)