

Case T-34/93

Société Générale
v
Commission of the European Communities

(Competition — Decision requiring information
pursuant to Article 11(5) of Regulation No 17 —
Statement of reasons — Rights of the defence)

Judgment of the Court of First Instance (Fourth Chamber), 8 March 1995 II - 547

Summary of the Judgment

1. *Competition — Administrative procedure — Request for information — Indication of the legal basis and purpose of the request — Need for the existence of a connection between the information requested and the infringement under investigation*
(Council Regulation No 17, Art. 11(3))
2. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision requiring information pursuant to Article 11 of Regulation No 17*
(EEC Treaty, Art. 190; Council Regulation No 17, Art. 11(3))

3. *Community law — Principles — Rights of the defence — Observance during administrative proceedings — Competition — Decision requiring an undertaking to supply information — Right to refuse to give an answer implying acknowledgment of an infringement (Council Regulation No 17, Art. 11)*

1. The Commission's obligation to specify the subject-matter and purpose of a decision requiring information pursuant to Article 11 of Regulation No 17 is a fundamental requirement both in order to show that the information requested of the undertakings concerned is justified and also to enable those undertakings to assess the scope of their duty to cooperate while at the same time safeguarding their rights of defence. It follows that the Commission is entitled to require the disclosure only of information which may enable it to investigate putative infringements which justify the conduct of the inquiry and are set out in the request for information.

2. Article 11(3) of Regulation No 17 lays down the essential constituents of the statement of reasons for a decision requiring information to be supplied by providing that it must state the legal basis and the purpose of the request and also the penalties provided for in Article 15(1)(b) for supplying incorrect information. In that regard, the Commission is not required to communicate to the addressee of such a decision all the information at its disposal concerning presumed infringements or to make a precise legal analysis

of those infringements, although it must clearly indicate the presumed facts which it intends to investigate.

3. Respect for the rights of the defence, as a fundamental principle, must be observed not only in administrative procedures which may lead to the imposition of penalties but also during preliminary inquiry procedures which may be decisive in establishing the unlawful nature of conduct engaged in by undertakings.

Accordingly, whilst the Commission is entitled, in the context of a request for information under Article 11 of Regulation No 17, to compel an undertaking to provide all necessary information, even if that information may be used to establish, against it or another undertaking, the existence of anti-competitive conduct, it may not, by means of a decision requiring information to be supplied, undermine the rights of defence of the undertaking concerned and compel it to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent on the Commission to prove.