

## Case T-44/90

**La Cinq SA**

**v**

**Commission of the European Communities**

(Competition — Refusal by the Commission to adopt interim measures)

Judgment of the Court of First Instance (First Chamber), 24 January 1992 ..... II - 3

### Summary of the Judgment

1. *Competition — Administrative procedure — Termination of infringements — Adoption of interim measures — Commission's power — Conditions for exercise*  
(Regulation No 17 of the Council, Art. 3(1))
2. *Measures adopted by the institutions — Statement of reasons — Obligation — Scope — Decision applying rules on competition*  
(EEC Treaty, Art. 190)
3. *Competition — Administrative procedure — Termination of infringements — Adoption of interim measures — Prior finding of a prima facie infringement*  
(Regulation No 17 of the Council, Art. 3(1))
4. *Competition — Administrative procedure — Termination of infringements — Adoption of interim measures — Risk of serious and irreparable damage*  
(Regulation No 17 of the Council, Art. 3(1))

*5. Action for annulment — Decision of the Commission regarding the adoption of interim measures under Article 3(1) of Regulation No 17 — Complex economic appraisal — Judicial review — Limits — Observance of guarantees provided for citizens (EEC Treaty, Art. 173; Regulation No 17 of the Council, Art. 3(1))*

1. It is for the Commission, in the performance of the supervisory tasks conferred upon it by the Treaty and Regulation No 17 in competition matters, to decide, pursuant to Article 3(1) of that regulation, whether it is necessary to take interim measures when it receives a request to that effect.

The statement of the reasons on which a decision adversely affecting a person are based must be such as to enable the Community judicature to exercise its power of review as to the legality of the decision and to enable the person concerned to ascertain the matters justifying the measure adopted, so that he can defend his rights and verify whether the decision is well founded.

For it to be possible to order such measures, two conditions must be fulfilled; firstly, the practices of certain undertakings must be *prima facie* such as to constitute a breach of the Community rules on competition in respect of which a penalty could be imposed by a decision of the Commission; secondly, there must be proven urgency requiring the prevention of the occurrence of a situation likely to cause serious and irreparable damage to the party applying for their adoption or intolerable damage to the public interest.

2. In stating the reasons for the decisions adopted by it to ensure the application of the rules of competition, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned. It is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision.

3. When the Commission orders interim measures under Article 3 of Regulation No 17 it is not obliged to find the existence of a *prima facie* infringement of the rules on competition with the same degree of certainty as that required for a final decision and may not therefore refuse to order such measures on the ground that an initial summary examination of the facts has not revealed that there is a clear and flagrant infringement.

4. When the Commission has received an application for provisional measures under Article 3(1) of Regulation No 17, it must, in order to assess the existence or the risk of serious or irreparable damage to the party seeking them, take into account damage which can no longer be remedied by the decision adopted upon the conclusion of the administrative procedure, and not solely damage which cannot be remedied by any subsequent decision.

5. In the case of situations involving complex economic appraisals, such as that confronting the Commission when it receives an application from an undertaking for the adoption of interim measures pursuant to Article 3(1) of Regulation No 17, judicial review must be confined to verifying whether the rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of appraisal or a misuse of powers.

In cases where the institutions of the Community have a power of appraisal in order to be able to fulfil their tasks, observance of the rights guaranteed by the Community legal order in administrative procedures is of even more fundamental importance. Those guarantees include, in particular, the duty of the Commission to examine carefully and impartially all the relevant aspects in the individual case.

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

24 January 1992 \*

In Case T-44/90,

**La Cinq SA**, a company incorporated under French law, established in Paris, represented by Gilbert Parleani, of the Paris bar, with an address for service in Luxembourg at the Chambers of Philippe Hoss, 15 Cote d'Eich,

applicant,

v

**Commission of the European Communities**, represented by B. J. Drijber and E. Buissart, members of its Legal Service, with an address for service in Luxembourg at the office of Roberto Hayder, a national civil servant seconded to its Legal Service, Centre Wagner, Kirchberg,

defendant,

\* Language of the case: French.