

Case T-17/93

Matra Hachette SA

v

Commission of the European Communities

(Competition — Exemption decision — Joint venture)

Judgment of the Court of First Instance (Second Chamber), 15 July 1994 II - 598

Summary of the Judgment

1. *Competition — Administrative procedure — Principle of full disclosure between parties — Scope — Limits — Disclosure of the file to complainants*
(EEC Treaty, Arts 85 and 86; Council Regulation No 17, Art. 19)
2. *Competition — Administrative procedure — Commission decision declaring aid for a project requiring an exemption under Article 85(3) of the Treaty to be compatible with the common market — Consequences for the consultative procedure under Article 19(3) of Regulation No 17*
(EEC Treaty, Art. 85 et seq. and Art. 92 et seq.; Council Regulation No 17, Art. 19(3))
3. *Competition — Agreements, decisions and concerted practices — Prohibition — Exemption — Scope — Anti-competitive practices inherently incapable of exemption — None*
(EEC Treaty, Art. 85(3))

4. *Competition — Agreements, decisions and concerted practices — Prohibition — Exemption — Conditions — Burden of proof — Judicial review — Limits*
(*EEC Treaty, Art. 85(3)*)

1. The principle that there must be full disclosure in the administrative procedure before the Commission for the application of competition rules applies only to undertakings which may be penalized by a Commission decision finding an infringement of Article 85 or 86 of the Treaty. The rights of third parties, as laid down by Article 19 of Regulation No 17, are limited to the right to participate in the administrative procedure. It follows that the Commission enjoys some latitude in taking account, in its decision, of the observations presented by them. In particular, third parties cannot claim a right of access to the file compiled by the Commission on the same basis as the undertakings under investigation.

benefit from the exemption measure initially envisaged, the only result would be that the aid granted on the basis of the decision adopted under Article 92 of the Treaty would have to be repaid. Accordingly, the decision on State aid does not have the effect, in fact or in law, of rendering devoid of purpose the consultative procedure provided for by Article 19(3) of Regulation No 17 or limiting the powers of the Commission to grant the requested exemption.
2. Where the investigation of a case involves the application both of the rules on State aid and of the competition provisions, the Commission is legally entitled, without prejudice to any decision that it may take regarding the grant of an exemption, to give a decision on the compatibility of the planned aid with Article 92 of the Treaty, provided that it has formed the conviction, with sufficient probability, that the planned operation is capable of falling within the scope of Article 85(3) of the Treaty. If the operation did not ultimately

3. In principle, no anti-competitive practice can exist which, whatever the extent of its effects on a given market, cannot be exempted, provided that all the conditions laid down in Article 85(3) of the Treaty are satisfied and the practice in question has been properly notified to the Commission.
4. The grant of an individual exemption decision for an agreement between undertakings is subject to fulfilment of all the four conditions laid down in Article 85(3) of the Treaty, with the result that an exemption must be refused if any of the four conditions is not met. It is incumbent upon notifying undertakings to pro-

vide the Commission with evidence that the conditions laid down by Article 85(3) are met. Since exemptions are granted after an analysis of complex economic

facts, judicial review of the legal characterization of the facts is limited to the possibility of the Commission having committed a manifest error of assessment.