

Case T-30/89

Hilti AG

v

Commission of the European Communities

(Competition — Nails for nail guns —
Relevant market — Dominant position — Abuse —
Product liability — Fine)

Judgment of the Court of First Instance (Second Chamber), 12 December 1991 II - 1441

Summary of the Judgment

1. *Competition — Administrative procedure — Statement of objections — Duty to reply to it — None*
(Council Regulation No 17, Arts 11 and 19; Commission Regulation No 99/63, Arts 2(4) and 3(1))
2. *Competition — Dominant position — Relevant market — Determination — Criterion of the limited interchangeability of the products*
(EEC Treaty, Art. 86)
3. *Competition — Dominant position — Meaning — Criteria for assessment — Large market shares*
(EEC Treaty, Art. 86)
4. *Competition — Dominant position — Abuse — Knowingly delaying the grant to a competitor of a licence of right under a patent*
(EEC Treaty, Art. 86)
5. *Competition — Dominant position — Abuse — Product ties — Pressure on independent distributors — Refusal to honour the guarantee where the products sold have been used with consumables from other manufacturers*
(EEC Treaty, Art. 86)

6. *Competition — Dominant position — Abuse — Undertaking creating obstacles to competitors' activity on the market for products intended to be used with equipment of its own manufacture — Possible justification based on the dangerous nature or the inferior quality of competitors' products — None*
(EEC Treaty, Art. 86)

7. *Competition — Fines — Amount — Determination — Turnover taken into consideration*
(Council Regulation No 17, Art. 15(2))

1. Neither Article 19 of Regulation No 17 nor Article 2(4) of Regulation No 99/63, even when read together with Article 3(1) of Regulation No 99/63, can be construed as requiring the undertaking concerned to reply, in the course of the administrative procedure provided for by Community competition law, to the statement of objections sent to it by the Commission. Neither of those regulations, nor any general principle of Community law, obliges the undertakings concerned to do any more than supply the Commission with such information or documentation as it has requested under Article 11 of Regulation No 17. Moreover, such a duty would, at least in the absence of any legal basis, be difficult to reconcile with the principle of safeguarding the rights of the defence because it would create difficulties for an undertaking which, having failed for whatever reason to reply to a statement of objections, wished to bring an action before the Community courts.

2. In order to determine the relevant market for the purpose of applying Article 86 of the Treaty, an assessment must be made of the characteristics of the products in question by virtue of

which those products are particularly apt to satisfy an inelastic need and are only to a limited extent interchangeable with other products.

3. The dominant position referred to in Article 86 of the Treaty is characterized by a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers. The existence of a dominant position may derive from a combination of several factors which, taken separately, are not necessarily determinative. However, amongst those factors, the existence of very large market shares is highly important and very large shares must be considered in themselves, save in exceptional circumstances, as evidence of a dominant position. Such is the case with a market share of 70% and 80%.

4. It is an abuse of a dominant position for an undertaking needlessly to protract the proceedings for the grant to a competitor of a licence of right under a patent that it

holds by making manifestly excessive demands with regard to the amount of the fee to which it is entitled.

5. It is an abuse of a dominant position for an undertaking to refuse to supply certain products separately, to put pressure on independent distributors to cause them to adopt its discriminatory practices and to refuse to honour the guarantee attaching to tools sold by it where they have been used with consumables produced by other manufacturers.
6. Since an undertaking in a dominant position may, where required to protect

its rights, institute the procedures laid down in the various national laws concerning product liability and misleading advertising, it may not argue that the allegedly dangerous nature or inferior quality of its competitors' products intended to be used with a tool manufactured and sold by it justify abusive practices which seek to eliminate those products from the market in order to protect its commercial position.

7. The turnover referred to in Article 15(2) of Regulation No 17 laying down the criteria for determining the amount of administrative fines that may be imposed on undertakings that have infringed the competition rules is the undertaking's total turnover.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
12 December 1991 *

In Case T-30/89,

Hilti AG, whose registered office is at Schaan, Liechtenstein, represented by Oliver Axster, Rechtsanwalt, Düsseldorf, and by John Pheasant, Solicitor, of Lovell, White & Durrant, Brussels, with an address for service in Luxembourg at the Chambers of Mr Loesch, 8 Rue Zithe,

applicant,

* Language of the case: English.