

JUDGMENT OF THE COURT
14 JULY 1972¹

**Imperial Chemical Industries Ltd.
v Commission of the European Communities²**

Case 48/69

Summary

1. *Community administration — Notice of objections — Delegation of authority to sign — Nature of such delegation*
(Regulation No 99/63 of the Commission, Article 2)
2. *Competition — Infringement of the rules of the Treaty — Administrative procedure — Final attitude of the Commission — Objections — Notice thereof — Facts to be taken into consideration*
(EEC Treaty, Article 85)
3. *Competition — Infringement of the rules of the Treaty — Administrative procedure — Objections — Communication to the interested parties — Method*
(Regulation No 17/62 of the Council, Article 19)
4. *Competition — Infringement of the rules of the Treaty — Administrative procedure — Hearing of the interested parties — Minutes — Communication thereof — Purpose — Belated communication — Effects*
(Regulation No 99/63 of the Commission, Article 9)
5. *Measure adopted by a Community institution — Notification — Irregularities — Effects — Suspension of time-limit for instituting proceedings*
(EEC Treaty, second paragraph of Article 191)
6. *Limitation of actions — Period — Must be fixed in advance*
7. *Community administration — Infringement of the rules of European law — Fines — No time-limit laid down — Powers of the Commission — Bar to exercise resulting from the Commission's conduct*
8. *Competition — Cartels — Prohibition — Concerted practice — Concept*
(EEC Treaty Article 85)
9. *Competition — Effect — Function as regards prices*
10. *Competition — Cartels — Concerted practice — Prices — Manipulation — Criteria*
(EEC Treaty, Article 85)

1 — Language of the Case: Dutch.

2 — CMLR.

11. *Competition — Infringement of the rules of the Treaty — Jurisdiction of the Commission — Undertakings established in third countries — Subsidiaries under their control established in the Community — Action taken in the Community by the parent undertaking through its subsidiaries — Separate legal personality — Uniform behaviour on the market — Applicability of Community law*

(EEC Treaty, Article 85)

12. *Measures adopted by an institution — Statement of reasons — Extent*

(EEC Treaty, Article 190)

1. The delegation of authority to sign constitutes a measure relating to the internal organization of the departments of the Community administration, in accordance with Article 27 of the provisional Rules of Procedure adopted under Article 16 of the Treaty of 8 April 1965 establishing a single Council and a single Commission.
2. The notice of objections is the measure stating the final attitude of the Commission concerning undertakings against which proceedings for infringement of the rules on competition have been commenced. Accordingly, facts occurring subsequent to the decision to commence proceedings may be taken into consideration in the notice of objections when those facts consist of a continuation of earlier actions, and this does not prejudice the rights of the defence.
3. In order to protect the rights of the defence during the course of the administrative procedure, it is sufficient that undertakings should be informed of the essential elements of fact on which the objections are based. This requirement is met even if the contested decision contains amendments made pursuant to information furnished by the interested parties during the course of the procedure.
4. The intention of Article 9(4) of Regulation No 99/63 is to assure the persons heard that the minutes contain a true record of what they have said. Delay in sending the minutes of a hearing to the undertakings whose conduct has been called in question can affect the legality of the decision taken only if the statements made are inaccurately recorded.
5. Irregularity of notification does not invalidate the measure notified. It may in certain circumstances prevent the period within which an application must be lodged from starting to run. Such is not the case when the applicant has had full knowledge of the text of the decision.
6. In order to fulfil their function, limitation periods must be fixed in advance.
7. Although the provisions governing the Commission's power to impose fines in cases where Community rules have been infringed do not lay down any period of limitation, the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its power to impose fines.
8. By its very nature, a concerted practice does not have all the elements of a contract but may *inter alia* arise out of coordination, which becomes apparent from the behaviour of the participants. Although parallel behaviour may not by itself be identified with a concerted practice, it may however amount to strong evidence of such a practice if it leads to conditions of competition which do not correspond to the normal conditions of the market, having regard to the nature of the products, the size and number of the undertakings, and the volume of the said market.

This is especially the case if the parallel conduct is such as to enable those concerned to attempt to stabilize prices at a level different from that to which competition would have led, and to consolidate established positions to the detriment of effective freedom of movement of the products in the Common Market and of the freedom of consumers to choose their suppliers.

9. The function of price competition is to keep prices down to the lowest possible level, and to encourage the movement of goods between the Member States, thereby permitting the most efficient possible distribution of activities in the matter of productivity and the capacity of undertakings to adapt themselves to change. Independent and non-uniform conduct by undertakings in the Common Market encourages the pursuit of one of the basic objectives of the Treaty, namely the interpenetration of national markets and, as a result, direct access by consumers to the sources of production of the whole Community.
10. Although every producer is free to change his prices, taking into account in so doing the present or foreseeable conduct of his competitors, nevertheless it is contrary to the rules on competition contained in the Treaty for a producer to cooperate with his competitors, in any way whatsoever, in order to determine a coordinated course of action relating to a change of

prices and to ensure its success by prior elimination of all uncertainty as to each other's conduct regarding the essential elements of that action, such as the amount, subject-matter, date, and place of such changes.

11. Where an undertaking established in a third country, in the exercise of its power to control its subsidiaries established within the Community, orders them to carry out a decision to raise prices, the uniform implementation of which together with other undertakings constitutes a practice prohibited under Article 85(1) of the EEC Treaty, the conduct of the subsidiaries must be imputed to the parent company. For the purpose of applying the rules on competition, unity of conduct on the market as between a parent company and its subsidiaries overrides the formal separation between those companies resulting from their separate legal personality.
12. The fact that no statement is included showing why the Community administration has jurisdiction does not stand in the way of a review of the legality of its measures. The Community administration is not bound to include in its decisions all the arguments which it might later use in response to submissions of illegality which might be raised against its measures.

In Case 48/69

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