

JUDGMENT OF THE COURT

15 MARCH 1967¹

**Société Anonyme Cimenteries CBR Cementbedrijven NV
and others,
Cementfabriek IJmuiden (Cemij) NV,
Eerste Nederlandse Cement Industrie (ENCI) NV,
and Alsen'sche Portland-Cement-Fabriken KG and others
v Commission of the EEC²**

Joined Cases 8 to 11/66

Summary

1. *Measures adopted by an institution—Decision—Concept*
(EEC Treaty, Article 189)
 2. *Policy of the EEC—Rules on competition applicable to undertakings—Infringements—Fines—Exemption—Refusal by the Commission—Procedure to be followed before giving a refusal—Statement of reasons*
(EEC Treaty, Articles 85, 86; Regulation No 17 of the Council of the EEC, Article 15, paragraphs 5 and 6)
1. When a Community institution unequivocally adopts a measure the legal effects of which are binding on those to whom it is addressed and affect their interests, this measure by its very nature constitutes a decision.
2. The Commission must proceed by way of a decision when it excludes an agreement from the benefit of an exemption from a fine under Article 15 (5) of Regulation No 17 and declares on the basis of Article 15 (6) of the said Regulation that Article 85 (1) of the Treaty applies,
- and that application of Article 85 (3) is not justified. The Commission must consider the facts of the case, and apply to them the terms of Article 85 (1) (3). It must expressly find that the agreement in question contains all the constituent elements prescribed by Article 85 (1) and that application of Article 85 (3) is not justified. The Commission must give reasons for this decision with sufficient clarity to allow the Court and all parties concerned to ascertain whether the provisions mentioned above have been applied correctly.

In Joined Cases

8/66

**SOCIÉTÉ ANONYME CIMENTERIES CBR CEMENTBEDRIJVEN NV,
SOCIÉTÉ ANONYME CIMENTS D'OBOURG,
SOCIÉTÉ ANONYME DES CIMENTS PORTLAND LIÉGEOIS,**

1 — Languages of the Case: German, French and Dutch.

2 — CMLR.

SOCIÉTÉ ANONYME COMMON BRAND, CEMENT WORKS,
 SOCIÉTÉ ANONYME COMPAGNIE DES CEMENTS BELGES CCB,
 SOCIÉTÉ ANONYME SOCIÉTÉ GÉNÉRALE DES CEMENTS PORTLAND
 DE L'ESCAUT CIMESCAUT,
 SOCIÉTÉ ANONYME LA FRANCO-BELGE,
 SOCIÉTÉ ANONYME DES CEMENTS DE THIEU,
 SOCIÉTÉ ANONYME DES CEMENTS PORTLAND J. VAN DEN HEUVEL,
 LES HÉRITIERS DE FEU M. MARCEL LEMAY,
 SOCIÉTÉ ANONYME CEMENTS DE VISÉ,
 SOCIÉTÉ ANONYME EN LIQUIDATION CARRIÈRES ET CIMENTERIES DUTOIT,
 SOCIÉTÉ ANONYME EN LIQUIDATION CEMENTS DE HAREN,

represented by their boards of directors, their duly authorized representatives or their liquidators, assisted by Marcel Grégoire, Advocate at the Cour d'Appel, Brussels, (the SA Compagnie des Ciments Belges CCB being also assisted by Alphonse Servais, former leader of the Mons Bar), with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse Charlotte,

9/66

CEMENTFABRIEK IJMUIDEN (CEMIJ) NV, represented by certain members of its board of directors, assisted by J. Mertens de Wilmars, Advocate of the Antwerp Bar and by J. J. A. Ellis, Advocate of The Hague Bar, with an address for service at Luxembourg at the Chambers of Ernest Arendt, 6 rue Willy-Goergen,

10/66

EERSTE NEDERLANDSE CEMENT INDUSTRIE (ENCI) NV, represented by the chairman and vice-chairman of its board of directors, assisted by J. Mertens de Wilmars, Advocate of the Antwerp Bar, and J. J. A. Ellis, Advocate of The Hague Bar with an address for service at Luxembourg at the Chambers of Ernest Arendt, 6 rue Willy-Goergen,

11/66

The undertakings:

ALSEN'SCHE PORTLAND-CEMENT-FABRIKEN KG, Ost-West-Straße, 69,
 Hamburg 11,
 ANNELIESE PORTLAND-CEMENT- UND WASSERKALKWERKE AG, Ennigerloh
 i.W., Postfach 65,

BECKUMER PORTLAND-ZEMENTWERK BOMKE UND BLECKMANN, Beckum, Bez.
 Münster i.W., Postfach 31,
 BONNER PORTLAND-ZEMENTWERK AG, Zementfabrik, Oberkassel (Siegkreis),
 BREITENBURGER PORTLAND-CEMENT-FABRIK, Burchardstraße 8, Hamburg 1,
 BURANIA PORTLANDZEMENT- UND KALKWERKE GMBH, Büren, i.W.,
 DYCKERHOFF ZEMENTWERKE AG, Wiesbaden-Biebrich, Postfach 9139,
 ELSA CEMENT- UND KALKWERKE AG, Neubeckum i.W., Postfach 65,
 EVERS PORTLANDZEMENT- UND KALKWERKE GMBH, Erwitte i.W.,
 'FELSENFEST' WESTFÄLISCHE PORTLAND-ZEMENT- UND KALKWERKE GMBH,
 Erwitte i.W.,
 'FORTUNA' PORTLAND-ZEMENTWERKE GMBH, Geseke i.W., Postfach 6,
 PORTLAND- UND CEMENTFABRIK GERMANIA AG, Misburg bei Hannover,
 Postfach 29,
 HANNOVERSCHER PORTLAND-CEMENTFABRIK AG, Misburg bei Hannover,
 Bahnhofstraße 2,
 PORTLAND-ZEMENTWERKE HEIDELBERG AG, Heidelberg, Postfach 1328,
 PORTLAND-CEMENTWERK 'HELLBACH' FELDMANN UND Co., Beckum, Bez.
 Münster i.W.,
 PORTLAND CEMENTFABRIK HEMMOOR, Basbeck, Postfach 20,
 PORTLAND-ZEMENT- UND KALKWERKE HESSLING UND Co., KG, Beckum,
 Bez. Münster i.W.,
 HOLSTEINISCHE PORTLAND-CEMENT-FABRIK GMBH, Burchardstraße 8,
 Hamburg 1,
 ZEMENTWERK 'ILSE' FRIEDRICH-WILHELM MOHN, Paderborn, Postfach 560,
 W. KALTHÖNER PORTLAND-ZEMENT- UND KALKWERKE, Ennigerloh, i.W.,
 Postfach 25,
 KLÖCKNER-WERKE AG, HUTTE BREMEN, Postfach 5023, Bremen 18,
 C. MERSMANN PORTLAND ZEMENTWERK, Beckum, Bez. Münster i.W., Post-
 fach 36,
 HERMAN MILKE KG, Soest i.W., Postfach 404,
 MONTANZEMENT VERTRIEBS-GMBH, Düsseldorf 1, Postfach 5731,
 PORTLAND-ZEMENT-UND KALKWERK 'NORD', RUHR UND Co., Beckum, Bez.
 Münster i.W.,
 NORDCEMENT AG (V/H NORDDEUTSCHE PORTLANDCEMENT-FABRIKEN AG),
 Postfach 4540, Hannover 1,
 PORTLAND-ZEMENTWERKE 'NORDSTERN' JOSEF SPENNER, Erwitte i.W.,
 PHÖNIX ZEMENTWERKE KROGBEUMKER, KG Beckum, Bez. Münster i.W.,
 E. RENFERT KG, Beckum, Bez. Münster, Postfach 30,
 E. SCHWENK ZEMENTWERKE GMBH, Ulm/Donau, Hindenbergring 11/15,
 TEUTONIA MISBURGER PORTLAND-CEMENTWERK, Misburg bei Hannover,
 Postfach 49,
 TUBAG TRASZ-ZEMENT- UND SETINWERKE AG, Kruft bei Andernach,

WESTDEUTSCHE KALK- UND PORTLANDZEMENT-WERKE AG, Unter Sachsenhausen 17/19, Cologne 1,
 WESTDEUTSCHE PORTLAND-ZEMENT- UND KALKWERKE, Gebr. Gröne, Ennigerloh i.W., Postfach 7,
 PORTLAND ZEMENTWERKE 'WESTFALEN' SCHONLAU UND Co., KG, Geseke i.W., Postfach 8,
 WESTFÄLISCHE PORTLAND-ZEMENTWERKE KOHLE UND Co., Geseke i.W., Postfach 47,
 PORTLANDZEMENTWERK WITTEKIND HUGO MIEBACH UND Co., Erwitte i.W., Postfach 25;

represented by their directors, owners or managers, assisted by H. Helmann and K. Pfeiffer, Advocates of the Cologne Bar, and by W. von Simson, Advocate at the Oberlandesgericht, Düsseldorf, lecturer at the University of Freiburg in Breisgau, with an address for service in Luxembourg (Bertrange) at the Chambers of the latter,

applicants,

V

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its legal advisers J. Thiesing, G. Le Tallec and R. C. Fischer, acting as Agents, with an address for service at the secretariat of the Legal Department of the European Executive, 2 place de Metz,

defendant,

Application for the annulment of the decisions allegedly constituted by the communications addressed to the various applicants on 3 January 1966 by the Director-General of the Directorate-General for Competition of the EEC concerning the applicability of Article 85 of the Treaty to the agreement entitled 'Noordwijks Cement Accoord', made by the applicants in 1956;

THE COURT

composed of: A. Trabucchi (President of Chamber), President, R. Monaco, President of Chamber, A. M. Donner, R. Lecourt (Rapporteur) and W. Strauß, Judges,

Advocate-General: K. Roemer
 Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

On 6 July 1956 74 undertakings (44 German, 28 Belgian and 2 Dutch) entered into an agreement called the 'Noordwijks Cement Accoord' (hereinafter referred to as 'the NCA').

This agreement divided up the market in respect of the supply of cement and clinker by means of quotas. It also contained clauses concerning the building of new cement works, the collective fixing of prices and conditions of sale, obligations as to exclusive sales and exclusive purchases, and certain prohibitions on exports.

The last-mentioned aspects of this agreement formed the subject-matter of a later agreement, which is not in issue in the present proceedings, made between the members of the original cartel on the one hand and the trade organization concerned on the other.

On 31 October 1962 the NCA agreement was notified to the EEC on Form B in accordance with the provisions of Regulation No 17.

On 8 April 1965 the member undertakings of the NCA received, directly or indirectly, a letter signed by Mr von der Groeben, a member of the Commission. This letter stated that it did not constitute a notice under Article 15 (6) of Regulation No 17, and amongst other matters informed the undertakings to which it was addressed that the agreement notified was probably prohibited under Article 85 (1) and could not be authorized under Article 85 (3). The said letter advised that it was desirable to strike out a certain number of clauses of the agreement, and invited the undertakings to state their views.

At the request of the undertakings a number of meetings took place between

their representatives and officials of the Commission, followed by an exchange of letters. In particular on 11 June 1965 a meeting took place at which the protagonists seem to have drawn different conclusions about the result which certain proposed amendments to the clauses of the agreement notified might have had on the validity of the said agreement.

On 14 December 1965 the Commission decided to pursue the matter in writing and to send to the parties to the agreement notices under Article 15 (6) of Regulation No 17. For this purpose the Commission conferred on the President of the Working Party on Competition, Mr von der Groeben, authority to assign to the Director General for Competition the task of signing and despatching the said notices.

On 3 January 1966 the Director General for Competition sent a registered letter which after describing the agreement in question, ended with the following paragraphs:

'The Commission has subjected the agreement in question to a preliminary examination. It has reached the conclusion that the requirements for applying Article 85 (1) of the Treaty are met and that there is no justification for applying Article 85 (3) to the agreement in the form in which it has been notified. This preliminary examination is notified to you by the Commission pursuant to Article 15 (6) of Regulation No 17 (First Regulation implementing Articles 85 and 86 of the Treaty, dated 6 February 1962, Official Journal of the European Communities, 1962, No 13, p. 204 et seq.).

The Commission takes this opportunity of informing you that the provisions of Article 15 (5) of the aforesaid Regulation No 17, whereby the application

to the agreement notified of the provisions concerning fines set out in Article 15 (2) (a) of the said Regulation was provisionally suspended, will cease to apply to the agreement as from the date of receipt of this letter.

I should be obliged if you would let me know within a period of six weeks (from the receipt of this letter) whether you have ceased to apply the agreement in question.'

This notice forms the subject-matter of the applications made to the Court which were joined by an order of the Court of 4 May 1966.

II—Conclusions of the parties

In Case 8/66 the *applicants* have claimed in their application, that the Court should:

- '1. declare the present application admissible and well-founded;
2. annul the decision of 3 January 1966 in its entirety;
3. order the defendant to pay the costs'.

In Cases 9 and 10/66 the *applicants* have claimed, in their applications, that the Court should:

'first:
annul the decision contained in the letter;

second:
declare that Article 15 (6) of Regulation No 17 of the Council is inapplicable, and accordingly annul the measure contained in the letter of 3 January 1966;

third:
in any event annul the measure contained in the letter of 3 January 1966 and order the defendant to pay the costs'.

In Case 11/66 the *applicants* have claimed, in their application, that the Court should:

- '1. annul the decision of the Commission of 3 January 1966 relating to

a notice addressed to the parties to the 'Noordwijks Cement Accoord' by virtue of Article 15 (6) of Regulation No 17/62 (No IV/A-00581);

2. order the defendant to pay the costs'.

In its statement of defence relating to the joined cases the *defendant* has contended that the Court should:

- '— dismiss the applications as inadmissible or alternatively as unfounded;
- order the applicants to pay the costs'.

In their reply the *applicants* have maintained their previous conclusions; furthermore the applicants in Case 8/66 have claimed that the Court should:

'alternatively, as a preliminary step, make an order for the holding of either the one or the other of the two inquiries mentioned in paragraphs 36 and 37 hereof' (inquiries into the nature and scope of the discussions held prior to 3 January 1966).

In its rejoinder to the joined cases the *defendant* has "proposed" that "René Jaume", a director, be summoned to give evidence'.

III—Digest of the submissions and arguments of the parties

A — Admissibility

The *applicants* in Cases 9, 10 and 11/66 have stated first of all that what they seek from a decision of the Court is 'a definitive ruling on the question whether the contested notice does or does not produce the legal effect intended by the defendant, namely that as from the date of that letter any further implementation of the amended "Noordwijks Cement Accoord" by the parties may be penalized by a fine'. The said applicants consider that in view of Article 173 of the Treaty one of the following alternative propositions must

be true in their case: either the contested notices are to be considered as decisions producing legal effects and the applications are admissible, or these applications are inadmissible and the said notices are not decisions and incapable therefore of producing legal effects.

The applicants cite the case-law of the Court (judgments in Joined Cases 1 and 14/57, Rec. 1957, p. 219; Case 42/59 Rec. 1961, p. 142; Joined Cases 16, 17 and 18/59, Rec. 1960, p. 65; and Case 28/63, Rec. 1963, p. 480) and refer to the wording of the notices, especially their penultimate paragraph, and say that the contested measures should have been described in legal terms as decisions because of their content (particularly having regard to the judgment in Case 13/61 according to which agreements are valid until such time as a decision finds to the contrary) and therefore should have been subject to review by the Court under Article 173 (2) of the Treaty. To accept the contrary view would be tantamount to agreeing that Article 15 (6) of Regulation No 17 constitutes an exception to the Treaty, especially Article 189 thereof, and that this provision can put all those concerned in an equivocal position as regards Community law and private national law concerning the validity of agreements.

In its statement of defence the *defendant* has argued first that the notices of 3 January are not decisions within the meaning of Article 189 and the second paragraph of Article 173 of the Treaty; neither the form of these notices—a letter which was neither signed nor transmitted by a member of the Commission—nor their content (that of a measure not producing definitive legal effects and not constituting the final stage of the internal administrative procedure) raises any doubts on this point. The notice under Article 15 (6) of Regulation No 17 leaves 'open the question whether the

Commission will impose a fine should it be decided not to grant an exemption'. The notice does not bind those to whom it is addressed to refrain from carrying out their agreement and it does not therefore impose any legal obligation on them, nor does it conclusively affect any individual interest. It is merely an opinion which the undertakings may freely disregard. They should simply be perfectly clear 'that if they do not observe this notice then in addition to the risk which they are already running under civil law, they are taking the additional risk of having a fine imposed upon them'.

In reality, says the Commission, the prohibition in Article 85 (1) applies until such time as the Commission takes a decision, if any, granting an exemption. The system created by Article 85 and by Regulation No 17 (especially Articles 1, 6, 7, 15 (5) and (6)) proves this. Thus it would be contrary to the Treaty for a cartel to be considered as valid without reservations during the period prior to the Commission's decision. Therefore during the period subsisting between notification and the Commission's decision there is a contingent situation (*Schwebenzustand*) in which the agreement is neither entirely valid nor definitively void. This follows from the judgment of 6 April 1962 in Case 13/61 (*Bosch* [1962] ECR 45) according to which a subsisting agreement notified within due time cannot be regarded as void until the Commission's decision. The validity of such an agreement is not definitive because the agreement would become definitively void, with effect from the entry into force of Regulation No 17, should the Commission refuse to grant an exemption under Article 85 (3). Thus the applicants have advanced a proposition contrary to the legal situation created by the Treaty when they claim that the undertakings concerned must observe agreements restricting competition during the period

preceding the Commission's decision on a notification. So far as civil law is concerned the notice does not affect the validity of an agreement notified to the Commission.

A comparison between Regulations Nos 17/62 and 99/63 proves that a clear distinction exists between mere 'notices' from the Commission and 'decisions' made by it concerning cartels.

As part of the existing system the provisions of Article 15 (5) and 15 (6) of Regulation No 17 are of special significance. When it appears that an infringement is so serious that an exemption seems out of the question, the Commission should use Article 15 (6). Thus undertakings guilty of particularly serious restrictions on competition are placed in a different situation from those which take part in less serious restrictions, for which the possibility of an exemption remains open. For the latter, Article 15 provides for an exemption based on the likelihood that Article 85 (3) will be applied. In either case no decision is taken. Instead an opinion is given based on a preliminary examination after a procedure which is faster than that required for a definitive decision to be reached. This rapidity is in the interests of undertakings and renders their legal position more certain.

Finally it is argued that 'since the Commission must issue a notice under Article 15 (6) before imposing a fine for an action taken after notification and before the decision relating to the application of Article 85 (3), the applicants could complain of any defects in this notice before the Court of Justice by contesting the decisions imposing fines on them'. Furthermore, by using such a procedure the applicants could, in reliance upon Article 184, invoke the inapplicability of Article 15 (6) as an incidental plea. In the present proceedings this is impossible since there is no decision but only a notice based on a preliminary examination which may

or may not be followed by a fine.

In their reply the *applicants* in Case 8/66 have first of all described the rules laid down by Article 15 of Regulation No 17, and expressed the opinion that when an agreement is duly notified the legal position of this agreement is that it is provisionally valid from the point of view of civil law (judgment in Case 13/61). From the point of view of fines the effects of notification preclude any discussion of the validity of the agreement.

In fact if the parties proceed to notification in due and proper form they know as a certainty that they cannot be fined in respect of a period prior to the Commission's decision, even if this decision declares with retroactive effect that the notified agreement is void. They only lay themselves open to a fine if, after the decision has been given, they do not obey its provisions. However this immunity only extends to undertakings acting *bon fide* as Article 15 (6) makes clear. The certainty of not being under threat of a penalty disappears as soon as the Commission informs the undertakings concerned that after a preliminary examination of the agreement it is of the view that Article 85 (1) of the Treaty is applicable and that Article 85 (3) is not. Nevertheless the Commission can only apply Article 15 (6) in instances of 'manifest and unmistakable' infringements of the Treaty. If this is correct there are three periods to consider: a period of total and unassailable immunity running from the date of the agreement to the date when notice is given of the decision taken by the Commission pursuant to Article 15 (6); a period between the provisional decision of the Commission and the final decision, during which there is no longer any immunity; finally there is the period starting when notice of the Commission's final decision is given. During this latter period the immunity has also gone, but the nature of the offence to be penalized is different

(during the second period it is the implementation of the agreement in question which can, if the Commission so chooses, be penalized under Article 15 (2) (a); during the third period it is the failure to obey the Commission's decision which is penalized under Article 16).

A notice under Article 15 (6) must of its very nature be a measure which can be contested by an application to the Court. For in employing Article 15 (6) the Commission is wielding a power which undertakings have good reason to fear. It deprives the undertaking concerned of the status which had protected it from all fines and imposes on it another status which lays it open to the possibility of being fined. Thus the notice presupposes an unfavourable preliminary opinion. Admittedly a fine does not automatically follow but this does not alter the fact that in order to impose a fine for what has happened prior to the final decision, the Commission must, before doing so, state its views in the manner laid down under Article 15 (6) and state them on the basis of this provision. If the Commission could issue this first judgment without having to justify it, the position of the undertaking to which it is addressed would be seriously affected. For the guarantees attaching to the final decision would be of no avail because of the intimidating effects of the notice. It would be illogical for the Commission to be able to exercise its powers based on Article 15 (6) without being subject to any supervision by the Court.

The case-law shows that when the Commission uses these powers it is taking a decision. For the Court has in fact decided that the test for determining whether a measure can be contested before it is not a formal one, but is to be found in the legal effects that this measure produces (the relevant cases are cited in the originating applications in Cases 9 to 11/66). The notice does produce definitive legal

effects because the change in the legal position of the undertakings concerned is irreversible. The reason for this is that these undertakings suffer a definitive loss of the immunity which they enjoyed prior to the notice, and this weakens their position because that position changes from one of security to insecurity and the undertakings are provisionally held to be in the wrong. It would be an untenable argument to say that the same authority takes a decision when it gives its opinion as regards an infringement of the Treaty and when it fixes the amount of the fine, but that it does not take a decision when pursuant to a mere preliminary examination it declares that the infringement is 'manifest, unmistakable and indisputable'.

The applicants have also stated that a consideration of the wording of the legal provisions concerned lead to the same conclusions. If the notice provided for by Article 15 were not a decision the wording of this Article should have said so, having regard to the general description given by Article 9 of Regulation No 17 ('decision') to any resolutions of the Commission concerning the application of Article 85. The use of terms such as 'preliminary examination' and 'of the opinion' do not mean that there is no decision. An interim decision in judicial proceedings, which is typically provisional in nature, can be appealed against when it puts a party at a disadvantage, and the expression 'to be of the opinion' may very well refer to an expression of intention. The fact that the Advisory Committee need not be consulted before the Commission applies Article 15 (6) is of no consequence because certain measures which are undeniably decisions (Articles 11 (5) and 14 (3) of Regulation No 17) can also be taken without this committee's being consulted. Finally, the reference to Regulation No 99/63 is not relevant. Thus the legal provisions cited in the statement of defence do

not contain anything which supports the Commission's arguments. On the other hand the legal provisions which the Commission does not mention strongly contradict its arguments. Thus, for example, Article 3 (3) of Regulation No 17 envisages the use of recommendations. Since there is no measure which is halfway between a recommendation and a decision, the measure of which notice was given under Article 15 (6) can only be a decision. What makes this particularly obvious is that even the measures by which the Commission may require an undertaking to furnish information or to submit itself to an investigation—measures which do not anticipate the final decision in any way—are decisions which can be contested before the Court. However, such measures are less likely to aggravate the situation of the undertakings concerned than is a notice under Article 15 (6).

In the present case, the wording of the letter of 3 January 1966, in particular the penultimate paragraph thereof, proves that the subject-matter of the decision, which is in fact what it is, takes effect immediately and that the administration does not in any way reserve to itself the possibility of re-considering its position.

The *applicants in Case 9 and 10/66* have advanced very similar arguments to those put forward by the applicants in Case 8/66. They fill out and add detail to the arguments in their applications, and stress that the contested measure adversely affects them because it introduces a new element in legal relationships which places them in a less favourable legal position than before. They say that the Commission is no longer free to take a decision as regards the legal position thus created, since it could only restore the previous situation by withdrawing the measure and therefore this measure contains all the substantial characteristics of a decision.

The applicants have stressed the fact that in a subsequent action no reliance could be placed on Article 184 of the Treaty as regards the notices because Article 184 only applies to regulations and not to decisions. They point out that the fact that the notice could be subjected to review later—supposing a fine were to be imposed, a possibility envisaged by the defendant itself—does not necessarily prove that the present application is premature.

As regards the infringements of procedural requirements the applicants have alleged that Articles 2 and 11 of the Commission's Regulation of 9 January 1963 have been infringed.

The *applicant in Case 11/66* have stated that they share the opinions put forward and supported in the replies in Cases 8 to 10/66.

They have emphasized in particular the system of legal protection established by the Treaty and have complained that the Commission has not explained itself on this subject. They have argued that the Commission is claiming the right to take measures other than those mentioned in Article 189, and is simultaneously relying on the second paragraph of Article 173, the effect of which is that no measures which do not constitute decisions within the meaning of Article 189 (and in particular 'notices' under Article 15 (6) of Regulation No 17), may be contested before the Court. Thus the Commission is infringing the elementary principle according to which the use of a procedure for which the law does not provide cannot have the effect of reducing the protection available from the Court for those concerned. In reality the Commission is merely trying to exclude any review of the legality of its action by the Court. In asserting that it will only make use of the possibilities available to it under Article 15 (6) in particularly serious cases, it is setting itself up as its own judge of how far the limits on its powers are to be respected, and this is

another way of dispensing with all legal guarantees.

When the quasi-penal nature of the provisions of the law on cartels concerning fines is considered, the argument that review by the Court should only start after sanctions have been imposed is contrary to the laws of all the Member States. It is also contrary to Article 7 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which forbids a penal law to be put into effect retroactively. This means that an act can only be subjected to a penalty if the penalty was laid down at the time of the offence. If the Commission's system were followed it would raise the objective doubt whether there is the risk of a fine or not. The case-law of the Court of Justice (Judgment in Case 13/61 [1962] E.C.R. 45) takes the view that the principle of legal certainty is a rule of law to be respected in the application of the Treaty.

As regards the definitive nature of the contested measure, the Commission's line of reasoning requires acceptance of the concept that measures are only decisions when they are the culmination of an administrative procedure taken as a whole. In that case, say the applicants, in accordance with the general principles which apply to interim measures in the laws of the Member States ('*einstweilige Verfügungen oder einstweilige Anordnungen*'), it must at least be admitted that the contested notices, which brought to a close the administrative procedure concerning the preliminary examination, constituted a definitive expression of intention.

As regards the applicability of Article 85 (1) until the Commission's decision, the applicants have pointed out that the defendant ascribes to them a view which they have never propounded and they go on to say that according to the unequivocal wording of Article 15 (5) agreements notified within due time and in due form cannot be subjected

to the fines mentioned in Article 15 (2), and the reason for this is the very fact of notification.

The applicants have mentioned the consequences in civil law which notices similar to the ones which they have received might have; they have also mentioned the conflicts which such notices could create between public law and private law.

The applicants have shown, with examples, that the alternatives open to the Commission in addition to notices under Article 15 (6) of Regulation No 17, for the purpose of preventing abuses of the exemption from fines, are all subject to review by the Court. This is as it should be, as is proved by comparative law and by the spirit of the Community system as already expressed to a certain degree in the case-law of the Court.

Finally the applicants have taken up the points in the statement of defence relating to the procedure under Article 184, and have argued that the objective of the present application is not an abstract test of legality, but is an application based on the second paragraph of Article 173, and is brought against the notices at issue. They are not using Article 184 as a basis for a method of recourse running parallel with the one under Article 173 but are claiming that the legal provision under which the contested measures were made is inapplicable and proving that the Council could not allow the Commission to use Article 15 (6) as a basis for going outside the framework of the Treaty and, in particular, of Article 189 thereof.

The *defendant*, in its rejoinder to certain new arguments of the applicants, has given more detailed particulars of certain aspects of its arguments.

It has recalled that while the Court of Justice sometimes uses different forms of words to define the test of what a decision is, it cannot be concluded from this that any administrative measure

which produces any legal effects must be considered as a decision. In the three judgments of 5 December 1963 the Court denied that the contested measures were decisions because 'in spite of their apparently peremptory nature' they did not lay the foundations of an obligation, on the part of the persons to whom they were addressed to make payments. The judgments cited by the applicants in Cases 9 and 10/66 only regarded as decisions those administrative measures which confer rights or impose duties on those to whom they are addressed. This interpretation is confirmed by examples cited by the applicants in Case 11/66. On the other hand it would neither be in accordance with the Treaty nor with the case-law of the Court of Justice (in particular the judgment in Case 54/65 of 16 June 1966) to consider any administrative measure as a decision because it produces legal effects. The interpretation of the concept of a decision espoused by the applicants does not follow from the legal order of the Community nor from the system of legal protection set up by the Treaty which limits rights of action *ratione materiae et personae*. Similar systems operate in certain Member States.

As regards the nature of the notices of 3 January 1966, the defendant has maintained its point of view according to which the said notices do not satisfy the test laid down by the case-law of the Court for decisions. First, these notices do not produce any legal effect within the meaning of the case-law and secondly they do not consist of measures denoting the culmination of an internal procedure and are not a definitive expression of intention on the part of the Commission. The defendant has stated that it has never claimed that Article 15 (6) confers upon it a power to carry out legal measures not provided for by Article 189 of the Treaty. It has merely asserted that the notice does not satisfy the test for a decision.

The notice is in fact an opinion—which is not binding—within the meaning of Article 189. The notices do not require the applicants to behave in any particular way. Article 9 (1) of Regulation No 17 does not say anything about the legal nature of the notices. The main point of the notices is to prevent undertakings from infringing the prohibition laid down by Article 85 (1) through inadvertence and to draw their attention to the risks which may be incurred under the civil law as regards restrictions on competition. The Commission has stated that if sanctions are imposed later, the notices can then be subjected, together with the preliminary procedure as a whole, to review by the Court, acting with unlimited jurisdiction, at the same time as can the decision to impose a sanction. The obligations of undertakings arise under Article 85 (1), and are based on this provision, not on the notices. It makes no difference to the existence of these obligations that their observance is further assessed by the threat of a fine. A correct reading of Article 15 (5) of Regulation No 17 shows that it is an error to maintain that the notice alone gives rise to the threat of a fine, or that there is an infringement of the principle *nulla poena sine lege*, or that the said Article 15 (5) divests the prohibition set out in Article 85 (1) of its status as a legal obligation. In Case 13/61, the Court of Justice did not declare that a retroactive coming into force of the prohibition and thus the possibility of running the risk of a fine was improper as constituting an unacceptable consequence. Rather, the Court took the view that it was an unacceptable consequence that in the first place certain agreements had been void for several years without any authority's ever having found them to be so, and that later this nullity might be removed retroactively. Even if it had to be admitted that the notices bring about legal effects, the other requisites of a decision are

not met. The external form of the notices alone is enough to prove that the defendant did not intend to adopt a decision.

Referring to the wording of Regulations Nos 17/62 and 99/63 the defendant has emphasized that as regards the exemption provided for by Article 85 (3), the French and Dutch texts of Regulation No 17 use words corresponding to the German word 'Entscheidung' (decision). The fact that the German text uses the word 'Erklärung' (declaration) can apparently be explained on the grounds that this wording was closely modelled on the wording of Article 85 (3).

Referring to the consequences of the interpretation suggested by the applicants for the application of the rules on competition, the defendant has reminded the Court that to apply those rules of procedure which are in force for decisions to notices under Article 15 (6) would inevitably lead to a state of affairs in which such a notice could scarcely be given sooner than a decision bringing a procedure to a final close. This would particularly be so where undertakings delay the conclusions of this procedure. Furthermore, the defendant has argued that, contrary to the opinion of the applicants, when Regulation No 17 came into force the Commission was not required to desist from applying its provisions to already-existing restrictions on competition, for amongst these might be found particularly harmful agreements from the point of view of the Common Market. The reply in Case 11/66 proves that, if Article 15 (6) be left aside, Regulation No 17 does not confer any sort of power whereby quick action can be taken to deal with restrictions on competition which are duly notified but which constitute flagrant infringements of the Treaty. Furthermore experience proves that it is not too difficult to make a restriction on competition seem relatively innocuous when it is notified. According to the defendant, the interpretation of the applicants would lead to a

state of affairs in which the Court of Justice would have to examine the legality of an opinion of the Commission, based on a preliminary examination, at a time when the Commission had still not taken a definitive decision on the application of Article 85 (1) and (3) or on the imposition of a fine.

As regards the application of Article 184 of the Treaty, the defendant has reminded the Court that this provision does not open up any additional avenue for bringing an action if an action based on the second paragraph of Article 173 is inadmissible. The present case shows that the applicants' fears as regards the consequences of the threat of being fined are exaggerated. For the applicants have not in fact ceased to impose restraints on competition. In such a case, a decision refusing to grant an exemption could be contested before the Court of Justice by the undertakings in accordance with the general provisions of the Treaty. If, however, the Commission decided to grant an exemption or if the Court of Justice annulled any decision refusing so to do, the undertakings could bring an action for damages against the Community under Articles 178 and 215 of the Treaty.

B — *The substance of the case*

The *applicants* have pleaded that the notices of 3 January 1966 are void on the basis of a series of arguments, which can be grouped under three headings of lack of competence or infringement of procedural requirements, failure to state reasons, and infringement of the rules for the hearing of the parties concerned. First, it has been argued that since the notices of 3 January are not signed by a member of the Commission or by an official of the EEC stating that he is acting within his duly authorized powers, they are decisions addressed to the applicant by a person other than the competent authority. The said notices are clearly intended to produce legal effects,

and therefore the judgment in Case 28/63 of 5 December 1964 (Rec. 1963, p. 481) should be applied to them. Since the notices are given under Article 15 (6) of Regulation No 17, they should have had regard to Article 163 of the Treaty and to Article 12 of the Commission's own rules of procedure (and not to Article 27 of these rules which, according to the applicant in Case 8/66, only makes allowances for the delegation of powers for the purposes of the internal running of the Commission's departments). Nevertheless the notices are not in the form of decisions of the Commission, acting as a body. No delegation of the power to sign has been published. It may be deduced from the Commission's own minutes that the Director-General for Competition took it upon himself to choose the content and form of the notices. It is possible to point out still further irregularities in the Commission's own procedure. Thus the German text of the notices is simply a translation which is, the applicants have argued, contrary to Article 12 of the Commission's rules of procedure.

The next point is that no reasons are given for the notices of 3 January, and they therefore infringe an essential procedural requirement. For, contrary to the requirements of Article 190 of the Treaty, there is nothing more, so it is alleged, in the notices by way of reasons therefor than a paraphrase of Article 15 (6) of Regulation No 17, and the notices do not comply with the case-law of the Court on the subject of giving reasons for decisions in general (judgments in Cases 2/56 of 20 March 1957, Rec. 1957, p. 36; 18/57 of 20 March 1959, Rec. 1959, p. 114 et seq.; 36 to 40/59 of 15 July 1960, Rec. 1960, p. 859). The notices have even less regard for the case-law of the Court on the giving of reasons for decisions on cartels (Joined Cases 56 and 58/64 of 13 July 1966) which must be justified with reference to Article 85 of the Treaty and, in a case such as the present, with regard

to Article 15 (6) of Regulation No 17. The notices do not describe the true economic effect of the agreement of which complaint is made. Therefore the applicants are placed in a position in which they have no means of knowing whether their legitimate interests have been respected or harmed, and the Court cannot exercise its review. This failure to state reasons cannot be excused on the ground of a manifest infringement of Community law by the agreements, for no complaint has been lodged against them, and the Government of the Netherlands has not demonstrated that it is opposed to them.

A second infringement of an essential procedural requirement arises from the fact that in disregard of Article 10 (3) of Regulation No 17 the Commission, which is required to hear the Advisory Committee on Restrictive Practices and Monopolies, composed of representatives of the Member States, failed to observe this essential formality, which applies equally to decisions taken under Article 15 of Regulation No 17. The notices in question do not even mention this formal requirement.

Finally it has been alleged that the notices of 3 January were made in disregard of the rules on the hearing of interested parties, laid down in Article 19 of Regulation No 17 and in the implementing provisions thereof set out in Regulation No 99/63. More particularly, the course of the negotiations proves that offers made by the parties to the NCA to make amendments to this agreement and to the supplementary distribution agreements have not been taken into account. No discussion on the substance of the matter in question took place before January 1966. Contacts made thereafter were bound to fail because of the attitude of the administration.

The *defendant* has examined the question whether the notices of 3 January 1966 meet the requirements of the Treaty on the subject of decisions 'should the Court hold that a decision is necessary

for the Application of Article 15 (6) of Regulation No 17'.

As regards the complaint of lack of competence, the defendant has stated that the Commission drew up the notices and gave the Chairman of the Working Party on Competition the power to have the notices signed and despatched by the Director-General for Competition. The wording of this resolution was, according to the defendant, annexed to the minutes of the 343rd meeting in accordance with Article 12 of the Commission's rules of procedure (published in the Official Journal, 1963, p. 181/63). Notwithstanding the fact that under this Article it is usually the President who gives notice of resolutions adopted by the Commission, this power may be delegated or sub-delegated under Article 27 of the rules of procedure. In any event the Commission's own procedure does not affect the rights of undertakings concerned by the measures taken by the Commission. On this point it should, however, also be pointed out that the file was submitted to the Commission in the two working languages (French and German) and that it already contained a proposal for a notice to be signed by the Director-General for Competition.

As regards the complaint concerning infringement of essential procedural requirements, the defendant has expressed the opinion that reasons need not be stated for a notice given under Article 15 (6), as they should be for decisions concluding a procedure. Even for the latter, the case-law accepts the proposition that it is not necessary to refute the objections of the persons concerned, or every other conceivable objection. The notices of 3 January state one by one the restrictions on competition agreed upon between the applicants and inform them that these restrictions are prohibited by Article 85 (1), and that the application of Article 85 (3) is not justified. Therefore, taking into account the seriousness of the facts and the preliminary

nature of the measure taken, sufficient reasons are given for the notices.

As regards the complaint about respect for the rights of the defence, the defendant has argued that the procedure regarding hearings set out in Regulation No 99/63 is only applicable when the Commission proposes to impose fines on undertakings pursuant to Article 15 (1) or (2) of Regulation No 17, and not when what is involved is a preliminary measure forming one of the stages of a procedure which is still continuing. In fact the applicants were heard and had meetings with the competent officials at the stage when enquiries were being made and following a letter of 8 April 1965 signed by Mr von der Groeben. Nevertheless the concessions made during the course of these negotiations did not affect the substantial content of the agreement. Thus upon completing its preliminary examination the Commission took the view that none of the restrictions on competition listed in its notices of 3 January could be the subject of an exemption under Article 85 (3).

The *applicants* in Cases 9, 10 and 11/66 have claimed alternatively that, on the basis of Article 184 of the Treaty, should it be held that Article 15 (6) of Regulation No 17 does give the Commission power to take a decision, then the said Article 15 (6) is inapplicable. Accordingly they have claimed that the notices of 3 January 1966 therefore lose their legal basis and that they should be annulled. The applicants base this alternative claim on an infringement by the Council, the author of Regulation No 17, of Article 189 of the Treaty in that the Council is said to have weakened the system of legal protection for which the Treaty provides.

In addition to the arguments already mentioned, the *defendant* has replied that the system set up by Regulation No 17, particularly Article 15 (6) thereof, is to be explained by the seriousness of restrictions on competition found during

a preliminary examination and by the fact that the notification of such a restriction cannot confer a right to practise it.

The *applicants* have claimed in the further alternative that if it is held that the notices at issue can produce legal effects, then they should be annulled for lack of competence and infringement of an essential procedural requirement.

The *defendant* replies with the same arguments as those which it has already put forward when dealing with the principal complaints.

C — Costs

The *applicants* have claimed that the defendant should be ordered to bear the costs even if their applications be held inadmissible on the ground that the contested measures are instruments having no recognized legal existence. Such an order for costs would be justified on the basis that the notices had the appearance of decisions.

The *defendant* has claimed that the *applicants* should be ordered to bear the costs because the notices were not and could not be decisions.

Grounds of judgment

The applicants notified the Commission of the EEC of the agreement of 6 July 1956 known as 'Noordwijks Cement Accoord' and the Commission, in the terms of the minutes of its 343rd meeting, 'took on 14 December 1965 a decision' worded as follows: 'A notice under Article 15 (6) of Regulation No 17 shall be addressed to the undertakings which are parties to the agreement registered with the Commission under No IV/A-00581; the Chairman of the Working Party on Competition is hereby authorized to have the notices sent by the Director-General for Competition'. On 3 January 1966 the Director-General for Competition carried out this instruction by sending the undertakings a registered letter, with a form of acknowledgment of receipt, in which the Commission informed them, that, after a preliminary examination 'the provisions of Article 15 (5) of . . . Regulation No 17, whereby the application to the agreement notified of the provisions concerning fines set out in Article 15 (2) (a) of the said Regulation was provisionally suspended, will cease to apply to the agreement as from the date of receipt of this letter.'

Admissibility

The Commission claims that the applications for annulment lodged by the said undertakings are inadmissible, on the ground that it has issued a mere opinion and not a decision within the meaning of Article 189 of the Treaty, and that Article 15 (6) of Regulation No 17 does not make provision for any measure in the nature of a decision.

Regulation No 17, under which the measure of 14 December 1965 was taken, empowers the Commission to impose fines on undertakings which intention-

ally or negligently infringe Article 85 (1) of the Treaty. However, by virtue of Article 15 (5) undertakings which have notified their agreements and which keep within the limits of the activity described in the said notification are exempted from this system of fines. Finally, Article 15 (6) empowers the Commission to withdraw the benefit of this exemption from fines if, after preliminary examination, it is of the opinion that Article 85 (1) of the Treaty applies and that application of Article 85 (3) is not justified.

The effect of the measure of 14 December 1965 and 3 January 1966 was that the undertakings ceased to be protected by Article 15 (5) which exempted them from fines, and came under the contrary rules of Article 15 (2) which thenceforth exposed them to the risk of fines. This measure deprived them of the advantages of a legal situation which Article 15 (5) attached to the notification of the agreement, and exposed them to a grave financial risk. Thus the said measure affected the interests of the undertakings by bringing about a distinct change in their legal position. It is unequivocally a measure which produces legal effects touching the interests of the undertakings concerned and which is binding on them. It thus constitutes not a mere opinion but a decision. Any doubt which might be raised by the question whether the notification of the said decision was made in proper form in no way alters the nature of that decision and cannot affect the admissibility of the application.

It is also necessary to consider whether the two requirements under Article 15 (6) of Regulation No 17 concerning 85 (1) and Article 85 (3) of the Treaty consecutively do not necessarily imply that the Commission must proceed by way of a decision.

To exclude an agreement from the benefit of the exemption from a fine under Article 15 (5) of Regulation No 17, the Commission must, according to Article 15 (6), first be of the opinion that Article 85 (1) of the Treaty applies. Therefore it must consider the facts of the case and apply to them the terms of Article 85 (1) and issue a finding that the various constituent elements described in this provision are present. The Commission is wrong when it objects that the agreement is prohibited without the necessity for any prior decision. Although under Article 1 of the Regulation agreements 'of the kind described' in Article 85 (1) of the Treaty 'shall be prohibited, no prior decision to that effect being required', the Commission must nevertheless find that the agreement submitted to it is indeed of the kind described in Article 85 (1) and objectively considered does contain all the constituent elements prescribed in that Article. In particular the questions whether the agreement, notified under Article 5 of the Regulation, may affect trade between Member States, or has as its effect the distortion of competition,

depends on the assessment of economic and legal factors. The presence of these factors cannot be presumed unless it is expressly found that the specific case in point contains all the constituent elements prescribed in Article 85(1).

Under Article 15 (6) the Commission must also inform the parties that it is of opinion that application of Article 85 (3) of the Treaty is not justified. This assessment by the Commission also presupposes an evaluation of elements of fact and of law which may involve various points of uncertainty and dispute. Although the Commission has some discretion in this matter, this only reinforces its obligation, when acting in the particular context of Article 15 (6) of the Regulation, to take a decision declaring that application of Article 85 (3) 'is not justified'.

Finally, the procedure under Article 15 (6) calls for a decision within the meaning of the Treaty subject to the legal guarantees which the Treaty provides, all the more so because it is not disputed that the said procedure leads in practice to the question whether there clearly exists such a serious infringement of the prohibition laid down by Article 85 (1) that an exemption under Article 85 (3) appears to be out of the question.

Neither the fact that the word 'decision' is not used in Article 15 (6), nor the fact that the procedure provided for therein is of a preliminary nature justifies the conclusion that the Commission is empowered to proceed by a mere opinion, especially since the words 'deliver an opinion' are not found in the said provision either. The silence of the text in a matter which affects the protection of the rights of individuals cannot be construed in the manner most unfavourable to them. Notwithstanding its preliminary nature, the measure by which the Commission takes a decision in such a case constitutes the culmination of a special procedure which is distinct from the procedure under which, after Article 19 has been applied, a decision on the substance of the case can be taken. Therefore it is not possible to find, either in the absence of any express reference in Article 15 (6) to one of the measures set out in Article 189 of the Treaty or in the preliminary nature of the Commission's examination, sufficient grounds for excluding the necessity for a decision.

The argument that the undertakings can exercise their right to institute proceedings when the final stage of the procedure provided for by Article 6 is reached also fails. If the preliminary measure were excluded from all review by the Court, there would be no other alternative for the undertakings, however righteous their cause might be, than to take the risk of a serious threat of a fine or to terminate against their own interests an agreement which, if proceedings had been instituted, might have had a chance of escaping the

prohibition. The preliminary measure would thus have the effect of saving the Commission from having to give a final decision thanks to the efficacy of the mere threat of a fine. In the present case this practical effect has not escaped the notice of the Commission. It appears from the letter of 7 February 1966 addressed to Counsel for the undertakings by the Director-General for Competition that in fact the Commission threatened the undertakings with Article 15 (2) and invited them 'first to examine how "Noord-wijks Cement Accoord" can be dissolved'.

Finally the Commission is wrong in pleading that the procedure would be excessively cumbersome if applications to the Court could be made in the context of Article 15 (6) of the Regulation. It is an irrelevant objection in a case in which more than three years have gone by between the notification of the agreement and the preliminary decision. In any event it cannot prevail against the guarantees for the protection of individuals laid down by the Treaty and which take precedence over all regulations. These objections must therefore be dismissed.

It follows from all these factors that the measure which the Commission adopted under Article 15 (6) of Regulation No 17 constituted and was bound to constitute a decision within the meaning of Article 189 of the Treaty.

The objection of inadmissibility must thus be dismissed.

The substance of the case

The applicants submit *inter alia* in support of their applications for annulment that no reasons are given for the decision.

According to the wording of the minutes of the 343rd meeting of the Commission, the decision of 14 December 1965 quoted above is unaccompanied by any statement of the reasons on which it is based. The letter of 3 January 1966, by which notice of this decision was given to the parties, contains a mere summary of the agreement followed by the statement that the Commission 'has reached the conclusion' that Article 85 (1) of the Treaty has to be applied and that 'there is no justification' for applying Article 85 (3). Thus there is no means of knowing from the contested decision what were the reasons for using Article 15 (6) of the Regulation. Nor is it any the more possible to check the correctness of the factors taken into account by the Commission according to which the requirements for applying Article 85 (1)

are 'met' and with reference to which there is no justification for applying Article 85 (3).

Even though such an assessment may be explained by a concise statement of reasons in view of the preliminary nature of the procedure, the reasons must nonetheless appear from the decision itself with sufficient clarity to allow the Court and all parties concerned to ascertain whether the provisions have been applied correctly. It is not disputed that the Commission would be infringing the Treaty if it made use of Article 15 (6) of the Regulation in cases where the requirements for applying this provision were not clearly met. Such a risk of violating the Treaty thus presupposes the need for a statement of reasons so that appropriate judicial review may be carried out. Furthermore, the necessity to reach a finding that the infringement of Article 85 (1) was obviously of a serious nature, far from reducing this obligation, makes it all the more imperative.

Thus, irrespective of all the other submissions, which now become superfluous, the decision of 14 December 1965, notice of which was given to the undertakings by letter dated 3 January 1966, must be annulled for having failed to state the reasons on which it was based.

Costs

The defendant has failed in its submissions. Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Therefore the Commission of the European Economic Community must be ordered to bear the costs of the proceedings.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 85 and 189;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby :

1. Annuls the decision of 14 December 1965, notice of which was given to the applicant undertakings by letter dated 3 January 1966;
2. Orders the Commission to pay the costs.

Trabucchi

Monaco

Donner

Lecourt

Strauß

Delivered in open court in Luxembourg on 15 March 1967.

A. Van Houtte
Registrar

A. Trabucchi
President of Chamber
President

OPINION OF MR ADVOCATE-GENERAL ROEMER
DELIVERED ON 15 FEBRUARY 1967¹

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*Mr President,
Members of the Court,*

The case on which I am giving my opinion today is about a notice con-

cerning cartels given by the Commission of the EEC to the applicants under Article 15 (6) of Regulation No 17 of the Council. This notice was issued in the following circumstances.

¹ — Translated from the German.