In Case 57/69

AZIENDA COLORI NAZIONALI—ACNA S.P.A., having its registered office at 1 and 2 Largo Donegani, Milan, in the person of its Managing Director and authorized representative, Gino Sferza, assisted and represented by E. Pizzi and C. Ribolzi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of P. Elvinger, Advocate, 84 Grand'rue,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, J. Thiesing, G. Marchesini and J. Griesmar, acting as Agents, with an address for service in Luxembourg at the Chambers of its Legal Adviser É. Reuter, 4 boulevard Royal,

defendant,

Application for the annulment, or alternatively the reversal, of the decision of the Commission of the European Communities of 24 July 1969 whereby the applicant was ordered to pay a fine of 40 000 u.a. for infringement of Article 85 of the EEC Treaty,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi (Rapporteur), R. Monaco and P. Pescatore, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Statement of facts

The facts may be summarized as follows:
By letter of 19 August 1964, the Commission informed the ACNA undertaking that it had received information of a price increase introduced by that undertaking at the beginning of the year on the Italian, Belgian and Netherlands markets for dyestuffs intended for use in the tanning industry. Referring to the analogous conduct which other dyestuffs manufacturers

within the EEC had also adopted, the Commission, in reliance on Article 11 of Regulation No 17 of the Council, requested the undertaking in question to supply certain information. The letter made it clear that this request was made 'as part of an examination of the question whether it is appropriate to commence proceedings under Article 85 of the Treaty of Rome'. The Commission asked the undertaking to state *inter alia* whether the increase of 15% which it had introduced in Italy, Belgium and the Netherlands on dyestuffs intended for use in the tanning industry was to be explained by the existence of an agreement, a decision, or a concerted practice between the different producers. In addition, the Commission asked the undertaking to state the reasons why it did not introduce a similar increase for the dyestuffs sold in France and Germany.

By letter of 16 September 1964, ACNA replied to the Commission pointing out amongst other matters that the price increases on dyestuffs intended for the tanning industry had taken place on a variable basis, according to type, quantity and other factors affecting the various markets. ACNA stated that the different trend of prices in the various countries depended on objective market conditions in those countries: the increase was intended to align prices with the increase in costs.

By letter of 26 May 1965, the Commission's Director-General for Competition informed the ACNA undertaking that it would be visited by two officials of the Commission with instructions to obtain supplementary information and further explanations on the questions which had given rise to the request for information and to ACNA's reply. This visit took place on 11 June 1965.

By letter of 11 December 1967, the Commission informed ACNA that it had decided to commence proceedings upon its own initiative under Article 3 of Regulation No 17 of the Council for alleged infringement of Article 85 of the Treaty against the undertakings which had participated in a concerted practice for the purpose of fixing prices within the EEC in the dyestuffs sector and in which, in its opinion, ACNA had also participated. This letter contained a statement of the essential facts on which the Commission based its opinion. It accused ACNA of having taken part with other undertakings in a concerted practice for the purpose of fixing the prices of dyestuffs based on aniline, which, it said, led to increases in prices in 1964, in 1965 and in 1967.

ACNA replied to the Commission by letter of 28 February 1968, refuting the objections set out against it.

At the beginning of 1968, officials of the Commission visited ACNA's agents in Belgium, France and the Netherlands, and, on 14 February of that year, its officials again visited the registered office of ACNA in Milan. By decision of 24 July 1969, the Commission, whilst accepting the fact that ACNA did not increase its prices in Italy in 1965, that it was late in introducing the price increases of 1967 in Belgium, and furthermore that its conduct had prevented the introduction on the Italian market of the increase envisaged by the other producers in 1967, imposed on it a fine of 40 000 u.a. for the part which it had played in the cartel which existed amongst the producers of dyestuffs in the Common Market.

The ACNA undertaking has brought an application against that decision under Article 173 of the EEC Treaty and Article 17 of Regulation No 17/62 of the Council. The said application was lodged at the Court Registry on 6 October 1969.

II — Conclusions of the parties

In its application the *applicant* claims that the Court should:

— Annul the decision of the Commission of the European Communities of 24 July 1969 in so far as it affects the applicant;

— Alternatively, reverse it by suppressing or reducing the fine imposed to fair proportions and order the defendant to bear the costs.

In its statement of defence the *defendant* contends that the Court should:

— Dismiss the application as unfounded;

— Order the applicant to bear the costs.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — Preliminary matters

1. *The effect of limitation on the infringement at issue, in so far as it relates to the price increase which took place in 1964*

The *applicant* argues that the period which elapsed between the date of the infringement in question (January 1964) and the first measure of the Commission suspending the effect of limitation (namely the notice of 11 December 1967) exceeds any limitation period laid down by the national laws which may reasonably be applied in the Community context in the absence of a specific provision on this subject laid down by Community law. In particular, that period goes well beyond the limitation period of 18 months laid down by Italian law with regard to offences punishable by a fine (Italian Criminal Code, Article 157, No 6).

The *defendant* observes that the fact that Regulation No 17 does not contain any provision concerning limitation means that the Commission remains free, as part of its powers, to lay down time-limits for the determining of infringements on an *ad hoc* basis subject to review by the Court. This freedom is to be explained by the desire that the Commission should not be tied down by limits fixed in advance, at least when it began to exercise control over the application of the rules on competition.

As for the applicability of the limitation period which may be deduced from the body of national rules, the defendant objects that the laws of the Member States differ considerably as regards the types of infringement which may be punished, the penalties applicable, limitation periods, and measures which can interrupt or suspend those periods.

The only criterion common to the national laws is the principle that a limitation period should attach to matters in respect of which a penalty may be imposed. It is therefore above all necessary, the defendant argues, to take the requirements of Community law into account, as also the nature and purposes of the rules on competition in the context of the EEC Treaty.

The defendant asserts that even if the increase which the applicant introduced in 1964 is considered in isolation, the period of limitation was suspended several times by the Commission either by the request for information sent to ACNA in accordance with Article 11 of Regulation No 17 during the same year 1964, or by the inspections carried out during June 1965 by officials of the Commission authorized to do so. For, it is argued, those inspections were undoubted 'measures of inquiry and investigation' which suspend the period of limitation according to the legislation of three Member States. Finally, that period was again suspended on 31 May 1967 by the decision to commence the procedure for establishing an infringement. The longest interval was that running from the investigations carried out in June 1965 to the decision taken in May 1967, and that period was less than two years. The defendant is of the opinion that, in view of the practical and legal difficulties inherent in the matter in question, such a period cannot be held to involve the limitation of proceedings in respect of complex infringements of Community rules.

The *applicant* disputes the Commission's arguments according to which the Commission has discretionary powers concerning limitation. This proposition would result in irreparable damage to the necessary certainty in legal relationships and situations, and the simple consequence of this would be to undermine the legal foundation of the Community system of law. Until such time as the question is settled by legislation, it is necessary, the

applicant argues to refer to the principles and to the common criteria of the legislation of the Member States. The applicant takes the view that in the present case it would be appropriate to apply the period of 18 months laid down by Italian law for offences punishable only by fines. Since this period is the shortest period laid down by the national laws, to apply it would accord with the principle which requires that in cases of doubt the solution most favourable to the accused must be adopted. To do so would also make it possible to avoid possible difficulties at the level of national constitutional law so far as regards the Italian undertakings.

The *defendant* replies by pointing out that by its nature criminal law cannot be extended by analogy, and that the Commission, to which the period of limitation applies, is outside the Italian legal order. To transpose legal rules of that kind into the Community system, as the applicant proposes, would be in contradiction with the requirements of a rigorous interpretation, which is necessary on the subject of limitation. Finally, the shortest period which may be taken into consideration should at least be more than the period of three years laid down by the Member States having legislation on matters of competition.

The *applicant* argues, in the alternative, that even if the period of three years laid down by Belgian and German legislation were to apply, that period has expired in the present case, since the applicant received notice of the decision to commence the procedure only on 11 December 1967, that is, more than 3 years after the facts, which date back to January 1964. Neither the request for information which was sent during August 1964, nor the visit to the offices of the applicant by officials of the Commission during June 1965 can have suspended the period of limitation because they did not constitute formal measures in the context of a procedure brought against the applicant in due form. Those measures, it is argued, were simply in the nature of preliminary inquiries for the purpose of establishing whether it was appropriate to commence formal proceedings to establish an infringement. Furthermore, the measures in question were not, so it is said, measures of the Commission as such, since they emanated from the Directorate-General for Competition, no corporate initiative by the Members of the Commission ever having been taken on the matter. The letter of May 1965 did not specify that the visit announced therein had been decided upon under Article 14 of Regulation No 17/62.

The *defendant* objects that the letter of 19 August 1964 addressed to ACNA constitutes a formal notice under Article 11 of Regulation No 17. The investigations announced in the letter of 26 May 1965 were carried out in accordance with the provisions of Article 14 of that regulation, even though the letter in question did not expressly refer to that article. The measures in question, signed by the Director-General for Competition, who acted on the basis of a delegation of powers granted by the Commission are, it is said, legally attributable to the Commission. It is for that reason that the measures in question should be considered as having been capable of suspending the period of limitation.

2. *Infringement of essential procedural requirements relating to the procedure for establishing infringements under Article 85 of the Treaty*

The *applicant* argues that the Commission has infringed the procedural provisions of Regulation No 17 in that it served the notice of objections on it at the same time as informing it of the commencement of the procedure for establishing an infringement; in that it undertook measures of inquiry after the notice of objections had been sent; and finally, in that it has not produced evidence substantiating the objections concerning the specific conduct of the applicant. It is argued that these defects are reflected in the final decision, as appears from the fact that on several points the contested decision is based on events or assertions of which the applicant had no prior knowledge, from which it follows that it suffered an infringement of its right of defence. Furthermore, a certain number

of observations appearing in the contested decision concern only some of the undertakings which have participated in the alleged concerted practice, and yet the wording of the decision does not make it possible positively to identify the specific undertakings to which the Commission intended to impute the objections in question. Thus the defendant, it is argued, has disregarded the duty which is incumbent upon it to communicate a specific notice of objections, which results in a reversal of the burden of proof.

In particular, as regards the fact that the Commission believed that it could deduce evidence of the concerted nature of the increases from the absolute duty on the subsidiaries to refuse to issue antedated invoices, the applicant points out that such a refusal is in line with proper commercial practice which it has constantly followed.

The *defendant* observes, as a preliminary point, that the procedural provisions contained in the regulations adopted on the basis of Article 87 of the EEC Treaty cannot be considered to be 'rules of law relating to the application of the Treaty' and that therefore infringement of them does not necessarily constitute an infringement of essential procedural requirements for the purposes of Article 173.

The defendant also points out that no rule of Community law requires it to make a chronological and physical separation between the notification of the decision to initiate a procedure to establish an infringement and the notice of objections. Furthermore, a joint notice does not, it is asserted, prejudice the rights of the defence in any way.

The purpose of the investigations carried out after the notice of objections was sent was to verify the declarations made subsequent to that notice. The contested decision did not take into account any facts other than those complained of in the notice of 11 December 1967. Finally, the fact that certain points in the decision concern only certain of the undertakings in question is not capable of invalidating the premises of the decision in relation to the various addressees.

The *applicant* replies that since the notice of objections did not make it possible to reconstruct completely and entirely the written evidence on which the Commission had relied for the purpose of taking its decision to institute proceedings, it was not possible for the applicant to assess the objections adequately. Similarly, it was not possible for it to be absolutely certain that the contested decision was not based on subsequent documents or facts.

The visits made after the notice was sent cannot, it is argued, have been intended to verify the statements made by the applicant subsequent to that notice, since they took place before the applicant had replied.

The fact that the Commission wished to adopt a single decision with reference to ten undertakings is attributable to the way in which the measure was prepared and has nothing to do with its validity. It is for this reason that the submission to the effect that the Commission stated reasons for that decision by reference to certain circumstances which do not specifically concern the applicant remains a valid submission.

The *defendant* replies that the investigations provided for by Article 14 of Regulation No 17 are not subject to any time-limit. Although they usually precede the notice of objections, there is no reason why they should not follow it, either in order to verify the accuracy of the statements made by the interested parties, or in order to inquire into the existence of subsequent infringements which, if found to exist, would be the subject of an *ad hoc* notice of objections. The only important factor is, it is argued, that the final decision must be based exclusively on matters of which the interested parties have previously been informed by the notice of objections, and this requirement is met in the present case.

Finally, the defendant observes that if the applicant wishes to assert that the final decision is based on documents obtained by the Commission after the notice of objections was sent, it must prove that assertion.

B — Substance

1. *Infringement of Article 85 of the Treaty and of the principles and provisions of Regulation No 17/62 of the Council*

The *applicant* argues in the first place that the Commission has not discharged the burden of proof: in effect, it has not supplied any valid evidence against ACNA. Even after admitting that it had made a material error in including the applicant amongst the undertakings which had actually increased their prices in January 1965, the Commission nevertheless continued to treat ACNA like all the other undertakings to which it wished to attribute without distinction the various price increases, including that of 1965. In this connexion, the applicant asserts that it did not introduce any price increase, even on external markets, and claims that the Commission is guilty of an error of logic. In view of the fact that the applicant clearly carries out its principal commercial activity in Italy, the decision does not explain why ACNA refrained from increasing its prices on the national market while taking part at the same time in supposed concerted practices relating to other markets which are of but little commercial interest to it.

As regards the increases of 1967, the contested decision states that they did not take place on the Italian market and that it was indeed ACNA which, by its conduct, prevented the increase envisaged in 1967 by the other producers from taking place on that market. That fact must render implausible any hypothesis concerning the simultaneous participation of ACNA in a concerted practice for the purpose of increasing prices on other markets. The applicant states that in fact the Italian market represents 95% of its sales within the Common Market whereas the Belgian and French markets do not exceed 3% thereof. Furthermore, the text of the contested decision shows that none of the factors leading to the conclusions as to the existence of the alleged concerted practice may be imputed to the applicant undertaking.

In its statement of defence, the *defendant* observes that the absence of a concerted practice, which the applicant raises in its favour, for the price increases of 1965 and 1967, was due not to any concern on its part to adhere to the principles of perfect competition but rather to an intention to react by this means against foreign competitors which were not supplying it with certain raw materials on the favourable terms which it has enjoyed in the past.

In its reply, the *applicant* notes that by that assertion the Commission has in effect placed the objections made against it in a new context, by abandoning practically all its previous statements on the participation by that undertaking in the alleged concerted practices of 1965 and 1967. The remarks concerning ACNA's intentions are wholly irrelevant, since no objection can be made against its actual conduct. It is for this reason that in its reply the applicant limits its observations to the facts which occurred in 1964.

The applicant also argues that no evidence has been put forward by the Commission, even as regards the increases of 1964, which are in any event covered by the effect of limitation. The decision admits as regards that increase that the applicant acted in Italy, in Belgium and in Holland after the increases decided upon by the other undertakings had become effective or, at all events, had already become known, because notice of them had previously been given to the customers. Therefore, it is argued, all that ACNA did was to align itself on decisions to make increases which had already been acted upon by the largest producers. There is no question here, so it is asserted, of an agreement, but rather of the phenomenon of 'conscious parallelism', justified by business considerations and not in any way in contradiction with the completely independent nature of the applicant's commercial policy.

Finally, the applicant argues that, contrary to what the Commission asserts, it is practically impossible for users of dyestuffs on a given national market to order their supplies from producers outside that market. This is due, *inter alia*, to the need for continuous assistance to be given at the appropriate time while the products

in question are in use, and to the need to supply users quickly with products having a multiplicity of characteristics occurring in many different kinds, and often in small quantities. In support of this proposition it alleges that although in 1965 and 1967 it did not take part in any increase in prices, and therefore continued to charge lower prices in Italy than those charged by its competitors on other markets, it did not receive a single order for supplies from customers in other Member States. Furthermore, the price increases on the various national markets did not in any way attenuate the overt competition existing between the producers in question on each of those markets, which is apparent in practice notably in the erosion of prices charged to customers. The applicant claims that at the present time its average receipts per unit are quite simply below the level prior to the increase of 1964.

The *defendant* takes exception above all to the proposition that the facts imputed to the applicant are to be compared with the phenomenon of conscious parallelism rather than with a concerted practice. It points out that the oligopolies for which academic writers accept the possibility of parallel conduct are characterized by a very high degree of interdependence when the following conditions are fulfilled: a limited number of producers, high fixed costs, homogeneity of products, a high degree of transparency of the market, and reduced expansion in the sector in question. It is argued that amongst those conditions, which are all necessary, homogeneity, on which American case-law also concentrates, is of particular importance. Yet the products in question are quite otherwise than homogeneous; about 6 000 different dyestuffs are in existence; of the undertakings which took part in the agreement in question, each applicant produces, it is said, a range of between 1 500 and 3 000 kinds, of which some are protected by patents. Furthermore, continuing technical progress contributes to this heterogeneity. A further factor, together with the multiplicity, heterogeneity, and rapid development of the products, is the lack of transparency of the market, which is yet further aggravated by the diversity of demand due to the many activities of the users. It is asserted that there is a clear trend towards expansion in the dyestuffs market, as appears from statistics of the OECD. Demand for the products in question is characterized by high mobility linked to the intensity of competition, and by the fact that consumers hold low quantities in stock and buy limited quantities as the need arises. Furthermore, the sector in the products in question displays a considerable capacity on the part of producers to adapt themselves to variations in demand, and this capacity is enhanced by the fact that their plant can be used for a number of different purposes. There is, it is said, great diversity in the position occupied by each undertaking on the market, depending on whether the products are at the experimental stage, or are increasingly or less used, and depending also on special relationships with the customers. Finally, it is argued that great diversity exists as regards the costs of production, depending on the size of the undertaking, the prices of raw materials, and so on, and that therefore profits vary considerably.

For all these reasons, conscious parallelism between producers on the dyestuffs market is, it is asserted, impossible.

Apart from these considerations of a general nature, the defendant denies that in the present case the 1964 increase was justified by the sizeable increase in costs and by the favourable circumstances resulting from the initiative already taken by the principal competitors. It is argued that the increase decided upon the latter presented the other undertakings with very favourable opportunities for achieving a high rate of profit. They could have adopted a pricing policy which, by means of appropriate diversification of prices, would have given them excellent returns. Therefore the different course of conduct which they adopted in conforming entirely to the increases in question can only be explained, it is alleged, by prior concertation between the interested parties.

It is argued that this conclusion is confirmed by the fact that the instructions sent out by the various producers concerning the increase in question were sent to Italy on

9 January 1964 and to Belgium a few days later. It appears that those instructions were drafted in very similar terms and that they all coincide on the subject of the size of the increase, the exceptions to be made for certain products, the obligations to apply the increase to all current orders, and the prohibition on granting exceptions other than those agreed upon and on accepting antedated orders as a means of avoiding the application of the new prices. Moreover, the instructions sent by the applicant were sent at the same time as those sent to Belgium by Bayer, Hoechst, Cassella, Sandoz and Francolor.

On the subject of the alleged simultaneous timing of the communication sent by ACNA to its agent in Belgium and the instructions to the same effect sent by the other producers, the applicant points out that the telegram in question was sent on 31 January 1964, whereas Bayer, which was the first to act, had sent instructions to increase prices as early as 9 January to its representatives on the Belgian market. This fact, it is claimed, deprives the Commission's argument of any probative value because ACNA's decision to raise its prices may be explained quite simply as a legitimate reaction to the new situation on the market, of which it had objective knowledge. The undertakings concerned had an almost identical period available within which to decide upon their conduct in the light of the increase announced by Bayer, and this is why their reactions were almost simultaneous.

It is asserted that the logic of the defendant's argument would result in identifying parallel conduct with a concerted practice, and that this lightens the burden of proof which is incumbent on it.

Moreover, it is said, the defendant's conclusions are contradicted by the Kammergericht Berlin which held, in its judgment of 28 August 1969, that it could not agree with the interpretation of the Bundeskartellamt, according to which it was highly improbable that the prices of all the interested parties could have been increased at the same time and by the same percentage without prior agreement. The Kammergericht accepted the proposition that when a general change in prices is announced and is immediately made known to all competitors and all purchasers, a certain interdependence exists between producers of dyestuffs.

The applicant stresses that for its part its prices were aligned not on those charged by other producers, but merely on the increased percentages announced. This meant that prices which were different before the increase remained different afterwards. Therefore the defendant's arguments based on the heterogeneity of products are not relevant; nor are those relating to the lack of transparency of the market, once the decisions announced to their respective customers by the instigators of the upward movement were publicly known.

The *defendant* replies by pointing out that the instructions in question not only coincided in time but were drafted in the most similar terms as to form and coincided as to substance. The alleged alignment took place not only on the Belgian market but also in other Member States, and the increase corresponded to that introduced by the undertakings controlling the largest share of the market in those countries (Bayer in Belgium, ICI in the Netherlands, Ciba in Italy). Since the interchangeability of the products is limited and there is no transparency of market, the undertaking which increases its prices first cannot, in the absence of a prior agreement, be certain that its competitors will automatically adopt a parallel course of conduct. It is true that ACNA mainly produces interchangeable dyes, but in that case equally, in an expanding market characterized by differing relationships between sellers and buyers, disparities of costs and prices, continuous technical progress and a difference in the degree to which productive capacity is used, it is inconceivable that all sellers should automatically have aligned prices for all their products on the increases announced by a competitor. This proposition is corroborated, it is argued, by the attitude of the applicant itself, in that it did not follow the increase announced in 1965 by a number of its competitors on the Italian market, a fact which caused that initiative to fail.

Finally, the defendant points out that the

decision of 28 August 1969 of the Kammergericht Berlin was contested before the Bundesgerichtshof on 13 October 1969 by the public prosecutor attached to the Kammergericht.

2. *The situation on the Italian market and the position of the applicant undertaking*

The *applicant* stresses that at the time in question its position was characterized by the following factors, which still subsist: an irremediable imbalance in the relationship between costs and profits occasioned by the noticeable increase in costs and the decrease in profits; a progressive deterioration in the undertaking's position on the national market as a result of intense competition and of the highly critical situation existing in wide areas of demand; the precarious position of the undertaking on other Community markets and its lack of ability to penetrate; the weak competitive position of the undertaking's products, which are fully exposed to competition, being almost exclusively dyes of standard types and therefore interchangeable with those of all other principal producers.

It appears in particular, it is said, from figures compiled by the OECD that in 1965 production of dyestuffs in Italy decreased by 20.7% in quantity and 20% in value. Furthermore, the statistics of ISTAT show that imports of dyestuffs into Italy more than tripled between 1959 and 1968, both in value and in quantity. This is all the more relevant in that during the course of the last few years average prices conceded to buyers of imported dyestuffs have fallen. Therefore, it is argued, the Commission's statement as to the expansion of the dyestuffs industry in general does not apply to Italian industry for the period under consideration.

The statistics in question show, it is said, that ACNA has, again in Italy, been subjected to ever wider and more intense competition. According to statistics of the OECD, the average value of standard products, comprising almost all products manufactured in Italy, is US $1.93 per kg, whereas in Germany, for example, that value is 3.70 and in Switzerland, 5.52. In these circumstances, ACNA did not have any reasonable alternative to a policy of varying prices. The applicant points out that as far as possible it has always pursued this policy, even after the increase of 1964. That does not conflict, it is argued, with the decision to follow the general price increase. The necessary precondition for this 'articulated' policy was that the price movement should succeed on the market during that time. It was only thereafter, so it is said, that the optimal adjustments envisaged by the Commission could have been considered.

The applicant expresses doubts as to the evidential value of the statistics produced by the defendant concerning consumption and production of organic dyes and the average gross hourly wages in the chemicals industry. It is argued that it is improbable that the apparent consumption shown in Table I A increased in Switzerland from $1.9 million in 1958 to 17.7 in 1963 and that from 1966 onwards consumption fell. Table II A contains data obtained from various sources, which renders a useful comparison practically impossible. Table VI is not very representative, both because it does not contain data prior to 1964 and because average wages do not give a satisfactory indication of the trend in labour costs. It would have been more useful to examine general operational costs, including indirect charges and social security contributions, which are particularly high in Italy. As regards consumption, Tables I A and I B, which take the year 1958 as their reference point, give a somewhat unrepresentative comparison, so it is said, of the trend in consumption for the years with which the Commission inquiries are concerned. The same goes for the tables showing production, from which, moreover, it appears that from 1962 onwards production in Italy has substantially decreased.

It is argued in conclusion that as a whole the data supplied by the Commission confirm what the applicant has itself stated as regards its situation and that of the production of dyestuffs in Italy in general.

In its rejoinder, the *defendant* accepts that the general expansion of the dyestuffs market did not occur in Italy in 1965

but that on the contrary it has been found that there was a recession. Nevertheless, it points out that that has nothing to do with the increase in question, which took place at the beginning of 1964. The statistical data which it supplies, together with a table appearing in the rejoinder, are alleged to show that until 1964 the market expanded progressively.

3. *The excessive amount of the fine*

Alternatively, the *applicant* takes the view that the amount of the fine which has been imposed on it, which is little less than the amount of the fine imposed on each of the other undertakings, is in contradiction with the considerations which the decision purportedly takes into account in order to determine the fine, namely: the gravity and duration of the alleged infringements, the circumstances in which they took place, and the size of the various undertakings within the common market. As regards its economic dimensions, the applicant undertaking first states that it is not a subsidiary of Montecatini-Edison, as is wrongly stated in the decision, but an associated undertaking having its own freedom of action and its own legal personality. The applicant then asserts that in 1968 its sales represented some 25% of the total sales of dyestuffs in Italy during the period in question. Its exports to other Community countries, on the other hand, were, it says, of no significance since they did not even amount to five hundred million lire, whereas imports into the Community by the other countries of the common market amounted in 1967 to Lit. 28 000 million, with imports from the EFTA countries amounting to Lit. 24 000 million.
Taking these facts into account it is inaccurate, the applicant alleges, to say that ACNA is comparable in size to the larger undertakings operating in this sector.
As for the gravity of the alleged infringements, the applicant stresses the insignificance of its exports within the common market (in 1964, 0.2% of apparent consumption in the Netherlands and 1.4% of apparent consumption in Belgium; in France, 0.6% in 1967). The presumed infringement of 1964 alone was not sufficient, it is argued, to justify so severe a penalty, taking into account also the fact that this was an isolated episode, which occurred long ago.
The *defendant* argues that the applicant made a considerable profit from the increase which it introduced in 1964 and which also affected the national market. Secondly, while admitting that ACNA derived less of an advantage from the successive increases in relation to those countries to which it exports very little, the defendant asserts that in directing its production almost entirely to internal consumption and neglecting the higher profits available elsewhere, the applicant adhered to a balance between the markets so that it did not in its turn have to face interference arising from the action of foreign competitors on its national market.
The *applicant* objects that the large increase in imports of dyestuffs into Italy and the significant decrease in Italian production which occurred in 1965 show that this statement by the defendant is unfounded.

IV — Procedure

The procedure took the following course:
By order of 8 July 1970, the Court, having regard to the report of the Judge-Rapporteur and the views of the Advocate-General, ordered as follows:

1. An expert's report shall be obtained in respect of the following questions:

   (a) Taking into account the characteristics of the dyestuffs market in the European Economic Community, especially during the period 1964 to 1967, would it have been a practical possibility, according to normal commercial criteria, for a producer acting independently who wished to increase his prices to do so otherwise than by a general uniform and public increase, by fixing different rates for each product in his individual relationships with each customer?

(b) For a producer acting independently, what advantages and disadvantages result from effecting a general and linear increase in prices, as compared with an increase differing in respect of each customer, product and market? The answer to this question is to be given both on the hypothesis that the producer is taking the initiative in making an increase and on the hypothesis that the producer is faced with a general and uniform increase announced by a competitor.

(c) Taking into account in particular the degree of transparency of the market, are dyestuffs other than speciality dyes practically interchangeable and, if so, to what extent? What is the approximate proportion of speciality dyes compared with the total production of dyes for each of the undertakings concerned?

2. The parties may, by agreement between themselves, propose the name of an expert to the Court before 1 October 1970.

By order of the same date the Court joined Cases 48/69, 49/69, 51/69, 52/69, 53/69, 54/69, 55/69, 56/69 and 57/69 for the purposes of the expert's report.

By order dated 13 November 1970 the Court, having regard to the proposal made by common agreement between the parties on the names of two experts, instructed Horst Albach, Professor of Business Management at the University of Bonn, and Wilhelm Norbert Kloten, Professor of Political Economy at the University of Tübingen, to prepare the report jointly.

The experts' joint report was lodged at the Court Registry on 23 April 1971. The experts summarized the results of their report in the following terms:

— Question (a) should be answered in the affirmative; according to normal commercial criteria a producer of dyestuffs acting independently could *in principle* have increased his prices on a variable basis in relation to each customer and each product.

— An affirmative answer may also be given to the question whether it would have been a *practical* possibility for such a producer to increase his prices on a variable basis in relation to each customer and product, subject to the following proviso: the average increase in prices that a producer acting independently could have achieved by means of a policy of differentiated prices in a given field would probably have been lower than the average increase in prices achieved by a general and uniform price increase.

— A general and linear increase in prices involves opportunities and risks both for the producer who takes the initiative in putting prices up and for the producer of dyestuffs who has to fall in with a general and uniform increase announced by a competitor. Both as regards the producer who determines the price and as regards those who follow him, the conclusion to be drawn is that during the period in question the advantages to be obtained from a general and uniform increase in prices were greater than the disadvantages.

— The appropriate answer to Question (c) is that the degree of interchangeability of dyestuffs varies: it ranges from products which are perfectly interchangeable to products for which to all intents and purposes there is no substitute. If, for the purposes of the question asked, speciality dyestuffs are those which are not interchangeable for practical purposes, it can be said that the proportion that they represent of the total production of dyestuffs in each of the undertakings concerned is very low. However, the results of the study show that the distinction is of but little use in assessing the facts envisaged.

Observations on the experts' report were lodged at the Court Registry on 3 July 1971 by the applicant and on 21 June 1971 by the defendant.
On 28 September 1971 the experts named by the Court took the oath in accordance with Article 49(6) of the Rules of Procedure.

The parties presented oral argument at the hearings on 28, 29 and 30 September 1971 and on 2 May 1972.
During the course of the procedure Mr Advocate-General Mayras replaced Mr Advocate-General Dutheillet de Lamothe, deceased. He delivered his opinion at the hearing on 2 May 1972.

Grounds of judgment

1 It is common ground that from January 1964 to October 1967 three general and uniform increases in the prices of dyestuffs took place in the Community.

2 Between 7 and 20 January 1964, a uniform increase of 15% in the prices of most dyes based on aniline, with the exception of certain categories, took place in Italy, the Netherlands, Belgium and Luxembourg and in certain third countries.

3 On 1 January 1965 an identical increase took place in Germany.

On the same day almost all producers in all the countries of the common market except France introduced a uniform increase of 10% on the prices of dyes and pigments excluded from the increase of 1964.

Since the ACNA undertaking did not take part in the increase of 1965 on the Italian market, the other undertakings did not maintain the announced increase of their prices on that market.

4 Towards mid-October 1967, an increase for all dyes was introduced, except in Italy, by almost all producers, amounting to 8% in Germany, the Netherlands, Belgium and Luxembourg, and 12% in France.

5 By a decision of 31 May 1967 the Commission commenced proceedings under Article 3 of Regulation No 17/62 on its own initiative concerning these increases for presumed infringement of Article 85(1) of the EEC Treaty against seventeen producers of dyestuffs established within and outside the common market, and against numerous subsidiaries and representatives of those undertakings.

6 By a decision of 24 July 1969, the Commission found that the increases were the result of concerted practices, which infringed Article 85(1) of the Treaty between, the undertakings

— Badische Anilin- und Soda-Fabrik AG (BASF), Ludwigshafen,
— Cassella Farbwerke Mainkur AG, Frankfurt am Main,
— Farbenfabriken Bayer AG, Leverkusen,
— Farbwerke Hoechst AG, Frankfurt am Main,
— Société Française des Matières Colorantes SA, Paris,
— Azienda Colori Nazionali Affini S.p.A. (ACNA), Milan,
— Ciba SA, Basel,
— J. R. Geigy SA, Basel,
— Sandoz SA, Basel, and
— Imperial Chemical Industries Ltd. (ICI), Manchester.

7 It therefore imposed a fine of 50 000 u.a. on each of these undertakings, with the exception of ACNA, for which the fine was fixed at 40 000 u.a.

8 By application lodged at the Court Registry on 6 October 1969 the undertaking Azienda Colori Nazionali Affini S.p.A. (ACNA) has brought an application against that decision.

Submissions relation to procedure and to form

Submissions concerning the administrative procedure

(a) *The complaint concerning the initiation of the administrative procedure*

9 The applicant argues that the Commission has infringed the procedural provisions laid down by Regulation No 17/62 in that it sent the notice of objections to the applicant at the same time as it informed the applicant of the initiation of the procedure to establish an infringement.

10 Neither the provisions in force nor the general principles of law require notice of the decision to initiate the procedure to establish an infringement to be given prior to notification of the objections adopted against the interested parties in the context of such proceedings.

11 It is the notice of objections alone and not the decision to commence proceedings which 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.

12 Accordingly, the fact that the Commission did not separate, chronologically and physically, notification of the abovementioned decision from the notice of objections cannot affect the rights of the defence.

13 This complaint is therefore unfounded.

(b) *The complaint relating to a continuation of inquiries following notification of the objections*

14 The applicant believes that the Commission has infringed Regulation No 17/62 by continuing its inquiries relating to increases in the prices of the products following communication of the notice of objections.

15 The Commission has the right and where appropriate the duty to institute fresh inquiries during the administrative procedure if it appears from the course of that procedure that additional investigations are necessary.

16 Such inquiries would render it necessary to send an additional statement of objections to the undertakings concerned only if the result of the investigations led the Commission to take new facts into account against the undertakings or to alter materially the evidence for the contested infringements.

That is not the position in the present case.

17 This submission is therefore unfounded.

(c) *The complaint concerning the disparities between the contested decision and the notice of objections*

18 The applicant, alleging infringement of the rights of the defence, complains that the Commission took the contested decision on the basis of facts or assertions of which the said applicant had never had knowledge.

19 Moreover, it is stated that certain observations appearing in the contested decision concern only certain of the undertakings, and yet the decision does not make it possible to identify them.

20 Thus the Commission, it is said, has succeeded in reversing the burden of proof.

21 Finally, it is argued that the Commission has not put forward evidence concerning the specific conduct of the applicant.

22 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.

23 It appears from the text of the notice of objections that the facts taken into consideration against the applicant were clearly stated therein.

24 That notice contains all the information necessary for deciding as to the objections put forward with regard to the applicant, in particular the circumstances in which the increases of 1964, 1965 and 1967 were announced and implemented.

25 Amendments included in the contested decision concerning the precise course of the facts, which were made pursuant to information furnished by the interested parties to the Commission during the course of the administrative procedure, can by no means be relied upon to support this complaint.

26 The fact that the decision, which was taken in respect of ten separate undertakings, dealt with the arguments put forward by only some of the addressees, without identifying them, cannot impair the legality of that measure.

27 Finally, the question whether the factors put forward by the Commission in evidence of the infringement at issue are sufficient to prove the existence of that infringement is a matter relating to the substance of the contested decision.

28 These complaints are therefore unfounded.

The submission as to the limitation period

29 The applicant argues that the contested decision is contrary to the Treaty and to the rules relating to its application because the Commission, in commencing on 31 May 1967 proceedings concerning the price increase of January 1964, exceeded any reasonable limitation period.

30 The provisions governing the Commission's power to impose fines for infringement of the rules on competition do not lay down any period of limitation.

31 In order to fulfil their function, limitation periods must be fixed in advance.

The fixing of their duration and the detailed rules for their application come within the powers of the Community legislature.

32 Although, in the absence of any provisions on this matter, the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its power to impose fines, its conduct in the present case cannot be regarded as constituting a bar to the exercise of that power as regards participation in the concerted practices of 1964 and 1965.

33 Therefore the submission is unfounded.

Substantive submissions as to the existence of concerted practices

Arguments of the parties

34 The applicant complains, first, that the contested decision accused it of having participated, outside the Italian market, in 1965 and in 1967, in concerted practices relating to price increases in other Member States.

35 It is argued that in view of ACNA's refusal to increase its prices on its national market and the small commercial importance to it of those other markets, the abovementioned allegation is not plausible.

36 During the oral procedure before the Court, the defendant replied that in the applicant's case the contested decision was based on its participation in the increase of 1964 alone, and that its conduct in 1965 and 1967, viewed in isolation, was not of a nature such as to justify that measure.

37 Therefore, in the examination of the existence of the infringement alleged against the applicant that limitation should be taken into account.

38 The applicant also complains that the Commission has not produced valid evidence to the effect that it participated in concerted practices contrary to Article 85(1) of the EEC Treaty.

39 The contested decision states that *prima facie* evidence that the increase of 1964 took place as the result of concerted action is to be found in the facts that the rates introduced for that increase by the different producers in each country were the same, that with very rare exceptions the same dyestuffs were involved, and that the increases were put into effect over only a very short period, if not actually on the same date.

40 It is contended that that increase cannot be explained simply by the oligopolistic character of the structure of the market.

It is said to be unrealistic to suppose that without previous concertation the principal producers supplying the common market could have increased their prices on several occasions by identical percentages at practically the same moment for one and the same important range of products including speciality products for which there are few, if any, substitutes, and that they should have done so in a number of countries where conditions on the dyestuffs market are different.

41 The Commission has argued before the Court that the interested parties need not necessarily have drawn up a common plan with a view to adopting a certain course of behaviour for it to be said that there has been concertation.

It is argued that it is enough that they should previously have informed each other of the attitude which they intend to adopt so that each could regulate his conduct safe in the knowledge that his competitors would act in the same way.

42 The applicant argues that the contested decision is based on an inadequate analysis of the market in the products in question and on an erroneous understanding of the concept of a concerted practice, which is wrongly identified by the decision with the conscious parallelism of members of an oligopoly, whereas such conduct is due to independent decisions adopted by each undertaking, determined by objective business needs, and in particular by the need to increase the unsatisfactorily low rate of profit on the production of dyestuffs.

43 At the time covered by the contested decision the applicant's position was, it is said, characterized by a very large imbalance in the relationship between costs and profits, by a progressive deterioration in its situation on the national market as a result both of the intense competition to which its products, consisting almost exclusively of dyes of standard types and therefore easily interchangeable, were exposed, and of the highly critical situation existing in wide areas of demand, taking into account the relatively small stature of the undertaking and its lack of ability to penetrate other Community markets.

44 In that critical situation it had no reasonable alternative, so it is said, but to pursue a policy of varying prices by means of adjustments of its prices to customers.

45 It is argued that the constant erosion of prices charged to customers shows that the uniform percentage of the increase did not attenuate open competition on the market in the products in question.

46 In 1964, the applicant confined itself, even on its national market, to following decisions to introduce increases already acted upon by its largest competitors.

47 It is argued that the statistics of the OECD, according to which production of dyestuffs in Italy in 1965 decreased by 20.7% in quantity and 20% in value, confirm these assertions.

48 Therefore, it is said, the Commission's general statement concerning the expansion of the dyestuffs industry cannot apply to the particular situation of the applicant.

The concept of a concerted practice

49 Article 85 draws a distinction between the concept of 'concerted practices' and that of 'agreements between undertakings' or of 'decisions by associations of undertakings'; the object is to bring within the prohibition of that article a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.

50 By its very nature, then, 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.

51 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.

52 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.

53 Therefore the question whether there was a concerted action in this case can only be correctly determined if the evidence upon which the contested decision is based is considered, not in isolation, but as a whole, account being taken of the specific features of the market in the products in question.

The characteristic features of the market in dyestuffs

54 The market in dyestuffs is characterized by the fact that 80% of the market is supplied by about ten producers, very large ones in the main, which often manufacture these products together with other chemical products or pharmaceutical specialities.

55 The production patterns and therefore the cost structures of these manufacturers are very different, and this makes it difficult to ascertain competing manufacturers' costs.

56 The total number of dyestuffs is very high, each undertaking producing more than a thousand.

57 The average extent to which these products can be replaced by others is considered relatively good for standard dyes, but it can be very low or even non-existent for speciality dyes.

58 As regards speciality products, the market tends in certain cases towards an oligopolistic situation.

59 Since the price of dyestuffs forms a relatively small part of the price of the final product of the user undertaking, there is little elasticity of demand for dyestuffs on the market as a whole and this encourages price increases in the short term.

60 Another factor is that the total demand for dyestuffs is constantly increasing, and this tends to induce producers to adopt a policy enabling them to take advantage of this increase.

61 In the territory of the Community, the market in dyestuffs in fact consists of five separate national markets with different price levels which cannot be explained by differences in costs and charges affecting producers in those countries.

61 Thus the establishment of the Common Market would not appear to have had any effect on this situation, since the differences between national price levels have scarcely decreased.

63 On the contrary, it is clear that each of the national markets has the characteristics of an oligopoly and that in most of them price levels are established under the influence of a 'price-leader', who in some cases is the largest producer in the country concerned, and in other cases is a producer in another Member State or a third State, acting through a subsidiary.

64 According to the experts this dividing-up of the market is due to the need to supply local technical assistance to users and to ensure immediate delivery, generally in small quantities, since, apart from exceptional cases, producers supply their subsidiaries established in the different Member States and maintain a network of agents and depots to ensure that user undertakings receive specific assistance and supplies.

65 It appears from the data produced during the course of the proceedings that even in cases where a producer establishes direct contact with an important user in another Member State, prices are usually fixed in relation to the place where the user is established and tend to follow the level of prices on the national market.

66 Although the foremost reason why producers have acted in this way is in order to adapt themselves to the special features of the market in dyestuffs and to the needs of their customers, the fact remains that the dividing-up of the market which

results tends, by fragmenting the effects of competition, to isolate users in their national market, and to prevent a general confrontation between producers throughout the Common Market.

67 It is in this context, which is peculiar to the way in which the dyestuffs market works, that the facts of the case should be considered.

The increase of 1964

68 In 1964 all the undertakings in question announced and immediately put into effect an increase in the prices of most aniline dyes, the initiative coming from Ciba-Italy which, on 7 January 1964, following instructions from Ciba-Switzerland, announced and immediately introduced an increase of 15%. This initiative was followed by the other producers, and in particular the applicant, on the Italian market within two or three days.

69 On 9 January ICI-Holland took the initiative in introducing the same increase in the Netherlands, whilst on the same day Bayer took the same initiative on the Belgo-Luxembourg market.

70 With minor differences, these increases concerned the same range of products for the various producers and markets, namely, most aniline dyes other than pigments, food colourings and cosmetics.

71 On the Italian market in particular, this conduct on the part of the undertakings cannot be considered to have been spontaneous.

72 In fact, from the number of producers concerned it is not possible to say that the Italian market in dyestuffs is an oligopoly in which price competition can no longer play a substantial role and in which the level of prices is fixed by conscious parallelism.

73 These producers are sufficiently numerous and some of them are sufficiently powerful to create a real risk that in times of rising prices some of them might not follow the general movement but might instead try to increase their share of the market by behaving in an individual way.

74 In fact it appears from ACNA's account of the situation on the Italian market in the years prior to 1964, which did not permit it to introduce price increases which had become necessary, that a general, uniform and spontaneous increase on that market was hardly conceivable.

75 Moreover, it is very significant in this context that by refusing to take part in the increases of 1965 and 1967 as regards the Italian market ACNA was able to prevent their being achieved.

76 Furthermore, the dividing-up of the Common Market into five national markets with different price levels and structures makes it improbable that a spontaneous and equal price increase would occur on most of the national markets.

77 Although a general, spontaneous increase on each of the national markets is just conceivable, in view of their structure, these increases might be expected to differ according to the particular characteristics of the different national markets.

78 Therefore, although parallel conduct in respect of prices may well have been an attractive and risk -free objective for the undertakings concerned, particularly for ACNA, it is hardly conceivable that the same action could be taken spontaneously at the same time, on the same national markets and for the same range of products.

79 It cannot be accepted that the increases of January 1964, introduced on the Italian market and copied on the Netherlands and Belgo-Luxembourg markets, which have little in common with each other either as regards the level of prices or the patterns of competition, could have been brought into effect within a period of two to three days without prior concertation.

80 The general and uniform increase on the different markets can only be explained by a common intention on the part of the undertakings, first, to adjust the level of prices and the situation resulting from competition in the form of discounts, and secondly, to avoid the risk, which is inherent in any price increase, of changing the conditions of competition.

81 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.

82 Differences in rates encourage 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.

83 By reason of the limited elasticity of the market in dyestuffs, resulting from factors such as the lack of transparency with regard to prices, the interdependence of the different dyestuffs of each producer for the purpose of building up the range of products used by each consumer, the relatively low proportion of the cost of the final product of the user undertaking represented by the prices of these products,

the fact that it is useful for users to have a local supplier and the influence of transport costs, the need to avoid any action which might artificially reduce the opportunities for interpenetration of the various national markets at the consumer level becomes particularly important on the market in the products in question.

84 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 price increase 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 the increases.

85 In these circumstances and taking into account the nature of the market in the products in question, the conduct of the applicant, in conjunction with other undertakings against which proceedings have been taken, was designed to replace the risks of competition and the hazards of competitors' spontaneous reactions by cooperation constituting a concerted practice prohibited by Article 85(1) of the Treaty.

The effect of the concerted practice on trade between Member States

86 The applicant argues that the uniform price increases were not capable of affecting trade between Member States because notwithstanding the noticeable differences existing between prices charged in the different States consumers have always preferred to make their purchases of dyestuffs in their own country.

87 However, it appears from what has already been said that the concerted practices, by seeking to keep the market in a fragmented state, were liable to affect the circumstances in which trade in the products in question takes place between the Member States.

88 The parties who put these practices into effect sought, on the occasion of each price increase, to reduce to a minimum the risks of changing the conditions of competition.

89 The fact that the increases were uniform and simultaneous has in particular served to maintain the *status quo*, ensuring that the undertakings would not lose custom, and has thus helped to keep the traditional markets in those good s'cemented' to the detriment of any real freedom of movement of the products in question in the Common Market.

90 Therefore this submission is unfounded.

The fine

91 The applicant argues as an alternative submission that the fine which has been imposed on it, which is little smaller than that imposed on the other undertakings, is in contradiction with the considerations to which the decision refers relating to the gravity and duration of the infringement, the circumstances in which it took place, and the relative size of the undertakings within the Common Market.

92 It is only as regards the increase of 1964 that the Commission has held that there was an infringement of Article 85.

93 On the other hand, the applicant played an important part in the success of that increase on the Italian market.

94 Therefore, compared with the fines imposed on the other participants in the concerted practices in question, a sum of 30 000 u.a. appears commensurate with the gravity of the infringement of the Community rules on competition.

95 It is therefore appropriate to reduce the amount of the fine imposed to that sum.

Costs

96 Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

97 Since the applicant has failed in its principal submissions, it must be ordered to bear the costs of these 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 173;
Having regard to Regulation No 17/62 of the Council of 6 February 1962;
Having regard to Regulation No 99/63 of the Commission of 25 July 1963;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Reduces the amount of the fine imposed on the applicant by the Commission Decision of 24 July 1969 to 30 000 u.a.;**

2. **Dismisses the remainder of the application;**

3. **Orders the applicant to bear the costs.**

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 14 July 1972.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS

(See Case 48/69, p. 000)