

# THE EUROPEAN COMMUNITY

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EUROPEAN ECONOMIC COMMUNITY • EUROPEAN COAL AND STEEL COMMUNITY • EUROPEAN ATOMIC ENERGY COMMUNITY

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## EUROPEAN COURT OF JUSTICE ANNULS COMMON MARKET COMMISSION DECISION ON CEMENT CARTEL

WASHINGTON, D.C., March 24 -- The European Court of Justice, Luxembourg, has annulled a provisional ruling of the Common Market Commission that the agreement notified by Noordwijk (NCA) cement cartel did not qualify for exemption from the Community's antitrust regulations. The announcement of the Court's decision of March 15 was made yesterday in Brussels.

The agreement concluded between 44 German, 28 Belgian, and two Dutch cement manufacturers in 1956 divided the market by assigning quotas and fixing prices and sales conditions, activities forbidden by Article 85 (1) of the Rome Treaty instituting the European Economic Community. The agreement was notified to the EEC Commission to obtain an exemption from the bans of Article 85 (1), as provided in Article 85 (3), and as elaborated in Regulation 17/62. Notification provided amnesty from fines and protected the agreement from being rendered null and void under Article 85 (2), pending decision.

On December 14, 1965, the EEC Commission made the preliminary ruling that the agreement did not qualify for exemption. On January 3, 1966, the head of the Commission's Competition Directorate General so advised the companies involved, in a

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form letter. Six weeks were allowed to amend the sections of the agreement which violated Community antitrust policy. At the end of that time, the immunity from fines allowed by Regulation 17 would lapse, and the offending sections of the agreement would no longer be enforceable, according to Article 85 (2) of the Treaty.

The parties to the agreement brought suit against the Commission on the grounds that although the preliminary ruling had the same legal effects as a decision, the Commission had not given them a hearing. In addition, the plaintiffs argued, the Commission had not stated its reasons in the note advising of the preliminary ruling to refuse exemption.

The Court found for the plaintiffs. The preliminary ruling, it held, changed the legal status of the companies involved, by terminating the legal effects of the agreement and exposing them to fines. Neither the absence of the term "decision" in Regulation 17, nor the provisional nature of a preliminary ruling excuse the abrogation of the individual's right to a hearing under law. In concluding, the Chief Justice said that as the result of the Commission's serious procedural error, no legally binding decision has been made.

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