Legrand was set at 5 December 2002. According to the applicant, these economic consequences and the obligation to comply in good faith with the judgments of the Court of First Instance meant that the Commission was required to pay particular attention when resuming the investigation of the case.

In support of its action, the applicant claims, first, that the Commission did give effect to the judgment of the Court of First Instance in Case T-310/01. The applicant states that the Commission resumed the proceedings at 'stage I', whereas the Court of First Instance had held that its examination should be recommenced at the stage at which the Commission had committed its procedural error, i.e. at the time of communicating the statement of objections.

Second, the applicant claims that there has been a breach of its rights of defence. It maintains that the Commission did not communicate the objections which it intended to use against it within the prescribed period and with the clarity which would give it the proper opportunity to submit corrective measures. The applicant further states that the Commission refused to grant any access to the results of the market studies which it carried out for the purpose of evaluating the scope of the corrective measures proposed by the applicant.

Third, the applicant claims that there has been an infringement of the principle of good administration, in that the Commission distorted the corrective measures in the questionnaire drawn up for the purpose of the market studies and did not take into account certain factual matters which qualified the results.

Fourth, the applicant relies on a number of errors of law and of manifest errors of assessment. The applicant claims that the Commission ignored the consequences of its decisions by stating that serious doubts still existed concerning the compatibility of the operation with the common market. According to the applicant, the Commission therefore failed, contrary to the second paragraph of Regulation No 4064/89 [3] and to the judgment of the Court of First Instance, to adopt a definitive position. Furthermore, the Commission is also alleged to have applied a stricter standard of proof to the facts in issue than that laid down in Article 2(2) of Regulation No 4064/89.

The applicant further claims that the Commission at no time approached the level of proof required to demonstrate the effects of a conglomerate of this type.

Last, the applicant states that the Commission made errors of law and errors of assessment when analysing the corrective measures proposed by the applicant. Thus, the Commission rejected those measures by making its assessment subordinate to that of a national court and by waiving its exclusive power to control concentrations of a Community dimension.

The applicant also claims that the Commission made a manifest error of assessment in considering that the corrective measures proposed were insufficient in the light of the allegedly inadequate industrial viability of the undertakings disposed of. In addition, it claims that the Commission infringed the principle of proportionality by refusing to take into account the potential acquirers of the shares disposed of and an alternative proposal to dispose of a significant shareholding. Last, the applicant claims that the Commission infringed Regulation No 4064/89 by refusing to analyse the applicant's undertakings as to conduct.

Last, the applicant claims that the decision to close the proceedings is vitiated by an error of law, since it has no legal basis in Regulation No 4064/89 or in any other principle of law. In that regard, the applicant also relies on an infringement of the principle of collegiality of the Commission.

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(1) Case COMP/M.2283 — Schneider/Legrand.

(2) Initiation of proceedings and abandonment of the planned concentration (Case COMP/M.2283 — Schneider/Legrand II) (Text with EEA relevance) (OJ 2003 C 29, p. 5).

(3) Council Regulation (EEC) No 4064/89/EEC of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1).

Action brought on 6 February 2003 by Gunda Schumann against the Commission of the European Communities

(Case T-49/03)

(2003/C 101/77)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 February 2003 by Gunda Schumann, resident in Berlin, represented by I. Bock, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of 4 June 2002 whereby the selection board in Competition COM/A/11/01 eliminated the applicant at the conclusion of the preliminary tests and did not admit her to the following tests, and also annul the decision of 19 July 2002 whereby the same selection board confirmed its first decision after re-examination; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant took part in the preliminary tests of Open Competition COM/A/11/01. By the decision of the selection board of 4 June 2002, the applicant was informed that she had not attained the minimum number of points required and could therefore not be admitted to the further tests in the competition. In the annex to the decision, it was explained that one question of the test had been annulled, and that therefore only 39 answers had been taken into consideration in evaluating the tests.

The applicant argues that the two decisions against which her action is brought infringe the principle of proportionality, inasmuch as it was not necessary, in order to ensure equality of treatment between candidates and an objective assessment of the aptitudes of all the participants in the competition, retrospectively to annul a question of the test in all the language versions, whereas all that was needed was to remove irregularities appearing in only one of them. Those decisions were, moreover, disproportionate in that they did not take account of the necessary balance between the general interest and individual interests. It was the annulment of one question and, therefore, the failure to take the effectively 'correct' answer into account, which caused the selection board not to admit the applicant to the subsequent stages of the preliminary tests. This is therefore a case of hardship, which the selection board has not treated as such.

Action brought on 10 February 2003 by Gyproc Benelux N.V. against Commission of the European Communities

(Case T-50/03)

(2003/C 101/78)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 February 2003 by Gyproc Benelux N.V., whose registered office is at Wijnegem (Belgium), represented by Jean-François Bellis, Peter L'Ecluse and Martin Favart, lawyers.

The applicant claims that the Court should:

— substantially reduce the fine imposed on Gyproc by the decision of the Commission of 27 November 2002 in Case COMP/E-1/37.152 — Plasterboard relating to a proceeding pursuant to Article 81 EC;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision which is the subject-matter of this application concerns an arrangement between BPB, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and the applicant on the plasterboard market. The applicant does not deny the existence of certain practices which the Commission held to be infringements. It never the less drew the defendant's attention to the fact that the scope of the complaints against it should significantly reduce over time, space and intensity.

In support of its claims, the applicant alleges that the Commission committed an error of assessment and infringed Article 81 of the EC Treaty by considering that it exchanged data on the volume of sales on the German, United Kingdom, French and Benelux markets between June 1996 and November 1998.

The applicant also takes the view that the defendant committed an error of assessment and infringed Article 15(2) of Regulation No 17 and the guidelines on the calculation of fines, Article 253 of the EC Treaty and the principles of proportionality, equal of treatment, fairness and of the protection of legitimate expectations:

— by failing to take into account, first, the very small overall size of the of the applicant and the 'one-item' nature of its business and, secondly, the absence of any illegal conduct on the part of the applicant on the UK market, or on the French or Benelux markets between June 1996 and April 1998.

— by failing to take account, as mitigating circumstances, first, of the role as 'follower' of the applicant and, secondly, of the ceasing of the infringement by the applicant as soon as the Commission intervened.
