

**ORDER OF THE PRESIDENT OF THE COURT OF FIRST
INSTANCE**

of 20 October 2003

**in Case T-46/03 R: Leali SpA v Commission of the
European Communities**

**(Application for interim measures — Competition — Pay-
ment of fine — Bank guarantee — Urgency — None)**

(2004/C 21/74)

(Language of the case: Italian)

In Case T-46/03 R: Leali Spa, whose registered office is in Odolo (Italy), represented by G. Belotti and G. Vezzoli, lawyers, supported by the Italian Republic (Agent: I.M. Braguglia) against the Commission of the European Communities (Agents: L. Pignataro and A. Whelan) — application for suspension of operation of the Commission decision of 17 December 2002 relating to a proceeding under Article 65 CS (COMP/37.956 — concrete-reinforcing bars), inasmuch as it imposes upon the applicant, jointly and severally with Acciaierie e Ferriere Leali Luigi SpA, in liquidation, a fine of EUR 6,093 million and, solely upon the applicant, a fine of EUR 1,082 million, the President of the Court of First Instance made an order on 20 October 2003, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*
2. *Costs are reserved.*

**Action brought on 10 October 2003 by Friesland Coberco
Dairy Foods Holding N.V. against the Commission of the
European Communities**

(Case T-348/03)

(2004/C 21/75)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 October 2003 by Friesland

Coberco Dairy Foods Holding N.V., established in Meppel (Netherlands), represented by Erik H. Pijnacker Hordijk.

The applicant claims that the Court should:

- 1) annul Article 2 of Commission Decision of 17 February 2003 on the State aid implemented by the Netherlands for international financing of activities (2003/515/EC) in so far as it is decided that undertakings which as at 11 July 2001 had already lodged a request with the tax authority for application of the gfa scheme, but in respect of which no formal decision had yet been taken, would not be eligible for the transitional scheme;
- 2) order the Commission to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

On 27 December the applicant lodged a request with the Netherlands tax authority to set up a reserve with effect from 1 January 2000 on the basis of the scheme concerning international financing activities (the gfa scheme).

In the contested decision⁽¹⁾ the Commission found that the gfa scheme was aid that was incompatible with the common market and ordered the Netherlands Government to abolish the scheme. In addition the contested decision provides for a transitional scheme. The Commission subsequently, in an answer to a question from the Netherlands Government, indicated that this transitional scheme does not apply for undertakings which, like the applicant, had in fact lodged a request for application of the gfa scheme before 11 April 2003 but where no decision had yet been taken on that request. The Netherlands tax authority then rejected the applicant's request.

In support of its application, the applicant pleads infringement of general principles of Community law, including the principle of equal treatment and the principle of protection of legitimate expectations. According to the applicant, the general principles of Community law preclude the restriction of the transitional scheme to undertakings in respect of which a decision had been taken as at 11 July 2001. By virtue of that restriction, undertakings which at that moment had a request pending before the tax authority for permission to set up a reserve, and which were therefore just as much entitled to expect that the gfa scheme was compatible with the Treaty, are being treated differently without any objective justification.