

ORDER OF THE COURT (Second Chamber)
30 November 1994 *

In Case C-294/90 DEP,

British Aerospace plc, a company registered in England and having its registered office in Farnborough (United Kingdom), represented by J. E. Flynn, Solicitor, 47-51 Rue du Luxembourg, Brussels,

applicant,

v

Commission of the European Communities, represented by T. F. Cusack, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the taxation of recoverable costs,

THE COURT (Second Chamber),

composed of: F. A. Schockweiler (Rapporteur), President of the Chamber,
G. F. Mancini and G. Hirsch, Judges,

* Language of the case: English.

Advocate General: G. Cosmas,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

- 1 By application lodged at the Court Registry on 24 September 1990, British Aerospace Plc and Rover Group Holdings Plc brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of a Commission Decision of 17 July 1990 in so far as it required the United Kingdom to recover UKL 44.4 million of alleged State aid.
- 2 By judgment of 4 February 1992 in Case C-294/90 *British Aerospace and Rover v Commission* [1992] ECR I-493, the Court annulled that decision and ordered the Commission to pay the costs.
- 3 Following that judgment, British Aerospace requested the Commission by letter of 24 November 1993 to reimburse to it by way of recoverable costs UKL 208 725.09, representing advisers' fees and expenses, and LFR 37 370, by way of costs of having an address for service.
- 4 By letter of 6 December 1993 the Commission notified British Aerospace that it was not prepared to pay that amount, which it considered excessive.

- 5 On 7 March 1994 British Aerospace sent to the Commission details of the recoverable costs claimed, including in particular a breakdown of time spent by lawyers.

- 6 By letter of 15 March 1994 the Commission disputed the figures put forward by the applicant, in particular the number of hours. It proposed setting the total of recoverable costs at UKL 39 217, by way of advisers' fees and expenses, and LFR 20 000, by way of costs of having an address for service.

- 7 Failing agreement on the recoverable costs, the applicant, by document lodged at the Court Registry on 15 April 1994, requested the Court, pursuant to Article 74 of the Rules of Procedure, to fix the recoverable costs at UKL 208 725.09 and LFR 37 370.

- 8 The costs claimed include fees of junior and senior counsel and solicitors, fees of accounting, tax and financial advisers and costs of having an address for service.

- 9 In its written observations lodged at the Court Registry on 6 May 1994, the Commission disputes in particular the costs relating to advisers' fees incurred before notification of the annulled decision and after the hearing by the Court, those relating to consultation with accounting, tax and financial advisers, the costs relating to certain specific services provided by counsel, certain travel expenses and the costs of having an address for service. In general, the Commission contends that the volume of work billed greatly exceeds that which the case required.

- 10 The Court has consistently held that it is not empowered under Article 74 of the Rules of Procedure to tax the fees payable by the parties to their own lawyers but may determine the amount of those fees which may be recovered from the party

ordered to pay the costs (see in particular the order of 4 February 1993 in Case C-191/86 DEP *Tokyo Electric v Council*, not published in the European Court Reports, paragraph 8).

- 11 Article 73 of the Rules of Procedure provides: 'the following shall be regarded as recoverable costs ... expenses necessarily incurred by the parties for the purpose of the proceedings'.
- 12 By 'proceedings' that provision refers only to proceedings before the Court and does not include any prior stage. That follows in particular from Article 72 of the Rules which refers to 'Proceedings before the Court' (see the order of the Court of Justice in Case 75/69 *Hake v Commission* [1970] ECR 901).
- 13 Furthermore, as Community law does not contain any provisions laying down a scale of fees, the Court must consider all the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interest which the parties had in the proceedings (see in particular the order in *Tokyo Electric v Council*, cited above, at paragraph 8).
- 14 Since the Court, when determining the recoverable costs, takes account of all the circumstances of the case until the time of such determination, it is not necessary for it to rule separately on the costs incurred by the parties in connection with these supplementary proceedings (order in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727, paragraph 5).
- 15 In the light of all those factors relating to assessment, fixing the total recoverable costs at UKL 52 000 will represent a fair assessment.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

The total costs to be reimbursed by the Commission to the applicant are fixed at UKL 52 000.

Luxembourg, 30 November 1994.

R. Grass

Registrar

F. A. Schockweiler

President of the Second Chamber