Instance of the European Communities on 23 September 1998 by the companies known as Asia Motor France, established at Livange (Luxembourg), JMC Automobiles, established at Livange (Luxembourg), Monin Automobiles, established at Bourg-de-Péage (France), and EAS, established at Livange (Luxembourg), represented by Jean Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 rue Béatrix de Bourbon.

The applicants claim that the Court should:

— annul unconditionally the Commission's Decision of 15/16 July 1998;

— take formal note that the applicants reserve the right to claim compensation for the damage suffered;

— order the Commission to pay all the costs.

Pleas in law and main arguments adduced in support:

The applicants in the present case, importers of Suzuki, Daihatsu, Isuzu and Subaru vehicles into France who are currently in judicial liquidation, contest the rejection by the Commission of the complaint lodged by them thirteen years ago concerning a system involving the voluntary limitation of imports into France of various other makes of Japanese vehicles. According to the decision in issue, quota-sharing arrangements, non-compliance with which could lead to the imposition of administrative penalties, were exclusively a matter for the French administrative authorities, pressure was placed on each importer individually, and the complaint did not concern the Community and had ceased to be relevant.

The applicants maintain, first of all, that, by adopting the contested decision, the defendant disregarded the judgments delivered by the Court of First Instance on 29 June 1993 [1] and 18 September 1996 [2] in relation to the same infringements; those judgments imposed a duty to re-examine the matter in the light of objective, relevant and consistent evidence concerning the question whether the French authorities placed irresistible pressure on the undertakings concerned to adopt the behaviour impugned in the complaint, so that the conduct of the accredited importers and metropolitan France fell outside the ambit of the competition rules since those undertakings lacked the requisite margin of autonomy.

According to the applicants, it is extraordinary for the defendant institution now to maintain that the fact that the matter goes back many years is such as to render the complaint no longer relevant, when it was the Commission itself which, having failed to conduct the administrative procedure with due diligence, was directly responsible for that delay. In the applicants' view, it would have been reasonable and equitable for a statement of objections to have been sent thirteen years ago to the members of the cartel and to their trade association. The cartel was already sufficiently established at that time. It would have been for the undertakings involved to establish in the course of discussions that the so-called voluntary limitation arrangement, in return for compliance with which they derived advantages including the exclusion of competition from Japan, did not reflect the exercise by them of any commercial choice but was due to irresistible pressure placed on them by the French State involving a threat of substantial loss for them.

The applicants also claim that, with the exception of Article 115, the Treaty makes no provision for any category of lawful practices which could include a voluntary limitation scheme such as that in issue, since France has never requested authorisation to take protective measures in the sphere in question. Nor was it open to the Commission to rely on any French rules in order to exempt the members of the cartel from the application of Community competition law, inasmuch as such rules simply did not exist.

[1] Case T-7/92 Asia Motor France and Others v. Commission [1993] ECR II-671.

[2] Case T-387/94 Asia Motor France and Others v. Commission [1996] ECR II-965.

Action brought on 29 September 1998 by RJB Mining plc against Commission of the European Communities

(Case T-156/98)

(98/C 358/42)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 September 1998 by RJB Mining plc, represented by Mark Brealey and Jonathan Lawrence, with an address for service in Luxembourg at the Chambers of Arendt & Medernach, 8—10 rue Mathias Hardt.

The applicant claims that the Court should:

— annul the Commission Decision of 29 July 1998 approving the acquisition of control by RAG Aktiengesellschaft of Saarbergwerke AG and Preussag Anthrazit GmbH on the grounds set out in the application; and

— order the Commission to pay the costs of the action, including those of the applicant.

Pleas in law and main arguments adduced in support:

The applicant in the present case is a public limited company incorporated in England and Wales, engaged in the production in the coal industry in England. Its principal shareholders are institutional investors, private investors, directors and the applicant's employees. By the contested decision, the Commission has purported, in accordance with Article 66(2) of the ECSC Treaty, to authorise, subject to conditions, the acquisition of Saarbergwerke and Preussag by RAG. These three companies are the only three remaining German hard coal producers. The merging entities have apparently agreed to divest part of the coal importing business to an independent third party and structurally to separate the remainder of the coal trading business into domestic and importing arms.

The applicant submits that the Commission has failed to respect the provisions of Article 66 and Article 4(c) of the ECSC Treaty and Decision No 3632/93/ECSC [1] (the Code) in adopting the contested decision. The annulment of this decision is also sought on the ground of infringement of essential procedural requirements, including lack of reasoning and misapplication of the principle of good administration.

According to the applicant, the Commission has failed to appreciate that the effect of the contested decision is to enable the merger to proceed, even though German state aid forms an intrinsic part of the merger, and such state aid has not been, and could not be, authorised pursuant to the Code. It is stressed in this regard that the contested decision does not even mention the state aid inherent in the merger structure, let alone analyse the effect of the aid on the market position of the parties. Thus the fact that the purchase price to be paid by RAG for Saarbergwerke in the context of the proposed merger is a mere DM 1 is mentioned nowhere in the Decision.

The applicant states that the Commission has suggested in the contested decision that it concerns only the application of Article 66 of the ECSC Treaty and not the application of provisions on the control of state aids. However, the Commission was asked for an assurance by the applicant that it would apply the state aid rules and would prevent the merger from proceeding without prior approval of the state aid paid to the undertakings to be merged and of the state aid inherent in and forming a prerequisite for the merger. Since the Commission has refused to provide the assurance requested, the applicant has no doubt, in the present circumstances, that the merger authorised by the contested decision can, and now will, proceed without the Commission performing its obligations.

[1] OJ L 329, 30.12.1993, p. 12.

Action brought on 30 September 1998 by Bernard Bareyt and Others against the Commission of the European Communities

(Case T-158/98)

(98/C 358/43)

(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 30 September 1997 by Berhard Bareyt, Ivone Benfatto, Denis Bessette, Giuliano Dalle Carbonare, Enrico Di Pietro, Barry John Green, Remmelt Haange, Michel Huguet, Marcus Iseli, Cornelis Jong, Neil Mitchell, Pier Luigi Mondino, Alfredo Portone, Carlo Sborchia, Alessandro Tesini and Mike Michael Wykes, all residing in Naka (Japan), represented by Nicholas Lhoëst, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 rue de Cessange.

The applicants claim that the Court should:

— annul the defendant's decision of 15 May 1998 rejecting the applicants' complaint;

— annul the applicants' remuneration statements for November 1997 and the subsequent months, which apply the weighting adopted by Council Regulation (EC, ECSC, Euratom) No 1785/97, including the remuneration statements for the months during which the administration proceeded to recover the overpayment previously made;

— in so far as may be necessary:

  — declare Regulation (EC, ECSC, Euratom) No 1785/97 adopted by the Council on the defendant's proposal to be inapplicable, in so far as it fixes a specific weighting for Naka;

  — order the defendant to repay to the applicants the sums which it withheld from their salaries retroactively from the month of May 1997;

  — order the defendant to repay to the applicants the curtailment of salary which it imposed on them with effect from November 1997 on the basis of the new weighting;

  — order the defendant to pay default interest on the sums which it is ordered to repay, from the date when those sums were withheld;

— order the defendant to pay all the costs.