

Murphy, Solicitor, 3 King's Bench Walk, Inner Temple, London v Commission of the European Communities (Agent: R. Lyal) — application for compensation for the non-material loss alleged to have been suffered by the applicant as a result of the Commission's alleged failure to provide a national court with information in accordance with its obligations under the EC Treaty — the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges; H. Jung, Registrar, has given an order on 16 March 2000, in which it orders the following:

1. *The action is dismissed.*
2. *The applicant is ordered to pay the costs.*

(¹) OJ C 34 of 5.2.2000.

Action brought on 17 January 2000 by Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied against the Commission of the European Communities

(Case T-5/00)

(2000/C 149/64)

(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 17 January 2000 by Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG), established in The Hague, represented by E.H. Pijnacker Hordijk and S.B. Noë, of the law firm De Brauw Blackstone Westbroek NV, The Hague, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe.

The applicant claims that the Court should:

- annul the Commission's decision of 26 October 1999(¹) concerning a proceeding pursuant to Article 81 of the EC Treaty in Case IV/33.884 — Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie;
- in the alternative, annul Article 5(1) of that decision;

— in the further alternative, reduce the fine imposed in Article 5(1) of that decision to the sum of EUR 1 000;

— order the Commission to pay the costs.

Pleas in law and principal arguments

The applicant is a sectorial association established in 1918 to protect the common interests of stockkeeping wholesalers of electrotechnical products. In 1995 it had 52 members, including various larger undertakings and numerous smaller wholesalers. In response to a complaint submitted in 1991, the Commission in 1999 adopted a decision in which it found that the applicant had infringed Article 81(1) EC by entering into a collective exclusive dealing arrangement intended to prevent supplies to non-members of the FEG, on the basis of an agreement with the Nederlandse Agentenvereniging op Elektrotechnisch Gebied ('NAVEG') and of practices concerted with suppliers not represented in NAVeG. The Commission further found that the applicant had infringed Article 81(1) EC by directly and indirectly restricting the freedom of its members to determine their selling prices independently. On account of those infringements, a fine of EUR 4.4 million was imposed on the applicant. The applicant seeks annulment of the decision on the following grounds. Since it took the Commission more than eight years to adopt that decision, it infringed the principle that decisions must invariably be given within a reasonable period. Furthermore, the rights of the defence have been violated, in that the Commission bases various essential elements of its argument on documents which were not mentioned in the statement of objections. In addition, the applicant claims that the Commission has infringed Article 81(1) EC in a number of respects. First, it based its decision on an incorrect delineation of the relevant market. Second, it wrongly inferred from the available factual material that the applicant had infringed the notification rules by entering into a collective exclusive dealing arrangement intended to prevent supplies to non-members of the FEG. It also wrongly inferred from the factual material that, by concluding horizontal pricing agreements, FEG had infringed the notification rules. In the alternative, the applicant claims that the Commission has infringed Article 15(2) of Regulation No 17, by imposing on the applicant, in the light of the circumstances of the case, a fine of EUR 4.4 million.

(¹) OJ L 39 of 14.2.2000.