— the Commission has failed to make a correct economic analysis of either the relevant product market or Tetra Pak's alleged dominance in respect of: packaging for juice, packaging for other non-dairy products, packaging for pasteurized milk, packaging for other liquid dairy products and packaging for UHT milk,

— the Commission has wongly failed to take into account in either its definition of the relevant market, or in its finding of dominance, or in its allegations of abuse, the relevant geographical considerations,

— the Commission has wrongly identified separate markets for machinery and cartons respectively,

— the commission has wrongly purported to extend its jurisdiction under Article 86 by finding that Tetra Pak has committed abuses within the meaning of Article 86 in a market on which it is not dominant,

— the Commission erred in the application of Article 86 (d) to the exclusivity provision in Tetra Pak's standard contract: firstly, because Tetra Pak's packaging material is closely connected both by its nature and by commercial usage to Tetra Pak's filling machines so that the clauses cannot constitute an unlawful 'tie-in'; secondly, because the exclusivity provisions are legitimate to ensure the preservation of public health; thirdly, because Tetra Pak has a legitimate interest in the reputation of its product; and finally, because there has been no anti-competitive effect. On the other hand, the Commission has wrongly condemned many other clauses in Tetra Pak's standard contracts because of its inadequate understanding of the factual background and its failure to carry out a proper assessment of the effect of those clauses,

— the Commission has failed to establish its allegations regarding 'price discrimination' as between Member States,

— the Commission's allegations of predatory pricing by Tetra Pak in Italy are based on factual and legal errors and on misinterpretation of the factual background. The other abuses alleged in Italy relating to machine pricing, price discrimination and other matters are unfounded. Tetra Pak has not acted abusively in relation to machine pricing in the United Kingdom either,

— Tetra Pak has had no overall policy to restrict supply or compartmentalize markets.

On the other hand, the applicant asserts that the fine imposed by the Commission was in breach of essential procedural requirements and is wholly unjustified and excessive in all the circumstances.

Finally, the applicant holds that the other remedies imposed by the Commission are unnecessary, inappropriate, and themselves distort competition, contrary to Community law.

Action brought on 19 November 1991 by Mireille Meskens against the European Parliament

(Case T-84/91)

(91/C 331/24)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 19 November 1991 by Mireille Meskens, residing at Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Sàrl Fiduciaire Myson, 1, rue Glesener.

The applicant claims that the Court should:

1. declare that by failing to take the necessary measures to comply with the judgment of the Court of First Instance of the European Communities of 8 November 1990 in Case T-56/89, the European Parliament has failed to fulfil its obligations;

2. order the European Parliament to pay the applicant ECU 100 per day as from 17 July 1991, the date on which the complaint was lodged, until such date as the necessary measures are taken; and

3. order the defendant to pay the costs.

Pleas in law and main arguments adduced in support

The applicant states that the judgment delivered by the Court of First Instance on 8 November 1990 in Case T-56/89 annulled the decision of the selection board in Internal Competition No B/164 rejecting, *inter alia*, her candidature. In the applicant's submission, in order to

comply with that judgment the Parliament was under an obligation to reopen the internal competition procedure in question for all the applicants in Case T-56/89, to instruct the selection board to re-examine their candidatures in the light of the principles set out in that judgment and to ensure, under the powers conferred upon it by the Staff Regulations, that the written and oral tests to be held by the selection board specifically for the successful applicants are properly administered. The applicant points out that the Parliament merely adopted new rules concerning the requirements for admitting members of the temporary staff to internal competitions, which is unsatisfactory as regards the applicant, who was unable to enjoy the benefit of those rules with retroactive effect. The applicant concludes that the defendant has failed to comply with Article 176 of the EEC Treaty.

The applicant further claims that the Parliament's refusal to take the necessary measures to comply with the abovementioned judgment as regards the applicant, which constitutes a failure of the Parliament to fulfil its obligations, incontestably causes her considerable non-material damage. The applicant considers that on a fair assessment the damage which she claims to have suffered in this manner amounts to ECU 100 per day as from the day on which she lodged her complaint until such date as the selection board in Competition No B/164 meets to re-examine her candidature in the light of the principles set out in the judgment.

Removal from the Register of Case T-40/90 (1)

(91/C 331/25)

By order of 25 November 1991 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-40/90: Giuseppe Baratti, supported by Unione sindacale Euratom Ispra, the 'Research' union of the Confederazione generale italiana del lavoro, the 'Research' union of the Unione italiana del lavoro and the 'Research' union of the Confederazione italiana sindacati liberi, v. Commission of the European Communities.

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(1) OJ No C 280, 8. 11. 1990.