

Leverkusen (Federal Republic of Germany), represented by J. Sedemund, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of A. May, 31 Grand-Rue, appellant — appeal against the judgment of the Court of First Instance of the European Communities of 29 May 1991 in Case T-12/90 Bayer v. Commission [1991] ECR II-219 seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities, represented by B. Langeheine, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also of the Commission's Legal Service, Wagner Centre, Kirchberg — the Court (Sixth Chamber), composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini (Rapporteur) and C. N. Kakouris, Judges; C. Gulmann, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 15 December 1994, in which it:

1. *Dismisses the appeal;*
2. *Orders the appellant to pay the costs.*

(<sup>1</sup>) OJ No C 229, 4. 9. 1991.

## JUDGMENT OF THE COURT (Fifth Chamber)

of 15 December 1994

in Case C-250/92 (reference for a preliminary ruling from the Østre Landsret): Gøttrup-Klim Grovwareforeninger and Others v. Dansk Landbrugs Grovareselskab AmbA (DLG) (<sup>1</sup>)

*(Competition — Agriculture — Regulation No 26/62 — Cooperative purchasing association — Exclusion of members making parallel purchases — Infringement of Article 85 (1) — Abuse of a dominant position)*  
(94/C 386/06)

*(Language of the case: Danish)*

*(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-250/92: reference to the Court under Article 177 of the EEC Treaty by the Østre Landsret for a preliminary ruling in the proceedings pending before that court between Gøttrup-Klim Grovwareforeninger and Others and Dansk Landbrugs Grovareselskab AmbA (DLG) on the interpretation of Articles 85 and 86 of the EEC Treaty and of Council Regulation No 26/62 of 4 April 1962 applying

certain rules of competition to production of and trade in agricultural products (<sup>2</sup>). The Court (Fifth Chamber), composed of: G. C. Rodríguez Iglesias, President, acting as President of the Chamber, J. C. Moitinho de Almeida and D. A. O. Edward (Rapporteur), Judges; G. Tesauo, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 15 December 1994, in which it ruled:

1. *Fertilizers and plant protection products do not come within the scope of the derogation from the competition rules laid down in Article 42 of the Treaty and Council Regulation No 26/62 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products.*
2. *A provision in the statutes of a cooperative purchasing association, forbidding its members to participate in other forms of organized cooperation which are in direct competition with it, is not caught by the prohibition in Article 85 (1) of the Treaty, so long as the abovementioned provision is restricted to what is necessary to ensure that the cooperation functions properly and maintains its contractual power in relation to producers.*
3. *Even if a cooperative purchasing association holds a dominant position on a given market, an amendment of its statutes prohibiting its members from participating in other forms of organized cooperation which are in direct competition with it does not constitute an abuse of a dominant position contrary to Article 86 of the Treaty, so long as the abovementioned provision is limited to what is necessary to ensure that the cooperative functions properly and maintains its contractual power in relation to producers.*
4. *Intra-Community trade may be affected, within the meaning of Articles 85 (1) and 86 of the Treaty, even where the basic products concerned by a provision in the statutes are in part imported from non-member countries.*
5. *A national court has jurisdiction to rule on the lawfulness of an agreement notified to the Commission of the European Communities where that court considers that the conditions for application of Article 85 (1) of the Treaty are clearly not satisfied.*

(<sup>1</sup>) OJ No C 187, 24. 7. 1992.

(<sup>2</sup>) OJ, English Special Edition 1952—1962, p. 129.