

Court and therefore to upset the functioning of the undertakings concerned, and where the grant of the interim measures applied for in the alternative would prolong the existence of a dominant position liable to entail irreversible repercussions on competition in the sector concerned, which the conditions and obligations imposed by the decision are specifically intended to bring to an end, it is incumbent on the judge hearing the application for interim measures to balance all the interests involved. Accordingly, account must be taken not only of the applicants' interests and of the Commission's interest in restoring effective competition but also of the interests of third parties, in particular the undertakings concerned, in order to obviate both the creation of an irreversible situation and serious and irreparable damage to any of the parties to the proceedings or to a third party or to the public interest.

In such circumstances, the grant of the measures applied for can be justified only

if it appears that, without them, the applicants would be exposed to a situation liable to endanger their future.

In the present case, the contested decision cannot in principle have repercussions on the rights of the employees of the undertakings concerned or expose them to the risk of a loss such as to justify intervention by the judge hearing the application for interim measures. Quite apart from the fact that the concentration authorized is not accompanied by any dismissals, Regulation No 4064/89 does not in any way undermine the collective rights of the workforce, and, by virtue of Articles 3 and 4 of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, the transferor's rights and obligations under a contract of employment or an employment relationship are transferred to the transferee.

## ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

15 December 1992<sup>\*</sup>

In Case T-96/92 R,

**Comité Central d'Entreprise de la Société Générale des Grandes Sources**, a staff committee governed by Book IV of the French Labour Code,

\* Language of the case: French.

**Comité d'Établissement de la Source Perrier**, a staff committee governed by Book IV of the French Labour Code,

**Syndicat CGT de la Source Perrier**, a trade union governed by Book IV of the French Labour Code,

and

**Comité de Groupe Perrier**, a staff committee governed by Book IV of the French Labour Code,

having their headquarters at Vergèze, represented by Jean Méloux, of the Montpellier Bar, with an address for service in Luxembourg at the Chambers of Guy Thomas, 77 Boulevard Grand-Duchesse Charlotte,

applicants,

v

**Commission of the European Communities**, represented by F. E. González Díaz, of its Legal Service, and Gérard de Bergues, a national expert seconded to the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for suspension of the operation of the Commission decision of 22 July 1992 relating to a proceeding under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (IV/M.190 — Nestlé/Perrier, OJ 1992 L 356, p. 1) and, in the alternative, an application for other interim measures,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES

makes the following

**Order**

**Facts**

- 1 By application lodged at the Registry of the Court of First Instance on 9 November 1992 the Comité Central d'Entreprise de la Société Générale des Grandes Sources, the Comité d'Etablissement de la Source Perrier, the Syndicat CGT de la Source Perrier and the Comité de Groupe Perrier (hereinafter 'the applicants') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of the Commission's decision of 22 July 1992 relating to a proceeding under Council Regulation (EEC) No 4064/89 (IV/M.190 — Nestlé/Perrier, OJ 1992 L 356, p. 1).
  
- 2 By a separate document lodged at the Registry of the Court of First Instance on the same date, the applicants also applied, under Articles 185 and 186 of the EEC Treaty and 104 to 110 of the Rules of Procedure, for suspension of the operation of the contested decision and, in the alternative, sought an order from the Court of First Instance requiring the Commission to enjoin Nestlé to:
  - undertake consultations with and obtain complete information in due time, as required by the applicable national legislation, from the bodies representing the workforce of Perrier,
  
  - suspend, throughout the proceedings for annulment, any measure terminating employment at undertakings of the Perrier group in connection with the take-over of Perrier by Nestlé, and

- suspend the performance of prior agreements entered into with third parties or commitments given to the Commission involving changes in the make-up of the group of Perrier companies by means of transfers of assets, acquisition of financial interests or any other legal or financial action designed to transfer the control of any unit within the Perrier group to any third party until the Court of First Instance has given judgment on the substance of the case.
  
- 3 The Commission submitted its written observations on the application for interim measures on 23 November 1992. The parties presented oral argument on 1 December 1992.
  
- 4 Before the merits of the application for interim measures are considered, it is appropriate to give the background to the present case and, in particular, the essential facts underlying the dispute before this Court, as set out in the parties' pleadings and described in their oral submissions at the hearing on 1 December 1992.
  
- 5 On 25 February, Nestlé SA ('Nestlé') notified to the Commission in accordance with Article 4(1) of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1,) a public bid by Demilac, a jointly controlled subsidiary of Nestlé and Banque Indosuez, for the shares in Source Perrier SA ('Perrier'). Nestlé and Demilac gave an undertaking that, if the takeover bid was successful, they would sell one of the subsidiaries of Perrier, the Volvic company, to the BSN group.
  
- 6 After examining the notification, the Commission decided, on 25 March 1992, to initiate the procedure provided for by Article 6(1)(c) of Regulation No 4068/89 on the ground that the concentration notified raised serious doubts as to its compatibility with the Common Market. In the Commission's view, the operation was liable to create a dominant position either for the Nestlé/Perrier grouping in its own right or for Nestlé/Perrier and BSN together.

7 By letter of 19 June 1992, Syndicat CGT de la Source Perrier (hereinafter 'CGT') asked the Commission for information on the investigation being carried out concerning the takeover of Perrier by Nestlé/Demilac. In response to that letter, Commission officials expressed their willingness to organize a briefing meeting. That meeting was held on 2 July 1992. The CGT representatives informed the Commission of their preoccupations regarding the social repercussions of the concentration notified and produced a file containing, *inter alia*, reports of meetings of the Comité d'Établissement and the Comité de Groupe Perrier, documents concerning the approaches made to the French judicial and administrative authorities and trade-union announcements and press reports. The day after that meeting, the CGT forwarded to the Commission, in response to a request for statistical information concerning the social consequences of the acquisition of Perrier by Nestlé, a copy of Perrier's annual report for 1991.

8 On 22 July 1992, having regard to the commitments given to it by Nestlé, the Commission adopted a decision declaring the concentration compatible with the Common Market (hereinafter 'the Decision'). The Decision imposes conditions and obligations intended to ensure that Nestlé observes the commitments given by it. Those conditions and obligations, which are designed to facilitate the entry into the French market of bottled water from a viable competitor with sufficient resources to compete effectively with Nestlé and BSN, may be summarized as follows:

- Nestlé must sell to that competitor the brand names and the sources Vichy, Thonon, Pierval, Saint Yorre and certain other local sources and the bottling capacities relating to those sources;
- Nestlé must not provide any data that are less than one year old on its sales volumes to any trade associations or any other entity which might make them available to other competitors;
- Nestlé must administer separately all assets and interests acquired from Perrier until completion of the sale of the abovementioned brand names and sources;

- during the aforementioned period, Nestlé may not make any structural changes within Perrier without prior Commission approval;
- the choice of the purchaser, which must have sufficient financial resources and know-how in the field of branded beverage or food products, shall be subject to prior Commission approval;
- Nestlé may not sell Volvic to BSN until the sale of the abovementioned brand names and sources takes place;
- Nestlé may not for a period of 10 years re-acquire, directly or indirectly, any of the brand names and sources which it is required to sell and must inform the Commission of any acquisition that it might make within five years after the adoption of the decision of any entity in the French bottled water market with a market share of more than 5%.

## Law

- 9 Under the combined provisions of Articles 185 and 186 of the EEC Treaty and Article 4 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the latter may, if it considers that the circumstances so require, order suspension of the application of the contested measure or prescribe any necessary interim measures.
- 10 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures made pursuant to Articles 185 and 186 of the EEC Treaty are to state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The measures applied for must be provisional in the sense that they do not pre-judge the decision on the substance of the case (see, most recently, the judgment in Case T-29/92 *SPO and Others v Commission* [1992] ECR II-2161).

*Arguments of the parties*

- 11 The applicants consider that the legal conditions for the requested interim measures to be granted are satisfied. In their view, the contested decision is unlawful and its immediate implementation would entail serious and irreparable damage to them.
- 12 In support of their view that the Decision is unlawful, the applicants refer to the pleas in law advanced by them in their application in the main proceedings, in which they submit, essentially, that the contested measure was adopted on conclusion of a procedure vitiated by substantive defects, in breach of the fundamental principles of Community social law, the provisions of the Treaty and the regulations implementing them.
- 13 The applicants maintain in particular that by confining itself, at the request of CGT, to an ordinary hearing of the latter's representatives on 2 July 1992, the Commission contravened the obligation imposed on it by Regulation No 4068/89 and by Commission Regulation (EEC) No 2367/90 of 25 July 1990 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4068/89 on the control of concentrations between undertakings (OJ 1990 L 219, p. 5) to inform the recognized workers' representatives in writing of the nature and subject-matter of the case, to set a time-limit for them to give their views and to grant them access to the file. They also claim that the Commission failed to inform them that they could be assisted by a lawyer, as provided for by Article 14(3) of Regulation No 2367/90.
- 14 The applicants also consider that, by authorizing the notified concentration without safeguarding fundamental social rights such as the right to information and prior consultation in all cases where jobs are in jeopardy, the Commission infringed the fundamental social principles of Community law laid down by the European Social Charter signed in Turin on 18 October 1961, the Community Charter of Fundamental Social Rights signed at Strasbourg on 9 December 1989, Article 117 et seq. of the EEC Treaty and Council Directives 75/129/EEC of 17 February 1975

on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48, p. 29) and 77/187/EEC of 14 February 1975 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26).

15 The applicants also consider that the decision declaring the concentration notified to be compatible with the Common Market, and imposing obligations and conditions, is not a decision appropriate to the aims pursued. According to the applicants, the Commission, having concluded that production on the market in question could not, without competition thereby being undermined, be allowed to be reduced to two large undertakings, should have refused to grant the authorization sought by Nestlé and have adopted a decision under Article 8(3) of Regulation No 4064/89 preventing the operation of the concentration, supplemented if necessary by appropriate measures such as those provided for by Article 8(4), with a view to restoring the effective competition which prevailed before Nestlé launched its bid to take over Perrier.

16 Finally, the applicants consider that the decision is vitiated by an error of law and a manifest error of appraisal of the facts. In their view the Commission acted *ultra vires* by, on the one hand, presuming that Nestlé and BSN had engaged in concerted action and, on the other, incorporated in its examination of the concentration notified the concepts of 'oligopolistic dominance' and 'duopoly' which are not envisaged in the Treaty or in Regulation No 4064/89. In any event, the Commission relied on mere hypotheses and unsubstantiated inferences in concluding that the concentration would undermine competition.

17 As regards the risk of serious and irreparable damage, the applicants claim that the authorization granted for the concentration notified will necessarily have direct effects in the social sphere, which are already apparent from the announcement by Nestlé at the end of September 1992 of a plan for the loss of 740 jobs in the course of 1993. They add that that plan for reduction of the workforce will necessarily be followed by other job losses not merely because of the substantial transfers of assets required of Nestlé by the Decision but also because of the duplication of organizational structure as between Nestlé and Perrier. The applicants state that the

loss of jobs represents irreversible damage for each worker affected since, under French law, in the absence of a general right to be re-engaged after an unjustified or improper dismissal, the only remedy available is to seek compensation. In the applicants' view, even the annulment by the Court of the contested decision, in the main proceedings, would not restore to the persons affected the rights of which they had been deprived since they would have become unemployed in the meantime.

- 18 The Commission considers that the main application is manifestly inadmissible since the applicants are not directly and individually concerned by the contested decision within the meaning of the second paragraph of Article 173 of the EEC Treaty and therefore the present application for interim measures should be dismissed as inadmissible. In that regard, the Commission contends that although, in principle, the question of the admissibility of the main action should not be examined in the context of an application for interim measures lest the substance of the case should be prejudged, it is settled case-law that it is for the judge hearing the application for interim measures to establish that the main application reveals prima facie grounds for concluding that there is a certain probability that it is admissible (see, most recently, the order of the President of the Court of First Instance in Joined Cases T-10/92 R, T-11/92 R, T-12/92 R, T-14/92 R and T-15/92 R *Cimenteries CBR and Others v Commission* [1992] ECR II-1571). The Commission also submits that, even if it were assumed that the contested decision were of individual concern to the applicants by virtue of the right vested in them to take part in the procedures provided for in Regulation No 4068/89, they could not be regarded as directly concerned since the legal effects which they might suffer cannot be attributed solely to the contested decision.
- 19 In particular, the Commission contends that a decision authorizing a concentration prejudices neither the freedom of a new purchaser to dismiss, or not to dismiss, employees nor the right of a Member State to make dismissals subject to a special procedure or even to prior administrative authorization. Similarly, according to the Commission, a transfer of an undertaking in no way affects the rights of employees since their rights simply move from the transferor to the transferee and the transfer of the undertaking does not in itself constitute a reason for dismissal. It follows that since the contested measure imposes no obligation on its addressee to carry out dismissals, no dismissals decided on by the latter can be regarded as necessarily resulting from the contested decision.

20 The Commission considers that in any event the application does not disclose any circumstances giving rise to urgency or pleas of fact and law establishing a prima facie case for the interim measures applied for.

21 As regards urgency, the Commission considers that the applicants have neither determined the certain and imminent nature of the damage caused nor established a direct link between the damage and the decision. The Commission observes that any job losses, of indeterminate scope, which might accompany future transfers of assets of the Perrier group can amount to no more than 'future and uncertain damage' within the meaning of the case-law of the Court of First Instance (order of the President of the Court of First Instance in Case T-19/91 *Vichy v Commission* [1991] ECR II-265).

22 As regards the plan to eliminate 740 jobs in the course of 1993, the Commission argues that it is for the applicants to show that neither the national legislation nor the remedies available under national law would enable them to avoid the damage which might result from the implementation of that plan (order of the President of the Court of Justice in Case 142/87 R *Belgium v Commission* [1987] ECR 2589). It states in that regard that the French Labour Code imposes on an employer intending to lay off employees on grounds of redundancy a number of obligations vis-à-vis not only employees and their representatives but also the administrative authorities and that any default in that regard attracts penalties.

23 The Commission also contends that there can be no link between a decision authorizing a concentration and any dismissals effected by the purchaser of an undertaking. In the Commission's view, to conclude, as do the applicants, that a concentration always entails job losses and that authorization thereof brings about the planned job cuts is tantamount to endowing with automatic effect any application submitted by representatives of the staff of the undertakings concerned for suspension of the operation of a decision authorizing a concentration.

24 The Commission considers, finally, that even in the event of the Court's considering that the applicants have proved the existence of circumstances establishing urgency, the balance of the respective interests of the parties should lead to rejection of the application for interim measures, particularly since such measures would affect not only their interests but also those of the Nestlé group, which is not a party to the proceedings. Moreover, since the concentration has already taken place, suspension of operation of the Decision could, in the Commission's view, entail irreversible consequences regarding competition in the sector concerned in that, in the circumstances of the present case, the main result of such suspension would be deferral of the sale by Nestlé of the assets concerned and the perpetuation of a dominant position which the Decision seeks to avoid.

25 As regards the existence of a prima facie case, the Commission considers that the grounds of annulment relied on by the applicants are inadmissible or, at least, unfounded. In the case, more particularly, of the plea as to infringement of essential procedural requirements, the Commission states that the objections that no prior information was given and access to the file was denied are without substance. The Commission maintains that, without prejudice to the question whether the CGT may be regarded as a recognized workers' representative within the meaning of Article 18(4) of Regulation No 4064/89 or is one of the parties 'directly involved' to whom Article 18(3) of that regulation grants a right of access to the file, both the CGT and the other applicants were in a position to take advantage of the possibilities granted to them by the Community regulations on concentrations and that the Commission cannot be held responsible for the fact that the CGT did not ask to become involved in the procedure until it had reached a very advanced stage, for the fact that it did not seek access to the file or, finally, for the fact that it did not arrange to be represented by a lawyer at the meeting held by the Commission. The Commission believes, on the contrary, that it gave very careful consideration to the concerns expressed by the CGT representatives, as is clear from the fact that it responded rapidly to their request for information by organizing a meeting with them and inviting them to submit further observations in writing after that meeting, which they did.

26 With regard to the plea alleging the breach of fundamental social rights, in that the social impact of the concentration in terms of job losses was not duly taken into account, the Commission states that the aim of the regulation on the control of

concentrations is to preserve and develop effective competition in the common market with a view to achieving the internal market. The Commission concedes that in considering the effects of the concentration on competition it must place its appraisal within the general framework of the attainment of the fundamental objectives set by Article 2 of the Treaty, including that of strengthening the economic and social cohesion of the Community referred to in Article 130a of the Treaty. However, for the effects on employment of the operation in question to be taken into consideration, it is necessary for such effects to be liable, by virtue of their extent, to undermine the attainment of one of those objectives, in particular the development of employment. However, neither the purchase of Perrier by Nestlé nor the transfer of assets following fulfilment of the conditions attached to the Decision is liable appreciably to detract from those objectives.

*Findings of the President of the Court of First Instance*

A — Regulation No 4064/89

27 The present application for interim measures is the first made to the Community judicature seeking, in particular, suspension of the operation of a decision adopted by the Commission by virtue of its powers under Regulation No 4064/89 on the control of concentrations between undertakings. That regulation makes it incumbent on the Commission to appraise in advance concentrations on a Community scale, having regard to the need to preserve and develop effective competition in the common market with a view to attainment of the internal market and enhancement thereof. Accordingly, the Community legislature concluded that, whilst reorganizations of undertakings within the Community, in particular concentrations, must be viewed positively because they respond to the needs of dynamic competition and can increase the competitiveness of European industry, improve conditions of growth and raise the standard of living, care must also be taken to ensure that the process of reorganization does not result in lasting damage to competition (see the fourth and fifth recitals in the preamble to Regulation No 4064/89).

28 In that connection, it is clear from the 13th recital in the preamble to Regulation No 4064/89 that the Commission, in establishing whether or not concentrations are compatible with the common market, having regard to their effect on the structure

of competition in the Community, must place its appraisal within the general framework of the attainment of the fundamental objectives set by Article 2 of the Treaty, including that of strengthening the economic and social cohesion of the Community referred to in Article 130a of the Treaty.

29 Furthermore, under Article 8(2) of Regulation No 4064/89, the Commission may attach to the decision whereby it declares a concentration compatible with the common market conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into with a view to modifying the original concentration plan.

30 Finally, it must be emphasized that in order to guarantee that the control is effective and that the undertakings concerned enjoy legal certainty, the Commission is required to observe strict time-limits in initiating a procedure and adopting the final decision, failing which the operation is deemed to have been declared compatible with the common market.

#### B — The manifest inadmissibility of the main application

31 It has been consistently held that ‘... if it is claimed that the application is manifestly inadmissible, it is for the judge hearing the application for interim measures to establish that the application reveals *prima facie* grounds for concluding that there is a certain probability that it is admissible’ (see most recently the order of the President of the Court of First Instance in *CBR Cimenteries and Others v Commission*, cited above).

32 Persons other than those to whom a decision is addressed may claim to be concerned within the meaning of the second paragraph of Article 173 only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by, virtue of those factors, distinguishes them individually just as in the case of the person addressed (judgment of the Court of Justice in Case 75/84 *Metro v Commission II* [1986] ECR 3021).

- 33 In its case-law on the *locus standi* of third parties in relation both to competition and State aid and to dumping and grants, the Court of Justice has held that where a regulation confers on undertakings procedural rights entitling them to request the Commission to find an infringement of the Community rules or to submit observations in an administrative procedure, those undertakings may be able to institute proceedings in order to protect their legitimate interests (see the judgments of the Court of Justice in Case 26/76 *Metro v Commission I* [1977] ECR 1875, Case 191/82 *FEDIOL v Commission* [1983] ECR 2913, and Case 169/84 *COFAZ v Commission* [1986] ECR 391). The need to protect legitimate interests may also be a decisive criterion in deciding whether a natural or legal person may be regarded as directly or individually concerned by a decision in the same way as an addressee.
- 34 In the present case, Article 18(4) of Regulation No 4064/89, unlike the corresponding provisions of the regulations laying down the procedures for the application of Articles 85 and 86 of the Treaty, expressly provides that recognized workers' representatives of the undertakings concerned are entitled to be heard in the same way as other natural or legal persons showing a sufficient legitimate interest. Accordingly, the question of the extent to which the recognized workers' representatives of an undertaking involved in a concentration may be entitled to bring proceedings to protect their legitimate interests calls for detailed examination.
- 35 In view of all the foregoing considerations, it is clear that the President of this Court cannot, at this stage, conclude that the application for annulment of the contested decision is manifestly inadmissible.

### C — The balance of interests

- 36 The present application for interim measures is intended primarily to secure suspension of the operation of the decision by which the Commission authorized the takeover of Perrier by Nestlé and, in the alternative, an order from the Court that the Commission enjoin Nestlé to suspend any measure cutting jobs in undertakings of the Perrier group or transferring the control of any unit within the Perrier group to a third party.

37 As regards the request for suspension of the operation of the contested decision, it must be observed, first, that the effect of granting that request would be to suspend throughout the course of the proceedings before the Court the authorization given by the Commission for the concentration notified to it and, therefore, the exercise by Nestlé of its voting rights within the Perrier group, a result which would be such as seriously to hamper the very functioning of the undertakings in the group.

38 As regards the request for an order from the Court that the Commission enjoin Nestlé to defer any measure transferring the control of any unit within the Perrier group to any third party, it must also be pointed out that the effect of such a measure would be to suspend fulfilment of the commitments, described in paragraph 8 above, given by Nestlé to the Commission, and, by that very fact, to prolong the existence of a dominant position liable to entail irreversible repercussions on competition in the sector concerned, which the conditions and obligations imposed by the Decision are specifically intended to bring to an end. Indeed, compliance with those commitments, within the period laid down in the decision, is the precondition laid down by the Commission for its granting authorization for the concentration notified to it to be carried out.

39 In view of that factual and legal situation, it is incumbent on the judge hearing the application for interim measures not only to balance the interests of the applicants against the Commission's interest in restoring effective competition (see the orders of the President of the Court of Justice in Case 45/87 R *Commission v Ireland* 87 [19783, Case 56/89 R *Publishers Association v Commission* [1989] ECR 1693, and of the President of the Court of First Instance in Cases T-24/92 R and T-29/92 R *Langanese and Schöller v Commission* [1992] ECR II-1839) but also to have regard to the interests of third parties such as Nestlé (order of the President of the Court of Justice in Case 92/78 R *Simmenthal v Commission* [1978] ECR 1129) in order to avoid both the creation of an irreversible situation and serious and irreparable damage to one of the parties to the proceedings or to a third party or to the public interest.

40 In that regard, it should be borne in mind that, as is clear from the order of the President of the Court of Justice in *Simmenthal v Commission*, cited above, in circumstances such as those in this case where the interim measures applied for may

seriously affect the rights and interests of third parties, which, not being parties to the proceedings, have not been able to have their views heard, such measures can be justified only if it appears that, without them, the applicants would be exposed to a situation liable to endanger their very existence.

41 It is in the light of those considerations that it must be considered whether the legal conditions for granting the requested interim measures are met in the present case.

#### D — The existence of serious and irreparable harm

42 It has been consistently held by the Court of Justice that the urgency of an application for interim measures must be assessed in the light of the extent to which an interlocutory order is necessary to avoid serious and irreparable damage to the party seeking the interim measure. The party seeking suspension of the operation of a measure must furnish proof that he cannot await the conclusion of the main action without personally suffering damage which would have serious and irreparable consequences for him (see the order of the President of the Court of Justice in *Belgium v Commission*, cited above, paragraph 23).

43 According to the applicants, the urgency for the suspension arises from the announcement made by Nestlé at the end of September 1992 of a plan for 740 job cuts in the course of 1993, which would be followed, the applicants maintain, by other job losses attributable not only to the substantial transfers of assets required by the contested decision but also to the existence within Nestlé of organizational units similar to those in the Perrier group. The applicants maintain in particular that the absence of any right under French law to be re-engaged after an unjustified or improper dismissal gives rise to irreversible damage, the only reparation made usually taking the form of compensation.

44 As far as the plan for job cuts is concerned, the documents before the Court show that at the staff committee meeting of 23 September 1992 the new management of Perrier informed the staff representatives of the intended implementation, in the

course of 1993, of a workforce reduction plan, without dismissals, affecting 750 jobs. That plan, which, according to the Perrier management, would enable any dismissals to be avoided, comprises three parts: a training scheme, a scheme for early retirement, subject to approval from the public authorities, and a vocational guidance scheme focusing on part-time and occasional employment. The plan would follow on from a scheme for the adaptation of the Perrier group workforce which had been drawn up by the previous management and presented to the local administrative authorities and staff representatives in 1991 but could not be implemented because of supervening events. As the applicants conceded at the hearing, only if the persons concerned rejected the conditions laid down in the workforce reduction plan would they be served with 'outright' dismissal notices.

45 As regards the risk of job losses resulting from the transfer of assets required by the contested decision, it must be emphasized, first, that, as is apparent from the 31st recital in its preamble, Regulation No 4064/89 in no way detracts from the collective rights of workers as recognized in the undertakings concerned. Secondly, by virtue of Articles 3 and 4 of Directive 77/187, the transferor's rights and obligations under a contract of employment or an employment relationship existing on the date of a transfer are transferred to the transferee, and such transfer does not in itself constitute grounds for dismissal by the transferor or transferee. It follows that a decision authorizing a concentration cannot, in principle, have repercussions on the rights of the employees of an undertaking the ownership of which has been transferred following a concentration.

46 In view of the foregoing considerations, it must be concluded that, even if the alleged damage appeared sufficiently certain, it could not be attributed directly to the contested decision or its implementation.

47 Accordingly, without its being necessary to analyse the pleas in law advanced by the applicants in support of their claim in the main proceedings, it must be held that the conditions for the grant of the requested interim measures are not satisfied and that the application must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed;
2. The costs are reserved.

Luxembourg, 15 December 1992.

H. Jung

Registrar

J. L. Cruz Vilaça

President