

Case T-87/92

**BVBA Kruidvat**  
**v**  
**Commission of the European Communities**  
**(Intervention)**

Order of the Court of First Instance (First Chamber), 8 December 1993 ..... II - 1375

**Summary of the Order**

*Procedure — Intervention — Persons having an interest — Case concerning the validity of a decision applying the competition rules — Action for the annulment of a decision exempting a system of selective distribution for de luxe cosmetics — Association representing undertakings which are parties to distribution systems such as that with which the decision is concerned (EEC Statute of the Court of Justice, Art. 37, second para.; Rules of Procedure of the Court of First Instance, Art. 115)*

**ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)**  
**8 December 1993 <sup>\*</sup>**

In Case T-87/92,

**BVBA Kruidvat**, a company governed by Belgian law, established in Saint-Nicolas, Belgium, represented by Onno Willem Brouwer, of the Amsterdam Bar, and Yves van Gerven, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

<sup>\*</sup> Language of the case: Dutch.

v

**Commission of the European Communities**, represented by Berend-Jan Drijber, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Nicola Anecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 92/428/EEC of 24 July 1992 relating to a proceeding under Article 85 of the EEC Treaty (Case No IV/33.542 — Parfums Givenchy system of selective distribution) (OJ 1992 L 236, p. 11),

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: R. Schintgen, President, R. García-Valdecasas, H. Kirschner, K. Lenaerts and C. W. Bellamy, Judges,

Registrar: H. Jung,

makes the following

**Order**

- 1 By application lodged at the Registry of the Court of First Instance on 22 March 1993, the Fédération Européenne des Parfumeurs Détaillants (European Federation of Retail Perfumers, hereinafter 'FEPD'), an association of national federations or unions governed by French law, having its registered office in Paris, represented by Rolland Verniau, of the Lyon Bar, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 12 Avenue de la Porte-Neuve, sought leave to intervene in Case T-87/92 in support of the defendant.

- 2 The application to intervene was made in accordance with Article 115 of the Rules of Procedure of the Court of First Instance and was submitted pursuant to the second paragraph of Article 37 of the (EEC) Statute of the Court of Justice which, by virtue of the first paragraph of Article 46 thereof, applies to proceedings before the Court of First Instance.
- 3 Pursuant to the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the First Chamber referred the application to intervene to the chamber.
- 4 In its application to intervene, Yves Saint Laurent Parfums states, essentially, that it has set up a selective distribution network comparable to that of Parfums Givenchy SA, that its network has been given an exemption under Article 85(3) of the EEC Treaty (Commission Decision 92/33/EEC of 16 December 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/33/242 — Yves Saint Laurent Parfums), OJ 1992 L 12, p. 24, 'the Yves Saint Laurent Parfums decision'), which is comparable to that granted by the Commission in the decision contested in the present proceedings and itself the subject of an action brought before the Court by the Galec group (Case T-19/92). The arguments advanced by the applicant in the present case differ from those put forward by Galec, in particular in that they are not confined to criticizing the individual exemption but challenge the whole principle of selective distribution for perfumes and de luxe cosmetics. If the Court were to accept the pleas and arguments submitted by the applicant, its judgment would also affect the validity of the Yves Saint Laurent Parfums decision and thus have serious consequences on the performance of the contracts in issue. Yves Saint Laurent Parfums therefore considers that it has an interest in the result of the present case.
- 5 The application to intervene was served on the parties in accordance with Article 116(1) of the Rules of Procedure.
- 6 By document lodged at the Court Registry on 2 April 1993, the Commission expressed doubts as to Yves Saint Laurent Parfums' interest in intervening in the

present case. It notes that the company has already been granted leave to intervene in Case T-19/92, concerning its own distribution system, and adds that the fact that Yves Saint Laurent Parfums and Parfums Givenchy are competitors might give rise to problems regarding confidentiality of documents.

- 7 By document lodged on 15 April 1993, the applicant asked the Court to dismiss the application to intervene and, if the application were to be allowed, to order Yves Saint Laurent Parfums to bear its own costs under Article 87(4) of the Rules of Procedure.
- 8 The applicant submits, essentially, that Yves Saint Laurent Parfums is not the addressee of the Parfums Givenchy decision and that the validity of its distribution system is dependent on the Yves Saint Laurent Parfums decision and not on the Parfums Givenchy decision. The result of the present case has no direct effect on the future of the Yves Saint Laurent Parfums decision. It is, moreover, apparent from the application to intervene that Yves Saint Laurent Parfums is concerned not with the operative part but with the grounds of the Court's judgment in this case. The applicant cites the orders of the Court of Justice of 12 April 1978 in Joined Cases 116/77, 124/77 and 143/77 *Amylum and Others v Council and Commission* [1978] ECR 893, paragraphs 7 and 10, of 25 November 1964 in Case 111/63 *Leemmerz-Werke v High Authority* [1965] ECR 677 at pp. 717-718, and of 10 June 1965 in Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299 at pp. 382-384, according to which the interest required of an intervener must relate to the forms of order sought by the parties, not to the pleas and arguments which they put forward, and a prospective intervener must establish a direct, existing interest in seeing those forms of order granted. Even if the judgment in the present case concerning the Parfums Givenchy decision were to lead the Commission to revoke the Yves Saint Laurent Parfums decision, the applicant to intervene could still put its arguments forward at that stage by challenging the revocation before the Court.
- 9 Pursuant to the second paragraph of Article 37 of the (EEC) Statute of the Court of Justice, the right to intervene in cases before the Court is open to any person establishing an interest in the result of the case.

- 10 In its orders in *Lemmerz-Werke* and *Amylum*, cited above, the Court of Justice dismissed applications to intervene on the ground that the prospective interveners were unable to establish a direct, existing interest in seeing the forms of order sought in the application granted, since the sole interest which they claimed concerned the success of certain of the applicants' arguments. However, in its order of 15 July 1981 in Case 45/81 *Moksel v Commission* (unreported), in the context of an application for the annulment of a Commission regulation temporarily suspending the advance fixing of export refunds for certain agricultural products, the Court of Justice allowed an application to intervene on the ground that the intervener, although unable to establish a direct interest in the forthcoming judgment, could none the less have an interest in the result of the case, at least as regards the grounds on which it was likely to be based.
- 11 Faced with those two different approaches in other cases and different contexts, it is for the Court, in accordance with its previous case-law (order of 15 June 1993 in Joined Cases T-97/92 and T-111/92 *Rijnoudt and Hocken v Commission* [1993] ECR II-587, paragraph 16), to determine the principles to apply in a case such as the present, where the application to intervene is made by a company whose interest lies in the defence of its own position in the context of another exemption decision under Article 85(3) of the EEC Treaty which was addressed to it and which, although comparable to, is none the less different from, the decision in issue in the present case.
- 12 In that context, and by analogy with the order in *Rijnoudt and Hocken*, an interest in the result of a case within the meaning of the second paragraph of Article 37 of the (EEC) Statute of the Court means an interest in the decision on the claims relating specifically to the act whose annulment is sought. It is therefore necessary to draw a strict distinction, as the Court of Justice did in its order in *Lemmerz-Werke*, between prospective interveners establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties.

- 13 In the present case, Yves Saint Laurent Parfums falls within the latter category and thus cannot establish a sufficient interest in the result of the case. In support of its application to intervene, Yves Saint Laurent Parfums alleges that the judgment in the present case may have repercussions on the Commission's decision concerning it, which is not the subject of the present proceedings. The judgment in this case cannot affect the legality of that decision, which is, moreover, the subject of Case T-19/92 in which Yves Saint Laurent Parfums has already been allowed to intervene. Moreover, if any economic operator were to be allowed to intervene in any case in which one of its competitors was a party and the judgment in which might be based on grounds which could have an influence on the approach which the Commission took to its own, quite separate, situation, it would be difficult or even impossible to draw a clear distinction between prospective interveners who can establish an interest in the result of a case and those who cannot.
- 14 Finally, the practice of the Court of Justice and the Court of First Instance in allowing certain associations of undertakings to intervene in a case such as the present cannot be relied on in support of an individual application to intervene such as that of Yves Saint Laurent Parfums. It is clear from that practice that, if it has not taken part in the preliminary administrative procedure, such an association may be allowed to intervene if (i) it represents an appreciable number of undertakings active in the sector concerned, (ii) its objects include that of protecting its members' interests, (iii) the case may raise questions of principle affecting the functioning of the sector concerned and (iv) the interests of its members may therefore be affected to an appreciable extent by the forthcoming judgment. Such a broad interpretation with regard to associations fulfilling those conditions, which can enable the Court to assess more fully the context of such cases whilst avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure, cannot be transposed to interventions by economic operators acting individually.
- 15 In the light of the foregoing considerations, the application for leave to intervene must be dismissed.

## Costs

- 16 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has not sought any order as to costs and the applicant has merely asked that Yves Saint Laurent Parfums should be ordered to bear its own costs if the intervention were allowed, each of the parties must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application for leave to intervene is dismissed.
2. The applicant for leave to intervene and each of the main parties shall bear its own costs relating to the application for leave to intervene.

Luxembourg, 8 December 1993.

H. Jung

Registrar

R. Schintgen

President