JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
12 December 1996 *

In Case T-16/91 RV,

Rendo NV, a company incorporated under the laws of the Netherlands, established at Hoogeveen (Netherlands),

Centraal Overijsselse Nutsbedrijven NV, a company incorporated under the laws of the Netherlands, established at Almelo (Netherlands),

Regionaal Energiebedrijf Salland NV, a company incorporated under the laws of the Netherlands, established at Deventer (Netherlands),

represented by T. R. Ottervanger, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of S. Oostvogels, 13 Rue Aldringen,

applicants,

v

Commission of the European Communities, represented by B. J. Drijber, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Dutch.

supported by

Samenwerkende Elektriciteits-produktiebedrijven NV, a company incorporated under the laws of the Netherlands, established at Arnhem (Netherlands), initially represented by M. van Empel and subsequently by O. W. Brouwer, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe,

intervener,

APPLICATION for the partial annulment of Commission Decision 91/50/EEC of 16 January 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/32.732 — IJsselcentrale (IJC) and Others) (OJ 1991 L 28, p. 32),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: H. Kirschner, President, B. Vesterdorf, C. W. Bellamy, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 5 June 1992,

having regard to the judgment of the Court of Justice of 19 October 1995,

having regard to the written procedure following referral of the case back to the Court of First Instance and further to the hearing on 19 June 1996,

gives the following

Judgment

1 This judgment is given following referral of the case back to the Court of First Instance by judgment of the Court of Justice of 19 October 1995 in Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319 ('the judgment on appeal') given on an appeal brought by the applicants against the judgment of the Court of First Instance of 18 November 1992 in Case T-16/91 *Rendo and Others* v *Commission* [1992] ECR II-2417 ('the judgment of 18 November 1992').

Facts of the case and the previous procedure

2 The background to the case and the course of the preceding stages of the procedure are set out in the aforementioned judgments, to which reference is made.

3 The applicants are local electricity distribution companies in the Netherlands. In May 1988 they lodged a complaint with the Commission under Article 3(2) of Council Regulation No 17 of 6 February 1962, First regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87, hereinafter 'Regulation No 17'), against, among others, Samenwerkende elektriciteits-produktiebedrijven NV (hereinafter 'SEP'), which is intervening in these proceedings. They alleged that various infringements of Articles 85 and 86 of the Treaty had been committed by SEP and the Netherlands electricity generating companies.

4 As a result of the applicants' complaint, the Commission adopted Decision 91/50/EEC of 16 January 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/32.732 — IJsselcentrale (IJC) and Others), (OJ 1991 L 28, p. 32, hereinafter 'the decision' or 'Decision 91/50'), which is challenged in these proceedings. The decision is concerned with a cooperation agreement (Overeenkomst van Samenwerking, hereinafter 'the OVS') concluded in 1986 between the electricity generating companies, on the one hand, and SEP, on the other. The agreement, which was not notified to the Commission, restricts imports and exports of electricity to SEP alone and requires the parties to the agreement to stipulate in supply contracts concluded with the undertakings distributing electric power that those undertakings will not import or export electricity (Article 21 of the OVS). It is that provision which is the subject of the decision and of these proceedings.

5 Whereas the Netherlands legislation in force when the OVS was concluded did not prohibit undertakings other than suppliers from importing electricity themselves, that situation was changed by a new Netherlands Electricity Law (Elektriciteitswet 1989). Article 34 of that Law, which entered into force on 1 July 1990, prohibits the distribution companies from importing electricity with a view to public supply.

6 The applicants' complaint was directed, *inter alia*, against the import ban embodied both in the 1971 General SEP Agreement (Article 2) and in the 1986 OVS.

7 In the decision, the Commission found, in the first place, that the ban on the import and export of electricity laid down in Article 21 of the OVS constituted a restriction on competition which was liable appreciably to affect trade between Member States (sections 21 to 32 of the decision). It added that the retention of that article, in conjunction with the rules introduced by the new Electricity Law, continued to constitute an infringement of Article 85 (paragraph 38 of the decision).

8 The Commission went on to consider Article 90(2) of the Treaty. In this regard, it drew a distinction between the ban on imports and exports laid down by the OVS as regards public supply and the ban outside the field of public supply. It held that the latter ban constituted an infringement of Article 85(1) of the Treaty and that Article 90(2) of the Treaty did not preclude application of Article 85(1) in this case. It therefore required the undertakings party to the OVS agreement to bring that infringement to an end. This aspect of the decision has not been challenged.

9 In contrast, as regards imports for public distribution, the Commission ruled as follows in paragraph 50 of the decision: 'The ban on imports by generators and distributors otherwise than through SEP in the context of public supply is now laid down in Article 34 of the Electricity Law 1989. The present proceeding is a proceeding under Regulation No 17, and the Commission will not pass judgment here on the question whether such restriction of imports is justified for the purposes of Article 90(2) of the Treaty. To do so would be to anticipate the question whether the new Law is itself compatible with the Treaty, and that is outside the scope of this proceeding.'

10 For the same reason, the Commission stated that it could make no judgment on the export ban imposed on the generating companies in the field of public supply.

11 The Commission did not rule in the operative part of the decision on the import and export restrictions as regards public electricity supply.

12 The applicants brought their action before the Court of First Instance on 14 March 1991. By order of 2 October 1991, SEP was given leave to intervene in support of the form of order sought by the defendant.

13 The applicants claimed that the Court of First Instance should:

— annul the decision only in so far as it does not rule on the application of Article 21 of the OVS to imports and exports by the distribution companies, including the applicants, in the field of the public supply of electricity;

— order the Commission to declare at this stage, in a decision pursuant to Article 3(1) of Regulation No 17, that Article 21 of the agreement referred to in Article 1 of Decision 91/50, as applied in conjunction with the control and influence exercised in practice over the international supply of electricity, also constitutes an infringement of Article 85(l) of the Treaty in so far as it has as its object or effect the restriction of imports and exports by distribution companies in the field of public supply, and to require the companies listed in Article 3 of the contested decision to put an end to the infringements found;

— make such other dispositions as the Court may deem appropriate;

— order the Commission to pay the costs.

14 The Commission contended that the Court of First Instance should:

— dismiss the application;

— order the applicants jointly and severally to pay the costs.

15 The intervener claimed that the Court of First Instance should:

— dismiss the application;

— order the applicants to pay the costs, including those of the intervener.

16 By judgment of 18 November 1992, the Court of First Instance dismissed the application. It drew a distinction between the Commission's having abstained from ruling, on the one hand, on the ban on the distribution companies importing electricity and, on the other, on the export ban.

17 As far as exports were concerned, the Court of First Instance held that the application was inadmissible.

18 As for imports, the Court of First Instance distinguished the period prior to the entry into force of the new Electricity Law from the subsequent period. Taking the view that the Commission had not adopted any decision on the applicants' complaint in so far as it related to the former period, it dismissed the application as inadmissible in this regard. As regards the subsequent period, it dismissed the application as unfounded.

19 Whilst Case T-16/91 was pending before the Court, Mr R., a Director at the Commission, sent the applicants' lawyers a letter dated 20 November 1991.

20 In that letter, he stated that 'no action can at present be taken on your complaint', going on to state as follows:

'As for the ban on electricity generating companies importing and exporting electricity for public supply, it is stated in the aforementioned decision that the Commission will not give any ruling in the present procedure pursuant to Regulation No 17 [see paragraphs (50) and (51)], in particular because the 1989 Netherlands Electricity Law had entered into force when the decision was taken. The significance of the complaint was considered in relation to the future, which meant that evaluating it from the point of view of the bans on imports and exports for public supply inevitably entailed also evaluating that Law.

In the meantime, the Commission has initiated, on 20 March 1991, another procedure [COM (91) PV 1052] with the aim, *inter alia*, of examining the 1989 Electricity Law in the light of Article 37.

...

In other words, the substance of Decision 91/50/EEC could be construed as an (implied) partial rejection of your complaint, but only in so far as the complaint related to the period before the 1989 Electricity Law entered into force and sought a declaration that the restrictions stemming from Article 21 of the cooperation agreement which prevented distribution companies from importing electricity for public supply were incompatible with Article 85.'

21 The applicants brought an action for annulment against that letter, which was dismissed as inadmissible by order of 29 March 1993 in Case T-2/92 *Rendo and Others* v *Commission* (not published in the ECR), which has become conclusive.

22 The applicants appealed to the Court of Justice against the judgment of 18 November 1992. The appeal proceedings were stayed, at the applicants' request, to enable the Court of Justice to consider the inferences to be drawn from the judgment given on 27 April 1994 in Case C-393/92 *Almelo and Others* [1994] ECR I-1477 in response to a request for a preliminary ruling from the Gerechtshof te Arnhem (Regional Court of Appeal, Arnhem, Netherlands) made in proceedings with the same factual context as this case, concerning, *inter alia*, the interpretation of the provisions of Articles 85 and 86 of the Treaty as regards a ban on 'the import of electricity for public supply purposes contained in the general conditions of a regional electricity distributor from 1985 to 1988 inclusive, possibly in conjunction with an import ban contained in an agreement made between the electricity generation undertakings in the Member State concerned'.

23 In its judgment on appeal, the Court of Justice set aside the judgment of 18 November 1992 in that the latter had held that Decision 91/50 had had no legal effect as regards the import restrictions applicable during the period prior to the entry into force of the Electricity Law and declared the application inadmissible on that point.

The procedure following referral of the case back to the Court of First Instance

24 After the case was referred back to the Court of First Instance by the Court of Justice, the parties lodged three statements of written observations pursuant to Article 119(1) of the Rules of Procedure.

25 In their statement of written observations of 18 December 1995, the applicants claimed that the Court should:

— annul Decision 91/50 in so far as it rejects the complaint on the import ban applicable to distribution undertakings before the Electricity Law entered into force;

— make such other dispositions as the Court may deem appropriate;

— order the Commission to pay the costs, including the costs relating to the appeal proceedings pursuant to Article 121 of the Rules of Procedure.

26 The Commission claimed that the Court should:

— dismiss the application;

— order the applicants jointly and severally to pay the costs.

27 The intervener claimed that the Court should:

— dismiss the application;

— order the applicants to pay the costs, including those of the intervener.

Forms of order sought and pleas put forward by the parties at first instance and in the proceedings following referral of the case back to the Court of First Instance

28 Following the setting aside in part of the judgment of the Court of First Instance by the Court of Justice on appeal, the Court of First Instance has to consider, on the one hand, the form of order sought by the applicants, namely annulment of Decision 91/50 only in so far as it impliedly rejects the complaint relating to the

electricity import ban which was applicable in the field of public supply during the period prior to the entry into force of the Netherlands Electricity Law and, on the other, the pleas put forward with regard to that aspect of the decision both at first instance and in the proceedings after the case was referred back to the Court of First Instance.

Substance

29 Originally, the applicants raised essentially three pleas. The first alleged infringement of Community competition law and certain general principles of law, in particular the principle of legal certainty and the principle that due care must be shown and that measures must be carefully prepared (zorgvuldigheidsbeginsel). The second plea alleged infringement of Article 190 of the Treaty and the third infringement of essential procedural requirements, more particularly infringement of Article 6 of Commission Regulation No 99/63 of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47), as alleged in the reply. In the proceedings after the case was referred back to the Court, the applicants first pointed out, referring to the reply, that they had pleaded that Decision 91/50 contained an inadequate statement of reasons and was unlawful (section 11 of their statement of written observations of 18 December 1995). Secondly, they put forward pleas alleging infringement of Article 190 of the Treaty and of Article 6 of Regulation No 99/63.

Statement of reasons

— Arguments of the parties

30 In their application, the applicants claimed that the duty to state reasons, laid down in Article 190 of the Treaty, had been infringed. In the reply, the applicants added that sufficient reasons were not given for the implied rejection of their

complaint. They emphasized that the Commission had omitted to specify the reasons for which it considered that there was no infringement, and argued that that silence warranted the annulment of the decision. They asserted that, in any event, the Commission had no ground for not ruling on the period prior to 1 July 1990, given that they also had an interest in establishing clarity as to the corresponding legal situation (section 4.2 of the reply).

31 In the proceedings after the case was referred back to the Court, the applicants refer to their reply in order to establish the inadequacy of the reasons for the implied partial rejection of their complaint which — after the setting aside in part of the judgment of 18 November 1992 — remains before the Court. They reiterate that it is necessary to review the reasons for the rejection. The Commission provided no reasons for it in its decision. It took the view that Article 85(1) of the Treaty had been infringed, yet did not find in the operative part of the decision that there had been an infringement. No particulars were given of the reasons for rejecting the complaint relating to the import ban applying to distribution undertakings (hence to the applicants) before the Netherlands Electricity Law entered into force.

32 At the hearing following referral of the case back to the Court, the applicants stressed that paragraph 50 of Decision 91/50 related only to the period after the Electricity Law entered into force. Otherwise the file would not have been closed on their complaint as regards the preceding period, but would have been suspended, as in the case of the complaint relating to the subsequent period.

33 They add that the explanations provided by the Commission during the proceedings are belated, and stress that this aspect of their complaint is still a live issue in view of the proceedings pending before the national courts and other discussions currently in progress between lawyers with regard to the period in question. In this context, they referred to proceedings pending in a court at Arnhem and challenged the Commission's contention that the application of Article 21 of the OVS had not caused them to sustain any loss.

34 In the proceedings after the case was referred back to the Court, the Commission pointed out that, according to the decision, the contractual ban on electricity imports constituted an infringement of Article 85(1) of the Treaty. However, it did not express a final negative determination because it had refrained from giving a ruling on the conditions of Article 90(2) of the Treaty. Since it had foregone ruling on the merits of that aspect of the complaint, it did not act on it and had therefore partially rejected it by implication.

35 Despite the implied nature of this rejection, the decision was properly reasoned. Paragraph 50 of the decision covered the situation before and after the Law entered into force, since the same import restriction arising out of Article 21 of the OVS was involved. Accordingly, the Commission had refrained from ruling on the substance of the prohibition for reasons of expediency approved by both the Court of Justice and the Court of First Instance. The only difference between the periods before and after the Law entered into force was that it was no longer necessary to pursue the inquiry in the case of the former period because it had ceased to be a live issue and because the applicant Rendo had not sustained any damage during that period.

36 The Commission argues that its interpretation of the decision is supported by Advocate General Tesauro, who stated in his Opinion on the appeal that the applicants had sustained no damage 'as is not disputed'. It quotes extracts from that Opinion according to which the Commission is free to decide on the degree of priority to be given to each procedure in the light, *inter alia*, of the Community interest of the procedure itself, and the Commission had rejected the applicants' assertions as to the effects caused by past conduct, which were no longer operative.

37 The Commission maintains that it was for the same reason that it refrained from giving a ruling in the first case and suspended judgment as to the second period. The implied rejection of the complaint was therefore based on considerations of expediency, as upheld in the judgment in Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223.

38 Furthermore, that statement of reasons was sufficient for the addressees of the decision, the intervener SEP and the four Dutch generating undertakings. The Commission puts forward in this connection an argument set out in the rejoinder, based on the claim that the applicants were not addressees of the decision. It was not obliged to explain in its decision requiring a practice to be brought to an end pursuant to Article 3 of Regulation No 17, which was addressed to SEP and to the Dutch generating undertakings, why it had not acted upon Rendo's complaint so far as the period preceding the entry into force of the Electricity Law was concerned.

39 The Commission avers that account should also be taken of Rendo's attitude during the administrative procedure. After the hearing in November 1989 it had shown virtually no sign of life. Had it taken further steps, the Commission would probably have sent it a letter pursuant to Article 6 of Regulation No 99/63. By remaining silent until the action was brought, Rendo had not enabled the Commission to reject the complaint in accordance with the usual procedure provided for by that provision.

40 Lastly, the different approach suggested by the applicants would have two difficult consequences: an implied rejection of a complaint would be vitiated almost invariably by insufficient reasoning, which would mean that each 'silent refusal' would in principle be a nullity. In addition, the Commission would have to postpone its decision — which might be an urgent one — to prohibit a partial infringement until such time as it was also in a position definitively to reject the other part of the complaint.

41 At the hearing the Commission maintained that its position was not invalidated by the proceedings pending at Arnhem, since those proceedings related only to the extra cost equalization charge, which was not dealt with in Decision 91/50.

42 SEP, intervening, supports the Commission's observations as to the statement of reasons for the decision. The reasoning was sufficient for the five addressees of the decision. At the hearing, it asserted that the national proceedings did not relate to Article 21 of the OVS, but referred solely to conditions of supply, such as the extra cost equalization charge.

— Findings of the Court

43 The fact that Decision 91/50 was not addressed to the applicants does not preclude them from raising a plea alleging infringement of Article 190 of the Treaty (see the judgment of 18 November 1992, paragraph 122). The interest which persons, other than an addressee of the act, to whom a measure is nevertheless of direct and individual concern may have in obtaining explanations must be taken into account when assessing the extent of the obligation to provide a statement of reasons (see, for example, Case 294/81 *Control Data* v *Commission* [1983] ECR 911, paragraph 14, and Case 41/83 *Italy* v *Commission* [1985] ECR 873, paragraph 46).

44 As the Court of Justice and the Court of First Instance have consistently held, the extent of the duty to state reasons must be assessed practically in the light of the circumstances of the case. In the case of a decision whose purpose is to hold that there has been an infringement of the competition rules and to make orders, yet which amounts at the same time to a partial rejection of a complaint, the Commission is not under a duty to respond to all the factual and legal issues raised by the complainant undertakings. Nevertheless, the statement of reasons must enable the Community judicature to exercise its power of review as to the legality of the decision and the person concerned to ascertain the matters justifying the measure adopted so that he can defend his rights and verify whether or not the decision is well founded (see, for example, Case 24/62 *Germany* v *Commission* [1963] ECR 63, at 69; Case 110/81 *Roquette Frères* v *Council* [1982] ECR 3159, paragraph 24; Joined Cases 43/82 and 63/82 *VBVB and VBBB* v *Commission* [1984] ECR 19, paragraph 22, and Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraphs 41 and 42; see also the judgment of 18 November 1992, paragraph 124).

45 It follows that the decision must be self-sufficient and that the reasons on which it is based may not be stated in written or oral explanations given subsequently when the decision in question is already the subject of proceedings brought before the Community judicature (see, for example, the Opinion of Advocate General Léger in Case C-310/93 P *BPB Industries and British Gypsum* v *Commission* [1995] ECR I-867, section 22, and the judgment in Case T-61/89 *Dansk Pelsdyravlerforening* v *Commission* [1992] ECR II-1931, paragraph 131).

46 As in the case of regulations, persons concerned by a decision may always be expected to make a certain effort to interpret the reasons if the meaning of the text is not immediately clear, and Article 190 of the Treaty is not infringed if it is possible to resolve ambiguities in the statement of reasons by means of such interpretation (see the Opinion of Advocate General Lenz in Case C-27/90 *SITPA* [1991] ECR I-133, section 59).

47 In this case, Decision 91/50 does not rule expressly, either in the operative part or in the statement of reasons, on the outcome of the applicants' complaint concerning the restrictions on the import of electricity for public supply resulting from Article 21 of the OVS as regards the period before the Electricity Law entered into force. Neither does it contain any indications referring expressly to that period as to the reasons for which the Commission considered that it was justified to close the file on that complaint.

48 Accordingly, it should be considered whether it is possible to identify the reasons for which the complaint was rejected by interpreting Decision 91/50 and, more particularly, the Commission's contention that paragraph 50 of the decision (see paragraph 9 of this judgment) contains information from which the Community judicature and the applicants may ascertain those reasons.

49 The fact that the Commission refrained from giving its views as to any possible justification for the import restriction under Article 90(2) of the Treaty is explained in paragraph 50 in terms of the entry into force of the Electricity Law

and the undesirability of assessing that Law in a procedure pursuant to Regulation No 17. Consequently, that paragraph of the decision indicates the reason why the Commission suspended its examination of the complaint in so far as it related to the period after the Electricity Law entered into force, pending the outcome of the procedures which it intended to initiate under Article 169 of the Treaty.

50 On the other hand, the Commission's statements provide no indication as to why a different outcome, namely implied rejection, befell the complaint in respect of the preceding period.

51 Admittedly, the arguments put forward in order to justify suspending the examination of the complaint may be interpreted as being capable of transposition to the period before the Law entered into force. Even an examination of Article 21 of the OVS which was limited to that period might have entailed assessing the compatibility of the new Law with the competition rules. The Commission would therefore have been at risk of adopting conflicting decisions with regard to those two periods if it had ruled in 1992 on the application of Article 90(2) of the Treaty to the restrictions arising under the OVS during the period before the Law entered into force without awaiting the outcome of the infringement proceedings envisaged with regard to the later period.

52 Those considerations might have been capable of constituting the statement of reasons of a decision to suspend the procedure with regard to the earlier period. In contrast, it is not possible, by interpreting those considerations, to identify the reasons for the Commission's implied rejection.

53 Besides, the Commission did not send a letter pursuant to Article 6 of Regulation No 99/63, by which it could have informed the applicants of the grounds for the implied rejection of their complaint before it adopted Decision 91/50.

54 It must therefore be held that the implied rejection of the applicants' complaint is vitiated by a defective statement of reasons.

55 However, whilst reasoning the beginnings of which are set out in the contested measure may be enlarged upon and clarified during the proceedings (see, for example, Advocate General Léger's Opinion in *BPB Industries and British Gypsum* v *Commission*, cited above, section 24), the situation is different where the contested decision is not reasoned (see, for example, Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22).

56 In those circumstances, the disclosure made for the first time in the letter sent to counsel for the applicants by Mr R., a Director at the Commission, on 20 November 1991, that is to say, 18 months after the action was brought in this case (see paragraph 20 of this judgment), that 'the significance of the complaint was considered in relation to the future' is not capable of making good the defective statement of reasons for Decision 91/50. The same applies to the explanations which the Commission has provided in order to seek to justify its decision rejecting the complaint in the proceedings following referral of the case back to the Court.

57 The arguments put forward by the Commission to the effect that to apply Article 190 of the Treaty in this way would render any implied rejection of a complaint unlawful and prevent the Commission from taking urgent decisions requiring practices to be brought to an end before it is in a position to give a definitive ruling on the whole of the relevant complaint, cannot be accepted.

58 On the one hand, sufficient grounds for the implied rejection of a complaint, for example in the case of a decision granting negative clearance or exemption, may consist of the considerations on which such a decision is based (see, for example,

Case 26/76 *Metro* v *Commission* [1977] ECR 1875). In this case, the implied partial rejection of the complaint could have been preceded by a letter pursuant to Article 6 of Regulation No 99/63 by which the reasons capable of justifying rejection would already have been made known to the complainant. Indeed, since the extent of the duty to provide a statement of reasons has to be assessed in each particular case not only with regard to the wording of the contested measure but also to its context and antecedents (see, for example, Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86), the explanations contained in such a letter could have been taken into consideration in determining whether the reasoning of the definitive decision rejecting the complaint was sufficient.

59 On the other hand, the obligation to state reasons for rejecting a complaint — even implicitly — does not prevent the Commission from taking the necessary decisions in good time on the infringements to which the complaint refers. It is sufficient in this regard for the Commission to indicate to the complainants the reasons for which a partial decision on the complaint is appropriate.

60 Consequently, the plea alleging infringement of Article 190 of the Treaty is well founded. As a result, Decision 91/50 must be annulled in so far as it impliedly rejects the applicants' complaint on the import ban during the period before the Electricity Law entered into force and it is unnecessary to consider the other pleas raised by the applicants.

Costs

61 The judgment of the Court of First Instance of 18 November 1992, in which the applicants were ordered to pay the costs, has been partially set aside. In its judgment on appeal, the Court of Justice held that each of the parties should bear

its own costs as regards the appeal proceedings. Consequently, in this judgment the Court of First Instance must make an order relating to the costs of the proceedings prior to its judgment of 18 November 1992, bearing in mind the outcome of the proceedings following referral of the case back to the Court, and then rule on the costs appertaining to those proceedings.

62 So far as the applicants' original action is concerned, each of the parties was unsuccessful in respect of some of its claims. The application was dismissed in so far as it related to the failure to rule on the ban imposed on the distribution companies to export electricity and in so far as it related to the suspension of the procedure concerning the import restrictions after the Electricity Law entered into force. In contrast, the applicants were successful in the matter of the rejection of their complaint concerning the import restrictions before the Law entered into force.

63 Accordingly, under the first subparagraph of Article 87(3) of the Rules of Procedure, the Court may order that the costs be shared or that each party bear its own costs. In this case, the costs of the proceedings prior to the judgment of 18 November 1992 should be shared having regard to the fact that the applicants were unsuccessful on most heads. Consequently, they shall bear their own costs and pay half of the costs of the Commission and the intervener, with the Commission and the intervener each having to bear the other half of their own costs.

64 As for the proceedings after referral back to the Court, the applicants were successful. Consequently, in accordance with Article 87(2) of the Rules of Procedure, the Commission must be ordered to pay the costs incurred in the course of the proceedings following the judgment on appeal, with the exception of the costs incurred by the intervener, which shall bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

1. **Annuls Commission Decision 91/50/EEC of 16 January 1991 relating to a proceeding under Article 85 of the EEC Treaty (IV/32.732 — IJsselcentrale (IJC) and Others) in so far as it rejects the applicants' complaint with regard to the import restrictions applicable during the period before the Elektriciteitswet 1989 entered into force;**

2. **Orders the applicants to bear their own costs and jointly and severally to pay half of the costs incurred by the Commission and the intervener before the judgment of the Court of First Instance of 18 November 1992, the defendant and the intervener each being ordered to bear the other half of their costs;**

3. **Orders the Commission to pay the costs incurred after the judgment of the Court of Justice of 19 October 1995, with the exception of the intervener's costs, which shall be borne by the intervener.**

Kirschner Vesterdorf Bellamy

Kalogeropoulos Potocki

Delivered in open court in Luxembourg on 12 December 1996.

H. Jung H. Kirschner

Registrar President