JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
25 May 2000 *

In Case T-77/95,

Union Française de l'Express (Ufex), formerly Syndicat Français de l'Express International (SFEI), established in Roissy-en-France, France,

DHL International, established in Roissy-en-France,

Service CRIE, established in Paris, France,

May Courier, established in Paris,

represented by E. Morgan de Rivery, of the Paris Bar, and J. Derenne, of the Brussels and Paris Bars, with an address for service in Luxembourg at the Chambers of A. Schmitt, 7 Val Sainte-Croix,

applicants,

* Language of the case: French.

Commission of the European Communities, represented by R. Lyal, of its Legal Service, acting as Agent, assisted by J.-Y. Art, of the Brussels Bar, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission Decision SG (94) D/19144 of 30 December 1994 rejecting the complaint of 21 December 1990 by Syndicat Français de l'Express International,

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

composed of: J. Pirrung, President, R.M. Moura Ramos and A.W.H. Meij, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 February 2000,

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 4 March 1999 in Case C-119/97 P *Ufex and Others* v *Commission* [1999] ECR I-1341 ('the judgment on appeal') setting aside the judgment of the Court of First Instance of 15 January 1997 in Case T-77/95 *SFEI and Others* v *Commission* [1997] ECR II-1 ('the judgment of 15 January 1997').

Facts of the case and the previous procedure

2 On 21 December 1990 Syndicat Français de l'Express International (SFEI), now Union Française de l'Express (Ufex), an association of which the other three applicants are members, made a complaint to the Commission seeking a finding that the French Government and La Poste (the French Post Office) as an undertaking were in breach of certain provisions of the EEC Treaty (now the EC Treaty, hereinafter 'the Treaty'), concerning competition in particular. The complaint was later supplemented by the applicants.

3 With respect to Article 86 of the Treaty (now Article 82 EC), the applicants complained of the logistical and commercial assistance allegedly given by La Poste to its subsidiary Société Française de Messageries Internationales (hereinafter 'SFMI'), which operated in the international express mail sector.

4 As to logistical assistance, the applicants challenged the making available of the infrastructure of La Poste for collection, sorting, carriage, distribution and

delivery, the existence of a preferential customs clearance procedure usually reserved for La Poste, and the granting of preferential financial terms. As to commercial assistance, the applicants pointed to the transfer of assets such as goodwill and stock, and promotion and advertising by La Poste in favour of SFMI.

5 The abuse of a dominant position by La Poste was alleged to have consisted in allowing its subsidiary SFMI to make use of its infrastructure on unusually favourable terms in order to extend its monopoly on the basic mail market to the associated market in international express mail. That abuse was said to have resulted in cross-subsidies in favour of SFMI.

6 The applicants further alleged, with respect to Article 90 of the Treaty (now Article 86 EC), Article 3(g) of the Treaty (now, after amendment, Article 3(1)(g) EC), Article 5 of the Treaty (now Article 10 EC) and Article 86 of the Treaty, that the unlawful actions of La Poste in giving assistance to its subsidiary originated in a series of instructions and directives from the French State.

7 On 30 December 1994 the Commission adopted a decision rejecting the complaint (hereinafter 'the contested decision'). SFEI received notification of it on 4 January 1995.

8 That decision, which took the form of a letter signed by Mr Van Miert, a member of the Commission, reads as follows (omitting the paragraph numbering):

'The Commission refers to your complaint dated 21 December 1990, to which was annexed a copy of a separate complaint made to the French Conseil de la

Concurrence (Competition Council) on 20 December 1990. Both complaints concerned the international express services of the French postal administration.

On 28 October 1994 the Commission sent you a letter under Article 6 of Regulation No 99/63 stating that the evidence collected in the investigation of the case did not enable the Commission to give a favourable answer to your complaint in so far as it concerned Article 86 of the Treaty, and inviting you to submit your comments on the point.

In your comments of 28 November 1994 you maintained your position with regard to the abuse of dominant position by La Poste and SFMI.

In the light of those comments, the Commission informs you by this letter of its final decision regarding your complaint of 21 December 1990 with respect to the initiation of proceedings under Article 86.

The Commission considers, for the reasons set out in its letter of 28 October 1994, that there is insufficient evidence in the present case showing that alleged infringements are continuing for it to be able to give a favourable answer to your complaint. In this respect, your comments of 28 November do not add any further evidence which might allow the Commission to alter that conclusion, which is supported by the grounds stated below.

First, the Green Paper on postal services in the single market and the Guidelines for the development of Community postal services (COM (93) 247 final of 2 June 1993) address *inter alia* the principal problems raised in SFEI's complaint. Although those documents contain only proposals *de lege ferenda*, they must be

taken into consideration in particular in assessing whether the Commission is making appropriate use of its limited resources, especially whether they are being put to use in developing a regulatory framework concerning the future of the postal services market rather than investigating on its own initiative alleged infringements which have been reported to it.

Second, following an investigation carried out under Regulation No 4064/89 into the joint venture (GD Net) set up by TNT, La Poste and four other postal administrations, the Commission published its decision of 2 December 1991 in case IV/M.102. By its decision of 2 December 1991 the Commission decided not to oppose the concentration notified and to declare it compatible with the common market. It emphasised in particular that, with respect to the joint venture, the proposed transaction did not create or strengthen a dominant position which might significantly hinder competition within the common market or in a substantial part of it.

Some essential points of the decision related to the possible impact of the activities of the former SFMI on competitors: SFMI's exclusive access to La Poste's facilities had been reduced in scope and was to end two years after completion of the merger, thus distancing it from any subcontracting activity of La Poste. Any access facility lawfully granted by La Poste to SFMI had likewise to be offered to any other express operator with whom La Poste signed a contract.

That outcome matches the proposed solutions for the future which you submitted on 21 December 1990. You asked for SFMI to be ordered to pay for PTT services at the same rate as if it was buying them from a private company, if SFMI chose to continue using those services; for "all aid and discrimination" to be put an end to; and for SFMI to "adjust its prices according to the real value of the services provided by La Poste".

Consequently, it is clear that the problems you refer to in relation to present and future competition in the international express mail sector have been adequately resolved by the measures taken so far by the Commission.

If you consider that the conditions imposed on La Poste in case IV/M.102 have not been complied with, in particular in the field of transport and advertising, it is then for you to provide — as far as possible — evidence, and possibly to bring a complaint on the basis of Article 3(2) of Regulation No 17. However, statements that "at present the tariffs (excluding possible rebates) applied by SFMI remain substantially lower than those of the members of SFEI" (page 3 of your letter of 28 November) or "Chronopost is advertised on P&T lorries" (report annexed to your letter) must be supported by evidence to justify an investigation by the Commission.

The Commission's actions under Article 86 of the Treaty are aimed at maintaining genuine competition in the internal market. In the case of the Community market in international express services, having regard to the significant development described above, new information on any infringements of Article 86 would have to be supplied for the Commission to be able to justify investigating those activities.

Moreover, the Commission considers that it is not obliged to examine possible infringements of the competition rules which have taken place in the past, if the sole purpose or effect of such an investigation is to serve the individual interests of the parties. The Commission sees no interest in embarking on such an investigation under Article 86 of the Treaty.

For the above reasons, I inform you that your complaint is rejected.'

9 By application lodged at the Registry of the Court of First Instance on 6 March 1995, the applicants brought an action for annulment of the contested decision.

10 By its judgment of 15 January 1997 the Court of First Instance dismissed the action as unfounded, considering essentially that the Commission was entitled to discontinue consideration of the complaint on the ground of lack of Community interest, as the practices complained of had ceased after the complaint was lodged.

11 By its judgment on appeal the Court of Justice set aside the judgment of 15 January 1997, referred the case back to the Court of First Instance, and reserved the costs.

12 With respect to the seventh plea in law of the appeal, the Court of Justice held in particular (paragraph 96):

'[B]y holding, without ascertaining that the anti-competitive effects [of the practices of La Poste complained of] had been found not to persist and, if appropriate, had been found not to be such as to give the complaint a Community interest, that the investigation of a complaint relating to past infringements did not correspond to the task entrusted to the Commission by the Treaty but served essentially to make it easier for the complainants to show fault in order to obtain damages in the national courts, the Court of First Instance took an incorrect view of the Commission's task in the field of competition'.

13 In the twelfth plea in law of the appeal, the appellants complained that the Court of First Instance had ruled on the plea alleging misuse of powers without examining all the documents they had relied on, in particular a letter from Sir Leon Brittan to the President of the Commission which the Court of First Instance had refused to order to be produced. On this point, the Court of Justice held that (paragraph 110):

'[T]he Court of First Instance could not reject the appellants' request to order production of a document which was apparently material to the outcome of the case on the ground that the document had not been produced and there was nothing to confirm its existence'.

Procedure following referral of the case back to the Court of First Instance and forms of order sought by the parties

14 After referral of the case back by the Court of Justice, the parties submitted written observations, pursuant to Article 119 of the Rules of Procedure of the Court of First Instance.

15 As a measure of organisation of procedure, the Court requested the applicants to produce the letter from Sir Leon Brittan (see paragraph 13 above). They did so within the prescribed time-limit.

16 Since Judge Potocki was unable to take part in the consideration of the case, the President of the Court of First Instance on 16 October 1999 designated another judge to take his place. By decision of 20 October 1999, a new Judge-Rapporteur was appointed.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure without any preparatory measures of inquiry.

18 The parties presented oral argument and answered the questions put to them by the Court at the hearing in open court on 9 February 2000. On that occasion the Commission also produced a copy of the letter of Sir Leon Brittan.

19 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs of the entire proceedings.

20 The Commission contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

Substance

21 In the light of the judgment on appeal in which the Court of Justice upheld only two of the appeal's 12 pleas in law, the applicants put forward in the present proceedings two pleas as their principal submission, namely breach of Article 86 of the Treaty and infringement of the rules of law on the assessment of Community interest. They submit, in the alternative, that the contested decision is vitiated by a misuse of powers.

22 The Court considers that the plea of infringement of the rules of law on the assessment of Community interest should be considered first.

Arguments of the parties

23 The applicants observe that whether the consequences of an infringement continue and how serious it is may be assessed only if it has been shown that the infringement did indeed exist. They submit that the fact that the infringement has ceased is not a relevant criterion for rejecting a complaint on the ground of lack of Community interest (see in particular paragraph 95 of the judgment on appeal).

24 They submit, first, that Article 86 of the Treaty necessarily refers to past events (Opinion of Advocate General Ruiz-Jarabo Colomer in connection with the judgment on appeal, ECR I-1344, points 68 and 71, and judgment in Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraphs 179 and 180). If the fact that the unlawful acts were over sufficed for them to escape Article 86 of the Treaty, any undertaking holding a dominant position would be able to cease its practices in order to be sure of impunity (Case T-83/91 *Tetra Pak* v *Commission* [1994] ECR II-755, paragraph 29).

25 Second, Article 86 of the Treaty concerns infringements and their consequences. That the practices in question have ceased therefore cannot restore the balance of competition which has been upset. The Commission must ascertain that the cessation of the practices has been accompanied by the disappearance of their anti-competitive effects, as otherwise a situation of distorted competition may be allowed to continue.

26 The circumstances of the present case show that the effects of the infringements complained of still subsist and are serious. That the effects continue is a result of the market share acquired in two years and retained by SFMI thanks to the illegal cross-subsidies received from La Poste. The structure of competition is thus affected. As to the seriousness of the infringements complained of, the applicants observe that they lasted from 1986 to 1991, and refer to several expert reports (the Braxton report of 1990, the RSV report of May 1993 and the Bain report of 1996) which quantified the extent of the infringements. Moreover, the Community dimension of the market in question is beyond dispute (Opinion of Advocate General Ruiz-Jarabo Colomer, cited above, point 79).

27 In those circumstances, if the Commission had carried out the investigations required by the Court of Justice in the judgment on appeal, the only possible conclusion would have been that there was a Community interest.

28 Finally, the applicants submit that the award of damages by a national court to an undertaking which has been the victim of unlawful practices cannot in itself restore the balance of competition. The purpose of the Commission's action is to maintain undistorted competition, which corresponds to the defence of the public interest. The award of damages, on the other hand, is aimed at the protection of the individual interests of competitors (Opinion of Advocate General Ruiz-Jarabo Colomer, points 73 and 74). Moreover, the amount of the compensation due from La Poste to the applicants differs radically from the amount of the unlawful cross-subsidies which SFMI must repay to La Poste. It is only that repayment, not the compensation for the damage suffered, which is capable of restoring a situation of undistorted competition.

29 The Commission submits that the applicants' arguments are based on a misinterpretation of the judgment on appeal.

30 According to that judgment, a decision to reject a complaint is unlawful where it is based solely on a finding that the practices to which the complainant objects have ceased, and fails to examine whether the effects persist and how serious the alleged infringement was. That is not the case with the contested decision.

31 The Commission itself considers that the fact that the practices contrary to the competition rules have ceased does not in itself justify rejecting a complaint. In particular, if anti-competitive effects continue, that may justify continuing an investigation into a past infringement. The Commission has a discretion, however, in that it is for it to assess whether those effects are serious enough to justify further investigation. In any event, the Commission did not consider in the present case that the ceasing of a practice alleged to be contrary to the Treaty in itself removed all interest in continuing the investigation.

32 The lack of Community interest in the present case follows in particular from the finding that the measures adopted in connection with the GD Net case had made it possible to solve the problems relating to present and future competition in the sector in question. Even if the practices complained of constituted an abuse of a dominant position at the time when they were in operation, they did not prevent the development of undistorted competition in the sector. The Commission cannot therefore be criticised for not having examined whether the anti-competitive effects of the practices complained of still continued.

33 That the question whether the effects were continuing was taken into account also appears from the observation in the contested decision that the sole purpose

or effect of investigating the complaint would be to serve the individual interests of the parties. That conclusion shows that the Commission considered, in the light of the information placed before it, that the practices complained of no longer had sufficient effect on competition to justify a Community interest in continuing the investigation.

34 Moreover, the Commission informed the applicants on 28 October 1994 that the present and future problems of competition complained of by them had been solved. In reply, the applicants put forward no hard evidence to show that the practices in question were still continuing or were still producing effects, which could have justified continuing the investigation (Case T-224/95 *Tremblay and Others* v *Commission* [1997] ECR II-2215, paragraphs 62 to 64).

Findings of the Court

35 The Court considers that this plea essentially raises the question whether the Commission complied with its obligations in the context of its examination of the complaint made to it by the applicant.

36 The Commission's obligations when a complaint is made to it under Article 3 of Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition

1959-1962, p. 87) have been defined in settled case-law of the Court of Justice and Court of First Instance, most recently confirmed by the judgment on appeal (paragraph 86 et seq.).

37 According to that case-law, the Commission must consider attentively all the matters of fact and law brought to its attention by complainants in order to decide whether they disclose conduct of such a kind as to distort competition in the common market and affect trade between Member States (Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, paragraph 79). Furthermore, complainants are entitled to have the fate of their complaint settled by a decision of the Commission against which an action may be brought (judgment on appeal, paragraph 86, and the cases cited).

38 However, the Commission is obliged to carry out an investigation or take a final decision on the existence or otherwise of the alleged infringement only if the complaint is within its exclusive jurisdiction. That is not so in the present case, which concerns the application of Article 86 of the Treaty, for which jurisdiction is shared by the Commission and the national courts (judgment on appeal, paragraph 87, *Automec*, paragraph 90, Case T-5/93 *Tremblay and Others* v *Commission* [1995] ECR II-185, paragraphs 59 and 61, and the case-law mentioned, and Case T-198/98 *Micro Leader Business* v *Commission* [1999] ECR II-3989, paragraph 27).

39 The Commission, entrusted by Article 89(1) of the Treaty (now, after amendment, Article 85(1) EC) with the task of ensuring application of the principles laid down in Article 85 of the Treaty (now Article 81 EC) and Article 86, is responsible for defining and implementing the orientation of Community competition policy. In order to perform that task effectively, it is entitled to

give differing degrees of priority to the complaints brought before it (judgment on appeal, paragraph 88).

40 It follows that the Commission may not only decide the order in which complaints will be examined but also reject a complaint on the ground of lack of a sufficient Community interest in further investigation of the case (*Tremblay* and Others v *Commission*, paragraph 60).

41 Finally, in order to assess the Community interest in further investigation of a case, the Commission must take account of the circumstances of the case, and must in particular balance the significance of the damage which the alleged infringement may cause to the functioning of the common market against the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required for it to perform, under the best possible conditions, its task of ensuring that Articles 85 and 86 of the Treaty are complied with (Joined Cases T-189/95, T-39/96 and T-123/96 *SGA* v *Commission* [1999] ECR II-3587, paragraph 52, Joined Cases T-185/96, T-189/96 and T-190/96 *Riviera Auto Service and Others* v *Commission* [1999] ECR II-93, paragraph 46, *Automec*, paragraph 86, and *Tremblay*, paragraph 62).

42 The Commission's discretion in defining priorities is not unlimited, however (judgment on appeal, paragraphs 89 to 95). Thus it is obliged to state reasons if it declines to continue with the examination of a complaint, and the reasons stated must be sufficiently precise and detailed to enable the Court of First Instance effectively to review the Commission's exercise of its discretion to define priorities. The purpose of that review is to ascertain whether or not the contested decision is based on materially incorrect facts, or is vitiated by an error of law, a manifest error of appraisal or misuse of powers (*Automec*, paragraph 80, *SGA*, paragraph 41, and *Micro Leader Business*, paragraph 27).

43 Moreover, the Court of Justice held, in the judgment on appeal (paragraph 92), that when the Commission decides on priorities for dealing with the complaints brought before it, it may not regard as excluded in principle from its purview certain situations which fall within the task entrusted to it by the Treaty. The Court of Justice went on to say:

'93 In this context, the Commission is required to assess in each case how serious the alleged interferences with competition are and how persistent their consequences are. That obligation means in particular that it must take into account the duration and extent of the infringements complained of and their effect on the competition situation in the Community.

94 If anti-competitive effects continue after the practices which caused them have ceased, the Commission thus remains competent under Articles 2, 3(g) and 86 of the Treaty to act with a view to eliminating or neutralising them (see, to that effect, Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 215, paragraphs 24 and 25).

95 In deciding to discontinue consideration of a complaint against those practices on the ground of lack of Community interest, the Commission therefore cannot rely solely on the fact that practices alleged to be contrary to the Treaty have ceased, without having ascertained that anti-competitive effects no longer continue and, if appropriate, that the seriousness of the alleged interferences with competition or the persistence of their consequences has not been such as to give the complaint a Community interest.

96 In the light of the above considerations, it must be concluded that, by holding, without ascertaining that the anti-competitive effects had been

found not to persist and, if appropriate, had been found not to be such as to give the complaint a Community interest, that the investigation of a complaint relating to past infringements did not correspond to the task entrusted to the Commission by the Treaty but served essentially to make it easier for the complainants to show fault in order to obtain damages in the national courts, the Court of First Instance took an incorrect view of the Commission's task in the field of competition.'

44 It follows from the foregoing that the Commission, having received a complaint by SFEI of infringements of Article 86 of the Treaty, was obliged to assess, on the basis of all the elements of fact and law obtained, the seriousness and duration of the alleged infringements and whether they continued to have effects, even if the allegedly abusive practices had ceased since the complaint was made.

45 In that context, the Commission had to ascertain in particular whether the cessation of the practices complained of necessarily resulted in the definitive disappearance of the alleged distortions of competition or left a competitive imbalance in existence, in this case the maintenance of the position SFMI had obtained by the practices alleged to be contrary to the Treaty. Consequently, the Commission had to establish whether the anti-competitive effects of those practices continued to exist in the market in question.

46 It must be ascertained whether the contested decision satisfies the above requirements.

47 In that decision the Commission, after summarising the various stages of the administrative procedure, states that there is insufficient evidence showing that alleged infringements are continuing for it to be able to give a favourable answer to the complaint (paragraph 5). To support that conclusion, the Commission

refers to the Green Paper on postal services in the single market and the Guidelines for the development of Community postal services. It observes that those documents 'contain only proposals *de lege ferenda*' intended to define 'a regulatory framework concerning the future of the postal services market' (paragraph 6).

48 The Commission further relies on its 'GD Net' decision of 2 December 1991, in which it declared compatible with the common market the setting up by a number of postal administrations, including La Poste, of a joint venture in the international express mail sector (paragraph 7). It sets out certain points of that decision, namely the reduction in scope of SFMI's exclusive access to La Poste's facilities, which was to end 'two years after completion of the merger', and La Poste's obligation to offer any other operator in the sector concerned with whom it signed a contract an access facility similar to that granted to SFMI (paragraph 8). The Commission then states that 'that outcome matches the proposed solutions for the future which [SFEI] submitted' (paragraph 9).

49 At this stage of the analysis, it must be observed that neither the above paragraphs of the contested decision nor indeed the GD Net decision show that the Commission assessed the seriousness and duration of the infringements complained of and whether their effects were continuing. The contested decision concerns only the future development of the market in question, which the Commission claims to have analysed in the Green Paper, the guidelines and the GD Net decision.

50 In those circumstances, paragraph 10 of the contested decision, which is presented as a conclusion and states that 'consequently... the problems... in relation to present and future competition in the international express mail sector have been adequately resolved by the measures taken so far by the Commission', must be regarded as an unsupported assertion. Since the first nine paragraphs of

the contested decision essentially address only the future development of the market in question, they cannot be the basis of any finding relating to 'present competition'.

51 Nor does it appear from the remaining paragraphs of the contested decision that the Commission complied with its obligations in connection with the examination of the complaint. In those paragraphs it does no more than raise the possibility of the applicants bringing a fresh complaint if they consider that the conditions imposed on La Poste in the GD Net decision have not been complied with (paragraph 11) and supplying new information on any infringements of Article 86 of the Treaty (paragraph 12).

52 It is thus apparent that the Commission failed in the present case to assess the seriousness and duration of the alleged infringements and whether their effects were still continuing. By considering, finally, that it was not obliged to investigate past infringements if the sole purpose or effect of such an investigation was to serve the individual interests of the parties (paragraph 13), the Commission misunderstood its task in the field of competition, which was not indeed to apply itself to establishing the conditions for compensation for the pecuniary loss said to have been suffered by one or more undertakings, but to ensure, following the complaint brought by an organisation representing almost all the French private operators active in the market in question, a state of undistorted competition.

53 This analysis therefore shows that, by discontinuing consideration of the complaint on the ground of lack of Community interest on the basis of the factors set out in the contested decision, the Commission failed to comply with its obligations in connection with the treatment of a complaint of an abuse of a dominant position.

54 Since the representatives of the Commission stated before the Court that an assessment of the alleged infringements and of whether their effects were

continuing had indeed taken place, it should be pointed out that the analysis of the contested decision as set out above cannot be called into question by those assertions. A decision must be sufficient in itself and the reasons on which it is based cannot derive from written or oral explanations given subsequently when the decision is already the subject of proceedings before the Community judicature (see, for example, Case T-16/91 RV *Rendo and Others* v *Commission* [1996] ECR II-1827, paragraph 45, and, by analogy, Case T-188/98 *Kuijer* v *Council* [2000] ECR II-1959, paragraphs 38 and 43).

55 The contested decision must therefore be annulled, without there being any need to examine the plea of infringement of Article 86 of the Treaty or the alternative plea of misuse of powers.

Costs

56 The judgment of 15 January 1997, which ordered the applicants to pay the costs, was set aside. In the judgment on appeal, the Court of Justice reserved the costs. It is therefore for this Court to rule in the present judgment on all the costs relating to the various proceedings.

57 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. In this case, since the Commission has been unsuccessful and the applicants have applied for costs, it must be ordered to pay the whole of the costs incurred before this Court and the Court of Justice.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Annuls Commission Decision SG (94) D/19144 of 30 December 1994 rejecting the complaint of 21 December 1990 by Syndicat Français de l'Express International (SFEI), now Union Française de l'Express (Ufex);**

2. **Orders the Commission to bear its own costs and to pay all the costs incurred by the applicants before the Court of First Instance and the Court of Justice.**

Pirrung Moura Ramos Meij

Delivered in open court in Luxembourg on 25 May 2000.

H. Jung
Registrar

J. Pirrung
President