JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
6 April 1995 *

In Case T-150/89,

GB Martinelli, formerly GB Metallurgica SpA, a company incorporated under Italian law and established in Milan (Italy), represented by Carmelo Maccarone, of the Bergamo Bar, with an address for service in Luxembourg at the Chambers of Franco Colussi, 36 Rue de Wiltz,

applicant,

v

Commission of the European Communities, represented by Enrico Traversa and Julian Currall, of its Legal Service, acting as Agents, and Alberto Dal Ferro, of the Vicenze Bar (Italy), with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for the annulment of Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 — Welded steel mesh, OJ 1989 L 260, p. 1),

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

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

Registrar: H. Jung,

having regard to the written procedure and further to the hearing from 14 to 18 June 1993

gives the following

Judgment

Facts

1 This case concerns Commission Decision 89/515/EEC of 2 August 1989 (OJ 1989 L 260, p. 1) (hereinafter 'the Decision'), in which the Commission imposed a fine on 14 producers of welded steel mesh for having infringed Article 85(1) of the EEC Treaty. The product with which the contested Decision is concerned is welded steel

mesh. It is a prefabricated reinforcement product made from smooth or ribbed cold-drawn reinforcing steel wires joined together by right-angle spot welding to form a network. It is used in almost all areas of reinforced concrete construction.

2 As from 1980 a number of agreements and practices, which gave rise to the Decision, came into being in that sector on the German, French and Benelux markets.

3 On 6 and 7 November 1985 Commission officials, acting under Article 14(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, hereinafter 'Regulation No 17') carried out simultaneous investigations without prior warning at the premises of seven undertakings and two associations, namely: Tréfilunion SA, Sotralentz SA, Tréfilarbed Luxembourg/Saarbrücken SARL, Ferriere Nord SpA (Pittini), Baustahlgewebe GmbH, Thibodraad en Bouwstaalprodukten BV, NV Bekaert, Syndicat National du Tréfilage d'Acier (STA) and Fachverband Betonstahlmatten eV; on 4 and 5 December 1985 they conducted other investigations at the premises of ILRO SpA, GB Martinelli, NV Usines Gustave Boël (Afdeling Trébos), Tréfileries de Fontaine-l'Evêque, Frère-Bourgeois Commerciale SA, Van Merksteijn Staalbouw SA and ZND Bouwstaal BV.

4 The evidence found in those investigations and the information obtained under Article 11 of Regulation No 17 led the Commission to conclude that between 1980 and 1985 the producers in question had infringed Article 85 of the Treaty through a series of agreements or concerted practices relating to delivery quotas for, and the prices of, welded steel mesh. The Commission initiated the procedure provided for in Article 3(1) of Regulation No 17 and, on 12 March 1987, a statement of objections was sent to the undertakings concerned, which replied to it. A hearing of their representatives took place on 23 and 24 November 1987.

5 At the end of that procedure the Commission adopted the Decision. According to the Decision (point 22), the restrictions of competition derived from a set of agreements or concerted practices fixing prices and delivery quotas and sharing markets for welded steel mesh. Those agreements, according to the Decision, concerned different parts of the common market (the French, German or Benelux markets) but affected trade between Member States because undertakings established in various Member States participated in them. The Decision states that 'there was no general agreement between all manufacturers in all the Member States concerned, but rather a complex of different agreements, the parties to which were not always the same. Nevertheless, as a result of the regulation of the individual sub-markets this complex of agreements had the effect of producing far-reaching regulation of a substantial part of the common market'.

6 The operative part of the Decision is as follows:

'*Article 1*

Tréfilunion SA, Société Métallurgique de Normandie (SMN), Chiers-Châtillon-Gorcy (Tecnor), Société de Treillis et Panneaux Soudés, Sotralentz SA, Tréfilarbed SA, or Tréfilarbed Luxembourg/Saarbrücken SARL, Tréfileries Fontaine l'Évêque, Frère-Bourgeois Commerciale SA (now Steelinter SA), NV Usines Gustave Boël, Afdeling Trébos, Thibo Draad-en Bouwstaalprodukten BV (now Thibo Bouwstaal BV), Van Merksteijn Staalbouw BV, ZND Bouwstaal BV, Baustahlgewebe GmbH, ILRO SpA, Ferriere Nord SpA (Pittini), and GB Martinelli fu GB Metallurgica SpA have infringed Article 85(1) of the EEC Treaty by participating from 27 May 1980 until 5 November 1985 on one or more occasions in one or more agreements or concerted practices (hereinafter "agreements") consisting in the fixing of selling prices, the restricting of sales, the sharing of markets and in measures to implement these agreements and to monitor their operation.

Article 2

The undertakings named in Article 1 which are still involved in the welded steel mesh sector in the Community shall forthwith bring the said infringements to an end (if they have not already done so) and shall henceforth refrain in relation to their welded steel mesh operations from any agreement or concerted practice which may have the same or similar object or effect.

Article 3

The following fines are hereby imposed on the undertakings named below in respect of the infringements found in Article 1:

1. Tréfilunion SA (TU): a fine of ECU 1 375 000;

2. Société Métallurgique de Normandie (SMN): a fine of ECU 50 000;

3. Société des Treillis et Panneaux Soudés (STPS): a fine of ECU 150 000;

4. Sotralentz SA: a fine of ECU 228 000;

5. Tréfilarbed Luxembourg/Saarbrücken SARL: a fine of ECU 1 143 000;

6. Steelinter SA: a fine ECU 315 000;

7. NV Usines Gustave Boël, Afdeling Trébos: a fine of ECU 550 000;

8. Thibo Bouwstaal BV: a fine of ECU 420 000;

9. Van Merksteijn Staalbouw BV: a fine of ECU 375 000;

10. ZND Bouwstaal BV: a fine of ECU 42 000;

11. Baustahlgewebe GmbH (BStG): a fine of ECU 4 500 000;

12. ILRO SpA: a fine of ECU 13 000;

13. Ferriere Nord SpA (Pittini): a fine of ECU 320 000;

14. GB Martinelli fu GB Metallurgica SpA: a fine of ECU 20 000.

Articles 4 and 5 (omissis)'

Procedure

7 It was in those circumstances that, by application lodged at the Registry of the Court of Justice on 25 October 1989, the applicant brought the present action for the annulment of the Decision. Ten of the thirteen other addressees of that Decision also brought an action.

8 By order of 15 November 1989 the Court assigned this case and the ten other cases to the Court of First Instance pursuant to Article 14 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1). Those actions were registered under numbers T-141/89 to T-145/89, and T-147/89 to T-152/89.

9 By order of 13 October 1992 the Court of First Instance ordered that, on account of the connection between the above cases, they should be joined for the purposes of the oral procedure, pursuant to Article 50 of the Rules of Procedure.

10 By letters lodged at the Registry of the Court of First Instance between 22 April 1993 and 7 May 1993 the parties replied to the questions put to them by the Court.

11 Having regard to the replies to those questions and upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.

12 The parties presented oral argument and answered questions put to them by the Court at the hearing which took place from 14 to 18 June 1993.

Forms of order sought

13 The applicant claims that the Court should:

(i) primarily:

having regard to the fact that GB Martinelli, formerly GB Metallurgica SpA, is a small undertaking which was induced to become a party to the agreements in question solely in order to operate on the French market,

acknowledging that the applicant became a party to those agreements in the firm belief that they were lawful and authorized pursuant to Article 85(3) of the Treaty,

find that the GB Martinelli is not responsible for the matters with which it is charged and, consequently, annul the Commission Decision of 2 August and annul the fine of ECU 20 000 imposed on the applicant;

(ii) in the alternative:

having regard to the fact that GB Martinelli, formerly GB Metallurgica SpA, has never actually benefited from the situation to which the agreements made between the producers of welded steel mesh gave rise,

and acknowledging that GB Martinelli, formerly GB Metallurgica SpA, acting in all good faith, has never concealed anything from the Commission, but has always honestly admitted the facts which have been held against it,

reduce the fine imposed on GB Martinelli, formerly GB Metallurgica SpA, in proportion to the fines imposed on the companies which benefited to a greater extent from the agreements in question, taking into account the actual participation of the applicant in those agreements.

14 The Commission contends that the Court should:

(i) dismiss the application by GB Martinelli, formerly GB Metallurgica SpA, as unfounded;

(ii) order the applicant to pay the costs of the proceedings.

Substance

15 The Court notes that the Decision (points 23, 51, 159 and 160) alleges that the applicant participated in two sets of agreements concerning the French market. Those agreements are said to have involved the French producers (Tréfilunion, STPS, SMN, CCG and Sotralentz) and the foreign producers operating on the French market (ILRO, Ferriere Nord, Martinelli, Boël/Trebos, Tréfileries de Fontaine l'Évêque (TFE), Frère-Bourgeois Commerciale (FBC) and Tréfilarbed) and were intended to determine prices and quotas in order to limit imports of welded steel mesh into France, and to set up an exchange of information. The first set of agreements is said to have been implemented between April 1981 and March 1982. The second set of agreements is said to have been implemented between the beginning of 1983 and the end of 1984. That second set of agreements is alleged to have been formalized by the adoption of a 'protocole d'accord' in October 1983.

16 The applicant puts forward three pleas in law in support of its application. The first alleges infringement of Article 85(1) of the Treaty on the ground that its participation in the agreements did not amount to an infringement of that provision. The second alleges infringement of Article 15(2) of Regulation No 17 on the ground

that its participation in the agreements did not justify imposing a fine which should, in any event, be reduced. The third plea alleges infringement of Article 190 of the EEC Treaty.

Infringement of Article 85(1) of the Treaty

Arguments of the parties

17 The applicant claims essentially that the Commission has infringed Article 85(1) of the Treaty by taking the view that the applicant's participation in the agreements made between the producers of welded steel mesh amounted to an infringement of that provision. It had been obliged to endorse pre-existing agreements made between the largest producers of welded steel mesh, since this was for it the only means of penetrating the French market, on which it had previously not been present. It hoped that in that way it would have information which was indispensable for the conquest of that market.

18 It states that, because of its very small size on the market, it could not have had the slightest influence on the agreements concluded at the instigation of the large producers and that it therefore had to accept their decisions passively.

19 The applicant adds that, again because of its size, its participation in the agreements could also not have had any influence on competition or on trade between Member States. As proof of this, it submits in particular that it never achieved the unduly large quota allocated to it on the French market, which was only a theoretical quota.

20 It contests point 162 of the Decision, according to which 'the effects of participation in the agreements are to be assessed, not individually for each of the participating companies, but in the wider context of the overall agreements concluded by all participants, including the arrangements made with respect to the other national and regional markets (Benelux and Germany). As a result of the reciprocal obligations entered into with the producers from those markets, the conduct of even a relatively small operator gains in significance'. It argues that such reasoning cannot be applicable to it, since there can be no question of reciprocity on its part, as the Commission only complains that it participated in an arrangement on the French market alone. It also considers that such an overall approach is unacceptable, because the Commission has to take into consideration the individual involvement of each undertaking.

21 In reply the Commission states that the applicant's arguments are, in all essential respects, irrelevant with regard to the finding of the infringement. They were, however, taken into account when determining the amount of the fine in terms of the seriousness of the infringement.

22 Moreover, the Commission considers that the applicant's argument concerning its small size on the market is based on an error of law, since the relevant question is not whether the applicant's participation in the agreements was capable of restricting competition but whether the agreements, in which it admits having participated, could have restricted competition (judgment of the Court of First Instance in Case T-6/89 *Enichem Anic* v *Commission* [1991] ECR II-1623, paragraph 216).

Findings of the Court

23 The Court first of all notes that the applicant has admitted, in the claims which it has formulated, to being a party to the agreements between producers of welded steel mesh and that it does not dispute the object of those agreements, namely to fix prices and quotas.

24 Article 85(1) of the Treaty prohibits, as incompatible with the common market, all agreements between undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions or share markets or sources of supply.

25 It follows from the wording of that provision that the only relevant questions are whether the agreements to which the applicant was a party with other undertakings had as their object or effect the restriction of competition and whether they might have affected trade between Member States. Consequently, the question whether the applicant's own participation in those agreements could, notwithstanding its small size, restrict competition or affect trade between Member States is irrelevant (judgment in *Enichem Anic* v *Commission*, cited above, paragraphs 216 and 224).

26 The applicant does not dispute that the agreements to which it was a party had as their object or effect the restriction of competition, or that they were capable of affecting trade between Member States, which is demonstrated by the numerous documents relating to the meetings in which the producers from various Member States took part (see in particular points 32 to 35, 53 and 54 of the Decision) and by the fact that the applicant accepts that it 'adapted itself to the arrangements' and behaved 'in an "orthodox" manner in the context of the arrangements'. The applicant's argument regarding the possibly theoretical nature of its quota does not invalidate that reasoning.

27 Article 85(1) of the Treaty does not require that the restrictions of competition which have been found have in fact appreciably affected trade between Member

States, but merely requires that it be established that those agreements are capable of having that effect (judgment of the Court of Justice in Case 19/77 *Miller* v *Commission* [1978] ECR 131, paragraph 15).

28 It follows that, as is found in the Decision, by being a party to agreements which had as their object the restriction of competition within the common market and which might have affected trade between Member States, the applicant infringed Article 85(1) of the Treaty.

29 The plea must therefore be rejected.

Infringement of Article 15(2) of Regulation No 17

30 This plea consists of three parts. The first alleges lack of intention or negligence on the part of the applicant; the second refers to the limited role which the applicant played and the third refers to the principle of equality of treatment.

A — *Lack of intention or negligence on the part of the applicant*

Arguments of the parties

31 The applicant claims that it cannot be criticized for having acted intentionally or negligently, since it took part in the agreements in the firm belief that they satisfied

the requirements of Article 85(3) of the Treaty. The applicant was convinced that those agreements, in so far as they concerned it, were solely intended to bring about a better distribution of economic resources and did not aim to impose restrictions of any kind on the free movement of goods, *a fortiori* since it had become a party to them in order to be able to penetrate the French market. That belief was reinforced by the fact that Articles 2595 et seq. of the Italian Civil Code authorized, subject to certain conditions, agreements intended to ensure better distribution of national resources and to monitor developments in competition.

32 It adds that its good faith is confirmed by the fact that it never considered the documents in its possession regarding the agreements in question to be 'confidential', but always submitted them spontaneously to the Commission.

33 The Commission contends that it is not necessary that an undertaking be aware that it is committing an infringement of Article 85 for that infringement to be punishable by a fine (judgment in *Miller* v *Commission*, cited above).

34 It adds that it is apparent from the case-law of the Court of Justice that the reference to the Italian legislation is not relevant in this case (judgment in Case C-277/87 *Sandoz Prodotti Farmaceutici* v *Commission* [1990] ECR I-45).

35 Finally, the Commission argues that the applicant could not suppose that the agreements in question could benefit from an exemption under Article 85(3), since they had not been notified, despite the fact that they were not exempt from notification under Article 4(2) of Regulation No 17.

Findings of the Court

36 The Court points out that, for an infringement to be regarded as having been committed intentionally, it is not necessary for an undertaking to have been aware that it was infringing the competition rules laid down in the Treaty, but it is sufficient that it could not have been unaware that the object of its conduct was the restriction of competition (judgments of the Court of Justice in Case 246/86 *Belasco* v *Commission* [1989] ECR 2117, paragraph 41, and Case 279/87 *Tipp-Ex* v *Commission* [1990] ECR I-261; judgment of the Court of First Instance in Case T-15/89 *Chemie Linz* v *Commission* [1992] ECR II-1275, paragraph 350).

37 In the present case, having regard to the intrinsic seriousness and obvious nature of the infringement of Article 85(1) of the Treaty, and in particular subparagraphs (a) and (c) thereof, the Court considers that the applicant cannot claim that it did not act negligently or intentionally. Nor can it avail itself of its firm belief that the agreements to which it was a party ought to have benefited from an exemption under Article 85(3) of the Treaty. It could not have failed to have been aware either of the fact that to be able to benefit from an exemption those agreements had to be notified to the Commission, or that those agreements could not benefit from the exemption from notification provided for in Article 4(2) of Regulation No 17.

38 With regard to the argument based on the provisions of the Italian Civil Code, it must also be stated that a national law cannot justify conduct which is prohibited by the Treaty. Any mistake by the applicant on that point cannot alter the fact that it ought to have been aware that its conduct restricted competition, in accordance with the case-law of the Court of Justice, cited above.

39 The complaint cannot therefore be upheld.

B — *Limited nature of the role played by the applicant*

Arguments of the parties

40 The applicant states that the documents referred to by the Commission at points 31 to 45 and 51 to 70 of the Decision show that it never took the initiative with respect to the agreements and that it only became a party to existing agreements between the large European producers, since that was the only means of penetrating the French market.

41 It considers that the Commission ought to have taken account of that limited, passive role and have treated it differently from the large undertakings which had taken the initiative with respect to those agreements.

42 In reply the Commission states that it has neither acknowledged that the applicant played an 'insignificant' role in the arrangements nor alleged that it took 'the initiative with respect to the agreements'. However, it states that the applicant played an active role in the negotiation, conclusion and execution of the arrangements, as is proved by the documents referred to at points 31 to 45 and 51 to 70 of the Decision.

43 It contends that the numerous factors of which it took account in order to fix the amount of the fines included the size of each of the undertakings, the extent to which it was involved, the duration of its involvement and the role it played during the negotiations for the arrangements, as well as its participation in the implementation of those arrangements.

44 Finally, the Commission maintains that the fact of having become a party to the agreements in force in order to be able to export to France does not in any way constitute a mitigating factor for the applicant, and still less a reason for exemption.

Findings of the Court

45 The Court finds that the applicant has adduced no evidence to refute the evidence produced by the Commission showing the active role which it played in the arrangements.

46 The significance of that role is apparent in particular from the documents relating to the preparation and outcome of the meeting held in Paris on 1 April 1981. Amongst those documents are a telex sent on 25 March 1981 by the applicant to Italmet (point 32 of the Decision), a telex sent on 9 April 1981 to the applicant by Italmet (point 33 of the Decision), a memorandum dated 9 April 1981 by Mr Marie of Tréfilunion (point 34 of the Decision), and a table from Tréfilunion headed 'Imports of welded mesh from Italy' (point 35 of the Decision). Those documents show that the applicant took an active part in the preparation and conclusion of the price and quota agreements made at the meeting of 1 April 1981 by the French, Italian and Belgian producers with respect to the following year.

47 Furthermore, the role played by the applicant in the implementation of the arrangements is also illustrated by the telex which it sent on 14 July 1993 to Italmet (point 57 of the Decision). In that telex the applicant authorized Italmet to sell standard mesh 'on the terms of FF 400 rebate on the Tréfilunion list prices, for delivery in the second half of September, unless, that is, you have sold the remainder of the production quota'.

48 Furthermore, the Court considers that the Commission stated with good reason at point 203 of the Decision that, when fixing the individual fines, it took into account the degree and duration of the involvement of the undertakings concerned, together with their financial and economic position.

49 It follows that the complaint must be rejected.

C — *Breach of the principle of equality of treatment*

Arguments of the parties

50 The applicant claims that the fine imposed on it is out of proportion to the fines imposed on ILRO and Ferriere Nord.

51 It states that the fine imposed on ILRO represents only 0.05% of its annual turnover in welded steel mesh whereas the applicant's fine represented 1.5% of its turnover. It argues that ILRO's participation in the infringement was much more substantial than its own, since ILRO was an instigator of the agreements, exported more welded steel mesh in two months than the applicant did in five years and derived considerable profit from the agreements, unlike the applicant. It adds in its reply that the Commission cannot justify that difference in treatment either by referring to the unlawful penalties imposed on ILRO by the French authorities, since they were annulled by an administrative court, or by referring to ILRO's disregard of the agreements, since otherwise that undertaking, which has had its fine reduced and profited from its failure to comply with the agreements, will be doubly favoured.

52 The applicant also claims that the fine imposed on Ferriere Nord represents only 1% of its turnover, although there is nothing which could justify that difference in treatment.

53 In reply the Commission states that the difference in treatment noted between ILRO and the applicant is due to the following factors: ILRO's non-compliance with the agreements made, which contributed to the breakdown of the arrangements, the fact that the Commission was unable to establish that ILRO encouraged the extension of the 1981/1982 arrangements, the fact that ILRO assisted the Commission in its investigations and collaborated, with decisive effect, in them, the fact that it had been the subject of sanctions by the French authorities and, finally, the fact that its participation in the arrangements ceased in May 1984 (see points 44, 64, 65, 66 and 204 of the Decision). Those factors should be compared with the applicant's scrupulous compliance with the agreements.

54 It adds that the taking into account, as a mitigating factor, of the non-compliance with the anti-competitive agreements is based on the notion that it is competition which should be protected and that non-compliance with anti-competitive agreements contributes doubly to the protection of competition by reducing the effects of the agreements and contributing to their breakdown.

55 The Commission also argues that it is irrelevant that it was only at the hearing that it explained that it was ILRO to which it referred at point 204 of the Decision, which states that 'one undertaking also gave the Commission some assistance in its investigations'. The Court of First Instance allowed that approach in Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 358).

56 Finally, it states that the relative difference in treatment between the applicant and Ferriere Nord is the result of the fact that the latter exports a much smaller proportion of its production to France than the applicant.

Findings of the Court

57 The Court points out that the Court of Justice and itself have consistently held that, in order for there to be a breach of the principle of equal treatment, comparable situations must have been treated differently (*Hercules Chemicals* v *Commission*, cited above, paragraph 295).

58 In the present case, the differences between the situation of ILRO and that of the applicant, as shown by the Commission, are sufficient to justify the difference in treatment between those two undertakings.

59 Whilst it is true that, when presented as a percentage of turnover in the relevant product (0.05% as against 1.5%), the difference in treatment appears larger than when it is presented in terms of total figures (ECU 13 000 as against ECU 20 000), the Court nevertheless considers that the applicant cannot claim that the principle of equality of treatment has been infringed. Fines constitute an instrument of the Commission's competition policy. That is why it must be allowed a margin of discretion when fixing their amount, in order that it may channel the conduct of undertakings towards observance of the competition rules.

60 From that point of view, the Commission appreciably reduced the amount of the fine imposed on ILRO because its conduct reduced the harm done to competition by the infringement in which it participated, in particular because it did not comply with the price and quota agreements concluded, and it cooperated in the procedure leading to the establishment of the infringement, which enabled the Commission to put an end to it. For such a reduction in the amount of the fine to be capable of having the desired effects, it must be possible for it to be sufficiently large in absolute terms. In the case of the applicant, there are no such mitigating factors.

61 With regard to Ferriere Nord, the Court considers that the difference in the percentage of total production exported by the two undertakings to the French market justifies the imposition of fines of a different level.

62 The applicant's complaint must therefore be rejected.

Infringement of Article 190 of the Treaty

Arguments of the parties

63 The applicant claims that the Decision does not sufficiently state the reasons upon which it is based with regard to the Italian producers. In contrast with its approach with respect to the other undertakings involved on the French market, the Commission devotes to the Italian producers only three lines of insignificant comments which are not based on any investigation.

64 In reply the Commission states that it was only required to summarize the relevant or significant characteristics of the various undertakings in relation to the fine imposed, in so far as that was necessary to place in context or determine each undertaking's role in the arrangements. It considers that it has given a sufficiently precise description of the situation of the Italian undertakings and has reproduced its essential characteristics. It adds that their situation was simpler since there was no complaint that they had participated in arrangements relating to the Italian market.

Findings of the Court

65 The Court points out that it has been consistently held that the purpose of the obligation to state the reasons on which a decision adversely affecting a person is based is to enable the Community judicature to exercise its power of review as to the legality of those decisions and to provide the party concerned with the necessary information so that it may establish whether they are well founded (judgments of the Court of First Instance in Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraph 42, and Case T-7/92 *Asia Motor France and Others* v *Commission* [1993] ECR II-669, paragraph 30). Consequently, the Commission is required to mention the matters of fact and law and the considerations which led it to adopt a decision applying the competition rules.

66 In the present case the applicant adopts a reading of the Decision which takes one of its parts out of context, whereas, since the Decision constitutes a single whole, each of its parts must be read in the light of the others. The Court considers that the Decision, taken as a whole, provides those concerned with the information needed to establish whether it is well founded, and enables the Court to exercise its power of review as to its legality.

67 Furthermore, it should be pointed out, as the Commission has done, that the brevity of the passages devoted to the applicant in the Decision is attributable to the fact that, unlike the other undertakings, the Italian undertakings took part in the arrangements only in one market.

68 Consequently, the complaint must be rejected.

69 Having regard to the foregoing, the Court considers that the fine of ECU 20 000 imposed on the applicant should neither be annulled nor reduced.

70 The application must therefore be dismissed.

Costs

71 Under Article 87 of the Rules of Procedure, 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 applicant has failed in its submissions and the Commission has applied for costs to be awarded against the applicant, the latter must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Kirschner Bellamy Vesterdorf

García-Valdecasas Lenaerts

Delivered in open court in Luxembourg on 6 April 1995.

H. Jung H. Kirschner

Registrar President

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