

ORDER OF THE COURT OF FIRST INSTANCE  
(Third Chamber, Extended Composition)

17 April 1996 \*

In Case T-2/93 (92),

**Société Anonyme à Participation Ouvrière Compagnie Nationale Air France**, a company incorporated under French law, established in Paris, represented by Eduard Marissens, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14a Rue des Bains,

applicant,

v

**Commission of the European Communities**, represented by Francisco Enrique González-Díaz, of its Legal Service, and Géraud de Bergues, a national civil servant on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented by John D. Colahan, of the Treasury Solicitor's Department, acting as Agent, assisted by

\* Language of the case: French.

Christopher Vajda, of the Bar of England and Wales, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

TAT SA, a company incorporated under French law, established at Tours (France), represented by Antoine Winckler, of the Paris Bar, and Romano Subiotto, Solicitor, with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 Côte d'Eich,

and

British Airways plc, a company incorporated under English law, established at Hounslow (United Kingdom), represented by William Allan and James E. Flynn, Solicitors, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe,

interveners,

APPLICATION for taxation of the costs payable by the applicant to the intervener British Airways plc pursuant to the judgment of the Court of 19 May 1994 in Case T-2/93 *Air France v Commission* [1994] ECR II-323,

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

composed of: C. P. Briët, President, B. Vesterdorf, P. Lindh, A. Potocki and J. D. Cooke, Judges,

Registrar: H. Jung,

makes the following

## Order

### Procedure

- 1 By application lodged at the Court Registry on 5 January 1993 the Société Anonyme à Participation Ouvrière Compagnie Nationale Air France ('Air France') brought an action pursuant to Article 173 of the EEC Treaty for annulment of the decision of the Commission of 27 November 1992 (IV/M. 259 — British Airways/TAT) relating to a proceeding under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (corrected version published in OJ 1990 L 257, p. 13). The concentration in question concerned the acquisition by British Airways of 49.9% of the share capital of TAT European Airlines, with the remaining 50.1% continuing to be held by TAT SA.
- 2 By order of 15 July 1993, the Court granted leave to the United Kingdom, British Airways and TAT SA to intervene in the case in support of the Commission.
- 3 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.
- 4 The parties presented oral argument and answered questions from the Court at the hearing on 23 February 1994.

- 5 By judgment of 19 May 1994, the Court dismissed the action and ordered Air France to bear its own costs and to pay those of, *inter alia*, the intervener British Airways.
- 6 By letter to Air France's adviser of 31 July 1995, the lawyers representing British Airways requested payment by Air France of the total sum of UKL 54 674.98. That sum is made up of disbursements (costs of an address for service, translation expenses, travel expenses, telephone calls, fax communications, photocopies, etc. totalling UKL 7 820.47 and fees amounting to UKL 46 854.57. No reply was given to that letter prior to the initiation of the present application.
- 7 In those circumstances, by application lodged at the Court Registry on 20 November 1995, British Airways applied for the costs to be taxed, requesting the Court to fix its recoverable costs at UKL 54 674.98.
- 8 On 8 January 1996, Air France lodged its observations on the application for taxation. No observations have been lodged by the other parties to the proceedings.

### Admissibility

- 9 Air France contends that the application for taxation of costs is inadmissible.
- 10 In support of that contention, Air France points out, first, that an application for taxation of costs must be made within a reasonable period, such that the party to whom costs are payable could not be assumed to have waived its rights (order of

the Court of Justice in Case 126/76 *Dietz v Commission* [1979] ECR 2131). Because 14 months elapsed between delivery of the judgment of the Court of First Instance and the recovery demand of 31 July 1995, for which no explanation has been given, it is entitled to consider that British Airways has waived its right to recover its costs. It adds that the costs involved consist of fees and disbursements the amount of which British Airways knew even before the Court delivered its judgment.

- 11 Air France further argues that the application for taxation must be regarded as premature since, according to Article 92 of the Rules of Procedure, the Court may determine the costs payable only 'if there is a dispute concerning the costs to be recovered'. The period of three months which elapsed following the recovery demand of 31 July 1995 was not long enough to warrant the conclusion that Air France disputed the amount claimed by British Airways.
- 12 The Court notes that the judgment in the main proceedings was delivered on 19 May 1994 and that the period allowed for bringing an appeal, including an extension to take account of distance, therefore expired on 25 July 1994. Although the initiation of appeal proceedings does not have suspensory effect, the Court regards it as normal for a party entitled to costs to await the expiration of the time-limit for lodging an appeal before submitting its demand for reimbursement of costs to the unsuccessful party. Moreover, the Court considers that the further period of one year which elapsed before British Airways, by letter of 31 July 1995, submitted its claim for costs to Air France does not exceed the reasonable period beyond which it might justifiably be regarded as having waived its right to recover its costs. Consequently, since the present application was lodged a short time after the claim for reimbursement was submitted to Air France by letter of 31 July 1995, the first plea of inadmissibility raised by Air France must be rejected.
- 13 As to the argument that the present application is premature, it is apparent from its observations that Air France disputes the sum which British Airways is seeking to recover. In those circumstances, even assuming that the time which elapsed between the sending of the letter of 31 July 1995 and the submission of this application was

not long enough to allow Air France to state whether it disputed the amount claimed, it cannot in any event have any interest in pleading that the application is premature.

- 14 The application is therefore admissible.

### Substance

- 15 British Airways requests the Court to confirm that the full amount which it demanded in its letter sent to Air France's adviser on 31 July 1995 is recoverable.
- 16 In support of its claim, British Airways points out, first, that the main proceedings involved matters in which it had a substantial financial interest, justifying an extensive analysis of the issues raised and detailed work on its statement in intervention. Moreover, the main proceedings involved difficult and novel questions of Community law, both as to the admissibility of the action and as to its merits.
- 17 British Airways maintains, with reference to the order of the Court of 8 March 1995 in Case T-2/93 (92) *Air France v Commission* [1995] ECR II-533, concerning the costs recoverable by the intervener TAT SA, that the complexity of the case also justified substantial fees.
- 18 As regards the disbursements incurred by it, British Airways observes that these comprise, to a considerable extent, translation costs. It points out that it is an English company, that the language habitually used by its lawyers is also English

and that the pre-litigation procedure took place in English. As far as the written procedure is concerned, the Court's order of 15 July 1993 refusing to allow derogation from the rule requiring it to use the language of the case meant that it was obliged to incur translation costs.

- 19 Air France maintains that British Airways is entitled to recover its legal fees only to the extent to which they relate to aspects of the case on which Air France has been unsuccessful. However, Air France succeeded on the issue of the admissibility of the action and British Airways' application for taxation should therefore be regarded as unfounded to the extent of one-half of the fees.
- 20 Furthermore, as regards the disbursements, Air France observes that these comprise, to a considerable extent, translation costs. To allow British Airways to recover its translation costs would, however, be tantamount to a disregard by the Court of its own order of 15 July 1993, cited above, refusing British Airways leave to produce documents in English. It maintains that British Airways is therefore entitled only to reimbursement of costs of travelling to Luxembourg and, possibly, of its telephone calls.
- 21 The Court notes, as a preliminary point, that it is settled case-law that, in the absence of Community provisions laying down fee scales, it must assess, in its discretion, the relevant features of the case, taking into account the purpose and nature of the proceedings; their significance from the point of view of Community law; as well as the difficulties presented by the case, the amount of work generated by the case for the agents or advisers involved and the financial interest which the parties had in the proceedings, and that, in so doing, it is not obliged to take account of any national scales of lawyers' fees or any agreement concluded in that regard between the party concerned and his agents or advisers (order of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727 and order of the Court of First Instance in *Air France v Commission*, cited above).

- 22 As British Airways itself pointed out in its application, its lawyers were very familiar with the matters in dispute, since they had advised British Airways at the time of its investment in TAT European Airlines and had acted in the proceeding before the Commission relating to that investment.
- 23 Despite British Airways' prior knowledge of the case, which facilitated the work done by its advisers, the Court finds that the dispute was significant from the point of view of Community law and that it necessitated research into novel and complex issues which were both economic and legal in nature. Moreover, both in its statement in intervention and at the hearing, British Airways' observations were relevant and distinct from those raised by the other parties to the proceedings.
- 24 Furthermore, the Court considers that the nature of the dispute and the financial interests which the parties had in the proceedings are such as to justify substantial fees (see, to the same effect, the abovementioned order of the Court of 8 March 1995 in *Air France v Commission*, paragraph 23).
- 25 In addition, the Court considers that the fact that it did not accept British Airways' contentions concerning the admissibility of Case T-2/93 is irrelevant for the purposes of determining the amount of the costs, since the judgment delivered in Case T-2/93 is now *res judicata* and Air France has been ordered to pay all British Airways' costs. Consequently, the mere fact that British Airways' submissions on that point were not accepted cannot preclude it from recovering the costs relating to the work done on that issue.
- 26 As regards the translation costs incurred by British Airways as intervener, the Court considers that such costs do not generally constitute expenses necessarily incurred for the purpose of the proceedings within the meaning of Article 91(b) of the Rules of Procedure. However, as the Court has found in paragraphs 22 and 23 above, the fact that British Airways was represented before the Court by the same lawyers as those who represented it in the proceeding before the Commission

facilitated the work done by those lawyers and reduced the time which they had to spend on the case. In those circumstances, the Court considers that the translation expenses incurred by British Airways are recoverable in accordance with Article 91(b) of the Rules of Procedure.

27 In view of the foregoing, it is appropriate to fix the sum of the total costs payable by Air France to British Airways, inclusive of the expenses incurred by British Airways' lawyers, at UKL 29 000.

28 Since the Court has taken account, in fixing the recoverable costs, of all the circumstances of the case up to the date of its decision, there is no need to give a separate ruling on the costs incurred by the parties for the purposes of these ancillary proceedings.

On those grounds,

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

hereby orders:

The total costs payable by the applicant to the intervener British Airways plc are fixed at UKL 29 000.

Luxembourg, 17 April 1996.

H. Jung

C. P. Briët

Registrar

President