

ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
8 March 1995 *

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 Gonzáles Díaz, of the 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 Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

* Language of the case: French.

United Kingdom of Great Britain and Northern Ireland, represented by John D. Colahan, of the Treasury Solicitor's Department, acting as Agent, assisted by 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 TAT SA 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
(Second Chamber, Extended Composition),

composed of: B. Vesterdorf, President, D. P. M. Barrington, A. Saggio,
H. Kirschner and A. Kalogeropoulos, 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 (hereinafter 'Air France') brought an action pursuant to Article 173 of the EEC Treaty for the annulment of the decision of the Commission of 27 November 1992 (IV/M. 259 — British Airways/TAT, hereinafter 'the decision') relating to a proceeding under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (in the corrected version published in Official Journal 1990 L 257, p. 13, hereinafter 'the Regulation'). 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 (hereinafter 'TAT').

- 2 By order of 15 July 1993, the Court granted leave to the United Kingdom, British Airways and TAT to intervene in the case in support of the form of order sought by 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 TAT.

- 6 By letter to Air France of 1 June 1994, the lawyers representing TAT requested the payment by Air France of the total sum of FF 328 000. That sum is made up of disbursements (telephone calls, fax communications, production of documents, photocopies, postage, the cost of having an address for service and travel expenses) totalling FF 19 908 and fees amounting to FF 308 092.

- 7 In those circumstances, by application lodged at the Court Registry on 4 July 1994, Air France applied for the costs to be taxed, requesting the Court to fix TAT's recoverable costs in the sum of FF 65 600.

8 On 5 September 1994, TAT lodged its observations on the application for taxation. No observations have been lodged by the other parties to the dispute.

Substance

9 Air France puts forward the following arguments in support of its application for taxation:

- as regards the admissibility of the application, TAT's statement in intervention was restricted to invoking United States case-law, the contents of which it merely reproduced;
- as to the substance of the case, TAT merely adopted the Commission's arguments;
- during the oral procedure, TAT made submissions of a purely political nature which were extraneous to the matters under consideration, since they were limited to questions of State aid;
- in the circumstances, there was no need for TAT to be represented by two lawyers.

10 Air France further maintains that the amount of the disbursements also appears surprisingly high in relation to the objective requirements of TAT's intervention.

11 In reply to Air France's arguments, TAT provides a brief summary of the contents of its statement in intervention and of the submissions made by it during the oral procedure. TAT contests Air France's allegations as to the irrelevant nature of those submissions. It contends that the application for taxation made by Air France

merely represents further proof of that party's enduring resolve to resist the consequences of the applicable law and the decisions of the Community judicature.

12 As regards the contents of its statement in intervention, TAT further observes that the admissibility of actions brought by third party competitors against Commission decisions on concentrations between undertakings raised novel questions justifying an analysis of the United States law on that point.

13 As to the amount of work done, TAT asserts that the case required extensive research into the works of academic lawyers and economists, an analysis of all the documents in the case and continuous liaison and numerous meetings with the Commission and British Airways. In those circumstances, TAT was justified in arranging to be represented both by a partner in a law firm and, at a lower charging rate, by that partner's assistant, in order that the work could be done more efficiently. Moreover, the total time charged by the law firm for preparing the statement in intervention and representing TAT at the hearing amounted to approximately 168 hours.

14 TAT further maintains that its financial interest in the dispute was such as to justify substantial fees. TAT refers in that regard to the German scale of lawyers' fees, which, had it been applied, would have resulted in fees significantly higher than those sought by TAT's lawyers.

15 Lastly, TAT points out that the disbursements charged represent the expenses incurred in the context of its intervention. In conclusion, it therefore requests the Court to fix the amount of the costs in accordance with the sums set out in the letter sent to Air France on 1 July 1994 by the law firm representing TAT.

16 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 make an unfettered assessment of the facts 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 in relation to fees concluded 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 Joined Cases T-18/89 and T-24/89 *Tagaras v Court of Justice* [1992] ECR II-153, paragraph 13).

17 In the present case, the Court finds that the proceedings necessitated an analysis of economic and legal questions and an examination of complex facts. The nature of the dispute was consequently such as to justify the representation of TAT both by a partner in a law firm and by his assistant. The Court is further of the view that those considerations also apply in relation to the representation of TAT in the oral procedure.

18 As regards the contents of TAT's statement in intervention, the Court finds, contrary to the contentions of Air France, that TAT did not merely invoke the relevant United States case-law in support of its arguments as to the inadmissibility of the action. The Court considers, moreover, that the brief analysis of United States law contained in the statement in intervention cannot be regarded, in the circumstances of the case, as superfluous.

- 19 Furthermore, although TAT's statement in intervention dealt principally with the question of the admissibility of the action, it also put forward relevant observations of its own on the substance of the case which were different from those appearing in the Commission's pleadings.
- 20 The Court further finds that the allegations made by Air France as to the course of the oral procedure are unfounded. Although it is true that some of the remarks made by TAT during the oral procedure may be described as 'political' in nature, those remarks formed only part of TAT's observations.
- 21 Accordingly, the Court does not consider it appropriate to reduce the amount of the fees claimed by TAT's lawyers, as set out in the abovementioned letter of 1 June 1994; given the nature of the dispute, those fees appear reasonable.
- 22 However, whilst Air France's specific objections regarding the costs sought by TAT cannot be upheld, the Court is obliged, as noted above, to make an unfettered assessment of the extent to which the fees payable by a party to its own lawyers may be recovered from the party against whom a costs order is made.
- 23 The Court considers in that regard that the nature of the dispute and the financial interest which the parties had in the proceedings are such as to justify substantial fees.

- 24 As regards the significance of the case from the point of view of Community law, the difficulties presented by the dispute and the amount of work generated by the proceedings for TAT's lawyers, the Court finds that TAT's statement in intervention was concerned to a great extent — as is apparent from its contents — with the question of the admissibility of actions brought by third party competitors against Commission decisions on concentrations between undertakings; that question necessitated significant research on the part of TAT's lawyers.
- 25 In view of the foregoing, it is appropriate to fix the total costs payable by Air France to TAT, inclusive of the expenses incurred by TAT's lawyers, in the sum of FF 220 000.
- 26 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 (Second Chamber, Extended Composition)

hereby orders:

The total costs payable by the applicant to the intervener TAT SA are fixed in the sum of FF 220 000.

Luxembourg, 8 March 1995.

H. Jung
Registrar

B. Vesterdorf
President