JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

19 February 2004 *

In Joined Cases T-297/01 and T-298/01,

SIC — Sociedade Independente de Comunicação, SA, established in Carnaxide (Portugal), represented by C. Botelho Moniz and E. Maia Cadete,

applicant,

v

Commission of the European Communities, represented by J. de Sousa Fialho Lopes and J. Buendía Sierra, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration under Article 232 EC that the Commission has failed to fulfil its obligations under the EC Treaty by failing to adopt a decision in relation to the complaints lodged by the applicant on 30 July 1993, 22 October 1996 and 20 June 1997 against the Portuguese Republic for infringement of Article 87 EC, and by failing, in contravention of Article 233 EC and the

* Language of the case: Portuguese.

principle of sound administration, to take the measures to comply with the judgment of the Court of First Instance of 10 May 2000 in Case T-46/97 *SIC* v *Commission* [2000] ECR II-2125 and to initiate the formal review procedure under Article 88(2) EC,

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

composed of: V. Tiili, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges,
Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 13 February 2003,

gives the following

Judgment

Facts

1 RTP — Radiotelevisão Portuguesa, SA ('RTP'), is a limited liability company with public capital. It is the holder of the concession for the Portuguese public television service.

2 The applicant, SIC — Sociedade Independente de Communicação, SA, is a commercial company which runs one of the main private television channels in Portugal.

3 On 30 July 1993, the applicant made a complaint to the Commission ('the first complaint') concerning aid granted by the Portuguese Republic to RTP. In that complaint, the applicant challenged the grants paid by the Portuguese Republic to RTP in 1992 and 1993 by way of compensation for its public service obligations, amounts estimated at 6 200 million and 7 100 million Portuguese escudos (PTE) respectively. Apart from those grants, the applicant complained of exemptions from registration fees granted to RTP, and the system of investment aid. The applicant therefore requested the Commission to initiate the formal review procedure under Article [88](2) EC ('the formal review procedure') and to order the Portuguese Republic to suspend payment of those unnotified aid measures pending the adoption of a final decision.

4 By letter of 12 February 1994, the applicant supplemented the first complaint, alerting the Commission, first, to the Portuguese Government's authorisation for the rescheduling of a debt owed by RTP to the Segurança Social (the social security authority), estimated at PTE 2 000 million, together with waiver of interest on late payment, and, second, the purchase from RTP by the Portuguese Republic, at an inflated price, of the television broadcasting network Teledifusora de Portugal ('the TDP Broadcasting Network') and the grant to RTP of payment facilities, in respect of the fees for using that network, by the public body charged with managing it. Taking the view that these measures constituted State aid incompatible with the common market, the applicant requested that the formal review procedure be initiated in respect of those measures too.

5 On 14 April 1994, the applicant informed the Commission of the payment by the Portuguese Government to RTP, for the year 1994, of a compensatory payment for public service obligations of PTE 7 145 million.

6 By letter of 16 October 1996, received at the Commission on 22 October 1996, the applicant lodged a fresh complaint ('the second complaint') seeking a declaration that the grants by the Portuguese Republic to RTP for the period 1994 to 1996, by way of compensation for public service obligations, were incompatible with the common market on the same grounds as those set out in the first complaint. In the second complaint, the applicant also complained of the grant of new unnotified aid to RTP in 1994, resulting from an increase in RTP's capital subscribed to by the Portuguese Republic, and from the guarantee given by the State in connection with a bond issue by RTP. The applicant also complained of the conclusion between the Portuguese Ministry of Culture and RTP, in September 1996, of an agreement on the financing of RTP's cinema promotion activities and the approval by the Portuguese Government of a restructuring plan for RTP likely to involve the grant of substantial sums in aid. The applicant therefore requested the Commission to initiate the formal review procedure, and to order the Portuguese Republic to desist from granting that aid pending the adoption of a final decision.

7 On 6 January 1997, the applicant received a copy of the Commission's decision of 7 November 1996 addressed to the Portuguese Republic, concerning the financing of public television channels ('the decision of 7 November 1996'). That decision concerned the measures which were the subject of the first complaint and the grants paid to RTP for the years 1994 and 1995, which were the subject of the second complaint. In that decision, the Commission stated that none of those measures or grants constituted or gave rise to the payment of State aid.

8 By letter of 20 December 1996, the Commission informed the applicant that following the second complaint, it had requested the Portuguese authorities to provide information concerning certain facts alleged therein. The request for information concerned the increase in capital and the bond issue by RTP in 1994, the establishment of a restructuring plan for the period 1996-2000, and the conclusion of an agreement on the financing of RTP's cinema promotion activities. However, the Commission added that, as regards the grants paid to RTP during the period 1994-1996, they did not, in its view, constitute State aid falling within Article [87](1) EC for the reasons set out in the decision of 7 November 1996.

9 On 3 March 1997, the applicant brought an action before the Court of First Instance, registered under number T-46/97, for the annulment of the decision of 7 November 1996 and the Commission's decision contained in the letter of 20 December 1996. In response to a question by the Court of First Instance, the applicant stated that the action did not seek the annulment of the part of the decision of 7 November 1996 relating to the purchase from RTP by the Portuguese Republic of the TDP Television Broadcast Network for an allegedly excessive price and the part of the decision relating to the system of investment aid.

10 By letter of 18 June 1997, received by the Commission on 20 June 1997, the applicant lodged a third complaint ('the third complaint'), alleging that the licensing agreement concluded between RTP and the Portuguese Republic on 31 December 1996 and the decision, implementing that agreement, to pay RTP compensation of PTE 10 350 million for public service obligations for 1997 were incompatible with Article [87] EC. By that letter, the applicant requested the Commission to initiate the formal review procedure and to adopt interim measures.

11 Between July 1997 and January 2001, several letters were exchanged between the applicant and the Commission concerning the progress of the examination of the second and third complaints by the Commission.

12 In Case T-46/97 *SIC* v *Commission* [2000] ECR II-2125 ('the *SIC* judgment'), the Court of First Instance annulled the decision of 7 November 1996 in so far as it concerned the measures taken by the Portuguese Republic in favour of RTP, consisting in grants paid between 1992 and 1995 by way of compensation for public service obligations, tax exemptions, payment facilities for use of the TDP television broadcasting network and the rescheduling of a debt to the Segurança Social, together with waiver of interest for late payment. However, the Court of First Instance dismissed the action as inadmissible in so far as it was directed against the Commission's letter of 20 December 1996, on the ground that that letter was purely by way of information and did not constitute a reviewable act.

13 By letter of 3 January 2001, the applicant requested the Commission to notify it of the measures that it proposed to take in order to fully comply with the *SIC* judgment.

14 By three letters of 26 July 2001, the applicant sent to the Commission, in accordance with the second paragraph of Article 232 EC, three requests to act concerning the first, second and third complaints. The applicant, in its request to act with respect to the first complaint, requested the Commission, in accordance with Article 233 EC, to take the measures to comply with the *SIC* judgment and to initiate the formal review procedure with respect to the grants paid from 1992 to 1995 by the Portuguese Republic to RTP and the measures taken in favour of RTP consisting in tax exemptions and payment facilities for use of the TDP television broadcasting network and the rescheduling of a debt to the Segurança Social, together with waiver of interest for late payment. In its requests to act regarding the second and third complaints, the applicant asked the Commission to adopt a position on those complaints, confirming that they were well founded, and, accordingly, to initiate the formal review procedure with respect to the grant paid by the Portuguese Republic to RTP in 1996 (second complaint) and the licensing agreement concluded on 31 December 1996 between the Portuguese Republic and RTP and the aid granted to RTP under that agreement (third complaint).

15 By letter of 24 October 2001, the Commission informed the applicant that the internal measures to implement the *SIC* judgment and the preparatory steps to decide the action to take on the second and third complaints were being finalised.

16 By request of 7 November 2001, notified to the Portuguese Permanent Representative to the European Union ('the request of 7 November 2001'), the Commission asked the Portuguese Government, on the basis of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1), to provide information in order to determine whether the grants paid by the Portuguese Republic to RTP for the period 1992 to 1998, and also, in substance, RTP's financing scheme set up by the licensing agreement of 31 December 1996, were to be classified as existing or new aid. Those grants, except that grant paid in 1998, which is not referred to in the applicant's complaints, and the financing scheme are, together, referred to hereinafter 'the Grants'.

17 On 13 November 2001, the Commission also adopted a decision to initiate the formal review procedure with respect to measures other than those mentioned in the preceding paragraph ('the Decision of 13 November 2001'). That decision was the subject of a press release on the day of its adoption, and it was notified to the Portuguese Permanent Representative on 15 November 2001.

18 Among the measures referred to by the Decision of 13 November 2001 were, first, three measures complained of by the applicant in the first complaint, which were the subject of the Decision of 7 November 1996, which was subsequently annulled by the *SIC* judgment, namely the tax exemptions, the payment facilities for the licences to use the TDP Television Broadcasting Network and the rescheduling of a debt to the Segurança Social, together with waiver of interest for late payment and, second, four measures complained of by the applicant in the second complaint, namely the increase in RTP's capital which took place in

1994, the guarantee given by the State in connection with a bond issue in the same year by RTP, the conclusion between the Portuguese Ministry of Culture and RTP in September 1996 of an agreement on the financing of RTP's cinema promotion and, finally, the approval by the Portuguese Government of a restructuring plan for RTP for the period 1996-2000. Those measures, taken together, are referred to as the 'ad hoc measures'.

19 The request of 7 November 2001 and the decision of 13 November 2001 were published in the *Official Journal of the European Communities* on 23 April 2002 (OJ 2002 C 98, p. 2) and 9 April 2002 (OJ 2002 C 85, p. 9) respectively.

Procedure and forms of order sought

20 By applications lodged at the Registry of the Court of First Instance on 6 December 2001, the applicant brought the present actions, registered under numbers T-297/01 and T-298/01 respectively.

21 By letter of 8 January 2002, the Commission sent the applicant copies of the request of 7 November 2001 and the Decision of 13 November 2001.

22 By order of the President of the Fourth Chamber (Extended Composition) of the Court of First Instance of 15 January 2003, Cases T-297/01 and T-298/01 were joined for the purposes of the oral procedure and the judgment, pursuant to Article 50 of the Rules of Procedure of the Court of First Instance.

23 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber, Extended Composition) decided to initiate the oral procedure and, as measures of organisation of procedure, put a written question to the Commission. The Commission replied to that question within the period prescribed, by letter of 17 January 2003.

24 The parties presented oral argument and answered questions put to them by the Court at the hearing on 13 February 2003.

25 In Case T-297/01 the applicant claims that the Court should:

— declare that the Commission has not defined its position on the applicant's requests to act within the period of two months laid down by Article 232 EC;

— declare that the measures communicated to the applicant after the institution of the present action do not ensure full compliance with the *SIC* judgment and the obligation to rule on the State aid complained of in the first and second complaints as far as relates to the obligation to initiate the formal review procedure with respect to the grants paid by the Portuguese Republic to RTP from 1992 to 1995;

— accordingly, declare that there remains an unlawful failure to act, attributable to the Commission, concerning the initiation of the formal review procedure with respect to the measures referred to above;

— order the Commission to pay the costs.

26 In Case T-298/01 the applicant claims that the Court should:

— declare that the Commission failed to define its position on the applicant's requests to act, within the two-month period laid down by Article 232 EC;

— declare that the measures which were communicated to the applicant after the institution of the present action do not ensure compliance with the duty to rule on the State aid complained of in the second and third complaints, in so far as relates to the duty to initiate the formal review procedure with respect to RTP's system of financing established in the licensing agreement of 31 December 1996 and to the grants paid by the Portuguese Republic to RTP in 1996 and 1997;

— accordingly, declare that there remains an unlawful failure to act, attributable to the Commission, concerning the initiation of the formal review procedure with respect to the measures referred to above;

— order the Commission to pay the costs.

27 In Case T-297/01 and T-298/01 the Commission contends that the Court should:

— dismiss the applications as devoid of purpose and thus unfounded;

— order the applicant to pay the costs.

28 By letter of 30 September 2003 ('the letter of 30 September 2003'), the Commission notified the Permanent Representative of Portugal to the European Union of a request for observations, in accordance with Article 17(2) of Regulation No 659/1999, concerning a system of annual compensation evidenced, in particular, by the Grants.

29 By letter of 3 October 2003, the Commission sent to the Court of First Instance a copy of the letter of 30 September 2003, and requested it, in accordance with Article 113 of the Rules of Procedure, to order that there was no need to adjudicate on the case with respect to the actions T-297/01 and T-298/01 in so far as they refer to the Grants.

30 In its observations on the request for a ruling that there was no need to adjudicate, lodged at the Court Registry on 24 October 2003, the applicant asked the Court of First Instance to:

— dismiss the request for a ruling that there was no need to adjudicate;

— declare that, by failing to adopt, in good time, the measures necessary for the prompt and full compliance with the *SIC* judgment and by failing to initiate the formal review procedure with respect to the second and third complaints within a reasonable time, the Commission is guilty of an unlawful failure to act, resulting from the infringement of the obligations under Article 233 EC and Articles 87 EC and 88 EC respectively;

— in any event, order the Commission to pay the costs, even if the request for a ruling that there is no need to adjudicate is upheld.

Law

Preliminary observations

31 It is settled case-law that the remedy provided for in Article 232 EC, which pursues different objectives from the remedy provided for in Article 226 EC (see, to that effect, Case C-154/00 *Commission* v *Greece* [2002] ECR I-3879, paragraph 28), is founded on the premiss that unlawful inaction on the part of the institution concerned enables the matter to be brought before the Court in order to obtain a declaration that the failure to act is contrary to the Treaty, in so far as it has not been remedied by that institution. The effect of that declaration, under Article 233 EC, is that the defendant institution is required to take the necessary measures to comply with the judgment of the Court, without prejudice to any actions to establish non-contractual liability to which the declaration may give rise. Where the act whose absence constitutes the subject-matter of the proceedings was adopted after the action was brought, but before judgment, a declaration by the Court to the effect that the initial failure to act was unlawful can no longer bring about the consequences prescribed by Article 233 EC. It follows that in such a case, as in cases where the defendant institution has responded within a period of two months after being called upon to act, the subject-matter of the action has ceased to exist, so that there is no longer any need

to adjudicate (see order in Case C-44/00 P *Sodima* v *Commission* [2000] ECR I-11231, paragraph 83, and the case-law cited; and Case T-105/96 *Pharos* v *Commission* [1998] ECR II-285, paragraphs 41 and 42). The fact that the definition of its position by the institution does not satisfy the applicant is, in that regard, irrelevant, because Article 232 EC refers to failure to act in the sense of failure to take a decision or to define a position, not the adoption of a measure different from that desired or considered necessary by the applicant (see *Sodima* v *Commission*, paragraph 83, and the case-law cited).

32 Moreover, it is clear from the case-law that an action for failure to act is the appropriate means of bringing before the Court a dispute relating to whether, in addition to replacing the measure annulled, the institution was also bound, in accordance with Article 233 EC, to take other measures relating to other acts which were not challenged in the initial action for annulment (see, to that effect, Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris and Others* v *Commission* [1988] ECR 2181, paragraphs 22 to 24 and 32; Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 40). It follows that the action for failure to act is also the appropriate means for obtaining a declaration that the failure by an institution to take the necessary measures to comply with a judgment is unlawful, in the present case, the measures to comply with the *SIC* judgment.

33 It is in the light of those considerations that the Court must rule on whether, as regards the ad hoc measures and the Grants, there is any need to adjudicate.

The ad hoc measures

34 It is common ground that, by the decision of 13 November 2001, the Commission initiated the formal review procedure with respect to the ad hoc

measures referred to in paragraph 18 above. That decision was the subject of a press release the same day. However, the Commission only notified the decision of 13 November 2001 to the applicant by letter of 8 January 2002. It follows that the Commission properly defined its position, within the meaning of the second paragraph of Article 232 EC, on the applicant's requests to act, in so far as they concern the ad hoc measures, only after the institution of the present action (see, to that effect, Joined Cases T-194/97 and T-83/98 *Branco* v *Commission* [2000] ECR II-69, paragraph 55).

35 Accordingly, although the applicant had a legitimate interest in bringing them, the present actions, as the parties agree, have no purpose in so far as they seek a declaration that the failure by the Commission to take a decision on the applicant's complaints concerning the ad hoc measures is unlawful.

36 There is thus no need to adjudicate on the present actions as regards the ad hoc measures.

The Grants

Arguments of the parties

37 The applicant claims that, notwithstanding the letter of 30 September 2003, the failure to act subsists.

38 The applicant argues, first of all, that the failure to act subsists owing to the Commission's failure to initiate the formal review procedure, implementing the *SIC* judgment, with respect to the Grants.

39 The applicant then disputes that the letter of 30 September 2003 is a definition of position within the meaning of Article 232 EC, since that letter is not a final act which can be challenged by an annulment action, but is merely a preparatory act.

40 Finally, the Commission's failure to examine the applicant's complaints within reasonable periods makes it guilty of a failure to act that the Court cannot fail to uphold. Otherwise it would deprive the applicant of effective legal protection and grant the Commission total impunity for the dilatory way it has treated the applicant's claims for more than 10 years. The scheme of an action for failure to act must, therefore, follow that of an action for failure to fulfil obligations, under which the purpose of the action remains although the failure has been rectified.

41 The Commission submits that the failure to act ceased with the letter of 30 September 2003.

Findings of the Court

42 By the letter of 30 September 2003, the Commission initiated, with respect to the Grants, the first stage of an examination as to whether those measures were to be

classified as existing aid. In so doing, the Commission defined its position on whether the Grants were new or existing aid, deciding that they were existing aid.

43 The question which arises is, therefore, whether by that letter the Commission defined its position, within the meaning of the second paragraph of Article 232 EC, on the applicant's call to act in so far as it refers to the Grants, and, whether, therefore, there is still any need to adjudicate, or whether, as the applicant claims, the failure to act continues and must, therefore, be declared by the Court of First Instance.

44 It is appropriate, first of all, to examine the applicant's claim that the Commission has still failed to act by not initiating the formal review procedure with respect to the Grants.

45 In so far as the action for failure to act in Case T-297/01 specifically seeks a declaration that the measures which were notified to the applicant do not ensure full compliance with the *SIC* judgment, it is necessary, in order to rule on the need to adjudicate and on the applicant's claim that there is such a need, to examine whether the *SIC* judgment included among its implementing measures, as the applicant claims, the obligation to initiate forthwith the formal review procedure with respect to the grants paid from 1992 to 1995. In other words, whether the *SIC* judgment held, in regard to the question whether the Grants were new or existing aid, that they constituted new aid. If the answer is affirmative, the Commission no longer had any grounds for uncertainty as to whether the grants were new aid measures, as it showed in its letter of 7 November 2001, nor, *a fortiori*, for initiating, by the letter of 30 September 2003, the review procedure for the Grants as existing aid. It should, in fact, have initiated the formal review procedure immediately after the *SIC* judgment. By failing to do so the Commission would still, as the applicant states in its observations on the request for a ruling that there is no need to adjudicate, have failed to act with respect to its obligation to take the measures to comply with the *SIC* judgment.

46 However, it must be held that the *SIC* judgment did not include, among the measures for its implementation, the obligation to initiate forthwith the formal review procedure with respect to the grants paid from 1992 to 1995.

47 It is clear from the *SIC* judgment that the Court of First Instance neither decided nor even mentioned, in the grounds for the decision or the operative part, whether the grants paid from 1992 to 1995 are existing or new aid. The question before the Court, which was the sole issue in the dispute, was whether the Commission's assessment that the Grants did not constitute aid, an assessment on which the contested decision in that case was based, did not present any serious difficulties.

48 That reading of the *SIC* judgment is not called into question by paragraph 85 of that judgment, on which the applicant relies, according to which 'the assessment relied on by the Commission in concluding that the grants to RTP by way of compensation did not constitute aid presented serious difficulties which, to the extent that the compatibility of those grants with the common market was not established, required the initiation of the (formal review procedure)'. Although that paragraph sets out the need to initiate the formal review procedure where there are serious difficulties as to whether those grants constituted aid, neither its function nor its purpose is to decide whether the Grants were to be regarded as new or existing aid.

49 It follows from the foregoing that the *SIC* judgment did not prevent the Commission from subsequently raising that question. Consequently, since the resolution, even provisional, of that question is a precondition for initiating the formal review procedure (see, to that effect, Case C-312/90 *Spain* v *Commission* [1992] ECR I-4117, paragraph 20 and Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145, paragraph 26; Joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraph 82), the *SIC* judgment could not require, among the measures for its implementation, the immediate initiating of the formal review procedure with respect to the grants paid from

1992 to 1995, referred to in Case T-297/01. Nor did that judgment, since it did not classify those grants as new aid, give rise indirectly to such a classification with respect to the grants paid subsequently in 1996 and 1997. Therefore, neither can that judgment be relied on by the applicant as grounds for the immediate initiation of the formal review procedure with respect to the grants paid in 1996 and 1997, referred to in Case T-298/01.

50 As regards the applicant's arguments, in its reply and observations on the request for a ruling that there is no need to adjudicate, alleging that the Commission's doubts on whether the Grants were new or existing aid were specious and the request of 7 November 2001 and the letter of 30 September 2003 were dilatory, those arguments must be dismissed. The Commission did not commit a manifest error of assessment in taking the view, in the interest of ensuring full compliance with the rules of procedure and accordingly the soundness of the future definitive decision, that certain aspects could and were yet to be clarified, which was the reason for the request of 7 November 2001, before it ruled on that question, in the event, by the letter of 30 September 2003. In particular, it is clear from the request of 7 November 2001 that the Commission had still not fully determined whether, and to what extent, the system of payments of grants to RTP had been affected by the constitutional and legislative amendments in Portugal between 1989 and 1992. Moreover, the Commission refers to the need to determine the exact dates to be fixed for the liberalisation of the television sector in Portugal and for the establishment of the system of grants to RTP, dates which, in fact, are not apparent from the file and the applicant's arguments.

51 It must be concluded, therefore, that since the Commission was not obliged, in implementing the *SIC* judgment, to initiate the formal review procedure forthwith with respect to the Grants, and since the Commission's doubts regarding the classification of the grants as new or existing aid were not clearly unjustified, the applicant wrongly maintains, in its pleadings and then in its observations on the request for a ruling that there is no need to adjudicate, that,

by failing to initiate the formal review procedure, the Commission has failed to act as regards its obligation to take the measures necessary to comply with the *SIC* judgment.

52 Next, a ruling must be given on the applicant's second claim, namely that the letter of 30 September 2003, as a preparatory act which is not challengeable by an annulment action, cannot constitute the definition of a position within the meaning of Article 232 EC.

53 According to the case-law, even an act which is not challengeable by an annulment action may constitute a definition of position terminating the failure to act if it is the prerequisite for the next step in a procedure which has, in principle, to culminate in a legal act that itself will be challengeable by an action for annulment (*Pharos* v *Commission*, cited above paragraph 43, and the cited case-law and *Branco* v *Commission*, cited above paragraph 54). Therefore, the letter of 30 September 2003 constitutes, in any event, a definition of position within the meaning of Article 232 EC.

54 It follows that the applicant's second submission challenging the request for a ruling that there is no need to adjudicate must be dismissed.

55 Finally, it is necessary to examine the applicant's third claim, namely that the Commission's non-compliance with reasonable periods for the consideration of the applicant's complaints makes the Commission guilty of a failure to act that the Court must uphold.

56 It is common ground that the Commission has a duty to examine diligently and impartially complaints in competition matters, in particular under Article 88 EC (*SIC*, paragraphs 105 to 107, and the case-law cited; Case T-54/99 *max.mobil* v *Commission* [2002] ECR II-313, paragraphs 48 and 49, and the cited case-law; and Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale* v *Commission* [2003] ECR II-435, paragraph 167, and the cited case-law).

57 None the less, however regrettable the Commission's behaviour may appear in its treatment of the applicant's complaints, the Court cannot, without exceeding the framework of the present actions for failure to act, determine the question of the Commission's non-compliance, alleged by the applicant, with reasonable periods.

58 It follows from the case-law referred to in paragraph 31 above that, where the act whose omission is complained of has been adopted after the institution of the action for failure to act but before the delivery of the judgment, there is no longer any need to adjudicate. It is for the applicant, if it takes the view that it has suffered loss arising from the Commission's failure to act within reasonable periods, to bring a claim for compensation.

59 It follows from the foregoing that, by the letter of 30 September 2003, the Commission defined its position on the applicant's requests to act in so far as they concern the Grants and there is therefore no longer any need to adjudicate on Cases T-297/01 and T-298/01 in so far as they also refer to those measures.

60 Therefore there is no longer any need to adjudicate in Cases T-297/01 and T-298/01.

Costs

61 Under Article 87(2) 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. On the other hand, under Article 87(6) of those Rules, where a case does not proceed to judgment, the costs shall be at the discretion of the Court.

62 In the present case, as regards, first, the part of Case T-297/01 and Case T-298/01 relating to the ad hoc measures on which, after notification to the applicant of the Decision of 13 November 2001, there is no longer any need to adjudicate, the applicant cannot, contrary to the Commission's suggestions, be criticised for having, in order to protect its rights, brought the actions without awaiting the notification by the Commission of that decision, notification which was made after the expiry of the period for acting in respect of a failure to act. As regards, second, the part of Case T-297/01 and Case T-298/01 relating to the Grants, it was only on 30 September 2003 that the failure to act ceased and there was no longer any need to adjudicate. In those circumstances, the Court of First Instance considers that the Commission must pay the applicant's costs.

63 Having regard to the foregoing, it is appropriate to order the Commission to pay the costs, as applied for by the applicant.

On those grounds,

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

hereby:

1. Declares that there is no need to adjudicate on Cases T-297/01 and T-298/01;

2. Orders the Commission to pay the costs.

Tiili Pirrung Mengozzi

Meij Vilaras

Delivered in open court in Luxembourg on 19 February 2004.

H. Jung V. Tiili

Registrar President