JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
10 July 1997 *

In Case T-227/95,

AssiDomän Kraft Products AB, a company incorporated under Swedish law, whose registered office is in Stockholm,

AB Iggesunds Bruk, a company incorporated under Swedish law, whose registered office is in Örnsköldsvik, Sweden,

Korsnäs AB, a company incorporated under Swedish law, whose registered office is in Gävle, Sweden,

MoDo Paper AB, a company incorporated under Swedish law, whose registered office is in Örnsköldsvik, Sweden,

Södra Cell AB, a company incorporated under Swedish law, whose registered office is in Växjö, Sweden,

Stora Kopparbergs Bergslags AB, a company incorporated under Swedish law, whose registered office is in Falun, Sweden,

Svenska Cellulosa AB, a company incorporated under Swedish law, whose registered office is in Sundsvall, Sweden,

* Language of the case: English.

represented by John E. Pheasant, solicitor of the Supreme Court of England and Wales, and Christophe Raux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

applicants,

v

Commission of the European Communities, represented by Wouter Wils, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's decision of 4 October 1995 rejecting the requests made by the applicants, following the judgment of the Court of Justice in Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, for repayment of the fines imposed on them by Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty (IV/29.725 — Wood pulp) (OJ 1985 L 85, p. 1),

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

composed of: B. Vesterdorf, President, C. W. Bellamy and A. Kalogeropoulos, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 11 September 1996,

gives the following

Judgment

Facts

1 This case is set in the same factual and legal context as the judgment of the Court of Justice of 31 March 1993 in Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307 ('the judgment of 31 March 1993' or 'the *Wood pulp* judgment'), in which it partially annulled Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty (IV/29.725 — Wood pulp) (OJ 1985 L 85, p. 1; 'the wood pulp decision'). The background to the case is set out in that decision and in the Court's judgment.

2 The seven applicants in this case are undertakings established in Sweden active in the wood pulp business. They constitute, either in their own right or as successors, ten of the eleven Swedish addressees (numbered 30 to 39) of the wood pulp decision ('the Swedish addressees').

3 In the wood pulp decision, the Commission found that some of the 43 addressees of that decision had, during certain specified periods, infringed Article 85(1) of the EEC Treaty, now the EC Treaty ('the Treaty'), in particular by concerting on prices for bleached sulphate wood pulp.

4 Article 1 of the wood pulp decision listed the infringements of Article 85 found by the Commission, the addressees concerned and the relevant periods. The infringements relevant to this case found to have been committed by the Swedish addressees were as follows.

5 In Article 1(1) of the decision, the Commission stated that the Swedish addressees, with the exception of Billerud-Uddeholm and Uddeholm AB, and other Finnish, American, Canadian and Norwegian producers had concerted 'on prices for bleached sulphate wood pulp announced for deliveries to the European Economic Community' during the whole or part of the period from 1975 to 1981.

6 According to Article 1(2), all the Swedish addressees had infringed Article 85 of the Treaty by concerting on actual transaction prices charged in the Community, at least to customers in Belgium, France, the Federal Republic of Germany, the Netherlands and the United Kingdom, for bleached sulphate wood pulp.

7 In Article 3 of the decision, the Commission imposed fines ranging from ECU 50 000 to 500 000 on almost all the addressees. Fines were imposed on nine of the Swedish addressees. Those undertakings did not bring an action for annulment of the decision and paid their fines.

8 A further 26 of the 43 original addressees of the wood pulp decision, or their successors, brought actions for annulment of that decision pursuant to Article 173 of the Treaty. In its judgment of 31 March 1993 on those actions, the Court of Justice *inter alia* annulled Article 1(1) and (2) of the decision, in which it had been found that infringements of Article 85(1) of the Treaty had been committed. The Court then annulled or reduced the fines imposed on the undertakings which had instituted proceedings.

9 The operative part of the judgment, as far as relevant, reads as follows:

'The Court ... hereby:

1. Annuls Article 1(1) of Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty;

2. Annuls Article 1(2) of the aforesaid decision;

...

7. Annuls the fines imposed on the applicants, with the exception of that imposed on Finncell and with the further exception of those imposed on Canfor, MacMillan, St Anne and Westar, which are reduced to ECU 20 000;

...'.

10 After judgment had been delivered, the applicants, by letter of 24 November 1993, asked the Commission to reconsider their legal position in the light of the judgment and to refund the fines which they had paid, to the extent that they exceeded the sum of ECU 20 000 upheld by the Court in relation to certain applicants for findings of infringement which it had not annulled.

11 The letter of 24 November 1993 is expressed in the following terms:

'... The Swedish respondents contend that the Commission may not retain the fines they paid for infringements of Article 85(1) by concertation on announced and transaction prices once the ECJ has annulled the Commission's relevant findings.

...

The Swedish undertakings who paid fines in respect of infringements of Article 85(1) which have now been annulled by the Court are entitled to recover those fines. It is clear from the case-law (see, for example, the two *Snupat* cases — [1959] ECR 127 and [1961] ECR 53) that there is an obligation on the relevant Community institution (in this case, the Commission), to review the position of undertakings in a similar position, where the ECJ makes a ruling which is not addressed to those undertakings.

In this case, the Swedish respondents are in an identical position to the wood pulp producers who appealed the Commission's decision. The Court has annulled the Commission's findings in relation to concertation on announced and transaction prices. The Commission therefore has a duty to review the position of the Swedish respondents and to return that part of the fines paid by them which relates to the two infringements of Article 85(1) which have been annulled.'

12 Initially, the Commission informed the applicants by letter of 6 December 1993 that their letter of 24 November 1993 had been passed to the Directorate-General for Budgets (DG XIX) for it to consider whether their request could be granted.

13 The Director-General of the Directorate-General for Competition (DG IV) then informed the applicants by letter of 4 February 1994 that the Commission was proposing to reject their request and set a period for them to make any submissions.

14 In their letter of 8 April 1994 replying to the second letter, the applicants asked the Commission to take a final decision on the legal consequences of the judgment of 31 March 1993. They repeated that request by letters of 24 October and 21 December 1994.

15 By letter of 4 October 1995 ('letter of 4 October 1995' or the 'contested decision'), the Commission member responsible for competition refused to grant the applicants' request for repayment in the following terms:

'In your letter of 24 November 1993 you asked the Commission to review the position of your clients ("the Swedish respondents") in light of the Court's judgment of 31 March 1993. More specifically, you requested the Commission to return the fines relating to the infringements found in the parts of its decision which had been annulled by the aforesaid judgment. Having received a preliminary reaction of my services (letter of 4 February 1994 signed by the Director General for Competition), you reiterated your request in your letters of 8 April, 24 October and 21 December 1994.

I do not see any possibility to accept your request. Article 3 of the decision imposed a fine on each of the producers on an individual basis. Consequently, in point 7 of the operative part of its judgment, the Court annulled or reduced the fines imposed on each of the undertakings who were applicants before it. In the absence of an application of annulment on behalf of your clients, the Court did not and indeed could not annul the parts of Article 3 imposing a fine on them. It follows that the obligation of the Commission to comply with the judgment of the Court has been fulfilled in its entirety by the Commission reimbursing the fines paid by the successful applicants. As the judgment does not affect the decision with regard to your clients, the Commission was neither obliged nor indeed entitled to reimburse the fines paid by your clients.

As your clients' payment is based on a decision which still stands with regard to them, and which is binding not only on your clients but also on the Commission, your request for reimbursement cannot be granted.'

Procedure and forms of order sought

16 By application lodged at the Registry of the Court of First Instance on 15 December 1995, the applicants brought this action.

17 Upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure and invited the Commission to state its views at the hearing as to whether the judgment of the Court of Justice in Joined Cases 42/59 and 49/59 *Snupat* v *High Authority* [1961] ECR 53 ('*Snupat*') could be relevant to this case.

18 At the hearing on 11 September 1996, the parties presented oral argument and replied to questions put by the Court composed of H. Kirschner, President, B. Vesterdorf, C. W. Bellamy. A. Kalogeropoulos and A. Potocki, Judges.

19 Following the death of Judge Kirschner on 6 February 1997, this judgment was deliberated by the three judges whose signature it bears, in accordance with Article 32 of the Rules of Procedure.

20 The applicants claim that the Court should:

— annul the decision of 4 October 1995;

— order the Commission to take all necessary steps to comply with the judgment of the Court of Justice of 31 March 1993 and, in particular, to repay to the applicants the fines paid by each of them or by the undertakings whose rights and obligations they have taken over, in the amounts set out in Annex 6 to the application;

— order the Commission to pay, from the date on which the fines were paid by the Swedish addressees until repayment of the sums claimed, interest on those sums:

  — initially at the rate applied by the European Monetary Cooperation Fund when the fines were paid, then at the rate applied by the European Monetary Institute, plus 1.5% in each case, or

  — at the base lending rate of the Banque Nationale de Belgique plus 1%,

in the amounts set out in Annex 9 to the application;

— order the Commission to pay the costs.

21 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss it as unfounded;

— order the applicants to pay the costs.

The first head of claim, seeking annulment of the decision allegedly contained in the letter of 4 October 1995

Admissibility

Arguments of the parties

22 The Commission submits that the claim for annulment is inadmissible on the ground that the letter of 4 October 1995 merely confirms the wood pulp decision in so far as it relates to the applicants. It therefore does not constitute a challengeable act.

23 In its view, there is nothing in the letter of 4 October 1995 not in the wood pulp decision which affects the applicants' legal position. It simply confirms that the decision still stands as regards the applicants and that there is therefore no reason to change it.

24 Although the application is for annulment of a new decision allegedly contained in the letter of 4 October 1995, it is in fact directed at the wood pulp decision. Since the time-limit for bringing an action for annulment of the wood pulp decision has long since expired, the present application should be declared inadmissible.

25 The applicants maintain that the letter of 4 October 1995 constitutes a challengeable act for the purposes of Article 173 of the Treaty.

26 In their view, that letter should be regarded as a new decision in relation to the wood pulp decision. It sets out for the first time the Commission's view as to the

obligations imposed on it by the *Wood pulp* judgment and, on the basis of that view, as to its decision not to refund the fines paid by the applicants and the undertakings whose rights and obligations they have taken over.

27 It is therefore untrue to state that there is nothing in the letter of 4 October 1995 which does not already follow from the wood pulp decision. In that decision, the Commission stated that the applicants had committed various infringements of the rules on competition, instructed them to put an end to those infringements and fined them. In its letter of 4 October 1995, on the other hand, the Commission made for the first time an unequivocal and final decision not to repay the fines.

28 The letter is an act which affects immediately and irreversibly the legal position of the undertakings concerned (Case 60/81 *IBM* v *Commission* [1981] ECR 2639 and Joined Cases T-10/92, T-11/92, T-12/92 and T-15/92 *Cimenteries CBR and Others* v *Commission* [1992] ECR II-2667).

Findings of the Court

29 It is settled law that actions brought against decisions which merely confirm earlier decisions that have not been contested within the time-limit are inadmissible (Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473, paragraph 16, and Case T-275/94 *CB* v *Commission* [1995] ECR II-2169, paragraph 27). A measure which merely confirms a previous measure cannot afford those concerned the opportunity of reopening the question of the legality of the measure which is confirmed (*Snupat*, at p. 75).

30 In this case, the applicants, by their letter of 24 November 1993, asked the Commission to review, in the light of the grounds of the *Wood pulp* judgment, the legal effects for them of the wood pulp decision. They asked the Commission in particular to repay the fines relating to the infringements found to have been committed in the parts of that decision annulled by the *Wood pulp* judgment.

31 That request for reconsideration was rejected by letter of 4 October 1995, on the ground that the Commission had fulfilled its obligation to comply with the *Wood pulp* judgment by refunding the fines paid to the extent that they had been annulled by the judgment of the Court.

32 In order to answer the question whether or not the Commission's refusal to review the legality of the wood pulp decision in so far as it relates to the applicants is a purely confirmatory measure, it is essential to consider first whether, in this case, Article 176 of the Treaty required it to carry out such a review.

33 Only if that is the case should the measure contained in the Commission's letter of 4 October 1995, which by implication deals with the scope of its obligations under Article 176 of the Treaty following the *Wood pulp* judgment, be regarded as a new decision which may be challenged by an action for annulment (see to this effect Joined Cases 97/86, 193/86, 99/86 and 215/86 *Asteris and Others* v *Commission* [1988] ECR 2181, paragraphs 8, 32 and 33), since that decision would then have to be regarded as having been adopted in a new legal context compared with that in which the wood pulp decision was adopted.

34 Since the question whether the *Wood pulp* judgment results in an obligation to review the legality of the wood pulp decision in so far as it concerns the applicants forms part of the substance of the case, admissibility and substance must be considered together.

Substance

Arguments of the parties

35 The applicants' sole plea is that the Commission, by refusing to review the wood pulp decision in relation to them in the light of the *Wood pulp* judgment and to refund the fines paid by them, disregarded the legal consequences resulting from the judgment. That plea is divided into two limbs.

36 In the first limb, the applicants submit that the Commission disregarded the principle of Community law that the effect of a judgment annulling an act is to render that act, in this case the wood pulp decision, null and void *erga omnes* and *ex tunc*.

37 It follows from the first paragraph of Article 174 of the Treaty, which does not draw a distinction as regards the legal effects of a declaration of nullity according to the different types of measure, that judgments annulling decisions, such as the one at issue in this case, as well as judgments annulling regulations take effect *erga omnes*.

38 Contrary to the Commission's submissions, the wood pulp decision must be regarded not as a bundle of individual decisions, but as a single decision addressed to a number of undertakings. That view is supported by the Court's findings in the *Wood pulp* judgment that the Commission made no attempt to explain in what way the infringements recorded in Article 1(1) and (2) of the decision related to each individual addressee by specifying the parties between whom and periods in which the concertation took place.

39 It is settled law that a judgment annulling an act takes effect *erga omnes* (see the judgments in Case 2/54 *Italy* v *High Authority* [1954] ECR 37, in Case 3/54 *Assider* v *High Authority* [1955] ECR 63, in Case 4/54 *I. S. A.* v *High Authority* [1955] ECR 91, in Case 5/55 *Assider* v *High Authority* [1955] ECR 135 and in *Snupat*, cited above; the Opinion of Advocate General Lagrange in Joined Cases 28/62, 29/62 and 30/62 *Da Costa* v *Nederlandse Belastingadministratie* [1963] ECR 31, at p. 40; the Opinion of Advocate General Gand in Case 50/69 R *Germany* v *Commission* [1969] ECR 449, at p. 454; the Opinion of Advocate General Dutheillet de Lamothe in Joined Cases 9/71 and 11/71 *Compagnie d'Approvisionnement and Grands Moulins de Paris* v *Commission* [1972] ECR 391, at p. 409; the judgment in Case 30/76 *Küster* v *Parliament* [1976] ECR 1719 and the Opinion of Advocate General Reischl in that case, at p. 1730; the judgments in Case 76/79 *Könecke* v *Commission* [1980] ECR 665, in Case 66/80 *International Chemical Corporation* v *Amministrazione delle Finanze dello Stato* [1981] ECR 1191, in *Asteris and Others* v *Commission*, cited above, and in Case 359/87 *Pinna* v *Caisses d'Allocations Familiales de la Savoie* [1989] ECR 585 as well as the Opinion of Advocate General Lenz in that case, points 13 to 16 and 29).

40 The applicants note that, although the Community judicature has the power to limit the *erga omnes* effects of its judgments (see, for example, the judgments of the Court of First Instance in Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775 and in Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847), the Court of Justice did not make use of that power in the *Wood pulp* judgment. Unlike Article 1(4) of the wood pulp decision, Article 1(1) and (2) was annulled without any limitation as regards the effects of that annulment, so that the findings therein were also annulled in so far as they concern the applicants.

41 According to the applicants, paragraph 7 of the operative part of the judgment, which 'annuls the fines imposed on the applicants', cannot affect that assessment. The reference to 'the applicants' was inserted solely in order to differentiate between the undertakings whose fines the Court annulled in their entirety and those whose fines it confirmed in whole or in part.

42 Therefore, the applicants maintain, the *Wood pulp* judgment requires the Commission, in order to prevent any unjust enrichment, to withdraw the wood pulp decision in so far as it imposed fines on the Swedish addressees for the infringements recorded in Article 1(1) and (2) and to repay those fines in part, together with interest at a rate reflecting the advantage gained from possession of those sums.

43 In the second limb of this plea, the applicants claim that the Commission infringed Article 176 of the Treaty.

44 That provision requires the institution concerned to take the necessary measures to comply with a judgment annulling an act, with regard not only to the parties to the case but to other parties as well. The obligation to comply with a judgment means that the defendant institution must, in particular, review similar cases in the light of the judgment. In this case, the Commission is required, in particular, to ensure that the Swedish addressees who are in a position similar to that of the applicants before the Court of Justice are placed in the same position as the latter (*Snupat*, cited above, and also Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777 and *Könecke* v *Commission*, cited above).

45 To that end, the institution concerned must examine not only the operative part of the judgment but also its grounds (*Asteris and Others* v *Commission*). The applicants point out in that regard that the *Wood pulp* judgment contains general considerations which apply equally to the findings of infringement against them.

46 In particular, the Court annulled Article 1(1) of the wood pulp decision on the ground that the Commission had failed to explain the probative value of certain documentary evidence and to establish that concertation on prices was the only plausible explanation for the evidence of parallel conduct which it relied on. Similarly, Article 1(2) was annulled on the ground that the finding of infringement at

issue had not been mentioned in the statement of objections; that had constituted an infringement of the rights of the defence and thus vitiated the procedure adopted by the Commission with regard to each of the addressees of that statement of objections subsequently charged with being party to that infringement. All the fines paid in respect of those findings should therefore have been refunded.

47 The Commission points out that the fundamental question raised in this case is whether an undertaking upon which the Commission imposed a fine for infringement of competition law, and which paid that fine without bringing an action for annulment of the decision, may subsequently demand a refund thereof on the ground that the Community judicature has annulled the fines imposed on other undertakings which were successful in actions for annulment brought within the time-limit set.

48 According to the Commission, that question must be answered in the negative, because decisions imposing fines are individual decisions addressed to separate addressees. Only the addressee himself can bring an action for annulment of that decision. If an addressee decides not to bring such an action within the time-limit set for that purpose, the decision remains, in accordance with Article 189 of the Treaty, valid with regard to him and binding in its entirety. There is, therefore, nothing which requires — or allows — the Commission to repay, even in part, the fines in question. To allow the applicants' claim would be to circumvent the time-limit set by Article 173 of the Treaty.

49 The Commission disputes the applicants' argument that annulment by the Court of Article 1(1) and (2) of the wood pulp decision takes effect *erga omnes*, requiring it to refund the fines paid in respect of the findings in those two paragraphs.

50 It contends, in that regard, that the applicants are confusing the legal status of decisions and regulations. Whereas regulations involve legal consequences for categories of persons viewed in a general and abstract manner, decisions are individual administrative acts affecting the legal position of individual addressees. The mere fact that the decisions imposing fines on the applicants were adopted together with those concerning other undertakings involved does not alter the individual nature of each decision. While annulment of a regulation can have general consequences, annulment of a decision affects the legal position of the successful applicant only.

51 Since the wood pulp decision in fact constitutes a bundle of individual decisions to separate addressees, with individually imposed fines, the *Wood pulp* judgment does not take effect *erga omnes* in the way the applicants mean. That interpretation finds support in the wording of the operative part of the judgment, according to which the Court annulled or reduced 'the fines imposed on the applicants', that is to say the fines imposed on the undertakings which had instituted proceedings. The Court could not have annulled the fines imposed on the Swedish addressees.

52 The Commission counters the assertion that it infringed Article 176 of the Treaty by arguing that it met in full its obligation to comply with the *Wood pulp* judgment by refunding the fines paid by the applicants who were successful in the proceedings before the Court of Justice. It is not obliged, or even permitted, to refund the fines of the Swedish addressees, the applicants in this case.

53 Finally, the applicants' assertion that the Commission is required to ensure that the Swedish addressees in a position similar to that of the applicants before the Court

of Justice are placed in the same position as the latter is manifestly incorrect. The Swedish addressees are not in the same position as the other addressees of the decision for the very reason that they did not bring proceedings for annulment within the time-limit set by Article 173 of the Treaty.

54 The Commission submitted at the hearing, in reply to a question from the Court, that the solution in *Snupat*, cited above, cannot be applied to this case. There are major differences in context between the two cases (see, in addition to the judgment in *Snupat*, the judgments in Joined Cases 32/58 and 33/58 *Snupat* v *High Authority* [1959] ECR 127 and in Case 14/61 *Hoogovens* v *High Authority* [1962] ECR 253). First, Snupat, unlike the Swedish addressees, had in fact had recourse, in due time, to all the legal remedies open to it for challenging the decisions of the High Authority which adversely affected it. Secondly, *Snupat* concerned an equalization scheme which, by its very nature, established a link between the High Authority's treatment of various undertakings. The exemptions granted to certain undertakings resulted automatically in increased levies for the others, including the applicant Snupat. There is no such link between the addressees in this case.

Findings of the Court

55 The applicants' argument that the *Wood pulp* judgment took effect *erga omnes* needs to be considered first. In their view, the judgment annulled Article 1(1) and (2) of the wood pulp decision without limiting the scope of the annulment, so that the findings of infringement made by the Commission in those provisions were annulled in relation to the applicants as well.

56 That argument cannot be accepted. Admittedly, there is no reason at all why the Commission should not adopt a single decision covering several infringements, even if some of the undertakings to which it is addressed are unconnected with some of those infringements, provided that the decision permits each addressee to obtain a clear picture of the complaints made against it (Joined Cases 40/73 to 48/73, 50/73, 54/73, 55/73, 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraph 111); however, the wood pulp decision, although drafted and published in the form of a single decision, must be treated as a bundle of individual decisions making a finding or findings of infringement against each of the undertakings to which it is addressed and, where appropriate, imposing a fine. Accordingly, had the Commission so wished, it could have formally adopted a number of distinct individual decisions recording the infringements of Article 85 of the Treaty which it had found.

57 Moreover, that assessment is substantiated by the wording of the operative part of the wood pulp decision which makes findings of infringement for each undertaking individually and accordingly imposes individual fines on the addressees of the decision (see, in particular, Articles 1 and 3 of the decision).

58 Under Article 189 of the Treaty, each of those individual decisions forming part of the wood pulp decision is binding in its entirety on the undertaking to which it is addressed. Therefore, where an addressee did not bring an action under Article 173 for annulment of the wood pulp decision in so far as that decision relates to it, the decision continues to be valid and binding on it (see, to the same effect, Case C-188/92 *TWD Textilwerke Deggendorf* v *Germany* [1994] ECR I-833, paragraph 13).

59 Accordingly, if an addressee decides to bring an action for annulment, the Community judicature has before it only the elements of the decision which relate to that addressee. The unchallenged elements of the decision relating to other

addressees, on the other hand, do not form part of the subject-matter of the dispute which the Court is called on to resolve.

60 In an action for annulment, the Court can give judgment only on the subject-matter of the dispute referred to it by the parties. A decision such as wood pulp, therefore, can be annulled only as regards the addressees who have been successful in their actions before the Court.

61 This Court considers, therefore, that paragraphs 1 and 2 of the operative part of the *Wood pulp* judgment must be interpreted as annulling Article 1(1) and (2) of the wood pulp decision only in so far as those provisions concern the parties who had been successful in their actions before the Court of Justice. That assessment is, moreover, borne out by paragraph 7 of the operative part of the judgment, according to which only the 'fines imposed on the applicants' are annulled or reduced.

62 As the Commission has correctly stated, the case-law relied on by the applicants in support of their argument that the judgment took effect *erga omnes* is irrelevant to this case, since each of the judgments cited concerns different points of law arising from highly specific factual situations.

63 The first limb of the plea must therefore be rejected as unfounded.

64 Next, it is necessary to examine the second limb of the plea, to the effect that the Commission infringed Article 176 of the Treaty by disregarding its obligation to review the legality of the wood pulp decision in so far as it relates to the Swedish addressees.

65 Under the first paragraph of Article 176 of the Treaty, 'the institution or institutions whose act has been declared void ... shall be required to take the necessary measures to comply with the judgment of the Court of Justice'.

66 In its letter of 4 October 1995, the Commission refused to review, in the light of the *Wood pulp* judgment, the legal position of the Swedish addressees with regard to the wood pulp decision and, in particular, to consider whether compliance with the judgment entailed repayment of the whole or part of the fines imposed by the decision on the addressees who had not brought an action for annulment. The Commission justified that refusal on the ground that it was, in any event, neither obliged nor even entitled to refund the fines paid by the Swedish addressees.

67 In view of that argument, it is necessary, first, to consider whether the Commission was required under Article 176 of the Treaty to review, in the light of the *Wood pulp* judgment, the legality of the wood pulp decision in so far as it relates to the addressees who did not bring an action for annulment within the time-limit. It will then, if necessary, be for the Court to establish whether the Commission was entitled in this instance to refuse to carry out a review on the ground that it was neither obliged nor even entitled to repay the fines.

68 In order to determine the scope of the obligations imposed in this instance on the Commission by Article 176 of the Treaty, it is necessary to define the meaning of the obligation to take 'the necessary measures to comply with the judgment' in order to ascertain whether that obligation also encompassed measures relating to the addressees of the wood pulp decision who had not brought an action for annulment within the time-limit set by Article 173 of the Treaty.

69 The wording of Article 176 of the Treaty does not support the conclusion that the obligation referred to in that provision is restricted solely to the legal positions of the parties to the dispute which gave rise to the judgment in question. Thus it cannot be automatically ruled out that the measures that the institution concerned must adopt may, in exceptional cases, extend beyond the specific context of the dispute which resulted in the judgment of annulment in order to eradicate the effects of the illegalities found in that judgment (see to this effect *Asteris and Others* v *Commission*, paragraphs 28 to 31).

70 Such an approach has been adopted by the Court in the context of Article 34 of the ECSC Treaty, which imposes on the institution concerned obligations similar to those laid down by Article 176 of the EC Treaty. The Court stated in *Snupat*, cited above, that the High Authority was required, following a judgment in which it had been held that an administrative act granting the applicant benefits in the form of exemptions was unlawful, to re-examine its previous position with regard to the legality of those exemptions and to consider whether similar decisions adopted previously, in favour of other undertakings, could be retained having regard to the principles laid down in that judgment. Furthermore, it could in certain circumstances be required under the principle of legality to revoke those decisions (pp. 79 and 86, 87 and 88).

71 Three findings are relevant to establishing whether that case-law can be applied in this case. First, the *Wood pulp* judgment annuls part of an act made up of a number of individual decisions which were adopted on completion of the same administrative procedure. Secondly, not only were the applicants in this case addressees of that same act, but they were fined for alleged infringements of Article 85 of the Treaty which the *Wood pulp* judgment set aside in relation to the addressees of the act who had brought an action under Article 173 of the Treaty. Thirdly, the individual decisions adopted in relation to the applicants in this case are, in their view, based on the same findings of fact and the same economic and legal analyses as those declared invalid by the judgment.

72 Accordingly, the institution concerned may be required under Article 176 of the Treaty to consider, pursuant to a request made within a reasonable period, whether it needs to take measures in relation not only to the successful parties but also to the addressees of that act who did not bring an action for annulment. Where the effect of a judgment of the Court of Justice is to set aside a finding that Article 85(1) of the Treaty was infringed, on the ground that the concerted practice complained of was not proved, it would be inconsistent with the principle of legality for the Commission not to have a duty to examine its initial decision in relation to another party to the same concerted practice based on identical facts.

73 Next, it is appropriate to determine the obligations which follow from the *Wood pulp* judgment and to establish, in the light of the principles which have just been set out, the extent to which that judgment requires the Commission to review the legal position of the Swedish addressees in relation to the wood pulp decision. For this purpose, both the operative part and the grounds have to be examined.

74 The Court of Justice has held that, in order to comply with a judgment of that kind and to implement it fully, the institution concerned is required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, disclose the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the measure annulled (*Asteris and Others* v *Commission*, paragraph 27).

75 In this case, the Court annulled Article 1(1) of the wood pulp decision on the basis of considerations which apply generally to the Commission's analysis of the wood pulp market and are not founded on any examination of conduct or practices on the part of individual addressees of the wood pulp decision.

76 In that provision of the decision, the Commission found that wood pulp producers — including all the Swedish addressees who are applicants in this case — had concerted on prices for bleached sulphate wood pulp announced for deliveries to the Community in the whole or part of the period from 1975 to 1981, as evidenced by a system of quarterly price announcements.

77 However, the Court of Justice held that the system of quarterly price announcements did not in itself infringe Article 85(1) of the Treaty (paragraphs 64 and 65 of the judgment) and rejected as unfounded the Commission's argument that the system of price announcements was evidence of concertation at an earlier stage (paragraphs 66 to 127 of the judgment).

78 As regards this last argument, the Court began by excluding the telexes referred to in paragraph 61 et seq. of the wood pulp decision as evidence of the infringement found against the applicants, since the Commission was unable to specify the probative value of those documents.

79 It then held, with regard to the other evidence put forward by the Commission, that it had not been established that concertation on prices was the only plausible explanation for the evidence of parallel conduct in the market.

80 The Court, relying on experts' reports, was able to hold that the system of price announcements could be regarded as a rational response to the fact that the pulp market constituted a long-term market and to the need felt by both buyers and sellers to limit commercial risks. The similarity in the dates of price announcements could be regarded as a direct result of the high degree of market transpar-

ency, which did not have to be described as artificial. Finally the parallelism of prices and the price trends could, according to the Court, be satisfactorily explained by the oligopolistic tendencies of the market and by the specific circumstances prevailing in certain periods (paragraph 126 of the judgment).

81 Therefore, in the absence of a firm, precise and consistent body of evidence of prior concertation, the Court held that concertation regarding announced prices had not been established by the Commission (paragraph 127 of the judgment).

82 Those findings by the Court of Justice — relating generally to the validity of the Commission's economic and legal assessment of parallel conduct observed on the market — have the potential to raise serious doubts as to the legality of the wood pulp decision in so far as it records, in Article 1(1), that the Swedish addressees also infringed Article 85(1) of the Treaty by concerting on prices for bleached sulphate wood pulp announced for deliveries to the Community during the periods specified.

83 While the Commission states in paragraph 82 of the wood pulp decision that it relied on different kinds of direct or indirect exchange of data as proof of concertation in addition to the parallel conduct which it established (see also paragraph 66 of the *Wood pulp* judgment), it is apparent from the Commission's replies to the questions put by the Court of Justice that the main evidence of the infringement recorded came from observation of parallel behaviour on the market. According to the Commission, a finding of concertation on announced or transaction prices was not made, in any case, solely on the basis of the telexes or other documents set out in paragraphs 61 to 70 of the wood pulp decision (see paragraph VII. F of the Report for the Hearing in the *Wood pulp* case, p. I-1416).

84 Accordingly, even if those documents might constitute the basis for establishing, as against some of the Swedish addressees, the whole or part of the findings in the operative part of the wood pulp decision (see, in that regard, the Opinion of Advocate General Darmon in the case, points 464 to 476), the fact remains that the Court rejected the main evidence relied on by the Commission against all the addressees of the decision to prove that there had been concertation on prices and, therefore, that Article 85 of the Treaty had been infringed. In this respect, the judgment clearly has the potential to affect the Commission's findings relating to the Swedish addressees.

85 The Court finds, therefore, without there being any need to consider the effect which the Court of Justice's findings in paragraph 40 et seq. of the *Wood pulp* judgment, regarding the defects in the statement of objections, may have on establishing that the Swedish addressees committed an infringement by concerting on transaction prices, that, following the applicants' request, the Commission was required — in accordance with Article 176 of the Treaty and the principle of good administration — to review, in the light of the grounds of the *Wood pulp* judgment, the legality of the wood pulp decision in so far as it relates to the Swedish addressees and to determine on the basis of such an examination whether it was appropriate to repay the fines.

86 It follows that the letter of 4 October 1995, far from amounting merely to confirmation of the assessment made when the wood pulp decision was adopted, necessarily contains a decision by the Commission, taken pursuant to Article 176 of the Treaty, that the grounds of the *Wood pulp* judgment did not require it to reconsider its previous position. That was a new decision which the applicants could challenge, as they did within the time-limit by bringing this action. Accordingly, the action is admissible.

87 The judgment in *TWD Textilwerke Deggendorf*, cited above, does not stand in the way of that assessment, since the latter does not allow the applicants to circumvent

the time-limit for bringing an action, or consequently, the definitive nature of the wood pulp decision for them. In contrast to *TWD Textilwerke Deggendorf*, in which the undertaking in question sought to plead, in the context of proceedings for a preliminary ruling, the unlawfulness of a decision which it had not challenged within the time-limit laid down by Article 173, in this case the Court is not reviewing the initial decision, that is to say the wood pulp decision, but a new decision adopted pursuant to Article 176 of the Treaty.

88 In so far as the Commission were to conclude, on the basis of a re-examination of the wood pulp decision pursuant to Article 176 of the Treaty, that certain findings to the effect that the Swedish addressees had infringed Article 85 of the Treaty were unlawful, it is appropriate, at this stage in the Court's reasoning, to examine the Commission's arguments that it was, moreover, neither obliged, nor indeed entitled, to repay the fines.

89 With regard to the question whether the Commission is entitled to make repayment, the Court notes that, while there are no specific provisions governing the withdrawal or revocation of decisions adopted by the Commission under Articles 3 and 15 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87), finding that those articles have been infringed and imposing fines for such infringements, that regulation does not prevent the Commission from re-examining such a decision in relation to an individual when an element of it is unlawful.

90 In that regard, it is helpful to recall the case-law regarding withdrawal of administrative acts conferring individual rights or similar benefits upon the addressee. The Court has acknowledged that the Community institutions are entitled, subject

to the principles of the protection of legitimate expectations and of legal certainty, to withdraw, on the ground that it is unlawful, a decision granting a benefit to its addressee (Joined Cases 7/56 and 3/57 to 7/57 *Algera and Others* v *Common Assembly* [1957] ECR 39, Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749 and Case 15/85 *Consorzio Cooperative d'Abruzzo* v *Commission* [1987] ECR 1005).

91 That case-law applies *a fortiori* in situations where, as in this case, the decision in question merely imposes burdens or penalties on the individual. In such cases, the Commission is not precluded from withdrawing the decision by considerations relating to the protection of the legitimate expectations and vested rights of the person to whom the decision was addressed.

92 Accordingly, if the Commission were to conclude, on the basis of a re-examination of the wood pulp decision in the light of the grounds of the *Wood pulp* judgment, that certain findings to the effect that the Swedish addressees had infringed Article 85 of the Treaty were unlawful, it would be authorized to refund the fines paid in accordance with those findings. In that case, if Article 176 were not to be deprived of all its practical effect, the Commission would also be required, in accordance with the principles of legality and of good administration, to repay those fines, as they would have no legal basis.

93 The Commission cannot object that repayment of the fines would be precluded by budgetary rules. Those rules, whose purpose is to ensure proper financial management within the institutions, may not be relied on to restrict the protection of the

rights of individuals or to prevent the Community institutions from complying with a judgment annulling an act.

94 It follows from the foregoing that the Commission's decision is vitiated by an error of law, in so far as it indicates that the Commission was neither obliged nor entitled to refund the fines paid by the applicants.

95 The Commission's decision, contained in the letter of 4 October 1995 rejecting the applicants' request that it review the legality of the wood pulp decision in so far as it relates to them, must therefore be annulled.

The second and third heads of claim, seeking an order requiring the Commission to refund, with interest, part of the fines paid by the applicants

96 In their last two heads of claim, the applicants seek an order requiring the Commission to take all the necessary measures to comply with the *Wood pulp* judgment and, in particular, to refund, together with interest, part of the fines paid by them.

97 Those heads of claim, which seek the issue of directions to the Commission, are inadmissible, since the Community judicature, when exercising the jurisdiction to annul acts conferred on it by Article 173 of the Treaty, is not entitled to issue

directions to the Community institutions (see, for example *Consorzio Cooperative d'Abruzzo* v *Commission*, paragraph 18).

98 Article 176 of the Treaty provides for a division of powers between the judicial and administrative authorities, under which it is for the institution whose act has been declared void to determine what measures are required in order to comply with a judgment annulling an act, such as the *Wood pulp* judgment, and to exercise, subject to review by the Community judicature, the discretion which it enjoys in that regard while respecting the operative part and grounds of the judgment which it is required to comply with and the provisions of Community law (*Asteris and Others* v *Commission*).

99 The decision whether or not to withdraw the wood pulp decision, possibly in part, is in the first place a matter for the Commission. The Court cannot take the place of the Commission, which is required to carry out that assessment pursuant to Article 176 of the Treaty.

100 The second and third heads of claim must therefore be rejected as inadmissible.

Costs

101 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. Since the applicants have applied for costs and the Commission has essentially been unsuccessful, it must be ordered to pay the costs.

On those grounds,

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

hereby:

1. **Annuls the Commission's decision, contained in the letter of 4 October 1995, rejecting the applicants' request that it review, in the light of the judgment of the Court of Justice in Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, the legality of Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EEC Treaty (IV/29.725 — Wood pulp) in so far as the latter relates to them;**

2. **Dismisses the action as inadmissible in so far as it seeks the issue of directions to the Commission;**

3. **Orders the Commission to pay the costs.**

Vesterdorf Bellamy Kalogeropoulos

Delivered in open court in Luxembourg on 10 July 1997.

H. Jung B. Vesterdorf

Registrar President