

Case T-18/97

Atlantic Container Line AB and Others
v
Commission of the European Communities
(Intervention)

Order of the President of the Fifth Chamber of the Court of First Instance, 23
March 1998 II - 591

Summary of the Order

Procedure — Intervention — Persons having an interest — Case concerning the annulment of a decision withdrawing immunity from fines for infringement of the rules on competition — Associations representing undertakings in competition with the undertakings to which the decision relates — Indirect and hypothetical interest in the result of the case — Application to intervene inadmissible

(EC Statute of the Court of Justice, Art. 37, second para.; Rules of Procedure of the Court of First Instance, Art. 115; Council Regulation No 17, Art. 15(6))

An application for leave to intervene in a case before the Court of First Instance cannot be granted unless there is a direct, existing interest in the result of the case and

not merely an interest in relation to the pleas in law put forward. Leave to intervene may be granted to representative associations whose object is to protect their members, in

cases raising questions of principle liable to affect those members to an appreciable extent.

In the case of a challenge to the validity of a Commission decision withdrawing from the parties to a properly notified agreement the immunity from fines which they enjoy under Article 15(6) of Regulation No 17, leave to intervene may not be granted to associations representing undertakings in competition with those affected by that decision, even if they are third-party complainants, where the interests of their members cannot, having regard to the nature of the contested measure, be affected to an appreciable extent by the judgment in that case.

Such a decision withdrawing immunity does not have the effect of preventing the parties from implementing the agreement notified. Dissuasive though the risk of a fine may conceivably be, that contingent and purely factual effect depends solely on the will of the parties to the agreement. Consequently, whilst outsiders to the agreement notified may prefer that there should or should not be such an effect in each specific case, their

interest is merely indirect, hypothetical and insufficient for there to be a finding that their legal situation would be affected by the result of the case brought against the Commission by the parties to which the decision withdrawing immunity was addressed.

Third-party complainants have, moreover, no legitimate interest in having immunity withdrawn from parties to an agreement. Unlike the provisional measures which the Commission may adopt under Article 3 of Regulation No 17, withdrawal of immunity from fines cannot directly benefit third-party complainants. Furthermore, a decision withdrawing immunity on the basis of considerations of expediency and the general interest does not seek to protect the interests of third-party market participants. In addition, such a decision constitutes the culmination of a special procedure which is distinct from the substantive procedure examining the compatibility of the agreement notified with Article 85 of the Treaty, in which third-party complainants retain their full rights. Finally, it is entirely without effect on the final validity of the agreements notified and thus cannot affect the legal position of the associations concerned or their members before the national courts.