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

14 December 2005 *

In Case T-209/01,

Honeywell International Inc., established in Morristown, New Jersey (United States), represented by K. Lasok QC and F. Depoortere, lawyer,

applicant,

v

Commission of the European Communities, represented by R. Lyal, P. Hellström and F. Siredey-Garnier, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Rolls-Royce plc, established in London (United Kingdom), represented by A. Renshaw, Solicitor,

* Language of the case: English.

and

Rockwell Collins, Inc., established in Cedar Rapids, Iowa (United States), represented by T. Soames, J. Davies, A. Ryan, Solicitors, and P. Camesasca, lawyer,

interveners,

APPLICATION for the annulment of Commission Decision 2004/134/EC of 3 July 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case No COMP/M.2220 — General Electric/Honeywell) (OJ 2004 L 48, p. 1),

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

composed of J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 25 May 2004,

gives the following

Judgment

Legal context

1 Article 2(2) and (3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1990 L 395, p. 1, corrected version in OJ 1990 L 257, p. 13), as last amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (OJ 1997 L 180, p. 1) (hereinafter, as corrected and amended, 'Regulation No 4064/89'), provides as follows:

'2. A concentration which does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared compatible with the common market.

3. A concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market.'

Background to the dispute

2 Honeywell International Inc. (hereinafter 'the applicant') is an undertaking active in the following fields: aeronautical products and services, automotive products, electronic materials, speciality chemicals, performance polymers, transportation and power systems as well as home and building controls and industrial controls.

3 General Electric Company (hereinafter 'GE') is a diversified industrial undertaking active in the following fields: aircraft engines, domestic appliances, information services, power systems, lighting, industrial systems, medical systems, plastics, broadcasting, financial services and transportation systems.

4 On 22 October 2000, GE and the applicant entered into an agreement under which GE would acquire the applicant's entire share capital (hereinafter 'the merger'), the applicant becoming a wholly-owned subsidiary of GE.

5 On 5 February 2001, the Commission formally received notification of the merger pursuant to Article 4 of Regulation No 4064/89.

6 On 1 March 2001, taking the view that the merger fell within the scope of Regulation No 4064/89, the Commission decided to initiate proceedings under Article 6(1)(c) of that Regulation and under Article 57 of the Agreement on the European Economic Area (EEA) (hereinafter 'the decision to initiate proceedings').

7 On 15 March 2001, GE and the applicant jointly submitted to the Commission their observations on the decision to initiate proceedings.

8 On 8 May 2001, the Commission sent a statement of objections to GE, to which GE replied on 24 May 2001.

9 On 29 and 30 May 2001, GE and the applicant took part in an oral hearing before the Commission.

10 On 14 and 28 June 2001, GE and the applicant proposed two sets of commitments designed to render the merger acceptable to the Commission.

11 On 3 July 2001, the Commission adopted Decision 2004/134/EC (Case No COMP/M.2220 — General Electric/Honeywell) (OJ 2004 L 48, p. 1) declaring the merger incompatible with the common market and the EEA Agreement (hereinafter 'the contested decision').

The contested decision

12 The operative part of the contested decision states as follows:

'Article 1

The concentration by which General Electric Company acquires control of the undertaking Honeywell International Inc. is declared incompatible with the common market and with the EEA Agreement.

Article 2

This Decision is addressed to:

General Electric Company.

...'

13 The grounds of the contested decision may be summarised as follows.

14 According to the Commission, GE was itself already in a dominant position on the market for jet engines for large commercial aircraft (hereinafter also referred to as 'large commercial jet aircraft engines') and on the market for jet engines for large regional aircraft (hereinafter also referred to as 'large regional jet aircraft engines'). Its strong market position, combined with its financial strength and vertical integration into aircraft leasing, were among the factors that led to the finding of GE's dominance on these markets. The investigation also showed that the applicant is the leading supplier of avionics and non-avionics products, as well as of engines for corporate jet aircraft and of engine starters, the latter being a key component in the manufacturing of engines.

15 The combination of the two companies' activities would have resulted in the creation of dominant positions on the markets for the supply of avionics products, non-avionics products and corporate jet aircraft engines, and in the strengthening of GE's existing dominant position in large commercial jet aircraft engines and large regional jet aircraft engines. The combination of various factors would have led to this creation or strengthening of a dominant position: horizontal overlap in some markets as well as the extension of GE's financial strength and its vertical integration into the applicant's activities and, lastly, the bundling of their respective complementary products.

16 According to the Commission, such integration would enable the merged entity to reinforce the market power of the two companies with regard to their respective products. This would have the effect of foreclosing competitors, thereby eliminating competition in those markets, ultimately with an adverse effect on product quality, service and prices to consumers.

Procedure

17 By application lodged at the Registry of the Court of First Instance on 12 September 2001, the applicant brought the present action. On the same day, GE also brought an action against the contested decision (Case T-210/01).

18 By documents lodged at the Registry of the Court on 11, 15 and 16 January 2002 respectively, Rolls-Royce Plc, Rockwell Collins Inc. (hereinafter 'Rockwell') and Thales SA sought leave to intervene in the present case in support of the Commission.

19 The applicant requested that certain information in its written submissions and in those of the Commission be kept confidential from the interveners.

20 By order of 26 June 2002, the President of the First Chamber of the Court of First Instance granted Rolls-Royce and Rockwell leave to intervene. By the same order he granted the confidential treatment requested by the applicant, subject to observations by the interveners. In accordance with Article 116(6) of the Rules of Procedure of the Court of First Instance, Thales was granted leave to intervene during the oral procedure on the basis of the report for the hearing.

21 Upon a change in composition of the Chambers of the Court pursuant to the Court's decision of 13 September 2004 (OJ 2004 C 251, p. 12), the Judge-Rapporteur was transferred to the Second Chamber, to which the present case was then allocated.

22 Following an objection by Rolls-Royce regarding the confidentiality of an annex to the application, namely 'the Nalebuff report', an informal meeting took place on 15 October 2002 with the President of the Second Chamber of the Court, by way of measures of organisation of procedure, following which the applicant lodged a new, non-confidential version of that document. When asked whether it intended to pursue its objections in light of that new version, Rolls-Royce did not respond within the period prescribed.

23 Its request for confidential treatment of its statement in intervention having been rejected on the ground that such treatment is not provided for by the Rules of Procedure, Rolls-Royce lodged a non-confidential version of that document and Rockwell lodged its own statement in intervention. The applicant and the Commission lodged their observations on those interventions within the period prescribed.

24 Pursuant to Article 14 of the Rules of Procedure and on the proposal of the Second Chamber, the Court of First Instance, having heard the parties in accordance with Article 51 of those rules, assigned the case to a chamber sitting in extended composition.

25 In its application the applicant requested that the present case be joined with Case T-210/01. The President of the Second Chamber (Extended Composition) referred that decision to the chamber in accordance with Article 50 of the Rules of Procedure.

26 Upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure and put questions to the parties by way of measures of organisation of procedure under Article 64 of the Rules of Procedure. It also asked the Commission to produce certain documents before the hearing. The parties complied with those requests.

27 By letter lodged at the Registry of the Court on 2 February 2004, Thales stated that it wished to withdraw its intervention. By order of 23 March 2004, after hearing the other parties, the President of the Second Chamber (Extended Composition) of the Court took formal note of that withdrawal.

28 The parties presented oral argument and their answers to the questions of the Court at the hearing on 25 May 2004. At the end of the hearing, the oral procedure was closed.

29 By letter of 3 June 2004, the applicant lodged at the Court Registry a further document together with observations on the relevance of that document and requested that they be placed on the file of the present case. By order of 8 July 2004, the Court decided to reopen the oral procedure in accordance with Article 62 of the Rules of Procedure so as to enable the parties to submit their observations on that request.

30 After hearing the parties, the Court adopted a measure of organisation of procedure under Article 64 of the Rules of Procedure by which it placed on the file the document and observations lodged by the applicant on 4 June 2004. The observations of the Commission and of the interveners regarding the relevance of those items were also placed on the file.

31 The oral procedure was then closed once more on 23 November 2004.

Forms of order sought

32 The applicant claims that the Court should:

— join the present case with Case T-210/01 *General Electric* v *Commission*;

— order such measures of inquiry as appear necessary;

— annul the contested decision;

— take such other or further steps as justice may require;

— order the Commission and the interveners to pay the costs.

33 The Commission, supported by Rolls-Royce and Rockwell, contends that the Court should:

— dismiss the application;

— order Honeywell to pay the costs.

Law

1. *The scope of the action and the subject-matter of the dispute*

Arguments of the parties

34 The Commission, supported by Rolls-Royce, submits that the applicant's reference, in its application, to GE's arguments in Case T-210/01 is contrary to Article 44(1)(c) of the Rules of Procedure, according to which the application must contain a summary of the pleas in law. Such a reference is all the more unacceptable in that the applicant had knowledge of only a draft of GE's application and not of the final version. The action should therefore be declared inadmissible as regards issues not specifically addressed in the application.

35 The Commission submits that, in the light of the pleas expressly raised by the applicant in its application, which essentially concern the part of the contested decision dealing with bundling, the applicant has disregarded the substantive and most important part of the decision, which deals with the issues of horizontal overlap and vertical integration. The contested decision is based on elements of fact and law which, together, show that the combination of GE's financial strength and vertical integration in regard to purchasing, financing and leasing of aircraft and the applicant's positions of strength on various aeronautical product markets leads to the creation and strengthening of dominant positions.

36 In its defence, the Commission stated that 'the reasoning of the decision is based on a combination of elements of fact and law which, taken together (and only when

taken together), led the Commission to prohibit the planned merger'. However, in its rejoinder and at the hearing, the Commission explained that each of the separate elements of reasoning adopted in the contested decision sufficed to justify the prohibition of the merger, and described the statement in its defence as 'ill-considered' in so far as it could be interpreted as indicating the contrary. Thus, even if all the submissions advanced by the applicant, in particular those regarding bundling, were well founded, the contested decision should not be annulled since the remaining grounds would be sufficient to establish the correctness of the Commission's finding that the merger was incompatible with the common market.

37 Rolls-Royce stresses that the applicant has failed to submit any arguments challenging the majority of the grounds on which the merger was prohibited, in particular the strengthening of GE's dominant positions on the markets for large commercial jet aircraft engines or large regional jet aircraft engines and the creation of a dominant position for corporate jet aircraft engines and small marine gas turbines. In particular, as regards the three separate factors which point to the strengthening of GE's dominant position on the large commercial jet aircraft engines market, the applicant has not seriously contested the finding that foreclosure will result from the vertical integration in regard to the applicant's starter engines. Consequently, the application is not pertinent and is devoid of purpose.

38 Rockwell observes that the applicant has not addressed the issues of horizontal overlaps or vertical integration in its application, the parts of the application allegedly addressing those issues, under the heading 'Summary of the Decision', consisting of nothing more than a description of the contested decision.

39 In reply to those objections, the applicant makes three points.

40 First, it observes that in its application it stated that it was adopting all the arguments advanced by GE in Case T-210/01 that were additional to its own. It submits that such a reference to the pleadings lodged in another connected case is permitted by the case-law and has the effect of incorporating those pleadings into its application. In its reply, it refers to the judgment of the Court in Case T-82/89 *Marcato* v *Commission* [1990] ECR II-735, paragraphs 22 to 24). At the hearing it referred to a 'summary' of the pertinent case-law in the Opinion of Advocate General Alber in Case C-263/98 *Belgium* v *Commission* [2001] ECR I-6063, at p. 6064, citing a single judgment of the Court of First Instance, Case T-37/91 *ICI* v *Commission* [1995] ECR II-1901, paragraph 43 et seq., in which the Court of First Instance had accepted a reference to the application in Case T-36/91, which involved the same parties, who were represented by the same lawyers.

41 Moreover, the Commission and Rolls-Royce do not allege that their ability to defend themselves has been impaired by that reference and that Rockwell was perfectly able to understand and reply to all the arguments submitted.

42 The applicant also recalls its request that Cases T-209/01 and T-210/01 be joined, and it submits that, even if its application contains the lacunae alleged by the Commission, the joinder of the two cases would remedy them. At the hearing, it relied in particular on the judgment of the Court of Justice in Joined Cases 26/79 and 86/79 *Forges de Thy-Marcinelle et Monceau* v *Commission* [1980] ECR 1083 as support for its argument concerning the legal effects of joinder.

43 Secondly, the applicant claims that the grounds of the contested decision that it has challenged in detail in the application, namely those relating to bundling, constitute the cornerstone of the contested decision, so that if the Court were to find that its objections were well founded, that would inevitably lead to the annulment of the contested decision. It observes that, in the defence, the Commission itself stated that the contested decision is based on a combination of elements which, taken together, justify its conclusion as to the incompatibility of the notified transaction with the common market. The contested decision would therefore have to be annulled if it

were established that the central plank of its reasoning relating to conglomerate effects is vitiated by errors.

44 At the hearing the applicant added that the Commission's approach during the administrative procedure led the notifying parties to believe that their transaction would be approved if a way could be found to dispel the Commission's reservations relating to future bundling. That is why the applicant has concentrated, in the proceedings before the Court, principally on that aspect of the case.

45 Thirdly, the applicant observes that, in any event, in the course of its description of the contested decision, the questions of horizontal overlaps and vertical integration were touched upon under the heading 'Summary of the Decision'. Under that heading, the applicant describes and comments on the contested decision and explains that, with regard to the relevant markets, the contested decision is based on several or all of the following elements: (i) horizontal overlaps and vertical anti-competitive effects; (ii) the financial strength of GE and vertical integration of the applicant with GE's subsidiaries, GE Capital Aviation Services ('GECAS') and GE Capital Corporate Aviation Group ('GECCAG'), within the merged entity; and (iii) bundling by the merged entity. The applicant submits that the analysis in the contested decision of the markets on which the horizontal overlaps are relevant either lacks credibility or is insufficiently reasoned with regard to each product. The contested decision is therefore essentially based on the two other elements. According to the applicant, the second element is so implausible that it is not necessary to examine it further. Thus, the third element, namely the question of bundling, is decisive. Moreover, the material part of the divestment regarded as necessary by the Commission concerned that aspect of the contested decision.

46 The applicant emphasises that the defects it has identified in the contested decision are sufficiently serious for the decision to be annulled in its entirety. As the

Commission accepts, only the combination of elements of fact and of law taken together justifies the prohibition of the concentration. In reply to Rolls-Royce, the applicant adds that the question of engine starters, which was in fact resolved by the commitments, is insufficient to justify the contested decision.

47 For all those reasons, the applicant submits that the objections raised by the Commission and the interveners, alleging that the reference to GE's application is inadmissible and that the pleas put forward in the applicant's own application in the present case are inoperative, are contrary to the principle of good administration of justice and have no sound basis.

Findings of the Court

Introduction

48 The Court points out, firstly, that where some of the grounds given in a decision are, by themselves, sufficient to justify that decision in law, errors which might invalidate other grounds of the decision do not have any effect on its operative part (see, to that effect, the judgment in Joined Cases C-302/99 P and C-308/99 *Commission and France* v *TF1* [2001] ECR I-5603, paragraphs 26 to 29).

49 Moreover, where the operative part of a Commission decision is based on several pillars of reasoning, each of which would in itself be sufficient to justify that operative part, that decision should, in principle, be annulled only if each of those pillars is vitiated by an illegality. In such a case, an error or other illegality which

affects only one of the pillars of reasoning cannot be sufficient to justify annulment of the decision at issue because it could not have had a decisive effect on the operative part adopted by the Commission (see, by analogy, Case T-126/99 *Graphischer Maschinenbau* v *Commission* [2002] ECR II-2427, paragraphs 49 to 51, and the case-law cited). That rule applies in particular in the context of merger control decisions (see, to that effect, Case T-310/01 *Schneider Electric* v *Commission* [2002] ECR II-4071, paragraphs 404 to 420, and paragraphs 80 and 81 below).

50 It should also be noted in this regard that where a pillar of reasoning that is sufficient to justify the operative part of a measure is not called into question by an applicant in his action for annulment, that pillar of reasoning, and thus the measure founded on it, must be held to be lawful and established with regard to him (see, to that effect and by analogy, Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraphs 57 to 63).

51 In the light of those considerations, it is necessary to examine whether in the present case the pleas submitted by the applicant would, if well founded, be sufficient to invalidate the operative part of the contested decision and could therefore support an action that might be capable of resulting in the annulment of that decision. If pleas properly raised are not capable, even when taken together, of justifying the annulment of the contested decision, they are inoperative and consequently the entire action is unfounded (see, to that effect, Case T-121/95 *EFMA* v *Council* [1997] ECR II-2391, paragraphs 115 to 122).

52 In that context, it is first necessary to determine the actual scope of the present action by examining whether some of the pleas which the applicant claims to have submitted are in fact inadmissible.

The reference to the pleas raised in Case T-210/01

53 Without formally raising a plea of inadmissibility, the Commission has argued that some specific aspects of the action are inadmissible. In any event, the Court observes that it is settled case-law that the conditions for the admissibility of an action concern an absolute bar to proceeding with the action which the Court may and must consider of its own motion should such an issue arise (orders of 15 September 1998 in Case T-100/94 *Michailidis and Others* v *Commission* [1998] ECR II-3115, paragraph 49, and of 25 October 2001 in Case T-354/00 *Métropole Télévision — M 6* v *Commission* [2001] ECR II-3177, paragraph 27; see also, to that effect, the order of 5 July 2001 in Case C-341/00 P *Conseil national des professions de l'automobile and Others* v *Commission* [2001] ECR I-5263, paragraph 32).

54 According to Article 21 of the Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of First Instance, the application must set out, inter alia, 'the subject-matter of the proceedings' and 'a summary of the pleas on which the application is based'. Moreover, under Article 48(2) of those rules, 'no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure'. It follows from those provisions that any plea which is not adequately articulated in the application initiating the proceedings must be held inadmissible. The case-law expressly confirms that, in the case of an absolute bar to proceeding, such inadmissibility may be raised by the Court of its own motion if need be (Case T-231/99 *Joynson* v *Commission* [2002] ECR II-2085, paragraph 154).

55 It is also apparent from that case-law that the summary of an applicant's pleas in law must be sufficiently clear and precise to enable the defendant to prepare its defence and to enable the Court to give judgment in the action without the need to seek further information (Case T-145/98 *ADT Projekt* v *Commission* [2000] ECR II-387, paragraph 66, and Case T-157/01 *Danske Busvognmænd* v *Commission* [2004] ECR

II-917, paragraph 45). Similar requirements apply where a submission is made in support of a plea in law (Case T-352/94 *Mo och Domsjö* v *Commission* [1998] ECR II-1989, paragraph 333).

56 Moreover, in order to ensure legal certainty and the proper administration of justice, it is established case-law that, for an action to be admissible, the basic legal and factual particulars on which the action is based must be indicated coherently and intelligibly in the application itself, even if only in summary form (see Case C-178/00 *Italy* v *Commission* [2003] ECR I-303, paragraph 6; Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraphs 20 and 21; *ADT Projekt* v *Commission*, paragraph 55 above, paragraph 66; order in Case T-110/98 *RJB Mining* v *Commission* [2000] ECR II-2971, paragraph 23, and the cases cited; Case T-195/00 *Travelex Global and Financial Services and Interpayment Services* v *Commission* [2003] ECR II-1677, paragraph 26; and *Danske Busvognmænd* v *Commission*, paragraph 55 above, paragraph 45; see also, to that effect, Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v *High Authority* [1961] ECR 281, 294, and Case C-330/88 *Grifoni* v *EAEC* [1991] ECR I-1045, paragraphs 17 and 18).

57 Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed to it, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential submissions in law which, in accordance with the abovementioned provisions, must appear in the application (order in Case T-154/98 *Asia Motor France and Others* v *Commission* [1999] ECR II-1703, paragraph 49). Moreover, it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (*Joynson* v *Commission*, paragraph 54 above, paragraph 154; Case T-84/96 *Cipeke* v *Commission* [1997] ECR II-2081, paragraph 34; Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and*

Others v *Commission* [1999] ECR II-931, paragraph 39, not having been set aside in that regard by the Court of Justice on appeal in Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij* v *Commission* [2002] ECR I-8375).

58 However, the applicant cites several judgments in which the Community judicature has permitted a reference to written pleadings submitted to the same court in other cases (see paragraph 40 above). The applicant submits that a reference to written pleadings submitted to the same court in another case should not be held inadmissible.

59 The cases relied on by the applicant in paragraph 40 above to justify such a reference do not, however, lead the Court in the present case to disapply the abovementioned rule that the applicant must set out in the application itself a summary of the pleas on which it relies. The Court of First Instance observed in *ICI* v *Commission*, paragraph 40 above (paragraph 45), that the case-law of the Court of Justice takes into account the specific features of each particular case, and cited in support of that assertion the judgments in Case 9/55 *Société de Charbonnages de Beeringen and Others* v *High Authority* [1954-1956] ECR 311; Joined Cases 19/63 and 65/63 *Prakash* v *Commission* [1965] ECR 533; Case 111/63 *Lemmerz-Werke* v *High Authority* [1965] ECR 677; Case 4/69 *Lütticke* v *Commission* [1971] ECR 325, paragraph 2; and *Forges de Thy-Marcinelle et Monceau* v *Commission*, paragraph 42 above (paragraph 4).

60 In this regard, the Court points out, first of all, that to allow such a reference to an application lodged in another case would in principle be incompatible with the cases cited in paragraphs 55 to 57 above, which require that the application itself contain a summary of the pleas in law submitted, so that the Court is able, where appropriate, to give judgment on the action without having to seek further information.

61 Even if in some cases the Community judicature has allowed pleas in law to be raised by means of a reference to another case (*Forges de Thy-Marcinelle et Monceau* v *Commission*, paragraph 42 supra, and *Marcato* v *Commission*, paragraph 40 above), it has refused to do so in others (see *Charbonnages de Beeringen and Others* v *High Authority*, paragraph 59 above, and *Prakash* v *Commission*, paragraph 59 above) without however indicating at least explicitly, a decisive criterion for the exercise of that choice.

62 It must be pointed out that in all the cases giving rise to the judgments relied on by the applicant or cited in paragraph 45 of *ICI* v *Commission*, paragraph 40 above, in which the Community judicature accepted that pleas not expressly set out in the application could be regarded as validly raised by virtue of such a reference, the applicant had referred to its own written pleadings in another case.

63 In the present case, as observed above, the applicant's reference in its application relates to the application lodged on the same day by another applicant, GE.

64 To accept the admissibility of pleas in law not set out expressly in the application on the ground that they were raised by a third party in another case, to which reference is made in that application, would be to allow the mandatory requirements of Article 44(1) of the Rules of Procedure, noted in paragraph 54 above, to be circumvented.

65 Moreover, in Case T-210/01 GE is represented by different lawyers from those representing the applicant in the present case. Furthermore, GE's application is not annexed to the applicant's application in the present case. These factors can only lend further support to the conclusion reached in the previous paragraph, inasmuch as they confirm the separate and independent nature of the present action in comparison with that registered under Case T-210/01.

66 It must also be recalled that each party is solely responsible for the content of the pleadings which it lodges, a principle laid down notably in Article 43(1) of the Rules of Procedure (see, that effect, the judgment in *ICI* v *Commission*, paragraph 40 above, paragraph 46). Although the applicant asserts that it had knowledge of the provisional version of GE's application, it does not claim to have known, at the time of lodging its own application, what was the precise content of GE's definitive application to which it referred. Contrary to the requirements of the proper administration of justice, the reference to GE's application did not therefore permit the Court to identify with sufficient precision the pleas raised before it when the application was lodged in the present case.

67 Having regard to the foregoing, and without it being necessary in the present case to determine under what conditions an applicant may raise pleas by means of a reference to its own pleadings in another case, the Court finds that the requirement that the parties, and in particular the applicant, be identical in both cases is an essential condition for the admissibility of pleas purportedly raised by means of a reference to pleadings in another case.

68 It follows from the foregoing that the applicant's reference to the application lodged by GE in Case T-210/01 does not have the effect of incorporating the pleas raised by GE in that case into the application lodged by the applicant in the present case.

The application for joinder

69 In support of its application for joinder of the present case with Case T-210/01, the applicant submits that even if the reference in its application to that of GE is not sufficient to render admissible the pleas that it wished to raise in relation to aspects of the case other than bundling, such joinder would remedy any deficiencies

rendering its own application inadmissible. At the hearing the applicant relied on the judgment in *Forges de Thy-Marcinelle et Monceau* v *Commission*, paragraph 42 above (paragraph 4), and a line of cases which it claims goes back to the beginning of the Community judicature's case-law.

70 As regards the consequences of a joinder of Cases T-209/01 and T-210/01, the Court observes that according to Article 50 of the Rules of Procedure:

'The President may, at any time, after hearing the parties and the Advocate General, order that two or more cases concerning the same subject-matter shall, on account of the connection between them, be joined for the purposes of the written or oral procedure or of the final judgment. The cases may subsequently be disjoined. The President may refer these matters to the Court of First Instance.'

71 As the Court of Justice held in Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others* v *Commission* [2001] ECR I-4717, paragraph 66, it is clear from that provision that an order for joinder does not affect the independence and autonomy of the cases which it covers, since they may always subsequently be disjoined. Thus, in that judgment, the Court of Justice held that two applicants were not entitled to rely before the Court of Justice on pleas which they had not raised at first instance, even though in the proceedings before the Court of First Instance their cases had been joined with other cases in which those pleas had actually been raised by other applicants (paragraphs 61 to 68 of the judgment).

72 It must also be pointed out that joinder is a measure which the President or the Court of First Instance may order under Article 50 of the Rules of Procedure, but that, since that decision falls within their discretion as to the most appropriate manner of organising the proceedings, neither of them is obliged to do so even if the

parties apply for joinder. Consequently, if the applicant's contention were to be accepted, that would mean that a procedural decision of the President falling entirely within his discretion could extend the scope of an application, and thus be decisive for the outcome of those proceedings before the Court, thereby introducing an arbitrary element into those proceedings.

73 As regards the judgment in *Charbonnages de Beeringen and Others* v *High Authority*, paragraph 59 above, it must be pointed out that the Court of Justice, in stating that a general reference to what is stated in another case does not suffice to make the application admissible, still less where the reference has been made without a contemporaneous request for joinder, did not hold that the application would have been admissible if an application for joinder had been made at the proper time. On the contrary, it merely held that in the case before it the absence of a request that the Court consider the two cases together was a further factor confirming the inadequacy of the general reference in the application to an action brought by a third person.

74 Moreover, inasmuch as the Court of Justice held in *Forges de Thy-Marcinelle et Monceau* v *Commission*, paragraph 42 above, that 'the admissibility of the second action covers any admissibility of the first', it must be observed that in that case the applications in question had been lodged by the same person, whereas in the present case the applicant is seeking to rely on pleas raised by a third person.

75 Thus, there being no need in the present case to rule on any effects that joinder may have on two actions brought by the same applicant, it suffices to hold that the fact of joining two cases brought by different applicants cannot alter the scope of the application lodged separately by each of them; otherwise there would be a risk of impairing the independence and autonomy of their separate actions (see, by analogy, *Moccia Irme and Others* v *Commission*, paragraph 71 above, paragraph 66).

76 In the present case, therefore, only the pleas in law other than those claimed to have been raised solely by means of the general reference to GE's application may be taken into consideration.

77 In these circumstances, there is no reason to join the present case with Case T-210/01. The applicant's request to that effect in its application is therefore rejected.

The effectiveness of the pleas raised in the present case

78 The applicant's second argument in this context is that the grounds relating to bundling are the key element of the contested decision, without which that decision cannot be upheld.

79 The Court observes that it follows from Article 2(3) of Regulation No 4064/89 that, in relation to concentrations, if a notified transaction creates or strengthens a dominant position, on just one market, as a result of which effective competition would be significantly impeded in the common market, the Commission must, in principle, prohibit it, even if the transaction does not give rise to any other impediment to competition. Where the Commission examines several markets in turn and finds that a dominant position will be created or strengthened on several of them with the result that effective competition will be significantly impeded, it must be concluded, unless otherwise expressly indicated in the decision, that the Commission considers that the situation on each of those markets as a result of the concentration would, of itself, justify the prohibition of the notified transaction.

80 The Court points out in that regard that in *Schneider Electric* v *Commission*, paragraph 49 above (paragraphs 404 to 420), it held that the errors found in that case concerning the analysis of the various national markets could not of themselves suffice to call in question the objections raised by the Commission in regard to the various French sectoral markets. Thus, the analysis underlying the Commission's decision which resulted in the prohibition of the merger in question could not be held to be inadequate in regard to the latter markets solely because errors had been found in respect of other markets.

81 Similarly, where the Commission finds that a dominant position will be created or strengthened on a single market for various separate and independent reasons, it must be held in principle, and absent any indication to the contrary in the relevant grounds of the decision adopted by the Commission, that each of the reasons put forward would, of itself, have caused the Commission to make that finding. That is all the more so where it is apparent from the terms of that element of reasoning that it is in itself sufficient to establish that the conditions of competition on the relevant market would undergo a qualitative or substantial change.

82 In the present case, the Commission explained in recital 567 of the contested decision that it had to be concluded that 'the proposed merger would lead to the creation or strengthening of a dominant position on the markets for large commercial jet aircraft engines, large regional jet aircraft engines, corporate jet aircraft engines, avionics and non-avionics products, as well as small marine gas turbine[s], as a result of which effective competition in the common market would be significantly impeded'.

83 As the Commission observes in its defence, it did not create in the contested decision a hierarchy between the competition problems found on each of the markets which it examined and then listed in its conclusion set out in paragraph 82 above. It must therefore be inferred from the contested decision that each separate

limb of the reasoning in it and, above all, the analysis in it of each of the markets listed in that paragraph in fact constitutes an independent pillar of the contested decision.

84 That conclusion is confirmed by a detailed examination of the various limbs of the Commission's reasoning.

85 The Court notes in that regard that the elements of reasoning relating to the horizontal overlaps resulting from the notified transaction on the market for large regional jet aircraft engines, the market for corporate jet aircraft engines and the market for small marine gas turbines are not of such a nature as to reinforce each other, in view of the lack of economic links between those markets. In particular, the creation of a dominant position on the market for small marine gas turbines cannot affect or be affected by the creation or strengthening of dominant positions on the various markets for jet engines and other aerospace components, since in both cases the products concerned fall within distinct business sectors.

86 Furthermore, in recitals 428 to 431, under the heading '(a) Horizontal Overlap on Existing Platforms', the Commission described the immediate effects of the merger on the market for large regional jet aircraft engines as a result of that overlap. The description refers to the influence of GE Capital and GECAS, a factor strengthening the pre-existing dominant position of GE on the relevant market, which is used by the Commission to reject the argument of the parties to the merger that the monopoly created by the merger is a purely static phenomenon. However, the Commission did not rely, in that context, on its argument relating to bundling. That argument was raised, so far as concerns the market for large regional jet aircraft engines, only under the heading '(b) Effects on Future Platform Competitions', which contains a separate analysis dealing with the medium and long-term effects of

the merger on that market. It follows from the foregoing that the Commission found, in the contested decision, that the horizontal overlap on the market for large regional jet aircraft engines as a result of the merger would immediately have strengthened GE's pre-existing dominant position, irrespective of any other factor which might strengthen that position still further in the future.

87 As regards the market for small marine gas turbines, the Commission described the horizontal overlap under a separate heading, in recitals 476 and 477 of the contested decision, before examining, in separate sections, 'foreclosure' through the vertical integration of the applicant with GE and 'foreclosure' through vertical integration of small marine gas turbines, on one hand, and the applicant's electronics and controls, on the other. The Commission stated in recital 476 of the decision that the merger would create an entity with a share of between 65% and 80% of the relevant market, which would be four to five times larger than its closest competitor. In recital 477 it concluded that the merged entity would be by far the largest player in the small marine gas turbines market and states why competition from other current and potential players on that market would not be effective. It therefore follows from the structure and wording of this part of the contested decision that, according to the Commission, the effects of the merger described in the first section dealing with the horizontal overlap in the turbines sector sufficed to create the dominant position on that market, irrespective of other factors which would serve to foreclose the market and thereby strengthen that position still further.

88 In any event, in the present case, the applicant has not disputed the Commission's argument relating to foreclosure of competitors from the small marine gas turbines market as a result of the vertical integration of GE's manufacture of those products and the applicant's manufacture of controls and other components used in those turbines, nor has it disputed the argument relating to foreclosure of competitors from the small marine gas turbines market as a result of the vertical integration of the applicant and GE on account of the latter's financial strength (see recitals 478 to 484 of the contested decision and paragraphs 113 and 114 below).

89 As regards the foreclosure of competitors through the vertical integration of the manufacture of large commercial jet aircraft engines and that of the applicant's engine starters, the Commission stated expressly in recital 419 of the contested decision that, quite apart from the effects of product package offers, the proposed merger would strengthen GE's dominant position on the market for large commercial jet aircraft engines as a result of the vertical foreclosure of the competing engine manufacturers.

90 The applicant drew attention in its reply to the Commission's assertion in paragraph 51 of its defence that '[m]oreover, and above all, the reasoning of the decision [was] based on a combination of elements of fact and law which, taken together (and only when taken together), [had] led the Commission to prohibit the planned merger'. According to the applicant, it follows from that statement that the contested decision can escape annulment only if all the main elements on which it is based are well founded, and in particular the analysis of bundling which it calls into question in detail in its application.

91 The Commission claimed, however, in paragraph 18 of its rejoinder, and repeated at the hearing, that each of the separate pillars adopted in the contested decision sufficed to justify the prohibition of the planned merger. At the hearing, it described its own statement, cited in the previous paragraph, as 'ill-considered' and explained that the statement was made in the context of an analysis replying to the applicant's arguments that the decision is based 'largely' on two theories, namely, first, the alleged financial strength of GE and its vertical integration in financial services, aircraft purchasing, leasing and aftermarket activities, and, secondly, the future practice of bundling.

92 The Commission's explanation must be accepted.

93 When paragraphs 48 to 51 of the defence are read as a whole it is apparent that the Commission sought to challenge the applicant's argument that those two 'theories' alone were the real foundation of the contested decision, to the exclusion of the other anti-competitive aspects of the notified transaction that were analysed in that decision.

94 Moreover, as the Commission correctly observed at the hearing, it is for the Court of First Instance to review the legality of the decision itself, taking into account the arguments advanced in that decision and not in the light of what has been asserted with regard to it in the defence. It is true that the Commission expressed itself ambiguously in its defence and that its statement was capable of being interpreted as meaning that it disavowed the proposition that each element of its analysis sufficed to found the contested decision. However, since it has explained in its rejoinder and at the hearing that this was not its position, the contested decision should not be interpreted in that way, that is to say, in a manner contrary to its wording, structure and general scheme (see paragraphs 79 to 85 above).

95 At the hearing the applicant also maintained that the Court ought to confine itself to examining whether the competitive situation as found by the Commission differed from that which in fact would result from the merger. If there are significant differences in that regard, the contested decision should be annulled. By that line of argument, the applicant contends, in substance, that it is for the Commission to decide whether a concentration should be prohibited following a judgment by which the Court of First Instance rejects its analysis in relation to certain markets. Accordingly, it is not open to the Court of First Instance to uphold a decision prohibiting a concentration by substituting its own overall conclusion for that of the Commission.

96 However, as the Court has pointed out in paragraph 79 above, the Commission must prohibit a concentration that satisfies the criteria in Article 2(3) of Regulation No 4064/89. Accordingly, a prohibition decision should not be annulled on the ground that the applicant has shown that the analysis adopted in relation to one or more

markets is vitiated by one or more errors, if it is nevertheless apparent from the prohibition decision that the notified merger satisfied those criteria in relation to one or more other markets (see paragraphs 48 to 50 and 79 to 81 above). In particular, if the grounds concerning those other markets are not challenged in the application, they must be held, for the purposes of the action in question, to be well founded. By drawing conclusions in this manner from the substantive scope of an application, the Court of First Instance is not substituting its assessments for those of the Commission, since it is the — unchallenged — assessments of the Commission itself which form the basis for the decision.

97 In the context of the line of argument set out in paragraph 78 above, the applicant also observed at the hearing that the Commission gave the impression, particularly during the administrative procedure, that the risk of bundling after the merger was the decisive aspect of the case. That impression allegedly distorted the entire administrative procedure and deprived the parties to the merger of the opportunity to propose commitments capable of resolving the other problems. That is also the reason why the applicant focused its application on the conglomerate effects allegedly resulting from the merger.

98 That argument, advanced by the applicant for the first time at the hearing, constitutes a new plea in law. As that plea relates to the approach allegedly adopted by the Commission during the administrative procedure, it is obvious that the applicant was in a position to raise it in the application initiating these proceedings. Consequently, it is inadmissible under Article 48(2) of the Rules of Procedure.

99 In any event, in its statement of objections of 8 May 2001 the Commission clearly set out the objections concerning all the anti-competitive consequences of the merger, in particular those in respect of the horizontal and vertical effects resulting from it that were subsequently included in the contested decision (see, in particular, paragraphs 118 to 122, 124 to 126, 459 to 471, 473, 474, 578 to 586 and 612 to 633 of the statement of objections). It must be held that in matters relating to merger control the Commission cannot be required, over and above the obligation to set out

its objections in a statement of objections and to supplement that statement if it should then decide to adopt new objections, to indicate, after service of the statement of objections and before adoption of the final decision, its current thinking as to the possible means of resolving the problems it has identified (see, to that effect, Case 53/69 *Sandoz* v *Commission* [1972] ECR 845, paragraph 14; Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraphs 192 and 193; Case T-87/96 *Assicurazioni Generali and Unicredito* v *Commission* [1999] ECR II-203).

100 Moreover, since the applicant has not even alleged that it received, from authorised and reliable sources within the Commission, precise, unconditional and consistent assurances that the Commission was not pursuing certain objections, the principle of the protection of legitimate expectations can have no application in the present case (see, to that effect, Case T-203/97 *Forvass* v *Commission* [1999] ECR-SC I-A-129 and II-705, paragraph 70, and the cases cited, and Case T-290/97 *Mehibas Dordtselaan* v *Commission* [2000] ECR II-15, paragraph 59).

101 Finally, the Court notes, as regards the market for large regional jet aircraft engines, to the extent that it may be relevant, that the Commission found in recital 20 of the contested decision that those aircraft were of particular importance in the Community context since they constituted 14% of the overall European fleet in 1992 and 33% in 1998. It observed in recital 431 of the contested decision that the significance of that market, on which the merged entity would have a monopoly as a result of the merger, would have the effect of making airlines more and more dependent on that entity.

102 Having regard to the foregoing, the Court must reject the applicant's argument that the objections raised by it on the merits concerning the conglomerate effects — essentially bundling — suffice to justify the annulment of the contested decision.

103 It must be held that the horizontal and vertical anti-competitive effects of the merger set out in the contested decision are not subsidiary grounds in the general scheme of the contested decision and are sufficient to support the prohibition of the notified transaction.

104 Consequently, the application can result in the annulment of the contested decision only if the pleas expressly raised in the application itself call into question the Commission's conclusion in respect of each of the independent aspects examined in the contested decision, and in particular the horizontal and vertical anti-competitive effects found by that decision.

The scope of the application

105 Lastly, it is necessary to examine the applicant's argument that in its application, under the heading 'Summary of the decision', it put forward submissions relating to the horizontal and vertical anti-competitive effects of the merger identified in the contested decision. It is necessary to consider whether those observations of the applicant may be characterised as pleas in law.

106 The Court points out first, in that regard, that matters set out in an application for annulment under the heading 'Summary of the decision' are not, prima facie, intended to constitute independent pleas in law capable of resulting in the annulment of the contested decision, but rather to describe the measure which is being challenged. However, it is not possible to rule out, a priori, that this part of the application may contain a statement setting out one or more pleas of annulment. Nevertheless, it is only where it emerges clearly and unambiguously from a passage contained under that heading that, in addition to providing a description, the

passage is challenging the validity of the findings made in the contested decision, that the passage can be regarded as a plea in law, notwithstanding the structure of the application and its position in the general scheme of that document.

107 In the following section the Court examines in turn the statements made in the application under the heading 'Summary of the Decision' with regard to each of the main pillars on which the contested decision is based.

— Horizontal overlap on the market for large regional jet aircraft engines

108 In this context, the applicant merely makes the following assertion at paragraph 30 of its application:

'... the Commission concedes that the increase in market share resulting from the merger is "rather small" and would take place against the backdrop of GE's alleged pre-existing dominance. Hence, the assertions that the combination of GE and Honeywell would prevent customers "from enjoying the benefits of price competition" (which appears to be contradicted by the finding that GE is already dominant in the market) and would give them "a unique incumbency advantage for ... future platforms" are of little or no weight'.

109 It follows from those statements that the applicant considers that the grounds of the contested decision relating to that market describe a change in the competitive environment that is of little significance. However, the essential elements of fact and of law on which the application is founded in that regard do not emerge coherently and comprehensibly, even in summary, from the passage cited in the previous

paragraph. The applicant merely underlines the relative insignificance of the horizontal anti-competitive effects found by the Commission concerning the horizontal effects on the market for large regional jet aircraft engines, without explaining what, in its view, are the legal consequences of that line of argument.

110 In particular, it is not possible to deduce from that passage whether the applicant's position is that the 'alleged' pre-existing dominant position of GE on that market is not strengthened in any way by the merger transaction, or whether it would be strengthened to an insignificant extent that would be 'de minimis' or, lastly, whether the strengthening of that dominant position would not result in effective competition being impeded significantly in the common market or in a substantial part of it. In those circumstances, it is not for the Court to supplement that part of the application by itself choosing how the exceedingly vague criticisms formulated by the applicant are to be characterised in law.

111 Consequently, the passage in paragraph 30 of the application under the heading 'Summary of the Decision' is not sufficiently clear and precise to constitute the statement of a plea in law within the meaning of Article 44(1) of the Rules of Procedure and of the case-law interpreting that provision (see, in particular, paragraph 55 above).

112 Consequently, whatever may be the situation with regard to the other markets examined in the contested decision, the Court finds that the Commission's analysis regarding the horizontal overlap on the market for large regional jet aircraft engines has not been called into question in the application and must, therefore, be deemed to be well founded for the purposes of the present proceedings.

— Horizontal overlap on the market for small marine gas turbines

113 In this context, the applicant merely stated as follows in paragraph 39 of its application:

'In relation to small marine gas turbines, the Commission concluded that the merger would lead to the creation of a dominant position because: (i) the merged entity would have somewhere between 65% and 80% of the market; (ii) Honeywell's leading position would be strengthened by its combination with GE's financial strength and vertical integration; and (iii) GE would obtain a significant influence over competitors through Honeywell's business in supplying key components to competitors.'

114 It must be held that this passage does no more than describe the findings made in the contested decision with regard to that market and does not contain anything that could be interpreted as a plea in law in accordance with the requirements of Article 44(1) of the Rules of Procedure. Consequently, once again, whatever the situation may be with regard to the other markets examined in the contested decision, the Court finds that the Commission's analysis regarding the horizontal overlap on the market for small marine gas turbines has not been called into question in the application and must, therefore, be deemed to be well founded for the purposes of the present proceedings

— Vertical integration of engine-starter manufacture

115 As regards the vertical integration of the applicant's engine-starter production activities with those of GE's activities in the manufacture of large commercial jet

aircraft engines, the applicant, in paragraph 29 of its application, merely sets out the relevant grounds of the contested decision:

'In relation to the market for large commercial jet aircraft engines, the Commission found that GE was already dominant in that market, in which Honeywell has no presence. The Commission concluded that the merger would strengthen GE's dominant position because ... (iii) the merged entity would have the incentive and the ability to foreclose competition from other manufacturers of engines because Honeywell is a leading supplier of engine starters.'

116 It must be found, once again, that this description does not contain anything that could be interpreted as a plea in law in accordance with the requirements of Article 44(1) of the Rules of Procedure. Consequently, the Commission's analysis regarding the strengthening of GE's dominant position on the market for large commercial jet aircraft engines as a result of the applicant's position in the manufacture of engine starters must also be deemed to be well founded for the purposes of the present proceedings.

117 Consequently, whatever may be the situation with regard to the other markets examined in the contested decision, the Court finds that the Commission's analysis regarding the vertical integration of engine-starter manufacture has not been called into question in the application and must, therefore, be deemed to be well founded for the purposes of the present proceedings.

— Conglomerate effects as a result of the vertical integration

118 Lastly, as regards the conglomerate effects resulting from the vertical integration of the applicant with GE's subsidiaries, GECAS, GECCAG and GE Capital, the

applicant deals on the merits only with the aspect relating to the possibility of cross-subsidisation as a result of the financial strength of GE Capital. As to the possibility for GE to influence the choices made by customers in order to provide GE's engines and the applicant's avionics and non-avionics products, the applicant, after briefly describing the Commission's argument to that effect, asserts in paragraph 43 of its application: 'This theory is so implausible that it will not be given any further analysis in this application.' Since the applicant does not submit any arguments challenging the correctness of the grounds of the contested decision relating to the influence which GECAS and GECCAG might exercise as purchasers of aircraft, they must be deemed to be well founded for the purposes of the present proceedings.

— Horizontal overlap on the market for corporate jet aircraft engines

119 In paragraphs 31 to 37 of the application, the applicant made detailed submissions challenging, in particular, the definition of the relevant market and the fact that the Commission relied on figures relating to market shares. Notwithstanding the fact that this line of argument is included under the heading 'Summary of the Decision', it must be held that the elements of fact and of law submitted in that regard in its application are sufficient to constitute a plea in law which, if it proved to be well founded, could invalidate the Commission's analysis in the contested decision with regard to the creation of a dominant position on that market, in particular by virtue of the horizontal anti-competitive effects resulting from the merger.

Conclusion

120 The applicant has not contested a number of the independent pillars constituting the basis of the prohibition of the merger transaction. In particular, it has not contested the finding that, as a result of the horizontal overlaps between the activities of the two undertakings, GE's pre-existing dominant position on the

market for large regional jet aircraft engines would be strengthened and a dominant position would be created on the market for small marine gas turbines. It has also not called into question the finding that GE's pre-existing dominant position on the market for large commercial jet aircraft engines would be strengthened as a result of the vertical integration of the applicant's manufacture of engine starters and the manufacture of those engines.

121 Consequently, the grounds of the contested decision which have not been challenged must be regarded as well founded for the purposes of the present proceedings. In view of the linked but autonomous nature of the elements of the reasoning in question — each of which could in principle therefore justify by itself the prohibition of the merger — the Commission would have had to prohibit the merger if it had included in the contested decision only the findings of the anti-competitive effects that are not contested in the present case. In particular, it does not appear from either the statement of objections or the contested decision that the Commission's contention that the notified transaction was incompatible with the common market was based exclusively, or even essentially, on its analysis of bundling.

122 In consequence, the pleas raised by the applicant that have been held to be admissible and which, assuming them to be well founded, would affect the grounds of the contested decision dealing with bundling, cross-subsidies and the horizontal effects on the market for corporate jet aircraft, are inoperative because they could not result in the annulment of the contested decision in the context of the present proceedings.

123 It follows that, even if all the pleas in law and arguments submitted by the applicant in the present case were well founded, they could not be sufficient to result in the annulment of the contested decision in the context of the present proceedings.

2. *Infringement of procedural rights*

Arguments of the parties

124 The applicant has put forward a plea alleging infringement of the rights of the defence. It submits, in essence, that by introducing for the first time in the contested decision the concepts of cross-subsidisation between the various activities of the new entity and of predatory pricing, the Commission infringed its rights of defence.

125 The Commission replies, in essence, that those two aspects of the case were raised, briefly, in the statement of objections of 8 May 2001 and that in any event they cannot be characterised as independent objections.

Findings of the Court

126 The alleged infringement of the rights of the defence in this case relates exclusively to the aspects of the contested decision which the applicant has challenged in other respects in its other pleas in law, namely bundling and cross-subsidisation. Even if the present plea were well founded, it could therefore undermine only the pillars of the Commission's reasoning against which those other pleas are also directed. The present plea cannot therefore have any effect on the other pillars constituting the foundation of the contested decision.

127 Thus the present plea is ineffective in the same way, and for the same reasons, as the other pleas submitted by the applicant.

128 In any event, it must be found in the present case that the two aspects in question were touched on briefly in the statement of objections and are closely linked to other elements which are the subject of a detailed account in that statement. They cannot therefore be considered to be independent objections. In those circumstances, the applicant was in a position to defend itself effectively with regard to those arguments.

Conclusion

129 In the circumstances, since the applicant has not contested all the pillars of reasoning, each of which constitutes a sufficient legal and factual basis for the contested decision, its action cannot result in the annulment of the contested decision in the context of the present proceedings, even if all the pleas validly submitted by the applicant were to be well founded.

130 Consequently, the application is dismissed.

Costs

131 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. As the applicant has been unsuccessful and the defendant and the interveners, Rolls-Royce and Rockwell, have applied for costs, the applicant must be ordered to bear its own costs and to pay those of the defendant and of the interveners.

On those grounds,

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

hereby:

1. Dismisses the application;

2. Orders the applicant to bear its own costs and to pay those incurred by the Commission and by the interveners.

Pirrung Tiili Meij

Vilaras Forwood

Delivered in open court in Luxembourg on 14 December 2005.

E. Coulon J. Pirrung

Registrar President

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