

Cases T-79/95 R and T-80/95 R

Société Nationale des Chemins de Fer Français and  
British Railways Board

v

Commission of the European Communities

(Competition — Article 85 of the EC Treaty — Article 53 of the EEA Agreement  
— Rail transport — Suspension of operation of a measure — Interim relief)

Order of the President of the Court of First Instance, 12 May 1995 ..... II - 1435

Summary of the Order

*Applications for interim measures — Suspension of operation of a measure — Suspension of operation of a competition decision — Conditions for granting — Serious and irreparable damage — Concept — Uncertain and speculative risk — Exclusion — Balance of convenience  
(EC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104(2))*

The urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for those measures. It is for the party seeking suspension of the operation of

a decision to prove that it cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and irreparable consequences.

Only the existence, at least foreseeable or probable, of third-party undertakings interested in using the Channel Tunnel's capacity would be capable of substantiating the risk of serious and irreparable damage alleged by railway undertakings seeking the suspension of operation of the conditions attached to the Commission's decision granting exemption under Article 85(3) of the Treaty in so far as those conditions require the applicants to surrender to third parties up to one-quarter of their rights under the usage contract exempted by the Commission. In those cir-

cumstances, suspension could be ordered only if the applicants could demonstrate before the judge hearing the application that the surrenders of capacity at issue would immediately make it impossible for them to fulfil their obligations relating to the operation of the tunnel or that they could no longer, if their applications in the main proceedings were to succeed, recover from the third parties the capacity surrendered to them in the meantime. Since they have not adduced evidence of those conditions, the damage to them is too uncertain and speculative to be able to prevail in the assessment of the balance of convenience over the preservation of effective competition and the principle of the freedom to provide services in the rail transport sector which the Commission sought to protect by attaching the abovementioned condition to the exemption.