

1. The parties' entitlement to reimbursement of costs has its legal basis in the order fixing the amount thereof. It is therefore not open to a party to claim, as recoverable costs, interest on the sums paid by it to its lawyers prior to that order.
 2. The Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but may determine the amount of those fees which may be recovered from the party ordered to pay the costs. It follows that the Court is not obliged to take account of any national scales of lawyers' fees or any agreement concluded in that regard.
 3. In principle, only the remuneration of a single lawyer may be regarded as falling within the concept of 'expenses necessarily incurred' within the meaning of Article 91(b) of the Rules of Procedure of the Court of First Instance.
- Since Community law does not contain any provisions laying down a scale of fees, the Court must freely consider all the facts of the case, taking into account the purpose and nature of the proceedings and their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the lawyer involved and the financial interest which the parties had in the proceedings.

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
9 June 1993 ^{*}

In Case T-78/89 DEP,

PPG Industries Glass SpA, formerly PPG Vernante Pennitalia SpA, a company incorporated under Italian law, having its registered office in Genoa (Italy), represented by Gianni Manca and Antonio J. Manca Graziadei, of the Rome Bar, and by Michel Waelbroeck and Alexandre Vandencastele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

^{*} Language of the case: English.

Commission of the European Communities, represented by Enrico Traversa and Julian Currall, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Nicola Anecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for taxation of costs pursuant to the judgment of the Court of First Instance of 10 March 1992,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: H. Kirschner, President, C. W. Bellamy, R. Schintgen, R. García-Valdecasas and K. Lenaerts, Judges,

Registrar: H. Jung,

makes the following

Order

Procedure

1 By application lodged at the Registry of the Court of Justice on 23 March 1989, the applicant brought an action, registered under number 98/89, for the annulment of Commission Decision 89/93/EEC of 7 December 1988 relating to a proceeding under Articles 85 and 86 of the EEC Treaty (IV/31.906, flat glass) (OJ 1989 L 33, p. 44). Two other undertakings brought actions against the same decision. Those actions were registered in the Registry of the Court of Justice under serial numbers 75/89 and 97/89.

- 2 By application lodged at the Registry of the Court of Justice on 8 September 1989, the United Kingdom requested leave to intervene in this case in support of the Commission's conclusions, to the extent that they relate to the application of Article 85 of the EEC Treaty, and in support of the applicant's conclusions, to the extent that they relate to the application of Article 86 of the EEC Treaty.
- 3 By order of 4 October 1989, the Court of Justice granted the United Kingdom leave to intervene in the three cases 75/89, 97/89 and 98/89. The Court of Justice did not impose any limit upon such intervention.
- 4 Before the written procedure was completed, the Court of Justice, by orders of 15 November 1989 made pursuant to the first paragraph of Article 3 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, referred the three cases to the Court of First Instance, where they were registered under serial numbers T-68/89, T-77/89 and T-78/89. The written procedure thereafter took place before the Court of First Instance.
- 5 By a document lodged at the Registry of the Court of First Instance on 4 February 1990, the intervener submitted identical written observations in each of the three cases.
- 6 After hearing the Report of the Judge-Rapporteur, the Court of First instance, by orders of 7 May 1991, decided to adopt measures of inquiry and of organization of procedure and to entrust the implementation of those measures to the Judge-Rapporteur. The Judge-Rapporteur presided over an informal meeting with the parties on 29 and 30 May 1991.
- 7 At that meeting, the Judge-Rapporteur explained to the parties that, in order to facilitate consideration of the documents before the Court and the course of the

hearing, he wished to present to the Chamber, following that meeting, Reports for the Hearing the contents of which were acceptable to each of the parties as a full and detailed summary of its position, together with a single file of documents common to all of the cases, containing all of the documents which the parties regarded as important for the determination of their respective cases. He requested the parties to submit to him their observations on the draft Reports for the Hearing sent to them by him, and on the list of documents to be included in the common file. He also requested the Commission to produce, in the original form in its possession, the documentary evidence upon which it had founded its decision.

- 8 As regards the intervention of the United Kingdom, its representative stated that he would limit his oral argument to setting forth his views in support of the applicants' claims regarding the application of Article 86 of the EEC Treaty. The Commission stated that in those circumstances it no longer had any objection regarding the admissibility of such intervention.
- 9 As regards the assessment of the market, the parties agreed by consent to include in the common file all statistics needed to enable the operation of the Italian and European flat glass markets to be assessed. They expressed their agreement that it would not therefore be necessary to order that an expert's report be obtained in the matter.
- 10 With regard to the applicant's application of 19 November 1990 for leave to file an internal communication to its departments dated 25 February 1985 together with the list annexed thereto, the Commission and the applicant agreed that those documents could appear in the documents before the Court accompanied by a note stating that they had been filed out of time and that the Court of First Instance should decide in its judgment, in so far as might be necessary, whether they could be taken into consideration. Those documents were subsequently formally notified to the Commission, which submitted written observations regarding them.

- 11 The parties agreed to the possible joinder of the three cases for the purposes of the oral procedure.
- 12 Following that meeting, the parties produced a full set of documents and submitted their observations on the draft Reports for the Hearing. At the request of the Judge-Rapporteur, the Commission supplied a list, received at the Registry of the Court of First Instance on 14 June 1991, indicating the documents which in its view contained an express or implied reference to the applicant. The Judge-Rapporteur drew up a definitive Report for the Hearing in respect of each case and prepared a common file containing the documents — including, where appropriate, transcriptions and translations agreed between the parties — on the basis of which the parties agreed to proceed to the hearing of oral argument.
- 13 By order of 4 June 1991, the Court of First Instance joined Cases T-68/89, T-77/89 and T-78/89 for the purposes of the oral procedure.
- 14 The representatives of the applicant and of the other parties presented oral argument and replied to questions put by the Court of First Instance at the hearing on 12 to 15 November 1991.
- 15 During the course of the oral procedure the Court of First Instance requested the parties to submit their observations on the possible joinder of Cases T-68/89, T-77/89 and T-78/89 for the purposes of the judgment. The parties raised no objection to such joinder.
- 16 In view of the connection between the subject-matter of Cases T-68/89, T-77/89 and T-78/89, they were joined, pursuant to Article 50 of the Rules of Procedure of the Court of First Instance, for the purposes of the judgment.

- 17 Those cases formed the subject-matter of the judgment delivered by the Court of First Instance on 10 March 1992, in which the Court annulled the contested decision in so far as it referred to the applicant and ordered the Commission to pay the applicant's costs.
- 18 In March 1992 the applicant sent to the defendant a list regarding the costs occasioned by the proceedings, showing a total sum of LIT 979 745 379.
- 19 By letter of 18 May 1992 to the applicant's lawyer, the Commission's agent informed the latter that in the Commission's view the sum demanded was excessive. The Commission considered, first, that the costs occasioned by the administrative procedure and the setting up of a bank guarantee did not constitute recoverable costs and, second, that the amount of the costs claimed exceeded the expenses necessarily incurred for the purposes of the proceedings. Consequently, the Commission stated that it was willing to pay to the applicant, by way of recoverable costs, the sum of LIT 58 500 000, together with a sum intended to cover travelling and subsistence expenses, as well as additional expenditure attributable to the instruction of a lawyer, such sum to be determined on the basis of a detailed breakdown of those expenses.
- 20 By letter of 16 November 1992, the applicant's lawyers informed the Commission that its offer was unacceptable and that they had consequently decided to request the Court of First Instance to fix the recoverable costs in the sum of LIT 664 440 381, together with interest at the rate of 10% per annum from 10 March 1992, the date of the judgment.
- 21 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 19 November 1992, the applicant sought an order for a taxation of the costs, requesting the Court of First Instance to fix them in the sum

of LIT 664 440 381, together with interest at the rate of 10% per annum from 10 March 1992.

- 22 The Court of First Instance requested the applicant to lodge copies of the invoices drawn up by its lawyers in respect of their fees and an indication of the criteria on which the fees were calculated and of the amount thereof.
- 23 By a document of 30 March 1993, the applicant produced copies of those invoices, in relation to which the Commission submitted its observations on 6 April 1993.

Substance

- 24 The applicant seeks to recover two types of expenses incurred in the course of the proceedings leading up to the judgment of 10 March 1992. These involve, first, interest on the sums paid to its lawyers during the proceedings and on the total recoverable expenses from the date of the judgment and, second, the sums paid to its lawyers.

The recovery of interest

- 25 The applicant maintains, first, that interest on the sums paid by it to its lawyers during the proceedings is recoverable because it is attributable to the proceedings. It seeks in that regard LIT 71 855 302.
- 26 It states, second, that default interest at the rate of 10% is due to it on the whole of the sum claimed, from the date of delivery of the judgment of 10 March 1992.

- 27 The Commission's reply is that neither interest on the sums paid to the lawyers prior to delivery of the judgment, nor default interest on the whole of those sums, including the interest accrued thereon, at the rate of 10% per annum from the date of judgment, are recoverable.
- 28 The Commission cites in support of its argument the order made by the Court of Justice on 18 April 1975 in Case 6/72 *Europemballage Corporation and Continental Can v Commission* [1975] ECR 495, in which it was held that since an applicant's entitlement to reimbursement of costs has its legal basis in the order fixing the amount thereof, a claim for default interest from the date of the judgment must be rejected.
- 29 It follows from the order of the Court of Justice cited by the Commission that it is not open to the applicant to claim, as recoverable costs, interest on the sums paid by it to its lawyers, either from the date of payment of those sums or from that of delivery of the judgment of the Court of First Instance.

The sums paid to the lawyers

- 30 The applicant has produced by way of annex to its application a table recapitulating the sums paid to the two law firms which have assisted it during the proceedings and showing the dates of those payments, which are spread over a period from 19 April 1989 to 15 January 1992. It points out the size and complexity of the file as regards the facts and the legal issues, and in particular:
- the novel character, as regards competition law, of the concept of the collective abuse of a dominant position;
 - the lack of clarity in the Commission's position on various points, such as exchanges of glass;

- the Commission's errors, omissions and uncertainties regarding the facts recapitulated in the decision (see paragraphs 200, 202, 223, 260, 262 and 271 of the judgment);
- the unsatisfactory method used by the Commission to establish the facts, and in particular the deliberate omission or obliteration by it of certain passages in the documents (see paragraphs 90 and 91 of the judgment).

31 It observes that those various factors prompted the Judge-Rapporteur to undertake measures of inquiry and of organization of procedure which themselves involved its lawyers in additional work.

32 Finally, the applicant points out that the financial amount at stake in the dispute was considerable, since the fine imposed on it amounted to ECU 1 700 000.

33 Moreover, the applicant justifies its instruction of two separate law firms, one in Rome and the other in Brussels, by the fact, first, that it was established in Italy and, second, that the case required the involvement of a practice specializing in Community law.

34 The Commission, for its part, puts forward the following points in support of its argument that not all the expenditure incurred by the applicant was necessarily incurred for the purposes of the proceedings:

- the fact that the applicant had recourse not only to four lawyers but also to two separate law firms, one in Brussels and the other in Rome, which gave rise to a duplication of work and considerable communication expenses;

- the intervention of the United Kingdom Government in support of the applicant on the most difficult point of law, which saved a great deal of research by the applicant;
- the meetings organized by the Judge-Rapporteur, which greatly facilitated the work done subsequently;
- the fact that the lawyer who assisted the Commission in the three flat glass cases did so for a fee representing, in relation to those three cases, only a fraction of the total sum charged by the applicant's lawyer.

35 The Commission concludes that the applicant has not put forward any argument justifying such a substantial sum.

36 It should be noted, first of all, that the Community judicature is 'not empowered to tax the fees payable by the parties to their own lawyers but ... may determine the amount of those fees which may be recovered from the party ordered to pay the costs'. It follows that the Court of First Instance 'is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers'. Since Community law does not contain any provisions laying down a scale of fees, the Court of First Instance 'must consider all the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interest which the parties had in the proceedings (order of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727)' (order of the Court of First Instance in Joined Cases T-18/89 and T-24/89 [1992] ECR II-153, paragraph 13).

37 The Court of First Instance finds that the applicant is seeking to recover, by way of recoverable costs excluding interest, LIT 147 901 821 for the drafting of the

application, LIT 112 476 433 for that of the reply, LIT 28 341 860 for consideration of the rejoinder and a request for the production of certain documents, LIT 147 897 484 for preparing for, and attending at, the meetings organized by the Judge-Rapporteur held on 29 and 30 May 1991 and on 27 June and 15 July 1991 for the purpose of preparing the Court's file for the hearings and, finally, LIT 155 967 491 for the hearings and the closure of the case.

38 It is apparent from the figures produced by the applicant that at each of those stages in the proceedings two separate law firms were involved and charged sums of a more or less equivalent amount.

39 The case-law of the Court of Justice shows that in principle the remuneration of a single lawyer may be regarded as falling within the concept of 'expenses necessarily incurred' within the meaning of Article 73(b) of the Rules of Procedure of the Court of Justice, the subject-matter of which is the same as that of Article 91(b) of the Rules of Procedure of the Court of First Instance (order in Joined Cases 20/63 and 21/63 *Maudet v Commission* [1964] ECR 621; order of 16 May 1966 in Joined Cases 106/63 and 107/63 *Töpfer and Getreide-Import v Commission*, not published in the European Court Reports; and order of 5 July 1976 in Case 73/74 *Papiers Peints v Commission*, not published in the European Court Reports).

40 Even if, in the present case, the nature of the dispute did justify recourse to more than one lawyer, it has not been shown that it was absolutely necessary to have recourse to four lawyers and their staff, established in two firms with offices in Brussels, Edinburgh and Rome, which inevitably involved increased fees and expenses.

41 For that reason, the Court of First Instance considers it appropriate in principle to reduce the costs which the applicant is seeking to recover, subject to an examination of the merits of that amount from the standpoint of the criteria referred to in paragraph 36.

- 42 As regards the significance of the case from the point of view of Community law, it should be noted that the question of a collective abuse of a dominant position was a novel one, and that it thus necessitated significant investigation.
- 43 As regards the difficulty of the case and the volume of work which the contested proceedings may have presented for the applicant's lawyers, it should be observed that the complexity of the facts and the disorder and lack of clarity of the Commission's file have generated a substantial volume of difficult work for the applicant's lawyers, who have had to take part in a meeting organized by the Judge-Rapporteur in order to clarify the situation.
- 44 Finally, as regards the financial interests which the parties had in the dispute, it should be noted that the fine imposed on the applicant (ECU 1 700 000) was substantial.
- 45 On those three grounds, this case justifies a high level of fees, which it is for the Court of First Instance to assess.
- 46 In consideration of the foregoing, it is appropriate to fix the total amount of the costs to be reimbursed by the defendant to the applicant in the sum of LIT 300 000 000.
- 47 In view of the fact that the Court of First Instance, in fixing the recoverable costs, has taken into account all the circumstances of the case up until the time of giving its decision, there is no need for a separate ruling on the costs incurred by the parties for the purposes of these ancillary proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

The total amount of the costs to be reimbursed by the defendant to the applicant is fixed in the sum of LIT 300 000 000.

Luxembourg, 9 June 1993.

H. Jung

H. Kirschner

Registrar

President