

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)  
9 July 2002 \*

In Case T-312/01,

**Jungbunzlauer AG**, established in Basel (Switzerland), represented by R. Bechtold  
and M. Karl, lawyers,

applicant,

v

**Commission of the European Communities**, represented by W. Mölls and  
A. Whelan, acting as Agents, with an address for service in Luxembourg,

defendant,

\* Language of the case: German.

APPLICATION for the annulment of Commission Decision C(2001)2931 (final) of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium gluconate) or, alternatively, for the reduction of the fine imposed on the applicant by Article 3 of that decision,

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

Order

- 1 By application lodged at the Court Registry on 13 December 2001, Jungbunzlauer AG (hereinafter 'the applicant') applied for the annulment of Commission

Decision C(2001)2931 (final) of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium gluconate) (hereinafter ‘the contested decision’) or, alternatively, the reduction of the fine which was imposed on it by Article 3 of the contested decision.

- 2 By decision of 19 March 2002, the Commission withdrew the contested decision in so far as it had been directed to the applicant. The Commission explained that withdrawal by stating that the contested decision was vitiated by a material error in the reasoning relating to the decision as to the person to whom it was directed.
  
- 3 On 21 March 2002, the Commission made an application for an order that there was no need to adjudicate on the case. By letter of 22 March 2002, the Commission submitted some additional observations on the order for costs, stating that it had withdrawn the contested decision since it had been directed, by mistake, to the applicant rather than to the company Jungbunzlauer Ladenburg GmbH.
  
- 4 By letters of 9, 12 and 17 April 2002, the applicant submitted its observations in that regard showing that its action had become devoid of purpose.
  
- 5 In view of the preceding matters, the Court of First Instance holds that the action has become devoid of purpose and that there is no need to adjudicate thereon.

## Costs

- 6 In its application for an order that there is no need to adjudicate, the Commission, in essence, requested the Court to take into account, in the order for costs, that its mistake as to the addressee of the contested decision was caused by the conduct of the applicant in the administrative proceeding which led to the adoption of the contested decision.
- 7 The Commission points out that that obvious mistake was already apparent in the statement of objections which it sent to the applicant on 18 May 2000. According to the Commission, the applicant did not, in good time, draw the attention of the Commission's services to that mistake. The Commission admits that the applicant informed it, in the course of the administrative proceeding which led to the adoption of the contested decision, of the structure of the shareholdings within the group to which it belongs. However, according to the Commission, the applicant was seeking, in the argument it put forward in that context, wrongly to equate itself to a parent company of Jungbunzlauer Ladenburg GmbH, whereas that company and the applicant both belonged to the same group controlled by Jungbunzlauer Holding AG.
- 8 The applicant disputes that allegation.
- 9 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court of First Instance.

10 In the present case, contrary to what the Commission seeks to show in essence, there is no evidence in the file to justify the conclusion that the applicant misled the Commission as to the correct addressee of the Commission's statement of objections in its argument in the administrative proceeding prior to the adoption of the contested decision.

11 On the contrary, as the applicant correctly submits, it is clear from the file that on four occasions (see Annexes 9, 14, 15 and 17 to the application) and in a particularly clear manner in a letter of 11 April 2001 to the Commission (Annex 15 to the application), the applicant drew the Commission's attention to the fact that its statement of objections should not have been directed to the applicant but to Jungbunzlauer Ladenburg GmbH and that, in any event, the applicant was not the parent company of that company but belonged to the same group controlled by a common holding company, namely Jungbunzlauer Holding AG.

12 Therefore, the obvious error made by the Commission in the contested decision cannot be held against the applicant.

13 In those circumstances, it is right that the Commission should pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby orders:

1. There is no need to adjudicate on the action.
2. The Commission must pay the costs.

Luxembourg, 9 July 2002.

H. Jung  
Registrar

M. Jaeger  
President