

Case T-163/02 R

Montan Gesellschaft Voss mbH Stahlhandel and Others

v

Commission of the European Communities

(Application for interim measures — Regulation (EC) No 560/2002 —  
Admissibility of main action — Urgency)

Order of the President of the Court of First Instance, 12 July 2002 . . . . II - 3221

Summary of the Order

1. *Applications for interim measures — Conditions for admissibility — Admissibility of the main action — Irrelevant — Limits*  
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(1))
  
2. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Serious and irreparable damage — Standard of proof — Pecuniary loss — Loss of customers — Situation liable to endanger the existence of the applicant company*  
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. In principle the issue of the admissibility of the main action should not be examined in relation to an application for interim measures so as not to prejudge the substance of the case. Nevertheless, where it is contended that the main action to which the application for interim measures relates is manifestly inadmissible, it may prove necessary to establish whether there are any grounds for concluding *prima facie* that the main action is admissible.

(see para. 21)

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 in question to prove that it cannot wait for the outcome of the main proceedings without suffering such damage. Although in order to establish the existence of serious and irreparable damage it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage is fore-

seeable with a sufficient degree of probability, the applicants are none the less required to prove the facts forming the basis of their claim that serious and irreparable damage is likely.

Pecuniary loss, which a loss of customers is because it consists in a loss of earnings, cannot, save in exceptional circumstances, be regarded as irreparable or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation.

Pursuant to those principles, suspension of the operation of a measure would be justified only if it appeared that, without suspension, the applicants would be in a situation capable of threatening their very existence or of altering their market shares irretrievably.

(see paras 28-31)