JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

27 September 2006 *

In Case T-117/04,

Vereniging Werkgroep Commerciële Jachthavens Zuidelijke Randmeren, established in Zeewolde (Netherlands),

Jachthaven Zijl Zeewolde BV, established in Zeewolde,

Maatschappij tot exploitatie van onroerende goederen Wolderwijd II BV, established in Zeewolde,

Jachthaven Strand-Horst BV, established in Ermelo (Netherlands),

Recreatiegebied Erkemederstrand vof, established in Zeewolde,

Jachthaven- en Campingbedrijf Nieuwboer BV, established in Bunschoten-Spakenburg (Netherlands),

* Language of the case: Dutch.

Jachthaven Naarden BV, established in Naarden (Netherlands),

represented by T. Ottervanger, A. Bijleveld and A. van den Oord, avocats,

applicants,

v

Commission of the European Communities, represented by H. van Vliet, A. Bouquet and A. Nijenhuis, acting as Agents,

defendant,

supported by

Kingdom of the Netherlands, represented by H. Sevenster and M. de Grave, acting as Agents,

intervener,

APPLICATION for annulment of Commission Decision 2004/114/EC of 29 October 2003 on measures in favour of non-profit harbours for recreational crafts, the Netherlands (OJ 2004 L 34, p. 63),

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

composed of R. García-Valdecasas, President, I. Labucka and V. Trstenjak, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 3 May 2006,

gives the following

Judgment

Background to the dispute

1 The Enkhuizen municipality (Netherlands) decided, in 1998, to build a new harbour for large riverboats and tourist vessels. Because of the construction of this new harbour, the existing entrance of the sailing club KNZ & RV to the river was to be closed. In order to compensate for the closure of the entrance to the river the municipality took three measures:

— first, it provided a new opening to the river for KNZ & RV at a nearby location;

— second, since, according to the municipality, the new opening forced passing boats to make a detour in order to reach the existing marina of KNZ & RV, it dredged, by way of compensation, part of the water close to the existing marina, in order to enable the club to create 105 moorings at its own expense at a later stage;

— third, the sailing club KNZ & RV was offered the opportunity to purchase the dredged area of water (26 000 m^2) from the municipality at the same price per m^2 as the municipality had paid for the same area of water in 1998 to the national authorities.

2 The Nijkerk municipality (Netherlands) was the owner of a local marina, which was built in 1966. The marina was privatised in 2000 and sold to its tenant, the local sailing club De Zuidwal. In 1998 the marina was independently appraised at EUR 417 477, when rented out. The marina without a tenant was appraised at EUR 521 847.

3 In the purchase agreement between the municipality and the club dated 27 March 2000, the sailing club agreed to take on all costs for purification of the water and maintenance of the harbour facilities, which were still to be carried out. The municipality estimated the costs for outstanding maintenance in 2000 at EUR 272 268 and that of purification at EUR 145 201. The municipality deducted these costs from the appraised value of the marina, resulting in a purchase price of EUR 0.45 for the whole marina.

4 The Wieringermeer municipality (Netherlands) sold an area of water and land in 2000 to the company Jachtwerf Jongert BV ('Jongert') at a price of EUR 7 636 147. The appraised value of the land and water concerned was EUR 5 825 065 (EUR 105 211 in respect of the area of water and EUR 5 719 854 in respect of the area of land).

Administrative procedure

5 By letter dated 1 March 2001, the Vereniging Werkgroep Commerciële Jachthavens Zuidelijke Randmeren (Zuidelijke Randmeren commercial marinas working group association, the 'working group'), on behalf of its members (the other applicants in this case), filed a complaint with the Commission on the possible distortion of competition between marinas in the Netherlands. In that country, marinas are operated either by non-profit-making organisations (usually sailing clubs) or by private undertakings. According to the working group, several non-profit-making marinas have received State aid to build or maintain their moorings. This enables these marinas, inter alia, to offer the moorings at a lower rental to passing recreational craft.

6 At first, the complaint concerned on a single project in Enkhuizen. On 11 April 2001, the Commission wrote a letter with a number of questions to the Netherlands Authorities, who answered them by a letter of 24 May 2001.

7 After being informed of this correspondence, the working group sent additional information on the project in Enkhuizen and six other cases by various letters during the course of 2001. By letter dated 11 February 2002, the Commission asked the Netherlands authorities to provide detailed information on all seven cases.

8 On the basis of the information received, the Commission examined the seven cases and sent the results of its analysis to the working group by letter dated 8 August 2002. That letter distinguished three cases which might have involved State aid within the meaning of Article 87(1) EC, and four cases for which the Commission's preliminary opinion was that no State aid within the meaning of Article 87(1) EC

was involved. By letter dated 3 September 2002, the working group agreed on the Commission's analysis and provided additional information on the three remaining cases (the Enkhuizen, Nijkerk and Wieringermeer marinas).

9 By letter dated 5 February 2003, the Commission informed the Netherlands of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of these three remaining cases. By letter dated 22 April 2003, the Netherlands authorities submitted their comments to the Commission together with further information.

10 The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 22 March 2003 (OJ 2003 C 69, p. 4). The Commission called on interested parties to submit their comments.

11 The Commission received a letter from the working group dated 16 April 2003 with no new information or relevant additional facts. The Commission did not receive any reaction from third parties on the opening of the formal investigation procedure.

12 On 29 October 2003, the Commission adopted Decision 2004/114/EC on measures in favour of non-profit harbours for recreational crafts, the Netherlands (OJ 2004 L 34, p. 63, the 'contested decision').

13 The operative part of that decision reads as follows:

'Article 1

The measures adopted by the Netherlands in favour of non-profit-making harbours for recreational crafts in Enkhuizen, Nijkerk and Wieringermeer do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Netherlands.'

Procedure

14 By application lodged at the Court Registry on 24 March 2004, the applicants brought the present action.

15 By a document lodged at the Court Registry on 26 August 2004, the Kingdom of the Netherlands made an application to intervene, in accordance with Article 116(6) of the Rules of Procedure of the Court of First Instance, in support of the forms of order sought by the Commission in the present case. By order of 7 October 2004, the President of the First Chamber granted that application.

16 Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure and called on the parties to submit, at the hearing, their comments on the admissibility of this action in the light of the relevant case-law on State Aid.

17 The parties presented oral argument and their replies to the Court's questions at the hearing on 3 May 2006.

Forms of order sought

18 The applicants claim that the Court should:

— annul the contested decision and declare unlawful the aid granted to certain undertakings;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the action as inadmissible and, in any event, as unfounded;

— order the applicants to pay the costs.

20 The Kingdom of the Netherlands supports the forms of order sought by the Commission.

Admissibility

Arguments of the parties

21 The Commission challenges the admissibility of the application, without actually raising a formal objection of inadmissibility under Article 114 of the Rules of Procedure.

22 It doubts, first, whether the contested decision is of individual concern to the members of the working group within the meaning of the fourth paragraph of Article 230 EC. Secondly, it raises the question of the working group's standing to bring proceedings.

23 As regards the standing of its members to bring proceedings, the Commission is of the view that, if the contested decision is of concern to them, then it is likewise of concern to all other commercial marinas.

24 As regards the role played by the members of the working group, the Commission stated at the hearing that the mere fact that the applicants lodged a complaint that culminated in the contested decision is not sufficient for that decision to be of individual concern to the applicants. Even if they submitted a complaint which gave rise to initiation of the procedure in Article 88(2) EC, the contested decision is only of concern to them, as competitors, in so far as their market position is substantially affected. The Commission, relying on the factors which the Court and the Court of First Instance took into consideration in their respective case-law, seeks to demonstrate that the applicants' market position has not been substantially affected by the alleged aid.

25 In this instance, the Commission observes that, since the applicants make up only six of the numerous marinas operating on the national and regional market, it has not been shown that the applicants' interests have been specifically prejudiced by the alleged aid.

26 In particular, the applicants have not in any way shown that their position on market has been substantially affected and that they have suffered actual loss as a result of an advantage of approximately EUR 200 000 being given to the Enkhuizen marina.

27 In respect of the working group's standing to bring proceedings, the Commission points out, in the first place, that Article 230 EC provides that it is necessary to have legal personality in order to institute proceedings. Under the Netherlands Civil Code (the 'BW'), a working group, such as that in the present case, which has not adopted statutes by notarial act and which is not even included on the register of companies has merely very restricted legal personality. As far as capacity to bring proceedings is concerned, only associations with full legal personality have capacity to bring proceedings on behalf of their members. Therefore, the Commission is of the view that the working group is not to be regarded as a legal person for the purpose of Article 230 EC.

28 In the second place, as regards whether the working group is individually concerned, the Commission refers to Case T-114/00 *Aktionsgemeinschaft Recht und Eigentum* v *Commission* [2002] ECR II-5121, in which the Court recalled, in paragraph 52, the principle that an association formed for the protection of the collective interests of a category of persons cannot be considered to be individually concerned, within the meaning of the fourth paragraph of Article 230 EC, by a measure affecting the general interests of that category, and is therefore not entitled to bring an action for annulment on behalf of its members where the latter cannot do so individually. The association in that case was individually concerned because it had acted in the role of negotiator and was a registered association.

29 At the hearing, the Kingdom of the Netherlands submitted additional observations on the Commission's argument.

30 So far as the standing of the working group to bring proceedings is concerned, the Kingdom of the Netherlands points out, first, that the applicants form only a tiny proportion of all the commercial harbours in the region and an even smaller proportion at the national or European level. In the municipality of the small town of Enkhuizen alone, at least two commercial harbours are active apart from the harbour managed by the yachting association which is involved in the proceedings. The applicants do not include any of the companies operating those two harbours. Those harbours, which are in the immediate vicinity of the non-profit marina which allegedly received aid, apparently did not suffer any loss.

31 In addition, the number of harbours in the Netherlands listed by the Commission in its decision and at the hearing, around 1 200, has grown since. As the applicants

make up only a tiny proportion of the harbours which might potentially be concerned, their position on the market is not substantially affected.

32 Secondly, the Kingdom of the Netherlands denies that the competitive position of the applicants might be in some way affected. Concerning the applicants' argument that the aid allegedly given to those three harbours has consequences on the rates they charge, forcing the commercial harbours to lower their rates as a result, the Kingdom of the Netherlands considers that there are many possible explanations for the rates applied in non-profit-making marinas being lower than those used in commercial harbours. For example, that difference may be explained by the offer of additional facilities, such as restaurants and subsidiary and related activities, and the use of volunteers to achieve lower labour costs. In other words, the companies running non-profit-making marinas carry out their activities in accordance with criteria and factors other than those on which companies managing commercial harbours operate and the running costs of the former are clearly much lower than those of the latter.

33 Thirdly, the Kingdom of the Netherlands submits that the applicants have not clearly demonstrated the negative impact of the rates on them. Thus, for example, in the Naarden commercial harbour, operated by one of the members of the working group, not only is the rate for a fixed mooring for a vessel 10 metres long above the average rate in the Netherlands for that type of mooring, but it is also evident from that group member's annual accounts that it was in a position to have distributed profits in recent years. In that harbour, a waiting list has also been introduced. Furthermore, at least one company operating one of the commercial harbours at issue, Jachthaven Strand-Horst of Ermelo, has increased its rates every year for the last three years.

34 As regards the working group's standing to bring proceedings, the Kingdom of the Netherlands observes, firstly, that since the aid has not affected the market position

of its members, the working group cannot be regarded as having special status within the meaning of the judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95.

35 Next, the Kingdom of the Netherlands submits that it is an informal grouping which was not created by due notarial act. As a result, it is not entitled under the BW to bring a group action in the Netherlands.

36 The applicants contend, as regards the standing of members of the working group to bring proceedings, that they are individually concerned for the purpose of Article 230 EC. They submit that, up till now, there has never been any requirement to take account of the position of competitors on the market in order to determine whether they are individually concerned. They refer in that regard to the judgment in Case T-158/99 *Thermenhotel Stoiser Franz and Others* v *Commission* [2004] ECR II-1.

37 The members of the working group are in competition, inter alia, with the Enkhuizen and Nijkerk marinas and, potentially, also with that in Wieringermeer as regards the offer of fixed or daily moorings made to the owners of recreational craft or those chartering them. As a result of the aid, the marinas in question are in a position to offer cheaper moorings, which hinders competition from members of the working group. The applicants submit that the contested decision effectively allows a situation disturbing the free play of competition to continue to exist.

38 At the hearing, the applicants claimed that lower rates, such as those applied in the non-profit-making marinas, make the profit margins of the companies running the

commercial harbours negligible, so that some of them have been forced to cease business. The applicants stated that the proper running of a commercial harbour requires a return on its total capital of at least between 7% and 10 %. The current rate of return is approximately 4%.

39 As regards the role of the members of the working group, the applicants submit that they played an active role in the administrative proceedings. They not only provided additional information and answered the Commission's questions, but also, at the Commission's request, submitted their comments on the exchange of letters which occurred between the Netherlands authorities and the Commission.

40 As regards the working group's capacity to bring legal proceedings, the applicants state that the essential objective in forming the working group on 15 March 2000 was to defend the interests of commercial marinas and to combat unfair competition. In Netherlands law, the working group is considered to be an association for the purpose of Article 26 of Book 2 of the BW and thus has legal personality and does not require constitution by notarial act or by registration on the register of companies to that effect. The fact that it has only limited legal capacity in Netherlands law and, on that basis, cannot, for example, initiate a specific group action on the basis of Article 305a of Book 3 of the BW is not relevant in the present case.

41 As regards whether the working group is individually concerned, the applicants point out that the Court of First Instance concluded in paragraphs 65 and 66 of the judgment in *Aktionsgemeinschaft Recht und Eigentum* v *Commission* that an association was entitled to bring an action on the basis of the mere fact that it had played an active part in the formal review procedure and in the informal discussions which preceded the adoption of the decision (inter alia, by submitting reports and by being a useful source of information).

42 At the hearing, the applicants added that, in accordance with the judgments in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971 and *Aktionsgemeinschaft Recht und Eigentum* v *Commission*, a grouping which, on the basis of its aims and activities, represents and defends the interests of its members can lodge an application on behalf of its members.

43 The applicants conclude that, since the members of the working group can be considered to be directly and individually concerned by the contested decision within the meaning of the fourth paragraph of Article 230 EC, the working group can be considered to be so also.

44 In addition, since the start of the proceedings the Commission has accepted the working group as a negotiating party. Further, the applicants point out that in order to avoid any dispute as regards the admissibility of an action brought by the working group, the application is signed jointly by the various members.

45 The Commission contends that the applicants' reliance on *Thermenhotel Stoiser Franz and Others* v *Commission* fails to have regard to a fundamental difference between that case and the present case, namely that in the present case a formal inquiry was commenced (Article 88(2) EC), whereas that was not the case in *Thermenhotel Stoiser Franz and Others* v *Commission*. Like the case-law in *Cook* and *Matra* (Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487 and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203) *Thermenhotel Stoiser Franz and Others* v *Commission*, which refers to those judgments, is thus of no help here because the applicants in the present case had the opportunity to present their arguments during the administrative proceedings.

46 Regarding the applicants' assertion that their limited legal capacity is not a relevant factor in this instance, the Commission contends that the applicants are forgetting that the restriction on the competence of associations which are not constituted by notarial act concerns their capacity to bring legal proceedings. Article 305a of Book 3 of the BW is relevant inasmuch as it provides that only associations with full legal personality may bring proceedings in the name of their members, which thus excludes the working group. It is precisely because of this restriction that the legal personality of the working group is not sufficient for it to be afforded standing to bring proceedings. According to the Commission, the fact that a fully established association has lodged a complaint or taken part in the administrative procedure before the Commission is not relevant.

47 In addition, the Commission maintains that it is contrary to the proper conduct of the procedure to afford standing to bring proceedings to groupings whose legal status is not clearly defined, such as a 'working group'.

48 So far as the reference to *Aktionsgemeinschaft Recht und Eigentum* v *Commission* is concerned, the Commission stated at the hearing that the Court, ruling on appeal, declared in Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737 that the Court of First Instance had erred in law in holding that the association in question was individually concerned.

Findings of the Court

49 It is appropriate to recall that, in accordance with the fourth paragraph of Article 230 EC, a natural or legal person can institute proceedings against a decision addressed to another person only if that decision is of direct and individual concern to him. Since the contested decision was addressed to the Kingdom of the Netherlands, it is necessary to consider whether the applicants fulfil those two conditions.

50 It is appropriate to examine, in the first place, the standing of the members of the working group to bring proceedings and, in the second place, the standing of the working group itself.

The standing of the members of the working group to bring proceedings

51 As regards the issue of whether the members of the working group are individually concerned by the contested decision, the Court of First Instance recalls that, according to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of those factors distinguishes them individually just as in the case of the person addressed (see *Plaumann* v *Commission*, p. 107; *Comité d'entreprise de la Société française de production and Others* v *Commission* [2000] ECR I-3659, paragraph 39; and Case T-435/93 *ASPEC and Others* v *Commission* [1995] ECR II-1281, paragraph 62).

52 As the contested decision was adopted at the end of the formal investigation procedure provided for in Article 88(2) EC, it should be observed that case-law also shows that such a decision is of individual concern to any undertaking which was at the origin of the complaint which led to the opening of that procedure, and whose views were heard during that procedure and determined the conduct of that procedure, provided, however, that its position on the market was significantly affected by the measure which is the subject of the decision (Case C-169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, paragraphs 24 and 25, and Case T-11/95 *BP Chemicals* v *Commission* [1998] ECR II-3235, paragraph 72).

53 The mere fact that the decision at issue may have some influence on competitive relationships on the relevant market and that the undertaking concerned is in some sort of competitive relationship with the beneficiary of the decision does not satisfy

that test of significant effect (see, to that effect, Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, paragraph 7). Therefore, an undertaking cannot rely solely on its status as a competitor of the undertaking which benefits from the measure in question, but must additionally demonstrate the magnitude of the prejudice to its position on the market (see, to that effect, *Comité d'entreprise de la Société française de production and Others* v *Commission*, paragraphs 40 and 41).

54 In this instance, it is necessary to examine to what extent the participation of the applicants in the procedure opened under Article 88(2) EC and the effect on their position on the market is capable of distinguishing them individually, in accordance with Article 230 EC.

55 First, it is accepted that the working group initiated on behalf of its members the administrative procedure which was held before the Commission. To that end, it has on a number of occasions provided supplementary information on a number of non-profit-making marinas which, it submits, received State aid. However, since that procedure was initiated, it has sent only one letter, which did not contain any new information or any significant additional facts.

56 Second, as regards the extent to which the applicants' position on the market was affected, it should be borne in mind that, as stated in paragraph 28 of the judgment in *COFAZ and Others* v *Commission*, it is not for the Community Court, when considering whether an application is admissible, to make a definitive finding on the competitive relationship between the applicants and the undertakings in receipt of the aid. In that context, it is for the applicants alone to adduce pertinent evidence to show that the Commission's decision may adversely affect their legitimate interests by seriously jeopardising their position on the market in question.

57 In this case the applicants have not provided any evidence capable of showing that their situation on the marina market is special.

58 On the contrary, the argument put forward by the applicants, far from suggesting that they are distinguished individually, demonstrates that they are concerned, if at all, in the same way as other competitors. The applicants allege that their profitability has been affected by the contested aid measures in so far as the companies operating the non-profit-making marinas in question could, as a result of those measures, offer moorings to passing recreational craft at a lower rental than that applicable in commercial marinas.

59 However, it must be stated that the applicants have not demonstrated, by means of concrete evidence, such as turnover achieved before and after the adoption of the measures at issue, that those measures were capable of substantially affecting their position on the market in question.

60 Furthermore, at the hearing the Commission and the Kingdom of the Netherlands recalled that the applicants represent merely six of the approximately 1 200 marinas which operate in the Netherlands (see paragraph 49 of the contested decision). Those figures have not been disputed by the applicants. They thus represent only a tiny proportion of the harbours which might be concerned by the aid at issue. In such a situation, each of the applicants should have set out in what respect aid granted to such and such a harbour might prejudice its own activities, for example, by risking loss of custom or reduction in the profit margin.

61 In addition, the Kingdom of the Netherlands indicated at the hearing, without being challenged by the applicants, that the rates in the commercial harbours of Naarden and Ermelo were not affected by the contested aid measures. As regards the commercial harbour of Naarden, it is to be noted, first, that the rate for a fixed mooring for a vessel 10 metres long is above the average rate in the Netherlands for that type of mooring (see the report of Waterrecreatie Advies communicated by the Netherlands authorities to the Commission in the course of the administrative proceedings). Secondly, according to the annual accounts of that commercial harbour, the company running it was able to distribute profits in the last few years. Finally, in that harbour, a waiting list has been introduced. As regards the Ermelo commercial harbour, the Kingdom of the Netherlands alleges, without being challenged by the applicants, that that harbour has increased its own rates for the last three years. Such information does not bear out the applicants' statement that their profitability has been affected by the contested aid measures.

62 The applicants' reference to the judgment in *Thermenhotel Stoiser Franz and Others* v *Commission*, according to which an action brought by an association is admissible only if some of its members are the direct competitors of the recipient of the aid in question, is irrelevant, since the decision at issue in that case had been adopted following merely a preliminary investigation (Article 88(3) EC). In this instance, the applicants cannot thus rely in any way on the case-law to the effect that when the Commission, without opening the formal investigation procedure, declares in the context of a preliminary investigation that State aid is compatible with the common market, the interested parties within the meaning of Article 88(2) EC, entitled to the guarantees afforded by the formal examination procedure when it is implemented, must be considered to be individually concerned by the decision making that declaration (see, to that effect, *BP Chemicals* v *Commission*, paragraphs 82 and 89).

63 It follows that the applicants have not been able to demonstrate that they are individually concerned by the contested decision, that is to say that it affects them in a special way compared with other economic operators, in the same way as if they were the addressees of the decision.

64 It follows that the action must be declared inadmissible as regards the members of the working group, without it being necessary to consider whether they are directly concerned by the contested decision.

The standing of the working group to bring proceedings

65 The Court of First Instance recalls that an action for annulment brought by an association of undertakings which is not the addressee of the contested measure is admissible only in two cases. The first is where the association, in bringing its action, has substituted itself for one or more of the members whom it represents, on condition that those members were themselves in a position to bring an admissible action. The second is where there are special circumstances, such as the role which it might have played in the procedure leading to the adoption of the measure of which annulment is requested (see, to that effect, T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169, paragraph 50, and Case T-86/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd v Commission* [1999] ECR II-179, paragraphs 56 and 57 and the case-law cited).

66 In the present case, the Court of First Instance has already declared, at paragraph 63, that the members of the working group were not individually concerned by the contested decision. As a result, the working group cannot be considered to have validly substituted itself for one or several of its members.

67 It is therefore necessary to consider whether it can found its standing to bring proceedings on special circumstances.

68 The Court considers that, although the working group actually participated in the procedure which led to the decision of 29 October 2003, that participation alone is not sufficient to give it standing within the meaning of the case-law set out in *Van der Kooy* and *CIRFS* (Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125). As the Court of First Instance declared in Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, paragraph 42, the mere fact that the applicant made a complaint to the Commission, and in that connection corresponded and had meetings with the Commission, cannot constitute circumstances peculiar to the applicant sufficient to distinguish it individually from all other persons, and thus give it standing to bring proceedings challenging a general aid scheme.

69 The fact that an association intervenes with the Commission during the procedure under the State aid provisions of the Treaty for the purpose of defending the collective interests of its members is not sufficient in itself to establish locus standi for an association under that case-law (*Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission*, paragraph 60).

70 The role played by the applicants in the cases which gave rise to *Van der Kooy* and *CIRFS* in the procedure leading to the adoption of the measures challenged in those cases were, however, substantially more significant than the part played by the working group in the present case.

71 In the case giving rise to *Van der Kooy*, the Court of Justice found that the Landbouwschap, in its capacity as negotiator of gas tariffs, had taken an active part in the procedure under Article 88(2) EC by submitting written comments to the Commission and by keeping in close contact with the responsible officials throughout the procedure. It was one of the parties to the contract which established the tariff disallowed by the Commission and, in that capacity, was mentioned several times in the Commission decision.

72 The role of the applicant in the case giving rise to *CIRFS and Others* v *Commission* was also very substantial. CIRFS was an association whose membership included the main international manufacturers of synthetic fibres. It had pursued, in the interest of those manufacturers, a number of actions connected with the policy of restructuring the sector defined by the Commission. In particular, it had been the Commission's contact in negotiations to introduce restrictive rules in the sector and to extend and adapt them and it had pursued negotiations with the Commission in particular by submitting written representations to it and by keeping in close contact with the responsible departments.

73 Such is not the case with the working group in this instance. Its role, which does not go beyond the exercise of the procedural rights granted to interested parties under Article 88(2) EC, cannot be compared to that of the Landbouwschap or the CIRFS in the cases mentioned above (see, by analogy, *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, paragraphs 55 to 59).

74 In those circumstances, the action must also be declared inadmissible so far as the working group is concerned.

75 It follows from all of the foregoing that the action is inadmissible in its entirety.

76 As regards the Commission's argument concerning the working group's capacity to bring proceedings, the Court of First Instance considers that there is no need to rule on that subject, in so far as the members of the working group are not individually concerned and the working group has not proven that it has capacity to bring proceedings on the basis of circumstances peculiar to it.

Costs

77 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. Since the applicants have been unsuccessful and the Commission has asked for costs to be awarded against them, they will be ordered to pay the Commission's costs, as well as bearing their own.

78 The Kingdom of the Netherlands shall bear its own costs, in accordance with the first paragraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the action as inadmissible.**

2. **Orders the applicants to bear their own costs as well as those incurred by the Commission. The Kingdom of the Netherlands shall bear its own costs.**

García-Valdecasas Labucka Trstenjak

Delivered in open court in Luxembourg on 27 September 2006.

E. Coulon R. García-Valdecasas

Registrar President