

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
8 May 1992 \*

In Cases T-24/92, T-28/92,

**Langnese-Iglo GmbH**, a company governed by German law, established in Hamburg, Germany, represented by Martin Heidenhain, Bernhard M. Maassen and Horst Satzky, Rechtsanwälte, Frankfurt-am-Main, with an address for service in Luxembourg at the Chambers of Jean Hoss, 15 Côte d'Eich,

and

**Schöller Lebensmittel GmbH&Co. KG**, a company governed by German law, established in Nuremberg, Germany, represented by Ulrich Scholz, Rechtsanwalt, Nuremberg, and Rainer Bechtold, Rechtsanwalt, Stuttgart, with an address for service in Luxembourg at the chambers of Loesch & Wolter, 8 Rue Zithe,

applicants,

v

**Commission of the European Communities**, represented by Bernd Langeheine and Berend J. Drijber, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, representative of the Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

**Mars GmbH**, established in Viersen, Germany, represented by Jochim Sedemund, Rechtsanwalt, Cologne, and by John Pheasant and Simon Polito, Solicitors, of Lovell, White & Durrant, Brussels, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 8 Rue Zithe,

intervener,

\* Language of the case: German.

APPLICATION for an order suspending the operation of the Commission's decision of 25 March 1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/34.072 — Mars/Langnese and Schöller — interim measures),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES

makes the following

**Order**

1 By application lodged at the Registry of the Court of First Instance on 16 April 1992, Langnese-Iglo GmbH ('Langnese') brought an action under the second paragraph of Article 173 of the EEC Treaty for annulment of the Commission's decision of 25 March 1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/34.072 — Mars/Langnese and Schöller — interim measures).

2 By a separate document lodged at the Registry of the Court of First Instance on the same date, Langnese also applied for the adoption of interim measures under Article 185 of the EEC Treaty and Article 104 of the Rules of Procedure of the Court of First Instance, seeking the suspension of the operation of the contested decision until the Court of First Instance had given a decision on the substance of the case.

3 By application lodged at the Registry of the Court of First Instance on 13 April 1992, Schöller Lebensmittel GmbH&Co. KG ('Scholler') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of the abovementioned Commission decision.

4 By a separate document lodged at the Registry of the Court of First Instance on the same date, Schöller also applied for the adoption of interim measures under

Article 185 of the EEC Treaty and Article 104 of the Rules of Procedure of the Court of First Instance, seeking the suspension of the operation of the contested decision until the Court of First Instance had given a decision on the substance of the case.

- 5 By applications received at the Registry of the Court of First Instance on 16 and 21 April 1992, Mars GmbH ('Mars') sought leave to intervene in Cases T-24/92 R and T-28/92 R in support of the Commission.
  
- 6 The applications to intervene were served on the parties to the main proceedings in accordance with Article 116(1) of the Rules of Procedure of the Court of First Instance.
  
- 7 By a document lodged on 23 April 1992, Langnese stated that it did not oppose Mars's application to intervene. However, it requested, pursuant to Article 116(2) of the Rules of Procedure of the Court of First Instance, that only an abridged version of its application and of Annex A 1 thereto, containing the contested decision, should be disclosed to Mars. The request for confidentiality related more particularly to paragraphs 103, 105, 107, 109, 210 and 221 of the application for interim measures and paragraphs 29, 30, 37, 39, 46, 54, 56 to 58, 60 to 63, 67 and 116 of the decision. To that end, Langnese forwarded to the Court of First Instance non-confidential versions of the application for interim measures and Annex A 1 thereto, from which the matters covered by professional secrecy had been deleted. By letter lodged on 28 April, the applicant also requested confidentiality in respect of the information which, in its view, was covered by professional secrecy appearing on page 3, paragraph 1, and page 5, paragraph 3, of the Commission's observations, concerning its market share and the percentage of its customers in the traditional specialized sector of the trade. Finally, the applicant requested that, in the event of Mars being granted leave to intervene in the proceedings for interim measures brought against the Commission by Schöller, confidentiality should also be assured in respect of the information indicated by the latter as being covered by professional secrecy.

- 8 By fax received at the Registry of the Court of First Instance on 29 April 1992, Schöller stated that it did not oppose Mars's application to intervene. Schöller also requested confidentiality in respect of certain information which, in its view, was covered by professional secrecy, appearing in the contested decision, its application and the annexes thereto. However, by fax received at the Registry of the Court of First Instance on 30 April 1992 and by letter lodged at the Registry on 5 May 1992, Schöller withdrew its request for confidentiality as regards the proceedings for interim measures.
- 9 By letters of 22 and 28 April 1992, the Commission stated that it raised no objections to Mars's applications to intervene. However, by letter of 5 May 1992, the Commission raised objections to Langnese's request for confidentiality in respect of the information contained in paragraphs 29, 30, 46, 54, 56 to 58 and 116 of the contested decision.
- 10 By letter of 27 April 1992, the Registry of the Court of First Instance informed the parties that a decision on confidentiality and the applications to intervene would be reserved. The Registry also informed Mars that it would be allowed to present oral observations at the hearing of the application for interim measures and subsequently sent to it non-confidential versions of the application for interim measures, the annexes thereto and the Commission's observations, as prepared by Langnese. Since the applicant Schöller had withdrawn its request for confidentiality as regards the application for interim measures, Mars received a full copy of Schöller's application for interim measures and of the Commission's observations on it.
- 11 The Commission submitted its written observations on the applications for interim measures lodged by Langnese and Schöller on 23 and 27 April 1992 respectively. The parties presented oral argument on 6 May 1992.

### **The applications for interim measures**

- 12 The applications for interim measures were lodged within the time-limit prescribed for that purpose.
  
- 13 The contested decision was adopted following a complaint against Langnese and Schöller and a request for the adoption of protective measures submitted to the Commission by Mars on 18 September 1991 concerning obstacles which, in breach of the competition rules of the EEC Treaty, hindered the distribution of the complainant's ice-cream products in Germany.
  
- 14 In its decision of 25 March 1992, the Commission concluded that there was prima facie evidence of an infringement of Article 85 of the EEC Treaty and considered that Mars was likely to suffer serious and irreparable damage if interim measures were not adopted pending a final decision in the main procedure.
  
- 15 In view of the foregoing, it must be concluded that Mars has proved its interest in intervening in the present proceedings for interim measures.

### **The request for confidentiality**

- 16 It must first be observed that Mars has itself produced the text of the contested decision — in respect of which Langnese requested confidentiality — to the Court as an annex to its application to intervene. In those circumstances, it is unnecessary at this stage to give a decision on the request for confidentiality concerning the text of the decision.

- 17 As regards the other information in respect of which confidentiality was requested, there would appear to be grounds for acceding to the request made by Langnese, in respect of the proceedings for interim measures, since such information is *prima facie* covered by professional secrecy.

### The application for the suspension of operation of the decision

- 18 Since it was not possible to gather, from the parties' written submissions and their oral observations at the hearing of 6 May 1992, all the information necessary for a decision on the applications for interim measures, it is appropriate to ask the parties to provide the following additional information:

- 19 Langnese is requested to provide the Court with the following information by 15 May 1992:

the total number of sales outlets for its 'individually wrapped products' in Germany (1991) and volumes sold (in litres);

the number — and breakdown according to type (supermarkets, service stations, kiosks, and so on) — of sales outlets for its 'individually wrapped products' in Germany (1991) which were covered by exclusive dealing contracts and volumes sold (in litres).

- 20 Schöller is requested to provide the Court with the following information by 15 May 1992:

the information mentioned in the table constituting Annex XI to its application for the year 1991;

the number — and breakdown according to type (supermarkets, service stations, kiosks, and so on) — of sales outlets for its 'individually wrapped products' in Germany (1991) which were covered by exclusive dealing contracts and volumes sold (in litres).

- 21 The intervener, Mars, is requested to provide the Court with the following information by 15 May 1992:

the total number of sales outlets for its 'individually wrapped products' in Germany before the adoption of the Commission decision (1991 figures) and volumes sold (in litres);

the number of new sales outlets established after the adoption of the contested decision, and

a breakdown of sales outlets according to type (supermarkets, service stations, kiosks, and so on).

- 22 It must also be observed that since the Court is not at this stage in possession of all the information needed for its decision, it is appropriate, in the interests of the sound administration of justice, to order, as a protective measure, that the operation of the contested decision be suspended until a decision is given bringing the proceedings on the applications for interim measures to an end.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders

1. Mars is granted leave to intervene in Cases T-24/92 R and T-28/92 R in support of the defendant.
2. It is appropriate, at the stage of the application for interim measures, to uphold the request for confidentiality made by Langnese in respect of certain information contained in its application for interim measures (paragraphs 103, 105, 107, 109, 210 and 221) and in the Commission's observations on that request (page 3, paragraph 1, and page 5, paragraph 3).
3. Langnese is requested to provide the Court of First Instance with the following information by 15 May 1992:

the total number of sales outlets for its 'individually wrapped products' in Germany (1991) and volumes sold (in litres);

the number — and breakdown according to type (supermarkets, service stations, kiosks, and so on) — of sales outlets for its 'individually wrapped products' in Germany (1991) which were covered by exclusive dealing contracts and volumes sold (in litres).

4. Schöller is invited to provide the Court of First Instance with the following information by 15 May 1992:

the information mentioned in the table constituting Annex XI to its application for the year 1991;



the number — and breakdown according to type (supermarkets, service stations, kiosks, and so on) — of sales outlets for its 'individually wrapped products' in Germany (1991) which were covered by exclusive dealing contracts and volumes sold (in litres).

5. The intervener, Mars, is invited to provide the Court of First Instance with the following information by 15 May 1992:

the total number of sales outlets for its 'individually wrapped products' in Germany before the adoption of the Commission decision (1991 figures) and volumes sold (in litres);

the number of new sales outlets established after the adoption of the contested decision, and

a breakdown of sales outlets according to type (supermarkets, service stations, kiosks, and so on).

6. The operation of the Commission's decision of 25 March 1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/34.072 — Mars/Langnese and Schöller — interim measures) is suspended until the date on which an order is made bringing the proceedings on the application for interim measures to an end.

7. Costs are reserved.

Luxembourg, 8 May 1992.

H. Jung

Registrar

J. L. Cruz Vilaça

President