OPINION OF ADVOCATE GENERAL LÉGER

delivered on 11 July 2002 [1]

1. This is an appeal against the judgment of the Court of First Instance of the European Communities of 8 November 2000, *Dreyfus and Others* v *Commission*. [2]

2. The companies Glencore Grain Ltd, formerly Richco Commodities Ltd, [3] and Compagnie Continentale (France) SA [4] request that the Court set aside the contested judgment for breach of Community law and, in particular, inasmuch as the principle of freedom of competition was not correctly assessed therein.

The relevant provisions

3. The relevant provisions are Decision 91/658/EEC [5] and Regulation (EEC) No 1897/92. [6]

Decision 91/658

4. That decision was part of efforts made by the European Community to support the Russian Federation in its political reform and economic restructuring.

5. To that end, the Council of the European Union granted a medium-term loan of ECU 1 250 million to the ex-Soviet Union and its constituent Republics for food and

1 — Original language: French.

2 — Joined Cases T-485/93, T-491/93, T-494/93 and T-61/98 [2000] ECR II-3659 (hereinafter 'the contested judgment').

3 — Hereinafter 'Glencore Grain'.

4 — Hereinafter 'Compagnie Continentale'.

5 — Council Decision of 16 December 1991 granting a medium-term loan to the Soviet Union and its constituent Republics (OJ 1991 L 362, p. 89).

6 — Commission Regulation of 9 July 1992 laying down detailed rules for the implementation of a medium-term loan to the Soviet Union and its constituent Republics, established by Council Decision 91/658/EEC (OJ 1992 L 191, p. 22).

medical aid and as an incentive to take steps toward economic reform.

6. Article 4(3) of Decision 91/658 lays down the economic, financial and legal conditions governing the grant of that loan. It provides that:

'Imports of products financed by the loan shall be effected at world market prices. Free competition shall be guaranteed for the purchase and supply of products, which shall meet internationally recognised standards of quality.'

Regulation No 1897/92

7. That regulation states that those loans are to be granted on the basis of agreements entered into between the Republics of the Ex-Soviet Union and the Commission. [7]

7 — Article 2.

8. According to Article 4:

'1. The loans shall only finance the purchase and supply under contracts that have been recognised by the Commission as complying with the provisions of Decision 91/658/EEC and with the provisions of the agreements referred to in Article 2.

2. Contracts shall be submitted to the Commission for recognition by the Republics or their designated financial agents.'

9. Article 5 of the regulation lays down the conditions upon which the recognition referred to in Article 4 is dependent. These include the following:

'1. The contract was awarded following a procedure guaranteeing free competition. To this end, the purchasing organisations of the Republics shall, when selecting supplier firms within the Community, seek at least three offers from firms independent of each other....

2. The contract offers the most favourable terms of purchase in relation to the price normally obtained on the international markets.'

Facts and procedure

10. On 9 December 1992, the Community, the Russian Federation and its financial agent, the Vnesheconombank, signed, pursuant to Regulation No 1897/92, a Memorandum of Understanding, on the basis of which the European Community was to grant to the Russian Federation the loan provided for by Decision 91/658.

11. During the final quarter of 1992, the appellants, international trading companies, were contacted in connection with an informal invitation to tender organised by Exportkhleb, a State-owned company charged by the Russian Federation with the negotiation of wheat purchases.

12. By contracts concluded on 27 and 28 November 1992, the appellants and Exportkhleb agreed on the quantity of wheat and on the price.

13. On 27 January 1993, the Commission approved those contracts.

14. However, according to the appellants, the letters of credit on the basis of which the funding was to be provided did not become effective until the second half of February 1993, only a few days before the end of the shipment period provided for by the contracts.

15. While a substantial part of the goods had been delivered, not all of the goods could be delivered within the time-limits prescribed.

16. During a meeting in Brussels on 19 February 1993, the appellants agreed on further deliveries of wheat at a new price with Exportkhleb, taking account of the considerable rise in the price of wheat on the world market between the date when the sale contracts were concluded (November 1992) and the date of the new negotiations (19 February 1993).

17. Having regard to the urgency arising from the seriousness of the food situation in Russia, it was decided, at Exportkhleb's demand, to formalise those amendments to the initial contracts by means of simple addendums (riders).

18. On 9 March 1993, Exportkhleb informed the Commission that amendments concerning the price of wheat, in particular, had been added to the contracts signed with five of its principal suppliers.

19. By letter of 1 April 1993, the Commission alleged that 'the magnitude of the price increases is of such a nature that [the Commission] cannot consider them as a necessary adaptation but as a substantial modification of the contracts initially negotiated.' It considers that 'in fact the present level of prices on the world market (end of March 1993) is not significantly different from the level which prevailed at the time when the initial prices were agreed (end of November 1992).' The Commissioner points out that the need to ensure both free competition between potential suppliers and the most favourable purchase terms constituted one of the main factors governing the approval of the contracts by the Commission. Noting that in the present case the amendments had been agreed directly with the companies concerned, without any competition with other suppliers, he concluded that 'the Commission cannot approve such major changes as simple amendments to existing contracts'. He also stated that 'should it be considered necessary to modify the prices or quantities, it would then be appropriate to negotiate new contracts to be submitted to the Commission for approval under the full usual procedure (including submission of at least three offers).'

20. Glencore Grain maintained that Exportkhleb had been informed of the Commission's adverse decision on 5 April 1993. Compagnie Continentale maintained that, on the same date, it had received a telex from Exportkhleb informing it of that decision but that the full text of the letter of 1 April 1993 was not sent to it until 20 April 1993.

21. By applications lodged at the Court Registry on 9 June, 5 July and 22 June 1993 the company Louis Dreyfus & Cie, Glencore Grain and Compagnie Continentale respectively brought actions before the Court of Justice. By orders of 27 September 1993, the Court of Justice referred those cases to the Court of First Instance in accordance with Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591/ECSC,

EEC, Euratom establishing a Court of First Instance of the European Communities. [8] By judgments of 24 September 1996 [9] the Court of First Instance dismissed as inadmissible the applications for annulment submitted by each of the applicants. On 5 May 1998 the Court of Justice set aside the decisions of the Court of First Instance [10] inasmuch as they declared inadmissible the applications for annulment and referred the cases back to the Court of First Instance for judgment on the substance and reserved the costs.

22. By order of 11 June 1998 the Court of First Instance decided to join the cases for the purpose of the oral and written procedures. [11]

23. It was in those circumstances that the Court of First Instance gave the judgment which is the subject of the present appeal.

24. Before considering the appeal I shall recall the terms of the contested judgment.

8 — OJ 1993 L 144, p. 21.

9 — Case T-485/93 *Dreyfus* v *Commission* [1996] ECR II-1101; Case T-491/93 *Richco* v *Commission* [1996] ECR II-1131; Case T-494/93 *Compagnie Continentale* v *Commission* [1996] ECR II-1157.

10 — See Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309; Case C-391/96 P *Compagnie Continentale* v *Commission* [1998] ECR I-2377 and Case C-403/96 P *Glencore Grain* v *Commission* [1998] ECR I-2405.

11 — See the contested judgment (paragraph 31 et seq.).

The contested judgment

25. The first plea in law submitted by the Commission was that the application for annulment brought on 22 June 1993 was out of time. The Court of First Instance dismissed that first plea as unfounded. [12]

26. The applicants, by the first part of the second plea in law, essentially argued that the condition relating to the need to guarantee free competition had been complied with when the contracts were awarded in February 1993, as they had been when the contracts were concluded in November 1992. They observed furthermore that Decision 91/658 and Regulation No 1897/92 lay down no special formal requirements for ensuring competition between Community suppliers.

27. The Court of First Instance dismissed that first part for the following reasons:

'65. The Court observes, as a preliminary point, that the criterion requiring

12 — Ibid. (paragraphs 46 to 54).

adherence to the principle of free competition in the conclusion of contracts is crucial to the proper functioning of the lending mechanism established by the Community. In addition to being aimed at the prevention of fraud and collusion, it is designed, more generally, to guarantee the optimum use of the funds made available by the Community for aid to the Republics of the former Soviet Union. In actual fact, it is intended to protect both the Community as lender and the Republics in question as recipients of food and medical aid.

66 Consequently, fulfilment of that criterion is clearly not merely a formal obligation but in fact an essential element of the implementation of the lending mechanism.

67 In those circumstances, it is necessary to verify whether the Commission, when adopting the contested decision, was correct in finding that the requirement of free competition had not been fulfilled upon the conclusion of the riders to the contracts. The legality of the decision must be assessed in the light of all the rules needing to be complied with by the Commission in the matter, including those relating to the agreements concluded with the Russian authorities.

68 The riders concluded with the various Community undertakings constitute, in relation to one another, specific contracts, each of them requiring the Commission's authorisation. It is necessary, therefore, to examine whether each applicant, upon agreeing new contractual terms with Exportkhleb, was required to compete with at least two independent undertakings.

69 It should be noted in that regard, first, that the telex sent by Exportkhleb to the applicants, inviting them to attend a meeting in Brussels on 22 and 23 February 1993, cannot be regarded as proof that each undertaking, prior to concluding the riders, was required to compete with at least two undertakings independent of each other.

70 It is true that the applicable Community legislation does not require the call for bids to be in any particular form. However, the question which arises in the present case is not whether a telex may constitute a valid call for bids but whether the telex in question shows that each undertaking was required to compete with others before the new terms were concluded. Clearly, the telex from Exportkhleb, which was worded in a general way and which did not state, in particular, the quantities to be supplied or the delivery terms, does not constitute the necessary evidence in that regard.

71 Similarly, the extracts from the trade press produced by the applicants, which report the arrival in Europe of representatives of Exportkhleb for discussions on, inter alia, supplies of wheat in the context of the Community loan, do not in any way show that the riders were concluded with undertakings which had previously been required to compete with at least two other independent undertakings.

72 As Glencore Grain has pointed out, it is true that the applicable legislation requires Exportkhleb merely to "seek" at least three competing offers. Consequently, the possibility cannot be ruled out that certain undertakings, despite having been invited to submit a bid, may have declined to do so.

73 In the present case, however, the documentation does not even show that, for every rider finally concluded, at least two competing undertakings declined to respond to Exportkhleb's invitation.

74 Thus, in the telefax which it sent to the Commission on 9 March 1993 in order to point out the changes made to the contracts, Exportkhleb merely referred to the contracts concluded with each undertaking. In respect of each contract, mention was made only of the bid submitted by the undertaking to which the contract was awarded and the terms agreed following the negotiations between Exportkhleb and the undertaking in question. In relation to each of those contracts, no indication is given of at least two other responses, even negative ones, having been given to the invitations to submit offers. That telefax merely states that each undertaking had concluded with Exportkhleb a contract corresponding to the tonnage still to be delivered by it as at the date of the meeting in Brussels. In actual fact, although offers were indeed annexed to the telefax of 9 March 1993, these were separate offers for separate contracts, and not for one and the same contract. Consequently, that telefax likewise provides no proof that each rider was concluded after competing offers had been solicited from at least three undertakings independent of each other.

75 Furthermore, the Commission has stated, without being challenged in that regard, that, upon being officially notified by the [Vnesheconombank] of the new contractual terms on 22 and 26 March 1993, it did not receive the responses, favourable or unfavourable, given by at least three independent undertakings.

76 The applicants claim, however, that the principle of free competition was adhered to, since each of them was obliged to match the lowest price offered.

77 It is true that the telefax sent by Exportkhleb to the Commission on 9 March 1993 shows that, whilst the

prices offered ranged from USD 155 to USD 158.50, the price ultimately agreed with Exportkhleb was USD 155 in respect of all the undertakings.

78 Nevertheless, that shows, at most, that negotiations took place between Exportkhleb and each applicant before each of the contracts was concluded. On the other hand, also taking into account the foregoing, it does not show that the price in question was the result of at least three undertakings independent of each other having competed for each of the contracts to be awarded.

79 Thus, it is apparent that the applicants have not shown that the Commission committed any error in concluding that the principle of free competition had not been respected when the riders to the contracts were concluded.

80 Since one of the cumulative conditions prescribed in the applicable rules was not fulfilled, the first plea must be rejected, without there being any need to consider whether the price agreed in the riders corresponded to the world market price.'

28. By the second part of the second plea in law, the applicants submitted that the principle of the protection of legitimate expectations had been infringed. They pointed to the oral assurances they claimed to have received from the Commission and the correspondence entered into with the latter. [13] The Court of First Instance rejected that part of the plea, holding that the conditions for infringement of that principle were not fulfilled.

29. By the third part of the second plea in law, the applicants submitted that the Commission had failed to comply with the obligation to provide a statement of reasons, as laid down in Article 190 of the EC Treaty (now Article 253 EC). The Court of First Instance observed that the Commission had fulfilled the requirements of Community law and also rejected that part of the plea.

30. In the third and fourth pleas in law, the applicants submitted claims for compensation for material and non-material damage which the Court of First Instance rejected as unfounded.

The appeal

31. By the present appeal the appellants request that the Court annul the contested judgment in so far as it erred in law in determining the condition for free compe-

13 — See the contested judgment (paragraphs 81 to 84).

tition set out in Article 5 of Regulation No 1897/92 (first plea) and in the application of that condition at the time of the riders to the contracts (second plea). They also allege that the Court of First Instance infringed the Rules of Procedure (third plea) and declined to award the damages sought (fourth plea).

32. Since the substance of the present appeal falls to be examined only if it is admissible, I shall begin consideration of the appeal by determining whether the conditions for admissibility are fulfilled.

Admissibility of the appeal

33. Certain principles governing appeals should be noted, in particular those concerning the jurisdiction of the Court.

34. First, citing the first paragraph of Article 48(2) of the Rules of Procedure of the Court of First Instance, under which no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure, the Court of Justice has held that:

'To allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the Court of First Instance would be to allow it to bring before the Court, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the Court of First Instance. In an appeal the Court's jurisdiction is thus confined to review of the findings of law on the pleas argued before the Court of First Instance'. [14]

35. Following that case-law, I consider that the second part of the second plea in law should be treated as a new plea within the meaning of the case-law of the Court. The appellants submit, as grounds for annulment, that the Court of First Instance imposed upon them obligations arising from Regulation No 1897/92 which should only have applied to the Russian authorities. That plea was not put forward at first instance before the Court of First Instance, but is presented for the first time before the Court of Justice. I therefore consider it to be a new plea in law.

36. Therefore, the second part of the second plea in law should be declared inadmissible.

14 — Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59, and Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, paragraph 62. See also in this respect the order of 14 October 1999 in Case C-437/98 P *Infrisa* v *Commission* [1999] ECR I-7145, paragraph 29, and the order of 25 January 2001 in Case C-111/99 P *Lech-Stahlwerke* v *Commission* [2001] ECR I-727, paragraph 25.

37. Secondly, it is clear from settled case-law of the Court of Justice that, according to Article 168a of the EC Treaty (now Article 225 EC) and Article 51 of the Statute of the Court of Justice, an appeal is limited to questions of law and must be based on grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant or infringement of Community law by that court. [15]

38. It is clear from the case-law of the Court that an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts. The Court of First Instance has exclusive jurisdiction, first, to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the Court of First Instance has established or assessed the facts, the Court of Justice has jurisdiction under Article 168a of the Treaty to review the legal characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them. [16]

39. The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted. Provided that that evidence was properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. [17] That appraisal does not therefore constitute, save where the clear sense of that evidence has been distorted, a point of law which is subject, as such, to review by the Court of Justice. [18]

40. I must therefore ascertain whether the Court's legal requirements with regard to admissibility, as just described, have been fulfilled in the present case.

41. In that regard I note that the third and fourth parts of the second plea in law do not comply with the conditions for admissibility just described.

42. In the third part of that plea, the appellants claim that the Court of First

15 — Order of 17 September 1996 in Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 37.

16 — See *John Deere* v *Commission*, cited above, (paragraph 21), and Case C-279/95 P *Langnese-Iglo* v *Commission* [1998] ECR I-5609, paragraph 26.

17 — See, in particular, the order in *San Marco* v *Commission*, cited above, (paragraph 40).

18 — See Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42; Case C-8/95 P *New Holland Ford* v *Commission* [1998] ECR I-3175, paragraph 26, and Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 24.

Instance erred in law in its assessment by failing to take into account the Commission's administrative practice and the obligations flowing therefrom. They put forward the argument that the Commission should have requested documents other than just the amended contracts. The Commission did not conduct a sufficiently close examination into the circumstances of the case. [19]

43. In the fourth part of that plea the appellants submit that the Court of First Instance erred in law in its approach by incorrectly weighing the evidence adduced with regard to free competition. They submit that the Court of First Instance should have inferred from the fax sent by Exportkhleb to the Commission on 9 March 1993 that the condition regarding free competition had been complied with. [20]

44. Examination of the third and fourth parts of the second plea in law shows that the appellants' arguments call into question the findings of fact and the assessment of facts in the light of which the Court of First Instance concluded that the condition relating to free competition had not been complied with. The appellants submit no argument to show that the conclusion that the Court of First Instance drew from the facts established was vitiated by an error in law.

19 — See the appeals (points 3.18 and 3.19).
20 — Ibid. (points 3.21 and 3.22).

45. The third and fourth parts of the second plea in law should therefore be declared inadmissible.

Substance of the appeal

The first plea in law: error in determining whether the requirement relating to free competition laid down in Article 5 of Regulation No 1897/92 had been complied with

Arguments of the parties

46. The appellants maintain that the Court of First Instance erred in law by finding that the condition concerning free competition and the condition relating to the price, both laid down in Regulation No 1897/92, were cumulative. They take the contrary view that the two conditions are inextricably linked. The condition relating to the world market price makes it possible to check whether the condition relating to free competition has been complied with in so far as the world market price should reflect the results of worldwide free and fair competition.

47. According to the Commission the two conditions are different in nature. The condition relating to free competition concerns the procedure for the conclusion of contracts, whereas the condition relating to international market prices concerns the content of contracts. The Court of First Instance thus rightly considered those two conditions to be cumulative.

Assessment

48. In order to assess whether that plea for annulment is founded it is necessary to consider the wording of Article 5(1) of Regulation No 1897/92.

49. On the face of it, Article 5 lists a series of conditions which must be complied with when concluding contracts. In that regard it provides in paragraph 1 that 'the contract was awarded following a *procedure guaranteeing free competition*'.[21] The authors of that regulation then describe the procedural rules which must be observed, namely the requirement that the purchasing organisations seek at least three offers from firms independent of each other.[22]

50. In the light of that wording, it is my opinion that free competition for the purposes of Regulation No 1897/92 is meant to be a rule of procedure not a rule as to substance. Since the Court of First Instance found in its absolute discretion that the procedure had not been observed, I consider that the plea in law is unfounded.

51. The first plea in law should therefore be rejected.

The first part of the second plea in law: erroneous assessment of the application of the condition relating to free competition at the time when the riders to the contracts were made

Arguments of the parties

52. According to the appellants the Court of First Instance was wrong to require that

21 — My emphasis.

22 — See paragraph 9 of this Opinion.

each supplier compete with at least two independent companies when concluding the new contract terms. They submit that the relevant Community legislation requires nothing of the sort.

53. The Commission contests that interpretation and contends, on the contrary, that it is very clear from that legislation that that requirement is fixed.

Assessment

54. The appellants' argument does not seem relevant to me.

55. As the Commission correctly points out in the defence,[23] Article 5(1) of Regulation No 1897/92 states explicitly that 'the contract was awarded following a procedure guaranteeing free competition. To this end, the purchasing organisations of the Republics shall, when selecting supplier firms within the Community, *seek at least three offers* from firms independent of each other and shall, when selecting supplier firms in the non-Community supplier countries, *seek at least three offers* from firms independent of each other...'.[24]

56. The appellants' claim that neither Decision 91/658 nor Regulation No 1897/92 lays down the obligation to have competing offers from at least three undertakings in order to ensure free competition is therefore not correct.[25] As I have just noted, Regulation No 1897/92 explicitly mentions that requirement.

57. Consequently, I propose that the first part of the second plea in law be rejected as unfounded.

23 — Paragraphs 9 to 11.

24 — My emphasis.

25 — See the appeals (points 3.8 and 3.9).

The third plea in law: breach of Article 68(1) of the Rules of Procedure of the Court of First Instance with regard to the hearing of witnesses

Arguments of the parties

58. According to the appellants, the Court of First Instance should have heard witnesses in order to verify certain facts. They submit that the Court of First Instance did not take into account newspaper articles as evidence of free competition. In those circumstances they submit that, in order to establish the existence of free competition, the Court of First Instance should have relied on witnesses. [26]

59. The Commission contends, on the contrary, that Article 68(1) of the Rules of Procedure of the Court of First Instance conferred on that court a discretionary power to decide whether or not to hear witnesses. [27] Such a decision cannot be contested on appeal unless the appellants have shown that the fact that witnesses were not heard was manifestly unreasonable.

Assessment

60. In that regard, two points of case-law of the Court of Justice should be cited.

61. First, the Court has already held that 'the Court of First Instance cannot be required to call witnesses of its own motion, since Article 66(1) of its Rules of Procedure makes clear that it is to prescribe such measures of inquiry as it considers appropriate by means of an order setting out the facts to be proved'. [28]

62. Secondly, the Court has already stated that 'the Court of First Instance is the sole judge of any need for the information available to it concerning the cases before it to be supplemented. Whether or not the evidence before it is convincing is a matter to be appraised by it alone and, in accordance with consistent case-law, is not subject to review by the Court of Justice on appeal, except where the clear sense of that evidence has been distorted or the substantive inaccuracy of the Court of First Instance's findings is apparent from the documents in the case-file'. [29]

26 — Ibid. (points 3.23 to 3.25).

27 — That article provides that 'the Court of First Instance may, either of its own motion or on application by a party, and after hearing the Advocate General and the parties, order that certain facts be proved by witnesses. The order shall set out the facts to be established. The Court of First Instance may summon a witness of its own motion or on application by a party or at the instance of the Advocate General. An application by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined.'

28 — *Baustahlgewebe* v *Commission*, cited above (paragraph 77).

29 — See Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, paragraph 19. See also, in this sense, Case C-119/97 P *Ufex and Others* v *Commission* [1999] ECR I-1341, paragraph 66, Case C-274/99 P *Connolly* v *Commission* [2001] ECR I-1611, paragraph 83 and the order in *Infrisa* v *Commission* cited above (paragraph 34).

63. However, I note that no evidence has been provided in the present appeal to indicate that such is the case here.

64. Consequently, the plea in law based on breach of Article 68(1) of the Rules of Procedure of the Court of First Instance should be rejected.

The fourth plea in law: application for annulment of the Court of First Instance's refusal to award the damages sought

Arguments of the parties

65. According to the appellants, the Court of First Instance misapplied the rules of law by holding that the Commission had acted lawfully. For that reason, and because the question of damage is in large part based on the facts, the appellants submit that the case should be referred back to the Court of First Instance for a ruling on damages.

66. According to the Commission, that plea in law should be rejected because it is linked to the previous pleas, which are unfounded.

Assessment

67. It is sufficient to note that for there to be liability a certain number of conditions must be fulfilled, relating to the unlawfulness of the conduct of the institution, the existence of damage and the existence of a causal link between the conduct and the alleged damage. [30]

68. Since the examination of the previous pleas in law did not establish the existence of any misconduct on the part of the Commission, the Court of First Instance rightly declined to award damages.

69. Therefore the fourth plea in law should be rejected.

30 — See for example Case C-237/98 P *Dorsch Consult* v *Council and Commission* [2000] ECR I-4549, paragraph 17.

Conclusion

70. In the light of the foregoing I propose that the Court:

(1) dismiss the appeals;

(2) order the appellants to pay the costs in accordance with Article 69(2) of the Rules of Procedure.