ORDER OF THE PRESIDENT OF THE COURT

17 June 1997 *

In Joined Cases C-151/97 P(I) and C-157/97 P(I),

National Power plc, a company incorporated under English law, established at Swindon (United Kingdom), represented by Nicholas Forwood QC, David Anderson and Sally Barrett-Williams, Barristers, and Gary Chapman, Solicitor, with an address for service in Luxembourg at the Chambers of Arendt & Medernach, 8-10 Rue Mathias Hardt,

and

PowerGen plc, a company incorporated under English law, established in London, represented by K. P. E. Lasok QC and Lindsay Marr, Solicitor, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

appellants,

APPEAL against the order of the President of the Third Chamber of the Court of First Instance of the European Communities of 24 March 1997 in Case T-367/94 *British Coal Corporation* v *Commission* [1997] ECR II-469, seeking to have that order set aside and applying for an order granting the appellants the leave to intervene sought by them and requiring the Commission to pay the costs,

* Language of the case: English.

the other parties to the proceedings being:

British Coal Corporation, a company incorporated under English law, established in London, represented by David Vaughan QC, David Lloyd Jones, Barrister, and Cyrus Mehta, Solicitor, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

and

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

THE PRESIDENT OF THE COURT,

after hearing the views of Advocate General C. O. Lenz,

makes the following

Order

1 By applications lodged at the Court Registry on 21 and 24 April 1997 National Power plc ('National Power') and PowerGen plc ('PowerGen') brought an appeal pursuant to the first paragraph of Article 50 of the ECSC Statute of the Court of Justice against the order of the President of the Third Chamber of the Court of First Instance of 24 March 1997 in Case T-367/94 *British Coal Corporation*

v *Commission* [1997] ECR II-469 (hereinafter 'the contested order') dismissing their applications for leave to intervene in that case.

2 By documents lodged at the Registry on 12 May and 20 May 1997 respectively, British Coal and the Commission submitted written observations to the Court.

3 In view of the connection between the two cases, they should be joined for the purposes of the order, in accordance with Article 43 of the Rules of Procedure which, by virtue of Article 118 thereof, is applicable to the appeals procedure.

Facts and procedure

4 The facts of the case are set out as follows in the contested order:

'3. By complaint lodged with the Commission on 15 June 1994, NALOO [the National Association of Licensed Opencast Operators] took issue with the restrictions on competition for which British Coal and the Central Electricity Generating Board (hereinafter "the CEGB"), to which PowerGen and National Power are successors, had been allegedly responsible from 1 January 1973, the date on which the United Kingdom acceded to the Communities, to 31 March 1990.

4. NALOO essentially contested the legality, under Articles 4(d), 65 and 66(7) of the ECSC Treaty (hereinafter "the Treaty"), of the royalties charged by British Coal on coal extracted by NALOO members from opencast mines belonging to British Coal. NALOO also claimed that the CEGB had purchased coal for electricity generation from NALOO members at discriminatory prices, contrary to Article 63 of the Treaty and Articles 85 and 86 of the EC Treaty.

5. In its complaint, NALOO therefore essentially requested the Commission:

— to exercise its jurisdiction under Articles 4(d), 65, 66(7) and 86 of the Treaty and to adopt a decision confirming the infringements charged against British Coal, in the light of the heads of complaint specified;

— to intervene with regard to the CEGB, pursuant to Article 63 of the Treaty and Article 86 of the EC Treaty.

6. On 1 August 1994, British Coal submitted to the Commission its observations on the complaint and made an application to that institution, pursuant to Article 35 of the Treaty, in which it sought, principally, a declaration that the Commission lacked jurisdiction to examine the complaint in regard to the royalties charged by British Coal during the period prior to 1 April 1990 and, in the alternative, rejection of that complaint on grounds of law, without any examination on the merits. British Coal stated that if the Commission did not adopt the requested decision within two months of the date of notification of its letter of formal notice, British Coal would bring proceedings before the Court of First Instance against the implied decision of refusal to be inferred from the institution's silence.

7. By letter of 3 October 1994, the Commission informed British Coal that it was not entitled to require the Commission to take a decision in a particular sense and

that the fact that a complaint was not rejected within the period laid down by the person complained against was not a matter which could give rise to proceedings under Article 35.

8. It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 10 November 1994, British Coal brought proceedings under Article 35 of the Treaty in which it sought annulment of the implied decision of refusal to be inferred from the Commission's failure to reject NALOO's complaint.'

5 By applications lodged at the Registry of the Court of First Instance on 31 March and 10 April 1995 respectively, PowerGen and National Power sought leave to intervene in support of the form of order sought by British Coal, on the basis, first, of Article 34 of the ECSC Statute of the Court of Justice, which applies to the Court of First Instance pursuant to Article 46 thereof, and, second, of Article 115 of the Rules of Procedure of the Court of First Instance.

The contested order

6 The arguments put forward by the appellants to establish their interest in the result of the case are summarized as follows in the contested order:

'9. In its application to intervene, PowerGen states that, unlike British Coal, it did not initiate proceedings because it is not an undertaking or an association of undertakings within the meaning of Article 80 of the Treaty, although it is subject to Article 63(1) thereof. PowerGen is none the less a legal person and has therefore status to intervene in these proceedings (order of 3 May 1961 in Case 13/60 *Geitling and Others* v *High Authority* [1962] ECR 143).

10. PowerGen points out that it submitted observations in response to NALOO's complaint that are effectively the same as those of British Coal and that this complaint is based on one set of facts raising common issues of law. The Court will therefore be required to resolve issues of law which are of direct relevance to PowerGen's position.

11. PowerGen further points out that the present case will also address issues of law clearly related to those raised in *Hopkins*, a reference for a preliminary ruling in which judgment was given on 2 May 1996 (Case C-18/94 *Barbara Hopkins and Others* v *National Power and PowerGen* [1996] ECR I-2281), which concerned the conditions under which the CEGB obtained coal from the owners of small mines between 1985 and 31 March 1990. In particular, the questions of the Commission's jurisdiction and the alleged existence of legal remedies having retroactive effect arise in an identical manner in *Hopkins* and in the present case.

12. National Power, for its part, submits that it has an interest in the outcome of the dispute in so far as NALOO's complaint is not directed solely at British Coal but also alleges that there has been an infringement of Article 63 of the Treaty and Article 86 of the EC Treaty by the CEGB, to which National Power is a successor. In the same way as British Coal, National Power argues that there is no basis to the complaint and that it should therefore be rejected in regard to National Power.'

7 The contested order refers as follows to the parties' observations on those two applications for leave to intervene:

'16. In the observations which, by document dated 24 April 1995, it submitted on PowerGen's application to intervene, the Commission states that the fact that PowerGen is not an undertaking within the meaning of the Treaty is not an objection to its application to intervene in the present proceedings pursuant to Article 34 of the [ECSC Statute of the Court of Justice ("the Statute")].

17. The Commission does, however, question whether PowerGen has demonstrated a sufficient interest in the outcome of British Coal's application, which is concerned solely with the royalty rate charged on licensed opencast extraction. PowerGen, it submits, does not explain how the outcome of the application to annul the Commission's implied decision of refusal to dismiss NALOO's complaint against British Coal under Articles 4, 65 and 66(7) of the Treaty will assist PowerGen in respect of the allegations made by NALOO that the CEGB infringed Article 63 of the Treaty and Articles 85 and 86 of the EC Treaty by applying discriminatory prices to the coal produced by private producers in comparison with the price paid to British Coal.

18. The Commission accepts that PowerGen is concerned by the complaint and acknowledges that it also puts forward the argument that the Commission does not have jurisdiction to re-open the matters raised in that complaint. However, the Commission doubts whether this fact is sufficient to give PowerGen an interest in the outcome of these proceedings.

19. In any event, PowerGen cannot, by its intervention, extend the scope of British Coal's application so as to encompass aspects of the complaint brought against PowerGen under entirely separate provisions.

20. By a document of 2 May 1995, the Commission lodged substantially identical observations on National Power's application to intervene.

21. In its observations on the applications to intervene, lodged on 28 April 1995, British Coal did not raise any objection in relation to the three applications to intervene but merely requested that certain documents be treated confidentially *vis-à-vis* PowerGen and National Power.'

8 The two applications for leave to intervene were dismissed in the contested order on the basis of the following reasoning:

'23. Article 34 of the [Statute] allows intervention only on the part of natural or legal persons establishing an interest in the result of a case. Under Article 34, submissions made in an application to intervene must be limited to supporting or requesting the rejection of the submissions of one of the parties.

24. It follows that the interest of the applicants seeking leave to intervene in the result of this case cannot be established by an indirect interest concerning a similarity of situations but must, on the contrary, be defined in regard to the actual subject-matter of the case, as circumscribed by the form of order sought by British Coal in its application instituting proceedings.

25. In this regard, it is only in so far as NALOO's complaint is directed against British Coal and, consequently, contests the legality, under the combined provisions of Articles 4(d), 65 and 66(7) of the Treaty, of the royalty which it charged that British Coal can validly seek annulment of the Commission's implied refusal to reject that complaint.

26. Articles 4, 65 and 66(7) of the Treaty constitute the legal framework for the examination of licences to extract unworked coal and of their royalty and payment terms (Case C-128/92 *Banks* v *British Coal Corporation* [1994] ECR I-1209, paragraph 14).

27. PowerGen and National Power can have a direct and present interest in the annulment of the Commission's implied refusal to reject NALOO's complaint only in so far as a judgment annulling that refusal would have the effect of preventing examination of that complaint in regard to the legality of the purchase prices for coal which the CEGB paid to NALOO members.

28. The practices in restraint of competition for which NALOO criticizes British Coal, on the one hand, and the CEGB, on the other, are not only distinct but also do not share the same legal framework. It is, in fact, the combined provisions of Articles 4(b) and 63(1) of the Treaty which constitute the legal framework for dealing with discrimination practised by purchasers against producers as regards price, volume and other terms and conditions for the purchase of coal (*Hopkins*, cited above, paragraph 24).

29. In those circumstances, the submissions in the applications to intervene made by PowerGen and National Power do not support the submissions of British Coal, within the meaning of Article 34 of the [Statute] (see order of 12 April 1978 in Joined Cases 116/77, 124/77 and 143/77 *Amylum and Others* v *Council and Commission* [1978] ECR 893, paragraph 7 et seq.).

30. The applications to intervene submitted by PowerGen and National Power must therefore be dismissed.'

9 Since the parties' written observations contain all the information necessary to rule on the appeal, there is no need to hear oral argument.

Arguments of the parties

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10 National Power essentially puts forward three pleas in law in support of its appeal.

11 By its first plea National Power maintains that the contested order proceeds on confusion between the two paragraphs of Article 34 of the Statute, which reads as follows:

'Natural or legal persons establishing an interest in the result of any case submitted to the Court may intervene in that case.

Submissions [French: "*conclusions*; Dutch: '*conclusies*"; German: "*Anträge*"; Italian: "*conclusioni*"] made in an application to intervene shall be limited to supporting or requesting the rejection of the submissions of one of the parties.'

12 According to National Power, it is clear from the contested order, and in particular from paragraph 29 thereof, that confusion has arisen between the requirement concerning an interest in the result of the case, laid down in the first paragraph of Article 34, and the rule, laid down in the second paragraph of that article, that the 'submissions' made in an application to intervene must support or request the rejection of those of one of the parties.

13 National Power argues that paragraph 29 of the contested order wrongly concludes from the appellants' alleged lack of interest in the result of the case that their 'submissions' (the form of order sought in their applications to intervene) did not support those of one of the parties.

14 By its second plea National Power maintains that its interest in the result of the case was incorrectly assessed in the contested order which is, it claims, vitiated by errors of law and by defective reasoning.

15 The finding that National Power lacked the requisite interest was, it claims, based solely on the fact that NALOO's complaints against British Coal, on the one hand, and National Power, on the other, concerned different practices which were governed by different provisions of the ECSC Treaty. That finding was not, however, sufficient to exclude National Power's interest in the result of the case.

16 Despite the difference between the two complaints, the grounds on which British Coal claimed that NALOO's complaint against it should be rejected would go equally to justify rejection of NALOO's complaint against National Power.

17 In that regard, National Power points out, first, that NALOO's complaints against British Coal, on the one hand, and against National Power and PowerGen, on the other, were contained in a single document and that an earlier complaint by NALOO had been dealt with by a single decision of the Commission. Next, National Power emphasizes the fact that both cases concerned solely the period prior to April 1990 and that the same issue of principle therefore arises concerning the competence of the Commission with regard to practices which had ceased many years previously. Lastly, it claims, as a general point, that NALOO's complaint is based on a supposed link between the practices respectively followed by British Coal, on the one hand, and National Power and PowerGen, on the other.

18 In the circumstances, and having regard to the fact that the arguments put forward by British Coal were essentially identical to those which National Power had put forward to the Commission with regard to that institution's lack of competence and its duty to dismiss the complaint, National Power considers that it was correct in submitting to the Court of First Instance that the outcome of British Coal's application could effectively determine whether the Commission would be able to take a decision against National Power.

19 According to National Power, its arguments are borne out by the case-law of the Court of Justice.

20 It submits that the order in *Amylum and Others* v *Council and Commission*, cited in paragraph 29 of the contested order, is not relevant, inasmuch as it concerned an application to intervene made by third parties in proceedings concerning non-contractual liability on the part of the Commission, the outcome of which was of no relevance to those third parties and did not affect their situation.

21 National Power refers, by contrast, to a number of other orders in which leave to intervene was granted: for example, the order in Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 487, in which annulment of the contested regulation would have had indirect economic effects on producers of fruit and vegetables (by making imports easier) even though the producers in question had no direct legal interest in the outcome of the case; the order of 15 July 1981 in Case 45/81 *Moksel* v *Commission* (not published in the European Court Reports); and the order in Cases 113/77 R and 113/77 R-Int. *NTN Toyo* v *Council* [1977] ECR 1721, an anti-dumping case in which it was held that the result of proceedings brought by an importer could affect the legal situation of another importer. National Power also refers, without citing them by name, to numerous cases in which associations have been permitted to intervene on the ground that the legal issue raised by the case, rather than its precise legal result, was of direct interest to their members.

22 With further reference to its second plea, National Power observes, lastly, that, since it is not an undertaking within the meaning of Article 80 of the ECSC Treaty, it would seem to lack the requisite capacity directly to challenge the Commission's failure to reject NALOO's complaint. However, if there were no legal means of asserting its rights, this would constitute an infringement of fundamental rights.

23 By its third plea National Power essentially repeats its complaint that the contested order is vitiated by an error of law, inasmuch as that order wrongly held that the 'submissions' in the application for leave to intervene did not support those of British Coal.

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24 In its appeal PowerGen relies on five pleas to show that the reasoning set out in the contested order is vitiated by as many errors of law.

25 It submits, first, that the contested order appears, according to paragraphs 25 and 27 thereof, to be based on the fact that there is a divergence between the different interests of British Coal and PowerGen in seeking annulment of the Commission's implied refusal. That, however, is irrelevant, since what is required is that the intervener should have an interest in the result of the case, not the same interest as the party in whose support he intervenes.

26 Second, the contested order is wrongly based on the assumption that, if the Court of First Instance were to annul the implied decision of the Commission, such annulment would be effective only in so far as British Coal is concerned and not *erga omnes*. PowerGen considers, on the contrary, that it would also be directly affected by such annulment. It points out in that regard that the notice of the case published in the *Official Journal of the European Communities* (OJ 1994 C 386, p. 19) does not indicate that British Coal has limited the scope of the proceedings brought by it to an application for annulment of the implied decision of the Commission only in so far as it affects British Coal.

27 Third, the fact, referred to in the contested order, that NALOO's complaints against British Coal, on the one hand, and PowerGen, on the other, are based on different provisions of the ECSC Treaty is irrelevant. PowerGen considers, on the contrary, that the only requirement is that the arguments put forward by British Coal in support of its application should be equally applicable to NALOO's complaint against PowerGen.

28 Fourth, PowerGen refers to the order of the Court of Justice in Case C-245/95 P *Commission* v *NTN Corporation and Koyo Seiko* [1996] ECR I-559, by which an undertaking and its subsidiaries were granted leave to intervene in an appeal in an anti-dumping case even though the applicants had sought annulment of the anti-dumping regulation concerned only in so far as it affected them. PowerGen infers from this that even if, in the present case, the annulment of the Commission's implied decision were not effective *erga omnes*, it would still have an interest in the result of the case.

29 PowerGen also refers to the orders, cited above, in *NTN Toyo* v *Council* and *Moksel* v *Commission*. It draws a distinction between those decisions and situations in which the application for leave to intervene must be dismissed because the party seeking leave is not affected by the contested act but simply wishes to put forward arguments that may be of use to it in future hypothetical proceedings concerning a different, future, hypothetical act. That was the position as regards the order made on 25 November 1964 in Case 111/63 *Lemmerz-Werke* v *High Authority* [1965] ECR 716.

30 The last plea put forward by PowerGen is essentially the same as the line of argument put forward by National Power in its second plea, namely that if persons who are not undertakings (as defined in the ECSC Treaty) have no legal means of asserting their rights, this would constitute an infringement of fundamental rights.

Observations of British Coal

31 In its observations to the Court of Justice, British Coal states, first, that it wishes to withdraw the applications for confidential treatment previously made by it before the Court of First Instance.

32 For the rest, it supports the arguments of National Power and PowerGen and relies on the order in *Commission* v *NTN Corporation and Koyo Seiko*, cited above, and the order of 25 March 1992 in Case C-241/91 *Radio Telefis Eireann* v *Commission* (not published in the European Court Reports), by which leave to intervene was granted to a party whose interest was no more than an interest in establishing the general principle of which the applicants hoped to persuade the Court.

33 Lastly, British Coal considers that intervention by National Power and PowerGen would serve the intended purpose of the intervention procedure, which is to avoid proliferation of litigation once a judgment has been delivered settling the issue in point.

Observations of the Commission

34 In addition to making specific observations on each of the two appeals, the Commission puts forward certain general observations.

35 It maintains, first of all, that an intervention cannot change the scope of the proceedings and that the action brought before the Court of First Instance by British Coal concerns only the lawfulness of the non-rejection by the Commission of NALOO's complaint as directed against British Coal. That complaint is limited to Articles 4(d), 65 and 66(7) of the ECSC Treaty. As the Court of First Instance observed in paragraph 25 of the contested order, British Coal does not have, and does not claim to have, a legal interest in having the complaint rejected as against National Power and PowerGen. Even if British Coal were to succeed in its action, that would not alter the position of National Power or PowerGen.

36 Next, according to the Commission, the appellants' interest is at most merely a general interest in having a legal precedent established. As is correctly stated in paragraph 24 of the contested order, mere similarity of situations is not enough; the interest must be defined by reference to the subject-matter of the case.

37 Lastly, the Commission states that the correctness of the approach adopted in the contested order is underlined by the distinction drawn between the situation of NALOO, which has been granted leave to intervene, on the one hand, and, on the other, that of National Power and PowerGen.

38 The Commission makes the following further observations concerning the appeal brought by National Power.

39 With regard to the first and third pleas, relating to the interpretation of Article 34 of the Statute, the Commission considers that the crucial question is whether there exists an interest in intervening. If the two paragraphs of Article 34 of the Statute are read together, as they should be, it is clear that there must be a direct link between the result of the case and the right to intervene: that right exists only for a person in relation to whom the decision of the Community judicature on the orders sought by the main parties has an immediate and decisive effect. As is apparent from the contested order, that is not the position in the case of National Power.

40 The second plea relied on by National Power is based, the Commission argues, on the false premiss that the judgment of the Court of First Instance will automatically apply to National Power. According to the Commission, National Power is in fact simply interested in using the present case to obtain a precedent.

41 The various orders relied on by National Power all concern cases in which the result of the main proceedings was bound to have repercussions on the situation of the party applying for leave to intervene, which is not the position in the present case.

42 Lastly, the Commission rejects National Power's arguments concerning the existence of a fundamental right to seek a judicial remedy: first, National Power has available to it remedies before the national courts; next, inasmuch as it has no direct interest in the result of the case, National Power would lose nothing by not being allowed to intervene, and its intervention should not therefore be regarded as a remedy in the absence of *locus standi* on its part; lastly, it appears to the Commission by no means certain that purchasers of products covered by the ECSC Treaty are deprived of a remedy merely because they are not themselves undertakings within the meaning of that Treaty.

43 The Commission's observations on the five pleas relied on by PowerGen in support of its appeal may be summarized as follows.

44 The first plea, according to which the interest of the intervener need not necessarily be the same as that of the party in whose favour it seeks to intervene, involves an essentially semantic argument. The only point which matters is in fact the question whether the grant or refusal of the order sought by the party concerned is decisive for the intervener. That condition is not fulfilled in the present case.

45 With regard to PowerGen's second plea, the Commission contends that, if the Court of First Instance were to annul the contested decision of the Commission, that would clearly benefit only the party seeking such annulment (Joined Cases 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73 and 135/73 to 137/73 *Schots-Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177 and Case 161/87 *Muysers and Tülp* v *Court of Auditors* [1988] ECR 3037).

46 For the rest, the Commission observes that, even if the judgment applied *erga omnes*, it would none the less be of direct concern only to British Coal and to other undertakings (within the meaning of the ECSC Treaty) which are owners of mining rights in relation to royalties charged to NALOO members.

47 The Commission also contests PowerGen's third plea, according to which any judgment of the Court of First Instance on the case upholding British Coal's contentions concerning Articles 65(1) and 66(7) of the ECSC Treaty would also decide the same issue in relation to Article 63(1), on which the complaint against PowerGen is based. Article 63(1) does not form the subject-matter of the action pending before the Court of First Instance.

48 According to the Commission, the order in *NTN Toyo* v *Council*, cited above, to which PowerGen refers in its fourth plea, is irrelevant. PowerGen's position is very different from that of the intervener in that case, NSK, which, as an exporter of the same product as the applicant, was also liable to pay the anti-dumping duties imposed by the disputed regulation, the annulment of which would be of equal benefit to it. NSK had, moreover, an independent cause of action against the same provisions.

49 Lastly, as regards PowerGen's fifth plea, the Commission's observations are the same as those submitted by it in relation to the corresponding arguments put forward by National Power (see paragraph 42 of this order).

Findings of the Court

50 It should be noted at the outset that NALOO's complaint against British Coal, which lies at the heart of the annulment proceedings before the Court of First

Instance, concerned the lawfulness, under the combined provisions of Articles 4(d), 65 and 66(7) of the ECSC Treaty, of the royalties charged by British Coal, and that the relief sought in British Coal's application was annulment of the Commission's implied decision refusing to reject that complaint against it.

51 The Court of First Instance considered that the interests of the parties seeking leave to intervene fell to be defined in the light of the precise subject-matter of that dispute.

52 That approach is consistent with the scope of Article 34 of the ECSC Statute and of the similar provisions of the EC and EAEC Statutes of the Court of Justice, as interpreted by itself.

53 Consequently, for the purposes of granting leave to intervene, the Court ascertains whether the interveners are directly affected by the decision at issue and whether their interest in the result of the case is established (order in Case 25/59 *Netherlands* v *High Authority* [1960] ECR 386, at 389). Similarly, it has held that it is necessary to establish a direct, existing interest in the grant by the Court of the order as sought and not an interest in relation to the pleas in law put forward (orders, cited above, in *Lemmerz-Werke* v *High Authority*, at 718, and *Amylum and Others* v *Council and Commission*, paragraphs 7 and 9). The Court has held in another order that the interest necessary in this respect must not relate merely to abstract legal arguments but to the actual form of order sought by a party to the main action (order in *Consten and Grundig* v *Commission* [1966] ECR 382, at 383). According to the Court's case-law, it is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties (orders in Case C-76/93 P *Scaramuzza* v *Commission* [1993] ECR I-5715 and I-5722, paragraph 11; see also the orders of the Court of First Instance in Joined Cases T-97/92 and T-111/92 *Rijnoudt and Hocken* v *Commission* [1993] ECR II-587, paragraph 22, and Case T-87/92 *Kruidvat* v *Commission* [1993] ECR II-1375, paragraph 12).

54 The pleas put forward by the appellants must be assessed in the light of that case-law.

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55 The first plea relied on by National Power must be rejected from the outset, inasmuch as the confusion which the appellant claims to be able to discern in paragraph 29 of the contested order cannot affect the findings in paragraphs 27 and 28, which are enough by themselves to preclude the existence of a sufficient interest in the result of the case.

56 Moreover, contrary to the contention of National Power, it is not apparent from the contested order that there has been any confusion between the two paragraphs of Article 34 of the Statute.

57 The requirement of an interest in the result of the case, laid down in the first paragraph of Article 34, must be interpreted in the light of the second paragraph of that article. As the Court stated in the order in *Lemmerz-Werke* v *High Authority*, the first paragraph of Article 34 of the ECSC Statute provides that only persons 'establishing an interest in the result of a case' may intervene in that case. The expression 'result' is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver. Consequently, if under the second paragraph of Article 34 the submissions in an application for leave to intervene are to be limited to supporting or requesting the rejection of those of one of the parties, the interest in question must be established with reference to those submissions and not to the pleas in law put forward in support of them.

58 Paragraph 29 of the contested order must therefore be understood as meaning that the interest asserted by the appellants did not exist in relation to the submissions of British Coal.

59 By its second plea National Power essentially maintains that, although NALOO's complaint against British Coal concerned different practices governed by separate legislative provisions, the outcome of the proceedings brought by British Coal may nevertheless determine its own situation with respect to the complaint made against it by NALOO, and that this constitutes a sufficient interest.

60 That argument cannot be accepted. It is true that the interest asserted by National Power before the Court of First Instance derives from a concrete, still existing situation. Nevertheless, as that company itself acknowledges, the interest it asserts is based solely on the similarity of the grounds on which, in its view, NALOO's complaints against it, on the one hand, and against British Coal, on the other, should be rejected.

61 It was rightly held in the contested order that National Power would have an interest in the result of the case only if the potential effect of that result were, essentially, to alter its legal position as a purchaser of coal from members of NALOO. However, as is pointed out in the contested order, the case is solely concerned with the Commission's refusal to reject a complaint relating to the royalties charged by a mine-owner, British Coal, on the coal extracted from its mines.

62 The additional points raised by National Power concerning NALOO's complaints, as summarized in paragraph 17 of this order, are irrelevant for the purposes of assessing the reasoning contained in the contested order.

63 Nor is the case-law referred to by National Power sufficient to establish the existence of an error of law in the contested order.

64 In the order in *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council*, cited above, the Court observed that the regulation at issue was capable of affecting the interests of national producers of certain goods, and therefore permitted intervention by an association representing those producers, having found that it had a legitimate interest in defending their interests. In that case, the producers, and thus their representative, therefore had a direct, existing and undeniable interest in the continuation or annulment of the regulation at issue.

65 In the case which gave rise to the order in *NTN Toyo* v *Council*, cited above, the intervener itself had also brought proceedings for annulment of the act in issue, and for interim measures, four days before the order granting it leave to intervene was made. It therefore had the same interest in the result of the case as the party in support of which it sought to intervene.

66 Moreover, National Power has not indicated how the case-law relating to the right of representative associations to intervene can apply to its own situation, since its object as a company is not to protect the general interests of any class of persons. The practice of allowing intervention by representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members cannot be relied on in support of an individual application to intervene. The adoption of a broad interpretation of the right of associations to intervene is intended to facilitate assessment of the context of such cases whilst avoiding multiple individual interventions which would compromise the effectiveness

and proper course of the procedure (see, to that effect, the order of the Court of First Instance in *Kruidvat* v *Commission*, cited above, paragraph 14).

67 For the same reasons, the reference by British Coal to the order in *Radio Telefis Eireann* v *Commission*, cited above, is of no relevance. The reason for which a non-profit-making association was permitted to intervene in that case is to be found in the specific nature of the case and the composition and object of that association.

68 Lastly, the order in *Moksel* v *Commission*, cited above, concerned an application for annulment of a Commission regulation temporarily suspending the advance fixing of export refunds for certain agricultural products. It is true that that order (unreported) shows that an application for leave to intervene was allowed on the ground that the prospective intervener had a potential interest in the result of the case, at least as regards the statement of reasons on which it would be based. However, it is not possible to derive from that very succinct reasoning consequences which go beyond that specific case and call in question established case-law (see, to the same effect, the order of the Court of First Instance in *Rijnoudt and Hocken* v *Commission*, cited above, paragraphs 15 and 16).

69 With regard to the right to a judicial remedy, as pleaded by National Power, it must be stated that this involves a separate issue which cannot affect the assessment of National Power's interest in the result of the case in the context of an application for leave to intervene.

70 In the light of the foregoing considerations the pleas put forward by Powergen also fall to be rejected.

71 As regards the first plea, the contested order clearly shows that the ground on which refusal to allow the application to intervene was based was the lack of any direct interest in the result of the case and not an alleged divergence between British Coal's interests and those of PowerGen. This plea must therefore be rejected.

72 As regards the second plea, it should be noted that it is clearly apparent from the very wording of the contested order that the subject-matter of the proceedings is the annulment of the Commission's implied refusal to reject NALOO's complaint only in so far as it was made against British Coal.

73 Moreover, as the Commission correctly points out, a judgment has the authority of *res judicata* only in relation to the parties to the litigation (see, in particular, the judgment in *Schots-Kortner and Others* v *Council, Commission and Parliament*, cited above, paragraph 36).

74 The third plea relied on by PowerGen, according to which British Coal's arguments are equally applicable as regards PowerGen, has already been answered in paragraphs 60 and 61 of this order.

75 With regard to the fourth plea, the order in *Commission* v *NTN Corporation and Koyo Seiko*, on which PowerGen, like British Coal, relies, lends no support to the appellant's assertions. In that case, the act which the Court of First Instance was requested to annul imposed a specific anti-dumping duty on the party granted leave to intervene.

76 Finally, the fifth and last plea must likewise be rejected, for the reasons set out in paragraph 68.

77 It follows from the foregoing that the appellants have not established that the contested order was vitiated by an error of law.

Costs

78 Under Article 69(2) of the Rules of Procedure, which, under Article 118, is applicable to the appeal 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 appellants have been unsuccessful, they must be ordered to pay the costs of these appeals. British Coal, which submitted observations in support of the appellants, must be ordered to bear its own costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. The appeals are dismissed.

2. National Power plc and PowerGen plc shall pay the costs of these appeals. However, British Coal shall bear its own costs.

Luxembourg, 17 June 1997.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President