ORDER OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
15 March 2000 *

In Case T-337/94 (92),

Enso-Gutzeit Oy, established in Helsinki, represented by I. Van Bael and J.-F. Bellis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Lorang, 3 Rue de la Chapelle,

applicant,

v

Commission of the European Communities, represented by Richard Lyal, 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,

defendant,

* Language of the case: English.

APPLICATION for taxation of the costs to be paid by the defendant to the applicant following the judgment of the Court of First Instance of 14 May 1998 in Case T-337/94 *Enso-Gutzeit* v *Commission* [1998] ECR II-1571,

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

composed of: B. Vesterdorf, President, A. Potocki, A.W.H. Meij, M. Vilaras and N. Forwood, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court on 14 October 1994 the applicant brought an action for annulment of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard) (OJ 1994 L 243, p. 1). In that decision the Commission found that 19 manufacturers, including the applicant, all of which were suppliers of cartonboard in the European Community, had infringed Article 85(1) of the EC Treaty (now Article 81(1) EC) by participating, for a

period which differed according to the undertaking concerned but which did not extend beyond April 1991, in an agreement and a concerted practice originating in mid-1986 whereby the suppliers of cartonboard in question had, *inter alia*, planned and implemented simultaneous and uniform price increases throughout the Community, had reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time, and had, increasingly from early 1990, taken concerted measures to control the supply of the product in the Community in order to ensure the implementation of the concerted price increases. Article 3 of Decision 94/601 imposed a fine of ECU 3 250 000 on the applicant.

2 By judgment of 14 May 1998 in Case T-337/94 *Enso-Gutzeit* v *Commission* [1998] ECR II-1571 the Court of First Instance annulled Decision 94/601 as regards the applicant and ordered the Commission to pay the costs.

3 By letter of 1 February 1999 the applicant requested the Commission to pay total costs of BEF 7 728 960. In its reply of 21 June 1999 the Commission offered to pay BEF 2 million.

4 By application lodged at the Registry of the Court on 14 September 1999 the applicant applied for taxation of costs and has requested the Court to fix the amount of recoverable costs at BEF 7 728 960. On 11 November 1999 the Commission submitted its observations on that request, in accordance with Article 92 of the Rules of Procedure of the Court of First Instance.

Arguments of the parties

5 The applicant considers that the amount claimed is justified having regard, first of all, to the purpose and nature of the proceedings. It contested Decision 94/601 by arguing, *inter alia*, that the 'SBS' cartonboard produced by it should have been excluded from the scope of that decision and that its participation in an infringement of Article 85(1) of the Treaty had not been proven. That line of argument had required a lengthy and meticulous examination of the evidence. Despite an initial examination of the evidence during the administrative procedure before the Commission, the preparation of an action for annulment, 18 months after dispatch of the statement of objections, had justified a new analysis in the context of a more general approach to the system of proof adopted by the Commission.

6 Second, the proceedings raised the important issue of the standard of proof which the Commission is required to satisfy in order to lawfully hold an undertaking responsible for a price-fixing cartel. That issue has been the subject of considerable comment in academic legal writing.

7 Third, the case presented particular difficulties on account of the complexity of the facts. It was necessary to refute evidence on which the Commission relied against the applicant and to show the existence of a separate product market for SBS cartonboard. Moreover, the organisation of the oral procedure involving all the applicants, for the purposes of which the cases were joined, and the lengthiness of the hearings, added to the complexity of the case.

8 Fourth, the complexity of the case and the duration of the proceedings necessitated the use of a team of lawyers in order to prepare the pleadings, reply to the Court's questions and organise meetings with the applicant's representatives. The special situation of the applicant also meant that its lawyers could not rely on the arguments made by the applicants in the other cases, even though they were under a duty to be fully aware of them.

9 Last, the applicant points to the considerable financial interest which it had in the outcome of the proceedings, having regard to the amount of the fine imposed and the damage to its reputation and standing on the market.

10 In support of its application the applicant provides a summary of the expenses and fees invoiced by its lawyers. This shows that the amount claimed is made up, first, of disbursements (three trips by two lawyers to Luxembourg, two trips by two lawyers to Helsinki and one trip by two lawyers to the applicant's marketing office in London) totalling BEF 243 835 and, second, fees of BEF 7 485 125 in respect of 1 348 hours spent on the case.

11 The Commission, which acknowledges the relevance of the criteria adopted in order to determine recoverable costs, nevertheless disputes the applicant's appraisal of those criteria and considers the amount claimed to be excessive.

12 It argues in substance, first, that the main issue in the proceedings was relatively simple and concerned the probative value of the evidence adduced by the Commission in order to link Enso-Gutzeit to the activities of the cartel; second, that the part of the work carried out in order to support the — irrelevant — argument that SBS cartonboard belongs to a separate product market should not be taken into account when calculating recoverable costs; third, that no new, important or difficult issue of Community law was raised in the present case; and, fourth, that the amount of time spent was excessive. As to the last-mentioned argument, the Commission states that 13 lawyers and one paralegal were involved for more than 600 hours in preparing the application, even though most of the arguments advanced were the same as those which had already been raised during the administrative procedure. Lastly, some of the hours are billed without any explanation.

Findings of the Court

13 Under Article 91(b) of the Rules of Procedure 'the following shall be regarded as recoverable costs:... expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers'.

14 It follows from that article that recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Court of First Instance and, second, to those which are necessary for that purpose (Order of the Court of Justice of 9 November 1995 in Case C-89/85 DEP *Ahlström Osakeyhtiö and Others* v *Commission*, not published in the ECR, paragraph 14; and Order of the Court of First Instance in Case T-115/94 (92) *Opel Austria* v *Council* [1998] ECR II-2739, paragraph 26).

15 It is settled law that, as there are no Community provisions laying down fee-scales, the Court must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interests which the parties had in the proceedings. When doing so, the Court is not obliged to take account of any national scales of lawyers' fees or any agreements in relation to fees concluded between the party concerned and his agents or advisers (Order of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 3727, paragraphs 2 and 3, and Order of the Court of First Instance of 4 December 1998 in Case T-448/93 (92) *British Cement Association and Others* v *Commission*, not published in the ECR, paragraph 12).

16 Finally, the extent to which the Community judicature can assess the value of a lawyer's work depends on the degree of detail of the information provided (Orders of the Court of First Instance of 12 May 1997 in Case T-561/93 (92) *Tiercé Ladbroke* v *Commission*, not published in the ECR, paragraph 23, and of 25 June 1998 in Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92) *Altmann and Others* v *Commission* [1998] ECR-SC I-A-299 and II-883, paragraph 20).

17 In the present case, the Court points out that, as regards the difficulties presented by the case and its importance from the point of view of Community law, the applicant, which did not contest the existence of an agreement or concerted practice, submitted in its pleadings to the Court that its participation in any agreement or concerted practice was not proved and thus refuted the specific and circumstantial evidence on which reliance had been placed in establishing its participation in the collusive conduct referred to in the operative part of Decision 94/601. The applicant's appraisal of that evidence required an examination of the whole decision and the numerous documents in the file on which the Commission had relied in establishing the infringement of Article 85(1) of the Treaty. Even though it was necessary for the applicant's lawyers to carry out a detailed examination of the documents in the file in order to support their submissions, it must nevertheless be stated that the case did not raise any particularly difficult questions of law.

18 Furthermore, although the fact that some of the applicant's pleas were not taken up does not rule out recovery of the costs associated with their preparation, costs arising from work in researching and formulating pleas that is not necessary for the purposes of the proceedings before the Court cannot be recovered. In the present case, the question whether there was a separate product market for SBS cartonboard was fully dealt with by the applicant in the context of its claims for annulment. It should be pointed out that in the present case an analysis of the relevant product market was not essential in order to assess whether Article 81(1) EC had been infringed, because the alleged conduct had as its object the restriction of competition to an appreciable extent within the common market and concerned the products covered by Decision 94/601. Nevertheless, the work carried out by the applicant's lawyers in analysing the product markets was not wholly irrelevant inasmuch as it allowed it to supplement its arguments supporting the plea alleging lack of evidence of its participation in any agreement or concerted practice by explaining why it had no interest in participating in them. The costs generated by that work may therefore be regarded as recoverable costs, but without prejudice to an assessment of the total number of hours which that work required.

19 Enso-Gutzeit's lawyers had extensive knowledge of the case. They advised the applicant during the administrative procedure before the Commission and were therefore able not only to dispute the correctness of the allegations in the statement of objections but also to assess the probative nature of the evidence

adduced in order to establish its participation in the overall agreement and concerted practice. Those circumstances were of such a nature as to facilitate the defence of Enso-Gutzeit's interests and to reduce the time which its lawyers should have spent on the file in question. In the present case, a total of more than 900 hours in preparing the application and the reply is excessive in that regard.

20 Moreover, although in principle only the remuneration of a single lawyer may be regarded as falling within the concept of 'expenses necessarily incurred' within the meaning of Article 91(b) of the Rules of Procedure (Order of the Court of First Instance of 9 June 1993 in Case T-78/89 DEP *PPG Industries Glass* v *Commission* [1993] ECR II-573, paragraph 39), the primary consideration is none the less the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings before the Court, irrespective of the number of lawyers who may have provided the services in question (Order of the Court of First Instance of 30 October 1998 in Case T-290/94 (92) *Kaysersberg* v *Commission* [1998] ECR II-4105, paragraph 20).

21 As regards the costs of the involvement of a new lawyer during the proceedings before the Court, as revealed by the supporting documents adduced by the applicant, those costs cannot be borne by the party ordered to pay costs except in so far as they correspond to time which that new lawyer spent on the file, other than time necessarily required in familiarising himself with that file.

22 The Court also points out, as the Commission contends, that since the applicant has given no reasons for a number of working hours invoiced, the corresponding costs cannot be recovered.

23 Lastly, the Commission does not dispute that the financial interests which the applicant had in the outcome of the dispute, in particular having regard to the amount of the fine imposed (paragraph 1 above), were significant.

24 Having regard to the foregoing, the Court will make an equitable assessment of the recoverable costs by fixing the total amount at BEF 4 500 000.

25 Since that sum takes account of all the circumstances of the case up to the date of this order, there is no need to give a ruling on the costs incurred by the parties in relation to these proceedings for taxation of costs (Order of the Court of First Instance of 22 March 1999 in Case T-97/95 (92) *Sinochem* v *Council* [1999] ECR II-743, paragraph 20).

On those grounds,

THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

hereby orders:

The total amount of costs to be paid by the Commission to the applicant is fixed at BEF 4 500 000.

Luxembourg, 15 March 2000.

H. Jung
Registrar

B. Vesterdorf
President