JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
8 June 1995 *

In Case T-459/93,

Siemens SA, a company incorporated under Belgian law, represented initially by Vincent Piessevaux and Jean-Jacques van Raemdonck and subsequently, in the oral procedure, by Jean-Jacques van Raemdonck and Dominique Lagasse, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

supported by

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent, and by Holger Wissel, Rechtsanwalt, Düsseldorf,

intervener,

v

* Language of the case: French.

Commission of the European Communities, represented initially by Sean Van Raepenbusch and Daniel Calleja and subsequently, in the oral procedure, by Daniel Calleja and Jean-Paul Keppenne, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Articles 1(c) and 2 of Commission Decision 92/483/EEC of 24 June 1992 concerning aid provided by the Brussels Regional Authorities (Belgium) in favour of the activities of Siemens SA in the data-processing and telecommunications sectors (OJ 1992 L 288, p. 25),

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

composed of: B. Vesterdorf, President, D. P. M. Barrington and A. Saggio, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 23 November 1994,

gives the following

Judgment

1 By Decision 92/483/EEC of 24 June 1992 concerning aid provided by the Brussels Regional Authorities (Belgium) in favour of the activities of Siemens SA in the data-processing and telecommunications sectors (OJ 1992 L 288, p. 25, hereinafter 'the Decision'), the Commission found that part of that aid was incompatible with the common market.

2 The Decision concerns 17 applications for aid submitted by Siemens SA (hereinafter 'Siemens') to the Brussels Regional Authorities between July 1985 and August 1987 pursuant to the Belgian Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries (hereinafter 'the 1959 Law'). By a number of decisions adopted between November 1985 and January 1988, the Brussels Regional Authorities granted those applications totalling BFR 335 980 000, of which BFR 290 921 000 had already been paid by the date when this action was brought.

The relevant provisions

3 Article 1(a) of the 1959 Law establishes a system of general aid for operations 'contributing directly to the creation, extension, conversion or modernization of large and small undertakings, whether the said activities are carried on either by those undertakings themselves or by other natural or legal persons under private or public law, provided that they are in the general economic interest'. Article 3(a) provides that subsidies may be granted for that purpose to approved credit institutions in order to enable them to agree to grant loans at a reduced rate of interest for the

operations referred to in Article 1, on condition that those loans are used for one of the purposes therein set out, which include, in particular, the direct financing of investments in immovable property, whether constructed or not, and in plant or machinery needed to carry out those operations.

4 By Decision 75/397/EEC of 17 June 1975 on the aids granted by the Belgian Government pursuant to the Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries (OJ 1975 L 177, p. 13, hereinafter 'Decision 75/397'), the Commission found that that system of general aid was incompatible with the common market. In Article 1 of that decision, however, the Commission considered that aids granted under the general scheme in connection with programmes of a sectoral or regional nature and notified to the Commission in advance, or aids of an insignificant amount, were compatible with the common market and did not therefore need to be notified in advance pursuant to Article 92(3) of the EC Treaty. The thresholds above which aids become significant and must be notified are laid down by Article 2 of Decision 75/397 and by letter SG (79) D10478 of 14 September 1979 from the Commission to the Member States on the notification of cases to which general investment aid schemes apply.

5 As regards the form of aid, the 1959 Law provides, in particular, for interest-rate subsidies on loans contracted with the approved credit institutions. In addition, Article 176 of the Law of 22 December 1977 on budgetary proposals for 1977-1978 (hereinafter 'the 1977 Law') allows, in conjunction with the Royal Decree of 24 January 1978 (hereinafter 'the 1978 Royal Decree'), the grant of non-recoverable capital premiums equivalent to the interest-rate subsidies where the operations referred to in Article 1 of the 1959 Law are financed by the undertaking's equity capital. By letter to the Belgian authorities of 25 May 1978, the Commission authorized those measures. In the present case, the aid granted is in the form of non-recoverable capital premiums.

The contested decision

6 By letter of 18 July 1991, the Commission initiated the procedure under Article 93(2) of the Treaty, in response to information published in the Belgian press reporting that the Belgian Audit Court had raised objections regarding the legality of the aids in issue. After receiving the observations presented by the Belgian authorities, it adopted the contested decision.

7 The Decision, which relates to a number of aid measures, draws a distinction between seven categories of operations for which those aids were granted, namely the leasing of equipment to clients, the purchase of equipment for internal use, the development costs of software, training costs, the acquisition of a building, advertising campaigns and market surveys.

8 In the Commission's view, the aid intended for equipment for internal use was granted legally, since, first, that expenditure corresponds to the types of investment expressly eligible for aid under the 1959 Law and, second, those investments are made up of independent individual programmes which do not exceed the notification thresholds laid down in the letter to the Member States of 14 September 1979.

9 On the other hand, the Commission considers that the training costs, the advertising campaigns and the market surveys are not items which are eligible for aid under the 1959 Law and that the grant of aid in respect of them constitutes an *ad hoc* intervention which should have been notified to it in accordance with Article 93(3) of the Treaty. Nevertheless, the Commission considers that the aid towards training costs qualifies for the exception provided for in Article 92(3)(c) of the EC Treaty, since it is intended to facilitate the development of certain economic activities and does not distort competitive conditions in a harmful manner.

10 Lastly, the Commission considers that the expenditure on equipment leased to clients does not meet the criteria laid down by Articles 1 and 3(a) of the 1959 Law and approved by the Commission, because it does not contribute to the creation, extension, conversion or modernization of the structure of Siemens. Furthermore, the grant of aid for the financing of those operations does not constitute aid to client undertakings either, since those clients pay the full rental set by Siemens at its discretion. Consequently, that aid is in the nature of permanent operating aid granted to that company. The Commission further states that, even if the 1959 Law had covered those latter subsidies, they should have been notified pursuant to Article 93(3) of the Treaty, as they exceed the thresholds established in the letter to the Member States of 14 September 1979.

11 The Commission further considers that the aid, which falls outside the scope of Decision 75/397, does not qualify for any of the exceptions provided for in Article 92 of the Treaty. First, Article 92(2) is not applicable in the present case, because the aid in question is not directed towards the attainment of the objectives to which that provision of the Treaty refers. Second, the aid in question is not intended to serve any regional or sectoral purpose and cannot therefore be covered by the exceptions laid down in Article 92(3)(a) and (c). The exceptions provided for in Article 92(3)(b) are likewise inapplicable in the present case, since the aid in question was not intended to promote an important project of common interest or to remedy a serious disturbance in the Belgian economy.

12 On the basis of those considerations, the Commission's conclusions, as set out in Article 1 of the Decision, are as follows:

'Of the total aid under investigation, that is to say BFR 335 980 000 in the form of subsidies awarded by the Government of the Region of Brussels under the aid

scheme established by the Economic Expansion Law (EEL) of 17 July 1959 towards expenditure by Siemens SA totalling BFR 2 647 294 000:

...

(c) the aid of BFR 256 445 000 towards expenditure on equipment leased to clients, advertising campaigns and market surveys, was illegally awarded in breach of the provisions of Article 93(3) and, after appraisal, does not meet any of the conditions which must be fulfilled in order for one of the exceptions of Article 92(2) and (3) to apply; consequently, this aid is incompatible with the common market within the meaning of Article 92(1).'

13 By Article 2 of the Decision, the Commission prohibits the Brussels authorities from proceeding to make payment of the aid illegally awarded and not yet paid, and requires them to recover the sums paid in respect of the aid declared incompatible with the common market in accordance with the procedures and provisions of national law, in particular those relating to interest on arrears payable on State liabilities. According to the Decision, interest on those sums is to run from the date on which the illegal aid was received.

Procedure

14 By application lodged at the Registry of the Court of Justice on 9 November 1992, Siemens applied for the annulment of Articles 1(c) and 2 of the Decision.

15 By application lodged at the Registry of the Court of Justice on 10 February 1993, the Federal Republic of Germany applied for leave to intervene in support of the form of order sought by the applicant. By order of 23 March 1993, the President of the Court of Justice granted the Federal Republic of Germany leave to intervene.

16 By order of 27 September 1993, made pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993, amending Decision 88/591/ECSC, EEC, Euratom establishing the Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Court of Justice transferred the present case to the Court of First Instance.

17 During the written procedure, the Court of First Instance requested the Commission to reply in writing to certain questions. Upon application by the applicant, the Court of First Instance further requested the Commission to produce the correspondence exchanged with the Belgian authorities in the context of the procedure under Article 93(2) of the Treaty. It also requested the parties to submit their observations on the documents lodged by the Commission.

18 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure without any preparatory inquiry. The oral procedure took place on 23 November 1994.

Forms of order sought by the parties

19 The applicant claims that the Court should:

— annul Article 1(c), alternatively Article 2, of the Decision;

— order the Commission to pay the costs.

The intervener claims that the Court should:

— annul the third paragraph of Article 2 of the Decision.

The defendant contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

Admissibility of the intervention of the German Government

20 The Commission questions the admissibility of the German Government's intervention in support of the form of order sought by the applicant in relation to its alternative claim, on the ground that such support is based on an interpretation of the law which is diametrically opposed to that put forward by the applicant. In particular, the German Government maintains that, by requiring the payment of interest from the date of receipt of the aid, the Commission exceeded its powers, whereas the applicant complains that the defendant failed to settle the question of interest once and for all.

21 The Court observes that, according to the third paragraph of Article 37 of the Statute of the Court of Justice of the EC, submissions made in an application to intervene must be limited to supporting the submissions of one of the parties and that, according to Article 116(3) of the Rules of Procedure of the Court of First Instance, the intervener must accept the case as he finds it at the time of his intervention. It is apparent from the case-law of the Court of Justice that those articles do not preclude the intervener from advancing arguments which differ from those of the party which he supports, since the intervention is always intended to support the form

of order sought by the latter (judgment of the Court of Justice in Case 30/59 *Steenkolenmijnen* v *High Authority* [1961] ECR 1).

22 In the present case, the German Government is claiming, like the applicant, that the third paragraph of Article 2 of the Decision should be annulled.

23 Consequently, the difference between the arguments advanced by the intervener and those relied on by the applicant cannot render the present intervention inadmissible.

Substance

24 The applicant seeks the annulment of Article 1(c) of the Decision, inasmuch as it finds illegal, and incompatible with the common market, the aids relating to the advertising campaigns, the market surveys and the purchase of the equipment to be leased. In the alternative, it seeks the annulment of Article 2 of the Decision, inasmuch as it orders the recovery of the aids already paid, together with interest from the date on which they were received.

I — *The legality of Article 1(c) of the Decision inasmuch as it relates to the aids in respect of the advertising campaigns, the market surveys and the purchase of the equipment to be leased*

25 The applicant pleads, in support of its claim for the annulment of the abovementioned provisions of Article 1(c) of the Decision, infringement of essential procedural requirements. It further maintains, first, that the aids granted for the

advertising campaigns, the market surveys and the purchase of the equipment to be leased fall within the ambit of the authorized general scheme and, second, that Article 92(3)(c) of the Treaty is applicable to those aids.

A — *Infringement of essential procedural requirements*

26 The applicant puts forward two pleas concerning infringement of essential procedural requirements. They relate respectively to the absence of a statement of reasons for the Decision and breach of the right to a fair hearing during the administrative procedure.

1. Absence of statement of reasons

Arguments of the parties

27 The applicant pleads a twofold failure to state reasons. First, the Commission did not explain why the investments in respect of the advertising campaigns and the market surveys fell outside the scope of the general aid scheme in question. Second, the Commission arrived 'by inference' at the conclusion that Siemens had artificially split up its applications for aid, without providing any firm evidence specifically showing that this had occurred, without establishing that it was artificial and without taking into consideration the observations submitted in that regard by the Belgian authorities during the administrative procedure.

28 The defendant stated in the oral procedure that those arguments had not been advanced at the written procedure stage and that they went beyond the plea

regarding the absence of a statement of reasons, which is set out with extreme brevity in the application. It added that, according to the relevant case-law, the Commission was not in any event obliged to adopt a position, in its decisions, on all the arguments relied on in the course of the administrative procedure (Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1).

Findings of the Court

29 As regards the admissibility of the plea in question, it should be observed that Article 44(1)(c) of the Rules of Procedure provides that the application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based, and that Article 48(2) of those Rules precludes, in general, the introduction of any new plea in the course of proceedings.

30 The Court finds in the present case that Siemens pleaded the absence of a statement of reasons in its application and that, in the course of the procedure, it merely developed and amplified that plea. It follows that the plea is admissible.

31 As to its substance, it should be noted that, as is apparent from the relevant case-law, the obligation laid down in Article 190 of the Treaty, requiring the acts referred to in Article 189 to state the reasons on which they are based, is not a mere matter of form but is intended to give an opportunity to the parties of defending their rights, to the Community judicature of exercising its powers of review and to the Member States and to all interested parties of ascertaining the circumstances in which the Commission has applied the Treaty (see, in particular, the judgment of the Court of Justice in Case 24/62 *Germany* v *Commission* [1963] ECR 63). However, it is equally apparent from the case-law of the Court of First Instance that, in stating the reasons for the decisions it has to take in order to ensure that the rules

of competition are applied, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned and it is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision (judgment in *La Cinq* v *Commission*, cited above, paragraph 41).

32 In the present case, the Court notes, with regard to the nature of the advertising campaigns and the market surveys, that the Commission stated in Part IV of the statement of reasons for the Decision (p. 29) that they 'are not listed as items eligible for aid under the EEL'. It goes on to explain (on p. 31 of the Decision) that they fall 'under the category of operating aid as this expenditure is a typical general operating cost that a company must bear in its normal activities'.

33 Similarly, as regards the alleged splitting-up of the applications for aid for the purchase of equipment to be leased, the Commission states, in Part IV of the statement of reasons for the Decision (p. 30), that 'certain of the expenditure programmes in question were split into several applications for aid which related to a homogenous body of expenditure to be made at the same time and should therefore have been dealt with jointly by the Brussels Government as a single expenditure programme'. It goes on to give examples of this. In that connection, the aid towards the purchase of equipment to be leased is regarded by the Commission as continued operating aid which falls, by its very nature, outside the general aid scheme established by the 1959 Law (see Part IV of the statement of reasons, p. 29 of the Decision).

34 It follows from the foregoing that, as regards the two points referred to by the applicant, the Commission has set out the facts and the legal considerations which are of decisive importance in the context of the Decision.

35 Consequently, the Decision is not inadequately reasoned and this plea must be rejected.

2. Breach of the right to a fair hearing

Arguments of the parties

36 The applicant maintains that, during the procedure provided for in Article 93(2) of the Treaty, the Commission changed its arguments regarding the illegality of the aid in issue but did not give the Belgian authorities an opportunity of presenting their observations on those new arguments. During the administrative procedure, the Commission allegedly appropriated the findings of the Belgian Audit Court, which stated, first, that the aid was intended to build up stocks and benefited a highly competitive undertaking not falling within the restricted category of industrial and craft undertakings eligible for aid on the basis of the 1959 Law, and, second, that part of the aid in issue exceeded the notification thresholds laid down in the letter of 14 September 1979, since it was of a sum greater than ECU 3 000 000 and constituted 12% to 13% of the capital needed for the operation in question. Consequently, in basing its final decision on the fact that the aid was intended to subsidize the functioning of the recipient undertaking and on the allegation that the applications for aid were artificially split up, the Commission acted in breach of the right to a fair hearing.

37 During the oral procedure, the Commission argued that this plea was inadmissible, submitting that the applicant could not rely on a breach of the right of the Belgian authorities to a fair hearing in their stead, since the Belgian authorities had not contested the Decision.

Findings of the Court

38 The Court notes, without there being any need to rule on the admissibility of the plea advanced by the applicant, that in the present case the applicant complains of

the fact that, in the Decision, the Commission justified its finding as to the illegality of the aid by referring to matters which were either unknown to the Belgian authorities or on which they were not given an opportunity of submitting their views during the administrative procedure. Those allegedly new matters are said to relate to the nature of the subsidies granted to Siemens as operating aid and to the artificial splitting-up of the applications for aid.

39 It is apparent from the documents before the Court that the Belgian authorities were in a position, at the time of the administrative procedure, to ascertain the main factors underlying the adoption of the Commission's decision and to express their views in that regard, particularly in relation to the nature of the aid and the alleged splitting-up of the applications for aid. In the letter initiating the administrative procedure, the Commission referred both to the objective of the operations financed, which was allegedly to improve 'the competitive position of Siemens, that has not had to bear all the costs of (its) investments' (second paragraph on page 4 of the letter), and to the fact that the threshold of ECU 3 000 000 laid down in the aforementioned letter of 14 September 1979 for aid 'whose ... intensity is between 10% and 15%' (second paragraph on page 3 of the first letter) had been exceeded. By means of those references and observations, the Commission undeniably gave the Belgian authorities an opportunity of making known their views on the main factors on which its decision was based. That analysis is borne out by the tenor of the correspondence between the Belgian authorities and the Commission during the administrative procedure. In a letter of 21 November 1991, the authorities expressed their views on the alleged splitting-up of the applications for aid, stating that, in view of 'the specific nature of the investments in question, which are spread over the whole of the accounting period and over several accounting periods', the applications cannot have been split up in that way. Similarly, in a letter of 13 March 1992, the Belgian authorities submitted their observations on the allegation that the thresholds had been exceeded, stating that the files had 'not been regarded as significant', since 'each file involved the aggregation of a number of individual files'. In that letter the Belgian authorities also indirectly expressed their views on the nature of the aid in issue, stating that the aid had 'never related to the building-up of stocks', which means that, according to those authorities, the aid in question could not be regarded as operating aid.

40 It follows from all the foregoing that the Belgian authorities were aware, in the context of the administrative procedure, of the main factors on which the Decision was based and that there has consequently been no breach of the right to a fair hearing.

41 Accordingly, the plea in issue is unfounded and must therefore in any event be rejected.

B — *The inclusion within the scope of the authorized general scheme of the aids towards the advertising campaigns, market surveys and purchase of equipment to be leased*

42 According to the applicant, the aids granted for the development of marketing concepts, the conduct of market surveys and the purchase of equipment to be leased fall within the scope of the 1959 Law and do not exceed the thresholds laid down in the Commission's letter of 14 September 1979. Consequently, the Commission has erred in law, has incorrectly assessed the facts and has infringed Decision 75/397, the terms of the letter of 14 September 1979 and Article 92(1) of the Treaty.

1. The nature of the aids covered by the Commission's decisions authorizing them

Arguments of the parties

43 The applicant maintains that, contrary to the indications given in the Decision (see Part IV of the statement of reasons, pp. 29 and 30), the aids referred to in

paragraph 42 above fall within the general scheme established by the 1959 Law but are not covered by the provisions of Article 3(a) thereof. The aids in question were granted in the form of non-recoverable capital premiums on the basis of Article 176 of the 1977 Law and Article 1 of the 1978 Royal Decree, whereas Article 3(a) of the 1959 Law refers solely to subsidies granted to credit institutions in order to enable them to grant loans at reduced rates of interest. Since the aforementioned provisions do not contain any list of the operations eligible for aid, nor any reference to the abovementioned Article 3(a), the aids in issue fall within the general aid scheme authorized by the Commission. Consequently, the applicant considers that the Commission has erred in law.

44 The Commission states in reply that Article 3(a) of the 1959 Law is applicable in the present case. The aids in issue were granted in the form of non-recoverable capital premiums on the basis of the second paragraph of Article 176 of the 1977 Law, which provides for that form of financing for the same operations as those referred to in the 1959 Law and, in particular, Article 3(a) thereof. When the Commission informed the Belgian authorities in its letter of 25 May 1978 that it did not object to the grant of aid in the form of capital premiums, as provided for in Article 176 of the 1977 Law and Article 1 of the 1978 Royal Decree, it did so having regard to the fact that the operations concerned were subject to the basic conditions and objectives laid down by the 1959 Law.

Findings of the Court

45 It is necessary to examine whether the provisions in question allowed the grant of aid for purposes other than investment. To that end, the national rules concerning the authorized general scheme need to be interpreted in the light of the Community rules in the matter. More specifically, the 1959 Law and Article 176 of the 1977 Law, as implemented by the 1978 Royal Decree, must be interpreted in accordance with the terms of Decision 75/397, the letter of 25 May 1978 and the wording of the relevant provisions of the Treaty.

46 The Court observes that in Article 1(a) the 1959 Law provides for 'general aid for operations contributing directly to the creation, extension, conversion or modernization of industrial or craft undertakings ... provided that they are in the general economic interest' and in Article 3(a) for such aid to be granted in the form of interest-rate subsidies on loans contracted with approved credit institutions and to be restricted to the financing of investment operations. The Commission considered in Decision 75/397 that the scheme established by the 1959 Law was a system for granting 'aid in favour of investments which the enterprises carry out for ... various purposes' (p. 13 of Decision 75/397). In adopting that decision, the Commission authorized such investment aid on condition either that it forms part of a sectoral or regional programme or that, by reason of the amount involved, it is not liable to have a significant effect on competition and trade within the Community (Article 1 of Decision 75/397). Furthermore, the Kingdom of Belgium provides, by Article 176 of the 1977 Law, as implemented by the 1978 Royal Decree, for the grant of general aid, in the form of non-recoverable capital premiums, for the operations referred to in Article 1 of the 1959 Law. By its letter of 25 May 1978 concerning the 1978 Royal Decree, the Commission authorized the grant of such aid for 'investment operations', subject to compliance with the 'verification procedure' provided for in Decision 75/397 (p. 2 of the letter).

47 It follows from the foregoing that where aid granted by the Belgian authorities within the framework of the general scheme in question is not intended for use for investment purposes, it cannot qualify under the Commission's authorization decisions and must therefore be notified pursuant to Article 93(3) of the Treaty.

48 Furthermore, as the Commission rightly contends, operating aid, that is to say, aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management or its usual activities, does not in principle fall within the scope of Article 92(3) aforesaid, and cannot therefore be regarded as authorized by Decision 75/397 or by the letter of 25 May 1978. According to the relevant case-law, the effect of such aid is in principle to distort competition in the sectors in which it is granted, whilst nevertheless being incapable, by its very nature, of achieving any of the objectives of the aforesaid

exceptions (see, in that regard, the judgments of the Court of Justice in Case C-86/89 *Italy* v *Commission* [1990] ECR I-3891 and in Case C-301/87 *France* v *Commission* [1990] ECR I-307).

49 On the basis of those considerations, the applicant's argument that Article 3(a) of the 1959 Law, which sets out the investment operations qualifying for general aid, is not applicable in the context of the 1978 Royal Decree must be rejected. Consequently, that royal decree cannot be interpreted as authorizing the grant of authorized general aid which is not intended for investment purposes.

2. The nature of the operations in issue

Arguments of the parties

50 The applicant maintains that, even if Article 3(a) of the 1959 Law were applicable in the present case, the Commission erred in its appraisal of the facts, by concluding that neither the development of marketing concepts, nor the conduct of market surveys nor the purchase of equipment to be leased constituted investment operations within the meaning of that provision. The purpose of those operations was to achieve future yields, and they were consequently subject to depreciation for accounting and fiscal purposes. In particular, the development of marketing concepts and the conduct of market surveys enabled the applicant to launch new products, to penetrate new markets and to strengthen its position on existing markets. As regards the purchase of equipment to be leased, this appeared in its balance sheet under the heading 'fixed assets' and enabled it to develop a new activity. The

applicant further contests the Commission's objection in the Decision that the acquisition of the equipment to be leased contributes not to the creation, extension, conversion or modernization of the structure of Siemens but to that of the undertakings leasing the equipment in question. Article 1(a) of the 1959 Law expressly provides that the operations eligible for the aid may be carried out either by the industrial or craft undertakings receiving general aid or by other natural or legal persons under private or public law, such as the lessees of the equipment in question. The Commission therefore made an incorrect appraisal of the facts and at the same time infringed Decision 75/397 and Article 92(1) of the Treaty.

51 The Commission states in reply, first, that the aid towards advertising campaigns and market surveys clearly constitutes aid towards Siemens' operating activities. Operations regarding surveys carried out in advance of the launch of new products or the penetration of new markets, such as those in issue here, are marketing activities forming part of normal operating activities, and cannot therefore qualify for general aid under Article 3(a) of the 1959 Law.

52 Second, the Commission observes that leasing is an activity which essentially concerns the marketing of products, and is therefore incapable of modernizing the structure of Siemens. The equipment was ordered after the leasing contract was signed, and the aid awarded was in 'direct proportion' to the revenue produced by the contract, since the rental payable for the equipment was necessarily dependent, according to the Commission, on its acquisition price, which was subsidized in the present case. Consequently, such aid constituted a regular subsidy towards Siemens' commercial activities and thus artificially strengthened its financial position, thereby threatening to distort competition. The fact that the cost of purchasing the equipment was subject to depreciation for accounting and fiscal purposes, in accordance with the national legislation, is irrelevant to an assessment of the compatibility of the aid with Article 92(1) of the Treaty, having regard to the fact that the concept of aid falls exclusively within the ambit of Community law.

Findings of the Court

53 Since the letter of 25 May 1978 authorizes the grant of aid in the form of capital premiums only for the financing of investments, it is necessary to examine whether the purpose of the aid in the present case is to finance investments. It should be borne in mind in that regard that such an examination entails assessments which must be made in a Community context (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 24) and, consequently, that the applicant's arguments of an accounting and fiscal nature, based on national law, are not relevant in the circumstances.

54 As regards the aid for the advertising campaigns and the market surveys, the application made by the applicant to the Belgian authorities on 30 September 1985, entitled 'Investment programme for Siemens, Brussels, in the sum of BFR 113 600 000', states that 'intangible investments are planned in the sum of BFR 37 600 000 for the marketing and promotion of new products, two examples of which are personal computers and the "HICOM" office communications system'. Similarly, it appears from the commentary on the investment programme annexed to the aid application of 29 September 1986 that 'the Belgian market in office technology, data processing and the automation of manufacturing processes is growing at a spectacular rate' and that 'in order to maintain, and even increase, (its) market share in those sectors, (it planned to) intensify (its) marketing activities during the coming years'.

55 It follows from the foregoing that the aid in question was intended for use in the marketing of Siemens' products, constituting one of its day-to-day activities. Consequently, it cannot be regarded as investment aid and qualify under the decision of the Commission of 25 May 1978 authorizing the grant of capital premiums for investment aid.

56 As regards the aid towards the purchase of equipment to be leased, involving the purchase of equipment by Siemens from other companies within the group and its being placed on the market by means of a leasing agreement, it is apparent from the supporting documents annexed to the applications for aid of 19 July 1985, 30 June 1986, 15 July 1986 and 12 August 1987 that Siemens itself classified the operation in question as a 'conventional sale', stating that, 'thanks to this method of selling', it had 'significantly increased (its) market share in the data-processing and office technology sector' (see, in particular, the supporting document annexed to the letter of 12 August 1987).

57 The Court finds that that operation is not such as to involve any technical or structural change or to promote Siemens' development otherwise than in an exclusively commercial way. As the defendant has stated, the aid in question enabled it over a given period to offer its clients artificially favourable terms and to increase its profit margin without any justification.

58 Lastly, the applicant cannot claim that the aid in issue contributes to the creation, extension, conversion or modernization of the third party undertakings which leased the equipment, and that it thus falls within the authorized general aid scheme. Those undertakings pay a rental set by Siemens at its discretion, and Siemens therefore remains the sole recipient of that aid, which enables it to reduce the rental level applied and thereby to distort competition to the detriment of its rivals.

59 It follows from the foregoing that, on account of its nature, neither the aid for the advertising campaigns and market surveys nor that relating to the purchase of equipment to be leased qualifies under Decision 75/397 or the letter of 25 May 1978.

3. The question whether the thresholds for notification of general aid have been exceeded

Arguments of the parties

60 The applicant claims that the Commission erred in concluding that the aid for the purchase of the equipment to be leased exceeded the notification thresholds. In particular, it denies that it artificially split up its applications for aid, since, as the Belgian authorities contended in the administrative procedure, each aid application involved the aggregation, solely for the sake of administrative simplicity, of separate investments. Consequently, the Decision disregarded, first, the rules concerning the notification of aid laid down in the Commission's letter of 14 September 1979, which updates the thresholds provided for in Decision 75/397, and, second, Article 92(1) of the Treaty.

61 As regards the question whether the thresholds were exceeded, the Commission states that it is contradictory to state that each application for aid aggregated separate investments and that each data-processing or telecommunications system constituted a separate investment, without explaining in detail the criteria by which the investment programmes were split up and without justifying the aggregation of the files.

Findings of the Court

62 It must be stated that the applicant's objections to the allegation that the notification thresholds were exceeded are of no relevance. Since the Court has held that the aid in issue was not covered by authorization under the general scheme approved by Decision 75/397 and the letter of 25 May 1978, by reason of its being in the nature of operating aid for the undertaking, there is no need to examine

whether the conditions imposed by those decisions, such as that relating to notification thresholds, were fulfilled.

4. The classification of certain operations as relating to advertising campaigns and of 'contrats de location' (leasing contracts) as 'contrats de location-financement' (lease-financing contracts)

Arguments of the parties

63 The applicant complains that the Commission wrongly regarded the investments in question as relating to advertising campaigns, when they were intended to improve marketing concepts.

64 It also complains that the Commission on occasion classified the 'contrats de location' as 'contrats de location-financement' and inferred from this, in the Decision, that the operations in question were operating activities and not investment operations.

65 The Commission contends that the classification of the aid for 'advertising campaigns' is based on the description of Siemens' activities appearing in the annexes to the note sent to the Commission by the Belgian authorities on 26 November 1991, which refers to advertising, promotion, the launch of new products and, consequently, marketing.

66 It further points out, with regard to the reference to 'location-financement', that there was a mistranslation, but that it took into consideration only the fact that the equipment, owned by the applicant, was leased out.

Findings of the Court

67 So far as concerns the classification of certain operations as relating to advertising campaigns, it should be noted that the applicant itself described those operations in its applications for aid as 'the marketing' and 'the promotion of new products' (see the letters of 30 September 1985 and 29 September 1986) by means of an 'advertising campaign aimed at promoting the integration of computers, personal computers, telephone exchanges, information retrieval services and terminals' (see the 'commentary on the investment programme' annexed to the letter of 29 September 1986).

68 The Court further notes that the 'contrats de location' are classified as 'contrats de location-financement' in the Decision and in the correspondence between the Belgian authorities and the Commission (see the Belgian authorities' letter of 13 March 1992), but that, since in these particular circumstances the Commission at no time took into consideration the financial aspect of the operations referred to as 'location-financement' in its assessment of their nature, their classification as such had no influence on the appraisal of Siemens' activities. It follows that the Decision is not vitiated by any contradiction or confusion.

69 The applicant's complaint is consequently of a purely terminological nature and does not call in question the fact that the subsidies in issue constituted operating aid.

70 On the basis of all those considerations, the Court finds that the aid towards advertising campaigns and market surveys and towards the purchase of equipment to be leased does not fall within the general aid scheme authorized by the Commission and, consequently, that the applicant's pleas must be rejected in their entirety.

C — *The applicability of Article 92(3)(c) of the Treaty to the aid towards advertising campaigns and market surveys and towards the purchase of equipment to be leased*

Arguments of the parties

71 The applicant maintains that the Commission incorrectly appraised the facts in regarding the aid in question as incapable of qualifying for the exceptions provided for in Article 93(2)(c) of the Treaty, and that it has consequently infringed that provision.

72 It claims, first, that the Commission was mistaken in regarding the investments in the development of marketing concepts and the conduct of market surveys as general operating costs that an undertaking must bear in connection with its normal activities. According to the applicant, those investments were investments in intangible assets subject to depreciation for accounting and fiscal purposes, which enabled it to launch new products, penetrate new markets or strengthen its presence on existing markets. Their aim was thus to develop its activities and to improve its structures.

73 Second, the applicant denies that the purchasing of equipment to be leased can be classified as an operating activity. Such purchases formed part of the fixed assets of the company and constituted investments for the purposes of Belgian accounting

and tax law. Similarly, the equipment leased to clients was allocated on a long-term basis, since the clients did not purchase the leased equipment at the expiry of the leasing contract but concluded a new contract for more modern equipment. Consequently, the operations in question were intended to promote investment.

74 The Commission reiterates that aids towards advertising campaigns and market surveys are intended to enable an undertaking to launch new products, penetrate new markets or strengthen its presence on existing markets, and that they must therefore be classified as marketing expenses falling within the normal activities of an undertaking, thus constituting operating costs. Similarly, aid towards the purchase of equipment to be leased is intended to serve a purely commercial purpose, since the equipment is not intended for the modernization either of Siemens or of its client undertakings. The Commission further observes that the rental is fixed at Siemens' discretion, and maintains that, as a result, the third party undertakings were not the recipients of the aid in issue.

75 Last but not least, in its view, the depreciation over several years to which the expenditure in question may be subject for accounting purposes, or its classification from the standpoint of national fiscal law, cannot call in question the assessment of the nature of the aid, which is linked to the economic effects of the intervention under consideration.

Findings of the Court

76 The Court points out that it is settled case-law that operating aid cannot in any circumstances be considered compatible with the common market pursuant to Article 92(3)(c) of the Treaty if its very nature is such that it may affect trading conditions to an extent contrary to the common interest (see the abovementioned

judgments in Case C-86/89 *Italy* v *Commission*, paragraph 18, and Case C-301/87 *France* v *Commission*, paragraph 49).

77 In the present case, as the Court has already held (see paragraphs 53 to 59), the purpose of both the aid towards the advertising campaigns and the market surveys and the aid for the purchase of equipment to be leased was the marketing of Siemens' products. Since marketing is a normal, everyday commercial activity, those aids constitute operating aids which, first, do not promote the 'development' of any economic sector and, second, provide the applicant with artificial financial support such as to distort competition in the long term and to affect trade to an extent contrary to the common interest.

78 It follows that the exception to the prohibition of aid provided for in Article 92(3)(c) is not applicable in the present case. Consequently, this plea is not well founded.

II — *The legality of the second and third paragraphs of Article 2 of the Decision, ordering recovery of the aid and requiring the payment of interest*

79 The applicant claims that, in ordering the recovery of the aid granted, together with interest running 'from the date on which the illegal aid was received', the Commission is not restoring the status quo but is putting the applicant in a position less favourable than that of its competitors, by placing it at a financial disadvantage. In so doing, the Commission is alleged, first, to have infringed Article 92(1) of the Treaty, which requires the situation prior to the grant of the aid to be restored, and, second, to have penalized the applicant without having any legal basis for doing so. The applicant's complaints concern the Commission's failure, when fixing the amount of aid to be recovered, to take into account the incidence of the tax paid by Siemens, and the payment of interest.

A — *The need, upon recovery of the aid, to take into account the tax paid by the applicant*

Arguments of the parties

80 The applicant claims that, by ordering the recovery in full of the illegal aid, the Commission failed to observe the principle that the status quo must be restored, instead placing Siemens at a financial disadvantage by reason of the fact that it had paid corporation tax on the amount of aid granted. Without even having to go so far as to calculate the fiscal implications and the net sum to be reimbursed, the Commission should nevertheless have made it possible for the national authority responsible for recovery of the aid to take into account the effect of the tax rules in order to determine the amount to be reimbursed.

81 The Commission states in reply that the procedure for the recovery of the aid is outside its purview and is governed by national law. For that reason, it merely calculates the gross sum to be reimbursed, regardless of the recipient's fiscal position. It is for the Belgian authorities, therefore, to determine the effect of their tax rules and to apply their provisions for the recovery of State liabilities by ensuring compliance with the Community interest. The applicant's allegation that under Belgian law there are no specific rules in the matter is not such as to call in question that reference to national law or to authorize the Commission to take the place of the national authorities.

Findings of the Court

82 It is settled case-law that, in the absence of provisions of Community law concerning the recovery of amounts unduly paid, the recovery of aid improperly granted

must be carried out in accordance with the rules and procedures laid down by national law. However, the application of national law must not affect the scope and effectiveness of Community law. In other words, the application of the national rules must not make it impossible in practice to recover the sums irregularly granted or be discriminatory in relation to comparable cases which are governed solely by national legislation (see the judgments of the Court of Justice in Joined Cases 205 to 215/82 *Deutsche Milchkontor* [1983] ECR 2633, paragraphs 18 to 25, and Case 94/87 *Commission* v *Germany* [1989] ECR 175, paragraph 12).

83 It follows that the Commission is not obliged, in its decisions ordering the recovery of State aid, to determine the incidence of tax on the amount of aid to be recovered, since that calculation falls within the scope of national law; it is merely required to indicate the gross sum to be recovered. That does not prevent the national authorities, when recovering the amount in question, from deducting certain sums, where appropriate, from the amount to be recovered pursuant to their internal rules, provided that the application of those rules does not make such recovery impossible in practice or discriminate in relation to comparable cases governed by national law.

84 In the present case, given that Article 2 of the Decision fixes the gross amount to be recovered and refers to the relevant 'procedures and provisions of national law', the detailed implementation of the Decision remains expressly governed by national law. The fact that the Commission did not expressly refer, in the contested Decision, to the possible deduction, from the amount to be recovered, of the tax paid on the aid granted cannot prevent the Belgian authorities, when implementing the Decision, from taking into account the tax paid by Siemens on the amount of aid to be recovered.

85 It follows that, in accordance with the wording of the Decision, the applicant will if necessary be able to assert a claim against the competent national authorities in respect of any financial disadvantage or discrimination arising from the reimbursement of the nominal amount of the aid granted.

86 It follows from the foregoing that Article 2 of the Decision has not placed the applicant at a financial disadvantage; nor, consequently, can Article 92(1) of the Treaty have been infringed.

B — *The charging of interest on the repayment of the aid*

Arguments of the parties

87 The applicant contests the charging of interest on the sums to be recovered from the date on which the aid in question was granted. There was frequently a relatively long lapse of time between that date and the date on which the aid was actually received. Furthermore, since the amount to be recovered must be calculated on the basis not of the total amount of aid granted but of the amount actually received by the applicant after paying corporation tax, interest is due only on the latter amount. The applicant observes that Belgian law, to which the Commission refers in its Decision, provides for the payment of default interest on State liabilities only where they relate to undue sums received in bad faith.

88 The Commission states in reply that its only obligation is to calculate the gross amount to be recovered, without taking into account the recipient's fiscal position, which varies from one Member State to another. It explains that, lacking the power to lay down the procedure for the recovery of the aid unduly granted, it was obliged to refer to the application of 'procedures and provisions of national law, in particular those relating to interest on arrears payable on State liabilities'. Consequently, the incidence of taxation on the calculation of interest is a matter falling exclusively within the purview of the national authorities. As regards the alleged non-existence under Belgian law of specific procedures and provisions relating to the recovery by the State of sums unduly paid and to the payment of default interest on State liabilities, the Commission points out that the absence of such procedures and provisions cannot call in question the reference to national law or enable the Commission to take the place of the national authorities for the purposes of

determining the incidence of taxation on the calculation of the basic amount on which interest must be charged.

89 The intervener states, first, that the third paragraph of Article 2 of the Decision, relating to interest, has no basis in law, since Community law contains no provisions in the matter. It is established case-law that, in the absence of Community rules, the recovery of illegal aid, including interest, must be carried out pursuant to the procedural and substantive rules laid down by national law alone. The German Government further denies that the payment of interest is necessary in order to restore the status quo. It points out that the judgment of the Court of Justice in Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, on which the Decision is based, is not relevant. That judgment makes no reference to the payment, by the recipient of the aid, of interest on the aid illegally granted, merely establishing in very general terms that the recovery of the aid is not, in principle, an excessive measure; nor does it mention the date from which such interest must be calculated.

90 It argues, second, that the Commission was under an obligation, in ordering the recovery of the aid, to take account of the position of the recipient of the aid in keeping with the principles of the protection of legitimate expectations and of proportionality. In a case such as this, in which the aid has been granted within the framework of a scheme notified to, and authorized by, the Commission, the latter is not empowered to adopt additional penalties such as 'the retroactive payment of interest'.

91 The intervener maintains, third, that the charging of interest is contrary to the Commission's practice in the matter.

92 The Commission disputes the intervener's arguments. It observes, first, that Community law requires interest to be charged from the date on which the aid was received. It points out in that regard that, according to the case-law of the Court of

Justice, the recovery of aid is the logical consequence of the finding that it is unlawful, in that it permits the restoration of the status quo, within the meaning of Article 93(2) of the Treaty (judgment in *Belgium* v *Commission*, cited above). For those purposes, the legal basis of the obligation to charge interest is exactly the same as that of the obligation to recover the illegal aid. To refrain from claiming interest would be tantamount to allowing the undertaking concerned to retain a part of the financial advantages connected with the grant of the aid in question.

93 The Commission further observes that it is for the undertaking concerned, where appropriate, to assess, having regard to the remedies available under national law and taking into account any exceptional circumstances on which its confidence in the legality of the aid may reasonably be based, whether it can claim damages in proceedings before a national court from the authorities which paid it the aid in question.

94 Lastly, the Commission observes that its Decision is in accordance with its administrative practice. Ever since its Communication to the Member States concerning the procedure for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93(3) of the EEC Treaty of 4 March 1991 (SG (91) D/4577), its decisions regarding aid which is illegal and incompatible with the common market have systematically ordered recipients to pay default interest from the date of the grant of the aid, save in certain cases exhibiting particular features.

Findings of the Court

95 The Court considers it appropriate to rule first on the complaints raised by the intervener regarding the compatibility with Community law and the Commission's practice hitherto of charging interest on the sums to be recovered by reason of their constituting aid illegally paid. If the conclusion arrived at by the Court is that those complaints are not well founded, it will be necessary to examine the complaints

raised by the applicant concerning the detailed rules for implementing the State's obligation to require a recipient of such aid to pay interest.

96 Article 93(2) of the Treaty provides that, if the Commission finds that State aid is not compatible with the common market having regard to Article 92, or that such aid is being misused, 'it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission'. It follows from the case-law of the Court of Justice that, to be of practical effect, such abolition or alteration may include an obligation to require repayment of aid granted in breach of the Treaty (see, in particular, the judgment of the Court of Justice in Case 70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 13). In so far, therefore, as the recovery of State aid which is not compatible with the common market is aimed at restoring the status quo, in cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aid (see the judgment in *Belgium* v *Commission*, cited above, paragraph 66).

97 The effect of that judgment is that, in principle, the restoration of the situation as it was prior to the payment of the illegal aid presupposes that all of the financial advantages resulting from the aid which adversely affect competition in the common market have been eliminated. It follows that a decision of the Commission ordering the recovery of illegal aid pursuant to Article 93(2) of the Treaty may also require interest to be recovered on the sums granted in order to eliminate any financial advantages incidental to such aid.

98 As the Commission has stated in these proceedings, to refrain from claiming, together with the recovery of the aid, the payment of interest on the sums illegally granted would be tantamount to enabling the undertaking in receipt of those sums to retain financial advantages resulting from the grant of the illegal aid, in the form of an interest-free loan. That in itself would constitute aid which would distort, or threaten to distort, competition.

99 The Court observes, however, that, in accordance with the principles referred to in the previous paragraphs, interest may only be recovered in order to offset the financial advantages actually arising from the allocation of the aid to the recipient, and must be in proportion to the aid.

100 In the present case, Siemens has had the advantage of a specified sum being placed at its disposal, free of charge, over a given period. It follows, in those circumstances, that the obligation imposed on Siemens to pay interest meets the requirement of eliminating a financial advantage which is ancillary to the amount of aid initially granted, and is therefore justified on the basis of the first subparagraph of Article 93(2) of the Treaty.

101 As regards the fixing of the date from which that interest is to be calculated, it follows from the foregoing that, contrary to the parties' contention, such interest is not default interest, that is to say, interest payable by reason of the delay in the performance of the obligation to repay the aid, but is instead equivalent to the financial advantage arising from the availability of the funds in question, free of charge, over a given period. Consequently, such interest may not start to run before the date on which the recipient of the aid actually had those funds at its disposal.

102 It follows that the fixing of that date is not a detailed rule governing the performance by the State of its obligation to claim interest, as the German Government contends; instead, it constitutes a parameter enabling the extent of the anti-competitive advantages from which the undertaking has benefited to be gauged. Consequently, under Article 93(2) of the Treaty, it is in principle for the Commission, and not for the national authorities, to fix the date from which such interest is to run.

103 In the present case, the third paragraph of Article 2 provides that interest is to run 'from the date on which the illegal aid was received'. Contrary to the applicant's

contention, that provision must be interpreted as meaning that interest runs from the date on which the aid was actually made available. It follows that that provision is consistent with the rules of Community law applicable in the matter.

104 As regards the alleged frustration of Siemens' legitimate expectation concerning the legality of the aid, it should be noted that, according to the case-law of the Court of Justice, Community law does not prevent national law from having regard, in connection with the recovery of aid unduly paid, to the protection of legitimate expectations, provided however that the conditions laid down are the same as those for the recovery of purely national financial benefits and the interests of the Community are fully taken into account. Accordingly, a recipient of State aid unduly granted may rely, when the aid is to be repaid, only on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful, and it is for the national court alone to assess the material circumstances of the case, if necessary after obtaining a preliminary ruling on interpretation from the Court of Justice (see the judgments in *Deutsche Milchkontor*, cited above, paragraph 33, and in Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraphs 13 to 16).

105 It follows that, in the present case, contrary to the German Government's contention, the applicant may rely on the protection of its legitimate expectations only in proceedings before the national court.

106 Similarly, the intervener cannot claim that the Decision, in so far as it relates to interest, is not consistent with the practice of the Commission in that field. It is apparent from the decisions published in respect of State aid that the Commission had ordered the recovery of interest on the amount of illegal aid, running from the date on which such aid was granted, in several cases prior to the contested decision. That practice was confirmed by the Commission in its Communication of 4 March 1991, cited above, in which it informed the Member States of the detailed rules for

the recovery of aid found to be incompatible with the rules of the Treaty and required them to recover from the recipients of illegal aid not only the amount of that aid but also interest thereon, running from the date on which the aid was granted. A practice of that kind is in any event consistent with the provisions of Article 93(2) of the Treaty.

107 Lastly, as regards the amount in relation to which the interest is to be calculated, reference must be made to paragraphs 82 to 84 of this judgment, in which it is stated that, where fiscal implications are to be taken into consideration in the calculation of the recoverable amount, which constitutes the basis of assessment of the interest, that is a matter falling within the performance of the obligation to recover aid which is incumbent on the national authorities. It follows that, in the present case, it is for the national authorities to take account of any potential tax implications when calculating the basis of assessment 'in accordance with the procedures and provisions of national law', as indicated by the Commission in the second paragraph of Article 2 of the Decision.

108 It follows from all of the foregoing considerations that the application must be dismissed.

Costs

109 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs.

110 Under Article 87(4) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. Accordingly, the Federal Republic of Germany is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs;

3. Orders the Federal Republic of Germany to bear its own costs.

Vesterdorf Barrington Saggio

Delivered in open court in Luxembourg on 8 June 1995.

H. Jung D. P. M. Barrington

Registrar acting as President