ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
30 May 2002 *

In Case T-52/00,

Coe Clerici Logistics SpA, established in Trieste (Italy), represented by G. Conte, G.M. Giacomini and E. Minozzi, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by R. Lyal and L. Pignataro, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for annulment of the Commission's letter of 20 December 1999 (D 17482) refusing to act on the applicant's complaint based on Articles 82 EC and 86 EC,

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

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: H. Jung,

makes the following

Order

1 Coe Clerici Logistics SpA operates in the sector of marine transport of dry raw materials in bulk. Among other things, it undertakes the transport of coal for ENEL SpA. ENEL has a storage depot for its goods in the Port of Ancona (Italy). That depot is linked, by a fixed system of conveyors and hoppers belonging to ENEL, to quay No 25 in the Port of Ancona over which the company Ancona Merci was given a concession.

2 In August 1996, the applicant applied to the Autorità Portuale di Ancona (Port Authority of Ancona) for authorisation to carry on self-handling of goods on quay No 25.

3 By a document dated 13 February 1998, the applicant gave formal notice to the Autorità Portuale di Ancona to express a view on the grant of that authorisation.

4 By letter of 17 February 1998, the president of the Autorità Portuale di Ancona justified the delay in replying by stating that grant of the authorisation requested required the prior consent of Ancona Merci under the terms of its concession.

5 On 20 March 1998, the president of the Autorità Portuale di Ancona adopted Bye-Law No 6/98 governing the carrying on of self-handling operations in the Port of Ancona. Article 5(a), which governs the circumstances in which quays subject to concessions may be made available for self-handling operations when the public quays are already allocated or insufficient, was inserted in Bye-Law No 6/98 by Bye-Law No 21/99 of 8 September 1999.

6 Since it considered that the provisions adopted by the Autorità Portuale di Ancona interfered with the exercise of its right of self-handling by according Ancona Merci exclusive rights to carry on its business on the quays over which concessions had been granted, the applicant, on 30 March 1999, made a complaint to the Commission on the ground of infringement of Articles 82 EC and 86 EC.

7 By letter of 20 December 1999, the Commission informed the applicant that it would take no action on that complaint.

8 By application lodged at the Registry of the Court of First Instance on 9 March 2000, the applicant brought an action for annulment of the Commission's decision of 20 December 1999.

9 In accordance with Article 24(6) of the Rules of Procedure of the Court of First Instance, the notice of the application initiating the proceedings was published in the *Official Journal of the European Communities* on 13 May 2000 (OJ 2000 C 135, p. 23).

10 By a document lodged at the Court Registry on 11 January 2002, the Autorità Portuale di Ancona, represented by S. Zunarelli and C. Perrella, sought leave to intervene in support of the defendant. That application was served on the parties in accordance with the first subparagraph of Article 116(1) of the Rules of Procedure. The Commission and the applicant submitted their observations on 29 January and 5 February 2002 respectively.

11 By a document lodged at the Court Registry on 5 February 2002, the applicant applied for confidential treatment, *vis-à-vis* the Autorità Portuale di Ancona, for the file of this case and, if appropriate, for a direction that only the Report for the Hearing relating to this case be communicated to it.

12 The President referred those applications to the Court of First Instance (Fifth Chamber) under Article 116(1) of the Rules of Procedure.

The application to intervene

Legal framework

13 Under Article 115(1) of the Rules of Procedure of the Court of First Instance in force before 1 February 2001:

'An application to intervene must be made within three months of the publication of the notice referred to in Article 24(6).'

14 On 6 December 2000, the Court of First Instance adopted amendments to its Rules of Procedure, published in the *Official Journal of the European Communities* of 19 December 2000 (OJ 2000 L 322, p. 4), which included the amendment to the abovementioned Article 115(1) and the insertion in Article 116 of those Rules of a new paragraph 6. Those amendments entered into force on 1 February 2001.

15 Article 115(1) of the Rules of Procedure, as amended, reads as follows:

'An application to intervene must be made either within six weeks of the publication of the notice referred to in Article 24(6) or, subject to Article 116(6), before the decision to open the oral procedure as provided for in Article 53.'

16 Article 116(6) of the Rules of Procedure provides that '[w]here the application to intervene is made after the expiry of the period of six weeks prescribed in Article 115(1), the intervener may, on the basis of the Report for the Hearing communicated to him, submit his observations during the oral procedure.'

Arguments of the parties

17 The Commission stated that it had no observations to make with regard to the application to intervene.

18 The applicant, on the other hand, opposes it.

19 It submits, first of all, that the version of the Rules of Procedure applicable to this case is that in force on the date of publication of the notice referred to in Article 24(6) thereof. Therefore, under the time-limit laid down in Article 115(1) of the Rules of Procedure, this application to intervene is out of time, since it was lodged more than three months after the publication of that notice. It points out, further, that since the Autorità Portuale di Ancona was involved in the Commission's enquiry, it was better placed than any other possible intervener to lodge its application within the period laid down in Article 115(1) of the Rules of Procedure.

20 In any event, on the supposition that account had to be taken of the amendments to the Rules of Procedure, applicable as from 1 February 2001 and, more particularly, of the amendment to Article 115(1) and the insertion of the new Article 116(6), the application to intervene would also be inadmissible. Belated applications to intervene are permitted only for actions for which the notice

under Article 24(6) of the Rules of Procedure was published in the *Official Journal of the European Communities* after 1 February 2001, which did not happen in this case.

21 Alternatively, on the supposition that the application to intervene were held to be admissible in spite of the fact that that notice was published prior to 1 February 2001, it would still be inadmissible, since it was lodged after the decision to open the oral procedure, as referred to in the new Article 115(1) of the Rules of Procedure. The applicant submits in that regard that the Registrar of the Court of First Instance announced the closure of the written procedure by a communication of 18 July 2001, and that the application to intervene was lodged on 11 January 2002.

22 Finally, even if the application to intervene could be allowed under Article 116(6) of the Rules of Procedure, that application, as formulated by the Autorità Portuale di Ancona, should be rejected. It has requested copies of all the pleadings in the case. However, under the terms of Article 116(6) of those Rules, the intervener may submit its observations, during the oral procedure, only on the basis of the Report for the Hearing communicated to him.

Findings of the Court

23 At the outset, it should be made clear that the amendments to the Rules of Procedure, adopted by the Court of First Instance on 6 December 2000, entered into force on 1 February 2001 and, being procedural provisions, are, on principle, immediately applicable as from that date (see, to that effect, order of the Court of First Instance in Case T-134/96 *Smets* v *Commission* [1997] ECR II-2333, paragraph 16).

24 In this case, the Autorità Portuale di Ancona did not lodge its application to intervene within the time-limits laid down for intervening during the written procedure.

25 However, Article 115(1) read with Article 116(6) of the Rules of Procedure, as amended, allows parties to intervene on the basis of the Report for the Hearing during the oral procedure, subject to their application to intervene being lodged before the opening thereof.

26 Thus, subject to that condition, and in so far as the Autorità Portuale di Ancona has an interest in the outcome of the case, it may, in accordance with Article 116(6) of those Rules, submit its observations on the basis of the Report for the Hearing during the oral procedure.

27 In that regard, in relation to the applicant's argument that this application to intervene was not lodged before the decision to open the oral procedure, which is the final time-limit laid down by Article 115(1) of the Rules of Procedure, as amended, it should be pointed out that that article refers to the decision to open the oral procedure under Article 53 of those Rules. That decision is taken by the Court of First Instance after the presentation by the Judge-Rapporteur of the preliminary report provided for by Article 52 of the Rules of Procedure.

28 However, in this action, the Court has not yet taken the decision to open the oral procedure.

29 With regard to the document to which the applicant refers, namely the communication which the Registrar of the Court sent to it on 18 July 2001, that document merely informs the parties that, in the absence of a subsequent decision by the Court, the written procedure was closed with the filing of the rejoinder and that, therefore, they may file no further pleadings.

30 In those circumstances, since the application to intervene by the Autorità Portuale di Ancona was made prior to the opening of the oral procedure, it was brought before the latest date provided for in that respect by Article 115(1) of the Rules of Procedure, as amended.

31 Nor, finally, may the view be taken that the application to intervene must be rejected as inadmissible on the ground that the Autorità Portuale di Ancona has requested copies of all the procedural documents. Whatever may be the extent of the access sought to the file, since Article 116(6) of the Rules of Procedure is mandatory, the Autorità Portuale di Ancona may obtain only the Report for the Hearing.

32 It is necessary, next, to decide whether the Autorità Portuale di Ancona has an interest in the result of the case, in accordance with the second paragraph of Article 37 of the EC Statute of the Court of Justice, which applies to the Court of First Instance by virtue of Article 46 of that Statute.

33 It is clear from settled case-law that the concept of an interest in the result of the case, within the meaning of that provision, must be understood as a direct, existing interest in the grant of the order sought (order of the President of the First Chamber of the Court of First Instance in Case T-138/98 *ACAV and Others* v *Council* [1999] ECR II-1797, paragraph 14).

34 However, in spite of the fact that the Autorità Portuale di Ancona has provided only a very succinct statement of reasons in support of its direct and existing interest in the determination in regard to the form of order sought by the defendant, it is clear from the circumstances of the case that, in its capacity as a party which is the subject of a complaint by the applicant, it does have such an interest. Moreover, the applicant pointed out that fact in its observations on the application for leave to intervene (see paragraph 19 above).

35 Accordingly, the Autorità Portuale di Ancona is to be granted leave to intervene in support of the form of order sought by the Commission and may submit its observations during the oral procedure in this case, on the basis of the Report for the Hearing to be communicated to it.

The application for confidential treatment

36 According to the applicant, no question arises concerning the confidential treatment of the file in regard to the Autorità Portuale di Ancona since its application for leave to intervene must either be rejected or result in leave to intervene limited to the oral procedure on the basis of the Report for the Hearing alone.

37 The Court of First Instance recalls that the Autorità Portuale di Ancona may receive communication of only the Report for the Hearing. Therefore, in accordance with the applicant's observations, the Court of First Instance finds that there is no need to rule on this application for confidential treatment.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The Autorità Portuale di Ancona is granted leave to intervene in Case T-52/00 in support of the form of order sought by the Commission.**

2. **The intervener may submit its observations during the oral procedure on the basis of the Report for the Hearing to be communicated to it.**

3. **There is no need to rule on the application for confidential treatment.**

4. **Costs are reserved.**

Luxembourg, 30 May 2002.

H. Jung — Registrar

J.D. Cooke — President