ORDER OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

7 December 2004 *

In Case T-251/00 DEP,

Lagardère SCA, established in Paris (France), represented by A. Winckler, lawyer,

Canal+ SA, established in Paris, represented by J.-P. de La Laurencie, lawyer, with an address for service in Luxembourg,

applicants,

v

Commission of the European Communities, represented initially by F. Lelievre and W. Wils and subsequently by É. Gippini Fournier, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATIONS for taxation of the costs following the judgment of the Court of First Instance of 20 November 2002 in Case T-251/00 *Lagardère and Canal+* v *Commission* [2002] ECR II-4825,

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

composed of: M. Jaeger, President, V. Tiili, J. Azizi, E. Cremona and O. Czúcz, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought by the parties

1 By judgment of 20 November 2002 in Case T-251/00 *Lagardère and Canal+* v *Commission* [2002] ECR II-4825 ('the main action' or 'the main proceedings'), the Court annulled the Commission decision of 10 July 2000 amending the Commission decision of 22 June 2000 declaring concentrations compatible with the common market and with the functioning of the Agreement on the European Economic Area (Cases COMP/JV40 Canal+/Lagardère and COMP/JV47 Canal+/Lagardère/Liberty Media), and ordered the Commission to pay the costs.

2 By letter of 6 January 2003, Lagardère asked the Commission to pay it the sum of EUR 179 160.44 in respect of its costs in the main action. On 16 January 2003, the Commission asked Lagardère to provide documentary evidence in support of that claim. By letter of 12 February 2003, Lagardère provided a more detailed statement of the costs incurred and continued to claim the full amount. On 10 March 2003, the Commission refused reimbursement of the costs claimed, and offered to pay Lagardère the sum of EUR 20 000.

3 By letter of 5 March 2003, Canal+ asked the Commission to pay it the sum of EUR 225 863.24 in respect of its costs in the main action. On 12 March 2003, the Commission asked Canal+ to provide documentary evidence in support of that claim. By letter of 4 June 2003, Canal+ provided a more detailed statement of the costs incurred and continued to claim the full amount. On 17 June 2003, the Commission refused reimbursement of the costs claimed, and offered to pay Canal+ the sum of EUR 20 000. On 29 October 2003, Canal+ resubmitted its claim of 5 March 2003 to the Commission.

4 By applications lodged at the Court Registry on 2 July 2003 and 20 April 2004, respectively, Lagardère and Canal+ applied for taxation of costs pursuant to Article 92(1) of the Rules of Procedure of the Court of First Instance.

5 Lagardère claims that the Court should fix the costs payable to it by the Commission at EUR 179 160.44.

6 Canal+ claims that the Court should fix the costs payable to it by the Commission at EUR 228 463.24.

7 By pleadings lodged at the Court Registry on 18 August 2003 and 23 July 2004, the Commission submitted its observations on the respective claims of Lagardère and Canal+. The Commission contends that the Court should fix the costs recoverable by the two applicants at EUR 43 250 to be shared between them.

Arguments of the parties

Arguments of Lagardère

8 In its letters of 6 January and 12 February 2003, to which it refers in its application for taxation of costs, Lagardère asked the Commission to pay the costs itemised as follows:

— lawyers' fees: for 407.5 hours worked, 72.75 by a partner at an hourly rate of between USD 550 and USD 765, 246 by an experienced lawyer at an hourly rate of between USD 360 and USD 480 and 88.75 hours by trainee lawyers at an hourly rate of between USD 120 and USD 190, a total of approximately EUR 167 000 in lawyers' fees, itemised in four fee notes covering, essentially, the costs relating to: (a) a meeting with the services of the Commission on 27 July 2000 and the preparation and drafting of the application in the main action; (b) the drafting of observations on the plea of inadmissibility; (c) the preparation and drafting of the reply and the analysis of the defence and the rejoinder; and (d) the preparation of observations on the measures of organisation of procedure of the Court of First Instance, and the hearing;

— telecommunication (telephone and fax) costs, approximately EUR 1 819;

— costs of producing documents (copying and binding, overtime worked by secretaries), approximately EUR 4 254;

— postal costs (special deliveries, stamps, deliveries 'by hand'), approximately EUR 360;

— taxi fares for lodging procedural documents at the Court of First Instance and travel expenses, approximately EUR 3 985.

9 According to Lagardère, the time the lawyers spent on the case was not excessive, having regard to the purpose and nature of the dispute, its significance from the point of view of Community law and the financial interests which the parties had in the proceedings. Lagardère claims that the main action raised new and complex points of law and therefore required very considerable research and interpretative analysis. It points out that, owing inter alia to the plea of inadmissibility raised by the Commission, the case required the production of a large number of documents. Furthermore, in the interests of the economy of procedure and in order to reduce the working hours spent on the case — given that the action had been brought by three applicants, one of which withdrew at the end of the written procedure — the lawyers of the three applicants had to work together to draft the pleadings. Lagardère states that the applicants' lawyers cooperated in the preparation of the application and the other written pleadings — which they lodged jointly, not by separate documents — but that no formal agreement for sharing the tasks had been concluded between those lawyers.

10 Lagardère maintains that the case has adversely affected its financial interests in that, as the Court of First Instance found in paragraph 111 of the judgment in the main action, the contested decision put it in a position of legal uncertainty as regards the validity of certain contractual clauses. In the light of the foregoing, Lagardère considers that, in accordance with the case-law of the Court of First Instance, the number of hours worked by the lawyers involved and the hourly rate of their fees are appropriate. The reference to the average hourly fee rate of lawyers involved in other cases is irrelevant, since the amount of the costs has to be fixed on a case-by-case basis.

11 As regards the 'taxi fares' in issue, Lagardère maintains that they cover, essentially, the transport costs of lodging procedural documents at the Court Registry. Lagardère also maintains, with regard to the costs relating to the meeting of 27 July 2000, that the aim of that meeting was to obtain the withdrawal of the decision of 10 July 2000 and thus avoid proceedings before the Court of First Instance.

Arguments of Canal+

12 In its letters of 5 March and 4 June 2003, to which it refers in its application for taxation of costs, Canal+ asked the Commission to pay the costs itemised as follows:

— lawyers' fees: for 594 hours worked, at an hourly rate of between USD 414 and USD 572 for partners and experienced lawyers and between USD 120 and USD 150 for trainee lawyers, a total of lawyers' fees of EUR 216 662, itemised in six fee notes covering, essentially: (a) contacts with the services of the Commission following the adoption of the decision contested in the main action, and the preparation and drafting of the application in the main action;

(b) the drafting of observations on the plea of inadmissibility; (c) the drafting of the reply; (d) the drafting of observations on the rejoinder; (e) the drafting of observations on the measures of organisation of procedure of the Court of First Instance; and (f) the hearing;

— other sundry expenses (travel expenses, postage, photocopies, telephone, faxes), EUR 9 201;

— costs incurred for the preparation and submission of the application for taxation of costs which is the subject-matter of these proceedings, EUR 2 600.

13 As regards the costs incurred in respect of contacts with the services of the Commission following the adoption of the decision contested in the main action, Canal+ considers that those are costs directly linked to the proceedings. Indeed, Canal+ maintains that, after the adoption of the decision contested in the main action, it had to decide what course of action to take in the light of the uncertainty created by that decision and to consider whether it was appropriate to challenge that decision before the Court.

14 According to Canal+, all the other costs were necessary for the purposes of the proceedings before the Court of First Instance. The amount of the lawyers' fees is, according to Canal+, justified by the complexity of the case which has raised points of law not previously examined by the Community Courts. Canal+ also claims that it had to submit an unusual number of pleadings, partly on account of the plea of inadmissibility raised by the Commission. The complexity of the case also required several lawyers to work a large number of hours. Moreover, the fee rate reflected the rates usually charged by specialised lawyers. Canal+ also points out that the dispute in the main action was not only of significant financial interest to Canal+, but also raised very important questions from the point of view of Community law.

15 Finally, Canal+ considers that, in the light of the fact that the Court of First Instance, when determining the recoverable costs, takes account of all the circumstances of the case until the time of such determination, and that it does not give a separate decision on the costs incurred by the parties in connection with the taxation of costs proceedings, the costs specifically incurred for this stage of the proceedings, namely EUR 2 600, should be included in this claim.

The Commission's arguments

16 The Commission considers that the main action was relatively complex only so far as concerned points of law regarding the admissibility of the action. On the other hand, unlike the competition cases usually brought before the Court of First Instance, the main action did not contain any complexity of a factual nature. Consequently, according to the Commission, drafting the pleadings should have required between one third and one half of the work usually required for a competition case. The Commission therefore considers that the number of hours worked claimed by the two applicants is manifestly excessive. The Commission denies that the plea of inadmissibility increased the time that would have been needed by the applicants' lawyers in any event to draft the application and reply in the main action.

17 The Commission also considers that the case cannot have required the participation of seven partners and four experienced lawyers in the various firms of lawyers involved. Furthermore, the Commission considers that some of the working hours charged clearly cannot be regarded as necessary for the purposes of the proceedings before the Court of First Instance. Inasmuch as the applicants claim that the case required all their lawyers to coordinate their work on the main action, the Commission considers that the fruits of that coordination are by no means reflected in the amount of the costs for which taxation is sought.

18 The Commission submits that the hourly rates of the applicants' lawyers are substantially higher than those usually charged by experienced lawyers. It considers that, even though the case-law does not acknowledge the existence of reference fees, and it is therefore necessary to assess the reasonableness of the costs incurred on a case-by-case basis, it is useful to refer to precedents and make comparisons to reduce the risk of arbitrariness and unfairness. It refers, in that regard, to the order in Case T-80/97 DEP *Starway* v *Council* [2002] ECR II-1, paragraph 36, in which the Court took an hourly rate of EUR 285.05 as a reference for calculating the recoverable costs.

19 The Commission considers that the costs in connection with the meeting of 27 July 2000 related to the pre-litigation stage. Furthermore, the sundry expenses submitted by Lagardère are excessive. In particular, it is unreasonable to invoice copies of documents at EUR 0.16 per page when, in the commercial world, those services cost less than EUR 0.02 per page. Similarly, with regard to the 'taxi fares', the Commission denies that it is necessary for the purposes of the proceedings before the Court of First Instance, within the meaning of Article 91(b) of the Rules of Procedure, regularly to order a taxi to take procedural documents to the Court.

20 Finally, the Commission disputes that the case was of special financial interest for Lagardère or of fundamental importance for Community law.

Findings of the Court

21 Under Article 91(b) of the Rules of Procedure, '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' are to be regarded as

recoverable costs. It is apparent from that provision that recoverable costs are limited, first, to those incurred for the purposes of the proceedings before the Court of First Instance and, second, to those necessary for those purposes.

22 First of all, costs charged by applicants for meetings with the services of the Commission after the decision contested in the main proceedings was adopted and before those proceedings were brought must be regarded as irrecoverable costs. It should be pointed out that, by 'proceedings', Article 91 of the Rules of Procedure refers only to the proceedings before the Court of First Instance, to the exclusion of the stage preceding those proceedings (see the order in *Starway* v *Council*, cited in paragraph 18 above, paragraph 25, and the case-law cited therein), irrespective of the fact that the aim of the meeting in question in the present case may have been, as Lagardère claims, to avoid bringing proceedings before the Court of First Instance.

23 As regards the costs relating to the proceedings before the Court of First Instance, it has consistently been held that, in the absence of 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 proceedings for the agents and advisers involved and the financial interests which the parties had in the proceedings (see the order in *Starway* v *Council*, cited in paragraph 18 above, paragraph 27, and the case-law cited therein).

24 In particular, it should be observed that, according to a consistent line of decisions, the Community Court is not empowered to tax the fees payable by the parties to their own lawyers, but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs. When ruling on an application for taxation of costs, the Court is not obliged to take account of any national scale of lawyers' fees or any agreement in that regard between the party concerned and his

agents or advisers (orders of the Court of First Instance in Case T-38/95 DEP *Groupe Origny* v *Commission* [2002] ECR II-217, paragraph 32, and *Starway* v *Council*, cited in paragraph 18 above, paragraph 26, and the case-law cited therein).

25 It is according to those criteria that the amount of the costs recoverable in the present case must be determined. In that regard, the following points must be taken into account.

26 First of all, as regards the purpose and nature of the proceedings and also their significance from the point of view of Community law, it appears that the case has raised a new and important point of law. Since the Commission raised a plea of inadmissibility alleging, in essence, that the decision contested in the main action was not an act adversely affecting the applicants' interests, it was necessary to examine the extent of the Commission's obligations in assessing the ancillary restrictions notified in connection with a concentration in accordance with Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1). This matter had not been mentioned during the administrative procedure before the Commission. What is more, it was not until the proceedings in the main action were underway that the Commission developed and published its new policy regarding the treatment of ancillary restrictions in the context of concentration procedures. Consideration of this matter, particularly in connection with the parties' observations on the plea of inadmissibility, therefore justified the intervention of highly specialised lawyers working many hours at very high hourly rates and the fact that the applicants were represented by a number of lawyers (see, to this effect, the order in *Starway* v *Council*, cited in paragraph 18 above, paragraph 31, and the case-law cited therein).

27 Similarly, the preparation of the pleadings in the main action may indeed have required — so far as that matter is concerned — a great deal of research work and given rise to further costs, such as those of copying documents.

28 However, particularly as regards the fees for drafting pleadings other than the observations on the plea of inadmissibility, it should be borne in mind that, with the exception of that specific point of law, the case was not particularly complex, either from the legal or the factual point of view. Similarly, the file in the main action was not excessively voluminous.

29 Moreover, it should be pointed out that some of the pleas raised by the applicants in the main action had already been the subject of an exchange of views during the administrative procedure before the Commission, and that the lawyers of those parties must therefore have been very familiar with the matters raised owing to their participation in that other procedure.

30 It must also be taken into account that the applicants worked together in preparing the application and other pleadings — which they lodged jointly, not by separate documents — even though each of the applicants was represented by different lawyers and no formal agreement for sharing tasks seems to have been concluded between them. In those circumstances, even bearing in mind that, as Lagardère points out, each party must make its own assessment of the arguments raised during the proceedings before the Court of First Instance and the lawyers of the various parties must coordinate their work, the fact remains that, to a certain extent, bringing the action jointly must have reduced the time devoted, inter alia, to the preparation and drafting of the pleadings by the lawyers of each of the applicants in the main proceedings. However, the Court of First Instance also takes into account that, by bringing the action and producing the other pleadings jointly and not by separate documents, the applicants in the main proceedings significantly reduced the costs, in terms of work, of the Commission, and, moreover, also of the Court.

31 Finally, the case has brought the applicants' financial interests into play since the validity of the concentration was, to a certain extent, called in question by the decision contested in the main action. However, by comparison with the concentration cases usually dealt with, this action cannot be regarded as being of exceptional financial interest for those parties.

32 In the light of the foregoing, the Court holds, first of all, that the number of hours which it is claimed the applicants' lawyers worked on the case (namely, 407.5 working hours for Lagardère and 594 working hours for Canal+) is excessive for the taxation of the costs and considers that the costs recoverable in respect of lawyers' fees can be assessed on an equitable basis — taking into account the costs incurred in these taxation of costs proceedings — at EUR 40 000 for each of the applicants, that is, a total of EUR 80 000 for the lawyers' fees of the two applicants.

33 As regards the other costs charged to the case by Lagardère, the Court considers that that party has not shown that the other costs, namely the costs of telecommunications (EUR 1 819), production of documents (EUR 4 254), special deliveries and postage (EUR 360) and travel costs (EUR 3 985), were, as a whole, necessary for the purposes of the proceedings the Court of First Instance.

34 In particular, the Court holds that, as a rule, it cannot be regarded as necessary for the purposes of the proceedings before the Court of First Instance to send pleadings and other documents to the Court by taxi. First, there are other safe and manifestly less expensive means of sending documents to the Court. Secondly, Article 102(2) of the Rules of Procedure provides for an extension of the time-limits on account of distance in order to allow more conventional and less expensive means to be used. Finally, since 1 February 2001 — a date falling during the written procedure in the main action — Article 43(6) of the Rules of Procedure has provided that pleadings

may be lodged by modern means of communication, inter alia by fax, provided that the signed original is lodged no later than 10 days thereafter. Moreover, in view of the fact that Lagardère charges those costs for transporting pleadings and other documents by taxi, the telecommunication costs, particularly the fax costs, also seem greatly inflated for the taxation of the costs.

35 Since Lagardère has not provided specific details of the allocation of those various costs, the Court considers it appropriate to fix the costs recoverable in respect of those other costs at EUR 6 000.

36 With regard to the other costs charged to the case by Canal+, it must be taken into account that that party supplied a detailed breakdown. Consequently, the Court, while taking into consideration the fact that the telecommunication and fax costs seem greatly inflated for the taxation of the costs, considers it appropriate to fix the costs recoverable for those other costs at EUR 8 500 for Canal+.

37 The Court therefore considers that the recoverable costs can be fixed on an equitable basis at EUR 46 000 for Lagardère and EUR 48 500 for Canal+.

38 Since the Court of First Instance, when determining the recoverable costs, takes account of all the circumstances of the case until the time of such determination, it is not necessary to give a separate decision on the costs incurred by the parties in connection with these taxation of costs proceedings (see, to this effect, the order in *Starway* v *Council*, cited in paragraph 18 above, paragraph 39).

On those grounds,

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

hereby orders:

1. **The costs to be reimbursed by the Commission to Lagardère in Case T-251/00 are fixed at EUR 46 000.**

2. **The costs to be reimbursed by the Commission to Canal+ in Case T-251/00 are fixed at EUR 48 500.**

Luxembourg, 7 December 2004.

H. Jung

Registrar

M. Jaeger

President