ORDER OF THE COURT (Fourth Chamber)
25 March 1998 *

In Case C-174/97 P,

Fédération Française des Sociétés d'Assurances (FFSA), an association governed by French law, established in Paris,

Union des Sociétés Étrangères d'Assurances (USEA), an association governed by French law, established in Paris,

Groupe des Assurances Mutuelles Agricoles (Groupama), an association governed by French law, established in Noisy-le-Grand (France),

Fédération Nationale des Syndicats d'Agents Généraux d'Assurances (FNSAGA), an association governed by French law, established in Paris,

Fédération Française des Courtiers d'Assurances et de Réassurances (FCA), an association governed by French law, established in Paris,

Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR), an association governed by French law, established in Paris,

represented by Xavier de Roux and Dominique Voillemot, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 11 Rue Goethe,

appellants,

* Language of the case: French.

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 27 February 1997 in Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, seeking to have that judgment set aside,

the other party to the proceedings being:

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

supported by

French Republic, represented by Kareen Rispal-Bellanger, Deputy Director at the Legal Affairs Directorate of the Ministry of Foreign Affairs and Jean-Marc Belorgey, Special Adviser in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,
and

La Poste, a public-law corporation, established in Boulogne-Billancourt (France), represented by Hervé Lehman, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

interveners,

THE COURT (Fourth Chamber),

composed of: H. Ragnemalm, President of the Chamber, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges,

Advocate General: A. Saggio,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 5 May 1997, Fédération Française des Sociétés d'Assurances (FFSA), Union des Sociétés Étrangères d'Assurances (USEA), Groupe des Assurances Mutuelles Agricoles (Groupama), Fédération Nationale des Syndicats d'Agents Généraux d'Assurances (FNSAGA), Fédération Française des Courtiers d'Assurances et de Réassurances (FCA) and Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR) brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 27 February 1997 in Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229 (hereinafter 'the contested judgment') in which the Court of First Instance dismissed their application for the annulment of the Commission Decision of 8 February 1995, notified to the applicants by letter of 21 February 1995, relating to a procedure implementing Article 93 of the EC Treaty (State aid NN 135/92, competitive activities of the French Post Office), published in the *Official Journal of the European Communities* of 7 October 1995 (OJ 1995 C 262, p. 11, hereinafter 'the contested decision').

2 According to the contested judgment, on 12 December 1990, the Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR), the Fédération Nationale des Syndicats d'Agents Généraux d'Assurances (FNSAGA) and the Fédération Française des Courtiers d'Assurances et de Réassurances (FCA) lodged

a complaint with the Commission concerning the aids which, in their view, had been granted to La Poste by Law No 90-568 of 2 July 1990 on the organisation of the public postal and telecommunications services, published in the *Journal Officiel de la République Française* (hereinafter 'the JORF') of 8 July 1990 (hereinafter 'the 1990 Law') (paragraphs 4 and 7 of the contested judgment).

3 Under Article 1 of the 1990 Law, La Poste is, as from 1 January 1991, converted into a public-law corporation under the authority of the Minister for Posts and Telecommunications.

4 Article 2 of the 1990 Law states that among the functions conferred on La Poste is that of offering 'services relating to means of payment and transfer of funds, investment and savings products, administration of assets, housing loans and all types of insurance products'. Article 7 provides that La Poste 'shall have the power to carry on, in France and abroad, all activities relating directly or indirectly to its object. For this purpose, and under the conditions laid down in its terms of reference, [it] may establish subsidiaries and take holdings in companies, groups or bodies having a related or complementary object'. Finally, Article 21 of the 1990 Law provides in particular that 'the bases of assessment [to local taxes] of La Poste shall be reduced by 85% owing to the constraints imposed on the operator of serving the entire national territory and of participating in regional development' (paragraph 5).

5 By letter of 26 December 1994 the complainants FFSA, Groupama and USEA called upon the Commission, pursuant to Article 175 of the EC Treaty, 'to adopt a definitive position on the action to be taken on [their] complaint as regards the following two points:

...

— the continuing infringement of Article 92, namely the reductions enjoyed by La Poste in the matter of local taxation' (paragraph 12).

6 By letter of 21 February 1995 the Commission informed the French Government that, in the contested decision, it had decided not to treat the tax concession which La Poste may enjoy under Article 21 of the 1990 Law, amounting in 1994 to FF 1.196 billion, as State aid within the meaning of Article 92(1) of the EC Treaty (paragraph 13).

7 By letter of 21 February 1995 the Commission sent a copy of the contested decision to the complainants FFSA, Groupama and USEA for information purposes (paragraph 15).

8 By application lodged at the Registry of the Court of First Instance on 24 April 1995, the applicants initiated proceedings before the Court of First Instance.

9 For a more detailed account of the facts which gave rise to the dispute, reference is made to paragraphs 1 to 24 of the contested judgment.

The contested judgment

10 In the contested judgment, the Court of First Instance dismissed the application.

11 The applicants' first and second pleas, alleging infringement of the rights of the defence and breach of the obligation to state the reasons for the contested decision, were held inadmissible (paragraphs 49 and 61 of the contested judgment).

12 By their third plea, the applicants claimed that the Commission had committed an error of assessment in so far as it used an inappropriate method for evaluating the additional costs connected with La Poste's public service obligations.

13 In that regard, the Court of First Instance considered as follows:

'97. The applicants do not contest that additional costs are generated by the public-service obligations of La Poste. All they seek to do, however, is to show that the Commission manifestly overestimated these additional costs of La Poste by using the wrong methods of calculation.

98. In examining the merits of the submissions supporting this plea, it must be borne in mind that it is clear from Article 90(3) and from the entire scheme of that article that the Commission's power of supervision *vis-à-vis* Member States liable for infringing the rules of the Treaty, and particularly those relating to competition, necessarily entails the exercise of a discretion on that institution's part.

99. That discretion is notably wider in relation to compliance by Member States with the competition rules because, in the first place, Article 90(2) requires the Commission to take account, in exercising that discretion, of the demands inherent in the particular tasks of the undertakings concerned and, secondly, because the authorities of the Member States may in some instances have a sufficient degree of latitude in regulating certain matters, such as, in the present case, the organisation of public services in the postal sector (judgment of the Court of First Instance in Case T-32/93 *Ladbroke Racing* v *Commission* [1994] ECR II-1015, paragraph 37).

100. Since the present case involves an assessment of complex economic facts, the discretion exercised in evaluating additional public service costs is all the more wide, since it is comparable to that exercised by the Commission when applying Article 92(3) of the Treaty (judgments of the Court of Justice in Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 49, in Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 56, and in Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 34).

101. Furthermore, as the case-law makes clear, the Community court's function in an action for annulment is solely to determine whether the contested decision is vitiated by one of the grounds of illegality set out in Article 173 of the Treaty; it cannot substitute its own assessment of the facts for that of the deciding authority especially in the economic sphere (judgment of the Court of Justice in Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 23). It follows that the review which this Court is called upon to perform in the present case in relation to the Commission's assessment must be confined to verifying the accuracy of the facts found and establishing that there is no manifest error of assessment.

102. It appears from the documents before the Court that in order to calculate La Poste's additional costs produced by its public service obligations, the Commission carried out a complex economic analysis on the basis of two studies carried out by La Poste itself and by outside consultants.'

14 After explaining the scope of those studies, the Court held that:

'106. ... in basing its assessment on such an analysis of the facts, the Commission established with sufficient certainty that La Poste has additional costs amounting to — at least — FF 1.32 billion. Those additional costs, generated primarily by its maintenance of an unprofitable presence in rural areas, are linked to performance of services of general economic interest within the meaning of Article 90(2) of the Treaty, which La Poste is required to provide, namely the obligations of having to

serve the entire national territory and to participate in regional development. In employing the methods of calculation explained above, the Commission's approach was to compare the costs generated by unprofitable offices situated in rural areas with the average costs of French post offices.

107. The Court finds that the applicants' submissions alleging defects in the methods of calculation are not such as to disturb the Commission's evaluation.

...

112. Nor have the applicants demonstrated that an alternative, more accurate method for calculating the additional costs on the basis of the information available at the time could have been used.

113. Since the applicants contest the assessments made by the Commission in a general way only and without producing any specific evidence or arguments to call those assessments into question, it must be concluded, in view of the foregoing considerations, that the applicants have not demonstrated that the Commission based its decision on factually incorrect data or exceeded its power of assessment in the matter when evaluating the additional public service costs.

114. It is not contested that the tax concession in question enjoyed by La Poste under Article 21 of the 1990 Law, namely the 85% reduction in the basis of assessment to local taxation, amounted in 1994 to FF 1.196 billion. The Court therefore finds that the Commission was correct to consider that the amount of that tax concession did not exceed the additional public service costs, even if

the minimum estimate was taken into account, that is to say additional costs of FF 1.32 billion (see paragraph 106 above).

115. As regards the claim for an order pursuant to Articles 66 and 70 of the Rules of Procedure directing that an expert's report be obtained in order to determine whether the method used by the Commission and the evaluations made were appropriate, the applicants have produced no evidence or arguments to suggest that the Commission might have committed manifest errors of assessment in determining the additional costs in question. In those circumstances, and given that in challenging the assessment of economic facts carried out by the Commission in the exercise of its power of assessment the burden of proof rests on the applicant, there are no grounds for ordering that an expert's report be obtained.'

15 By their fourth plea, the applicants claimed that the Commission had infringed Articles 92 and 90(2) of the Treaty. That plea was in two parts. They claimed, first, that the latter provision did not allow the tax concession in question to escape the prohibition laid down by Article 92 of the Treaty and, second, that the Commission had failed to assess the effect of the tax concession in question on competition (paragraph 117).

16 As regards, in particular, the condition that the aid should be used for public service activities and should not, under any circumstances, benefit competitive activities, the Court of First Instance summarised the applicants' arguments as follows:

'134. ... the applicants contend that when adopting its decision the Commission was not in a position to satisfy itself that there was no cross-subsidy for La Poste's competitive activities. In their view, the very principle of the method of comparison used by the Commission, that of investigating whether or not the amount of

tax advantage enjoyed by La Poste exceeds its additional public service costs, is open to challenge. There are two main aspects to this argument.

135. First, in the absence of any analytical accounts at La Poste, it is impossible to assert, as does the Commission, that the tax concession does no more than balance the additional public service costs: it benefits the undertaking "La Poste", that is to say all the activities of La Poste including activities it also pursues in the insurance sector, something which is contrary to the competition rules. In this regard, the applicants point out that the same offices and staff are simultaneously assigned to the public interest services and competitive services. They also point out that the Court of Justice has held that aid granted to an undertaking like La Poste in order to offset additional public service costs enables it to release other resources for competitive activities or, at least, to promote the development of those activities at less cost (judgment of the Court of Justice in Case C-303/88 *Italy* v *Commission*, cited above, paragraph 14).

136. Still on this aspect, the applicants assert that the aid in question is not strictly targeted at public service activities as Community law requires because, according to Article 21 of the 1990 Law, the 85% reduction in the bases for assessing La Poste to local taxation includes La Poste's total costs and turnover, including the proportion represented by competitive activities.

137. Furthermore, the data compared by the Commission is not genuinely comparable because post offices are maintained in rural areas not out of concern for profitability but owing to the need to maintain an "administrative base" in rural areas as part of regional planning. Consequently, the cost of a public service depends only on political decisions and is nothing other than the cost which the public at large wishes to devote to it.'

17 As regards the fourth plea, the Court of First Instance considered that:

'163. Faced with this plea in law, the Court's task is to examine the applicants' submissions concerning (i) the basis of the Commission's finding that, upon application of Article 90(2) of the Treaty, the tax concession in question granted to La Poste, being less than its additional public service costs, does not constitute State aid within the meaning of Article 92(1) of the Treaty, (ii) the question whether the aid is necessary for the performance of La Poste's particular tasks and, finally, (iii) the question as to whether the Commission, in proceeding on the assumption that the tax concession was less than the additional public service costs, could reasonably arrive at the view that there were no grounds for concluding that a transfer of State resources to La Poste's competitive activities was involved.

164. Article 92(1) of the Treaty provides: "Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market."

165. It is clear from Article 90 of the Treaty that, save only for the reservation in Article 90(2), Article 92 covers all undertakings, private or public, and all their production (judgment in Case 78/76 *Steinike & Weinlig* [[1977] ECR 595], paragraph 18). Thus, the Commission's power, under Article 93 of the Treaty, to assess the compatibility of aid with the common market also extends to State aid granted to the undertakings referred to in Article 90(2), in particular those which the Member States have entrusted with the management of services of general economic interest (judgment in Case C-387/92 *Banco Exterior de España* [[1994] ECR I-877], paragraph 17). Furthermore, the Court of Justice has held that the rules of competition also apply to the postal sector (judgments in Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565 and in Case C-320/91 *Corbeau* [[1993] ECR I-2533]).

166. As stated in paragraph 114 above, it is not disputed that the tax concession enjoyed by La Poste amounted to FF 1.196 billion for 1994.

167. In principle, that tax concession constitutes State aid within the meaning of Article 92(1) since, although not taking the form of a transfer of State resources, it places La Poste in a more favourable financial situation than other taxpayers, including the companies represented by the applicants (judgment in Case C-387/92 *Banco Exterior de España*, cited above, paragraph 14).

168. It has been consistently held that aid within the meaning of Article 92(1) of the Treaty covers advantages granted by the public authorities which, in various forms, mitigate the charges normally included in an undertaking's budget (judgments of the Court of Justice in Case C-241/94 *France* v *Commission* [1996] I-4551, paragraph 34, in Case C-39/94 *SFEI and others* [1996] I-3547, paragraph 58, and in Case C-387/92 *Banco Exterior de España*, cited above, paragraph 13).

169. In so far as aid is capable of affecting trade between Member States and distorting competition, it is incompatible with the common market, save where otherwise provided for by the Treaty (judgment in Case C-387/92 *Banco Exterior de España*, cited above, paragraph 15).

170. Article 90(2) of the Treaty provides for such a derogation where the aid involved is granted to an undertaking entrusted with the operation of a service of general economic interest (see paragraphs 66 to 72 above).

171. Article 90(2) provides: "Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."

172. It follows from the wording of that provision, in particular from the words "in so far as the *application* of such rules [which are those contained in Article 92 of the Treaty] does not obstruct the performance ... of the particular tasks", that, where Article 90(2) may be relied upon, a State measure caught by Article 92(1) may nevertheless be considered to be compatible with the common market (judgment in Case C-387/92 *Banco Exterior de España*, cited above, paragraphs 14 and 15, and see, to the same effect, the Opinion of Advocate General Lenz in that case, ECR [1994] I-879, paragraph 66). Although the aid involved is still State aid within the meaning of the latter provision, the effect of the competition rules may nevertheless be curtailed in such a case (judgment of the Court of Justice in Case 66/86 *Ahmed Saeed Flugreisen and Others* [1989] ECR 803, paragraph 56), so that a prohibition on giving effect to new aid, inferred from Articles 92 and 93(2) and (3) read together, may be declared inapplicable.

173. Because Article 90(2) of the Treaty lays down a derogating rule, it must be interpreted restrictively. So, in order that the derogation from the application of the rules of the Treaty provided for by that provision may apply, it is not sufficient that the undertaking in question has been entrusted by the public authorities with the operation of a service of general economic interest: the application of the rules of the Treaty, specifically those of Article 92, must also obstruct the performance of the particular tasks assigned to the undertaking and the interests of the Community must not be affected (judgment of the Court of Justice in Case C-179/90 *Merci Convenzionali Porto di Genova* [1991] ECR I-5889, paragraph 26).

174. In examining the question whether Community law precludes a Member State from granting State aid to offset the additional costs assumed by an undertaking entrusted with the operation of a service of general economic interest within the meaning of Article 90(2) of the Treaty where those additional costs

arise from performance of the particular task assigned to it, reference must be made to the case-law on the combined application of Articles 85 and 86 and Article 90(2) of the Treaty.

175. In its judgment in Case C-393/92 *Almelo* [1994] ECR I-1477, paragraph 46, the Court of Justice held that restrictions on competition from other economic operators may be permissible pursuant to Article 90(2) in so far as they are necessary to enable the undertaking to perform a task of general interest assigned to it. In particular, the Court held in this regard that "it is necessary to take into consideration the economic conditions in which the undertaking operates, in particular the costs which it has to bear and the legislation, particularly concerning the environment to which it is subject" (paragraph 49). In that case, the Court thus found that the application of an exclusive purchasing clause could escape the prohibitions laid down in Articles 85 and 86 to the extent that the restriction on competition entailed by the clause was necessary in order to enable the undertaking in question to perform its task of general interest.

176. In its judgment in Case C-320/91 *Corbeau*, cited above, the Court similarly held that the grant of exclusive rights as regards the collection, carriage, and distribution of mail to the Belgian Régie des Postes, which were capable of entailing restrictions on competition, could be justified to the extent that those restrictions were necessary to ensure performance of the particular task assigned to that undertaking.

177. In that case, the Court examined the question as to whether the exclusion of competition was necessary in order to provide the holder of the exclusive rights with economically acceptable conditions. It considered that the starting point for such an examination must be "the premiss that the obligation ... to perform [the] services in conditions of economic equilibrium presupposes that it will be possible

to offset less profitable sectors against the profitable sectors ..." (paragraph 17). According to the Court of Justice, this is possible only if one accepts that competition by private undertakings in the economically profitable sectors can be curtailed (paragraphs 17 and 18).

178. This Court considers that that case-law on the application of Articles 85 and 86, can be applied, *mutatis mutandis*, to the field of State aid, so that the grant of State aid may, under Article 90(2) of the Treaty, escape the prohibition laid down in Article 92 of that Treaty provided that the sole purpose of the aid in question is to offset the additional costs incurred in performing the particular task assigned to the undertaking entrusted with the operation of a service of general economic interest and that the grant of the aid is necessary in order for that undertaking to be able to perform its public service obligations under conditions of economic equilibrium (*Corbeau*, paragraphs 17 to 19). Determining whether the aid is necessary entails a general assessment of the economic conditions in which the undertaking in question performs the activities in the reserved sector, without taking account of any benefits it may draw from the sectors open to competition.

179. It is clear from the written evidence and from the oral argument presented to the Court that on average over the first three years following the adoption of the 1990 Law, La Poste has achieved a broadly breakeven position on an after-tax basis only, that is to say, only after the tax concession in question has been taken into account.

180. In those circumstances, even though the financial results from those years cover all La Poste's activities, there being no analytical accounts permitting La Poste's performance in its different sectors of activity to be distinguished, the Court considers that the Commission was entitled to take the view, without breaching the limits of its power of assessment, that in the present case the tax concession in question was not greater than was necessary to ensure that the tasks of public interest assigned to La Poste are performed, namely in particular the obligation to maintain a postal presence in rural areas, as it can be assumed that the resulting additional costs correspond to equivalent losses for La Poste. The

fact of having authorised State aid which stayed below those additional costs cannot therefore render Article 90(2) of the Treaty inapplicable in this case and, accordingly, it cannot constitute an infringement of Article 92 of the Treaty.

181. The Court also considers that the applicants have not produced any evidence or arguments to support their assertion that the aid in question is not necessary for the performance of the public service obligations assigned to La Poste. The submission challenging the necessity for the aid in question must therefore be dismissed.

182. The applicants' submissions to the effect that the methods used by the Commission were inappropriate must now be examined. According to them, because La Poste has no analytical accounts, it is impossible to say that the tax concession in question does not, contrary to Community law, benefit its competitive activities.

183. The Court must therefore examine whether the method of comparison used, consisting in assessing the amount of the State aid (FF 1.196 billion) in relation to the amount of La Poste's additional costs (FF 1.32 billion, according to the minimum estimate — see paragraphs 105 and 106 above), is an appropriate method capable of reasonably ensuring that the grant of that aid does not involve any cross-subsidy for La Poste's competitive activities. As the Commission rightly points out in the contested decision, Community law requires that the State aid in question should not benefit the public operator's competitive activities.

184. The documents before the Court show that, when it adopted the contested decision, La Poste did not maintain, in its internal accounting system, separate accounts for services falling within the reserved sector and for non-reserved

services. This in fact is the reason why the additional public service costs were calculated in the contested decision on the basis of all postal activities (see paragraph 105 above).

185. It is undeniable that if La Poste had established such an analytical accounts system at the time, the Commission would have had a surer basis for satisfying itself that there was no cross-subsidy.

186. However, there is as yet no Community legislation providing for the introduction of an analytical accounts system for undertakings which, whilst entrusted with public service tasks, engage in activities in competitive sectors.

187. Secondly, the actual application of the competition rules in circumstances such as those existing in the present case necessarily involves complex economic and legal assessments which must be made within a Community context (see, for example, the judgment of the Court of Justice in Case C-303/88 *Italy* v *Commission*, cited above, paragraph 34). Consequently, the Commission must be allowed a certain discretion in deciding on the most appropriate method for making sure that the competitive activities do not receive any cross-subsidy.

188. Whilst it is true that the grant of State aid to an undertaking may allow the undertaking to release other resources for other activities (judgment in Case C-303/88 *Italy* v *Commission*), the Court nevertheless considers that where the aid concerned is granted to an undertaking of the kind contemplated in Article 90(2) of the Treaty, the possibility of a cross-subsidy taking place is excluded to the extent to which the aid in question remains lower than the additional costs generated by the particular task referred to in that provision.

189. Moreover, as was held in paragraph 178 above, Community law does not preclude a Member State from granting State aid to an undertaking entrusted with the management of a service of general economic interest in order to offset the additional costs of the particular task assigned to it, provided that the aid is necessary in order for that undertaking to be able to perform its public service obligations under conditions of economic equilibrium. Consequently, unless Article 90(2) of the Treaty is to be rendered entirely ineffective, the Court considers that it must be acknowledged that the method of comparison used by the Commission in the present case was appropriate for making reasonably sure that the grant of State aid in question involved no cross-subsidy contrary to Community law.

190. On the question of the appropriate method, the applicants have not attempted to show that, given both the information available at the time and the state of Community law, there was an alternative, more suitable method for making sure that La Poste's tax advantage did not benefit its competitive activities. Nor have they produced any evidence or arguments to show that the Commission exceeded the bounds of its discretion in the matter.

191. The applicants' complaint concerning the basis of the tax abatement in question must be regarded as unfounded since they do not dispute the total amount entailed by the concession.

192. As regards the applicants' arguments that the cost of a public service is nothing other than the cost which the public at large is willing to devote to it and that it would have been preferable to apply the 1982 Law, it suffices to observe that, as stated in paragraph 108 above, in the absence of Community rules governing the matter, the Commission has no power to take a position on the organisation and scale of the public service tasks assigned to a public undertaking or on the expediency of political choices made in this regard by the competent national

authorities, provided that the aid in question does not benefit the activities pursued in competitive sectors or exceed what is necessary to enable the undertaking concerned to perform the particular task assigned to it.

193. Contrary to what the applicants maintain, the fact that the Commission has urged the French Government to ensure that La Poste's accounting system is improved in the future provides no ground for inferring that in adopting the contested decision the Commission recognised that a cross-subsidy existed. Even if La Poste's accounting system may be improved in the future so as to afford greater transparency in the breakdown of costs, the Commission was nevertheless entitled, as held in paragraphs 183 to 189 above, to find, on the basis of the information available at the time, that the grant of the tax concession in question entailed no risk of a cross-subsidy.'

The appeal

18 In their appeal, the appellants are asking the Court to annul the contested judgment, to annul the contested decision and to declare that, under Article 92(1) of the Treaty, the provisions of the 1990 Law in question are incompatible with the common market.

19 In support of their appeal, the appellants raised a single plea in law, consisting of three parts.

Findings of the Court

20 Pursuant to Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

21 Before considering the plea put forward by the appellants, it should be recalled that the Court has consistently held that, according to Article 168a of the EC Treaty and the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal may rely only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts (see, in particular, the judgment in Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 12, and the order of 17 September 1996 in Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraphs 39 and 49).

The first part of the plea

22 By the first part of their plea, the appellants criticise the Court of First Instance for not finding that neither the Commission nor La Poste nor the French Government had proved that the FF 1.196 billion granted by way of aid in 1994 benefited only the public service provided by La Poste.

23 In this regard, the applicants claim that the Court of First Instance erred in concluding that the aid did not lead to cross-subsidisation of La Poste's competitive activities. That aid, consisting of an 85% reduction in property tax and wages tax calculated on a basis of assessment including total turnover, effectively reduced the tax payable by La Poste in respect both of its public service activities and of its competitive activities. In the absence of analytical accounts enabling La Poste's performance in its different sectors of activity to be distinguished, the Court of First Instance should not have upheld the Commission's decision.

24 According to settled case-law, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements under Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure. In reality, such an appeal amounts to no more than a request for re-examination of the application submitted to the Court of First Instance, which, under Article 49 of the EC Statute, falls outside the jurisdiction of the Court of Justice (see, in particular, the order of 12 December 1996 in Case C-49/96 P *Progoulis* v *Commission* [1996] ECR I-6803, paragraph 25, and the order of 16 September 1997 in Case C-59/96 P *Koelman* v *Commission* [1997] ECR I-4809, paragraph 52).

25 In the present case, it must be held that, as is apparent from paragraphs 134 to 136 of the contested judgment, the appellants have merely repeated the arguments previously submitted to the Court of First Instance, without attempting to establish that its findings are vitiated by errors of law. The first part of the plea must therefore be dismissed as clearly inadmissible.

The second part of the plea

26 By the second part of their plea, the appellants claim that the Court of First Instance misapplied the interpretation of Article 90(2) of the Treaty adopted by the Court of Justice in *Corbeau*, cited above, in excluding La Poste's competitive activities from the scope of that provision and holding that the aid was intended to enable the undertaking to fulfil its public service obligations on a break-even, or even a profitable, basis.

27 In this regard, the appellants claim that in the present case the fundamental question is not whether or not the additional costs resulting from the obligation to maintain a presence in rural areas are offset in whole or in part by aid, but to ensure that the aid does not lead to subsidisation of contractual activities and is not thereby rendered anticompetitive.

28 That part of the plea has three limbs.

29 First, the appellants claim that the Court of First Instance failed to recognise, at paragraphs 176 and 177 of the contested judgment, the difference between the situation in *Corbeau* and that in the present case, since the appellants are never able to operate on the reserved markets of La Poste.

30 It is sufficient to note here that, at paragraphs 176 and 177 of the contested judgment, the Court of First Instance set out — without being challenged by the appellants on this point — the criteria in *Corbeau* which are relevant to the present case. Thus, in referring to the case-law of the Court of Justice on the combined application of Articles 85 and 86 and Article 90(2) of the Treaty, the Court of First Instance summarised the part of that judgment in which the Court of Justice considered whether the exclusion of competition was necessary to ensure performance of the particular task assigned to the undertaking in question.

31 The Court of First Instance rightly held, at paragraph 174 of the contested judgment, that such a reference to that case-law was necessary in order to determine whether Community law precluded a Member State from granting State aid to offset the additional costs assumed by an undertaking entrusted with the operation of a service of general economic interest within the meaning of Article 90(2) of the Treaty where those additional costs arise from performance of the particular task assigned to it.

32 Second, the appellants claim that the Court of First Instance misapplied paragraph 19 of the judgment in *Corbeau*, according to which Article 90(2) of the Treaty does not apply 'as regards specific services dissociable from the service of general interest which meet special needs of economic operators and which call for certain additional services not offered by the traditional postal service ...'. In their opinion, the distribution of financial and insurance products by La Poste constitutes specific services which satisfy the criteria laid down in *Corbeau*. It is therefore inappropriate to exclude them from competition and to exempt them pursuant to Article 92(1) of the Treaty.

33 In this regard, it should be recalled that, at paragraph 178 of the contested judgment, the Court of First Instance considered that the grant of State aid may, under Article 90(2) of the Treaty, escape the prohibition laid down in Article 92 of that Treaty provided that the sole purpose of the aid in question is to offset the additional costs incurred in performing the particular task assigned to the undertaking entrusted with the operation of a service of general economic interest and that the grant of the aid is necessary in order for that undertaking to be able to perform its public service obligations under conditions of economic equilibrium (*Corbeau*, cited above, paragraphs 17 to 19). At paragraph 188 of the contested judgment, the Court of First Instance concluded that, where the aid concerned is granted to an undertaking of the kind contemplated in Article 90(2) of the Treaty, the possibility of a cross-subsidy taking place is excluded to the extent to which the aid in question remains lower than the additional costs generated by the particular task referred to in that provision.

34 Since it laid down the condition that the tax advantage should not exceed the additional costs engendered by the public service, the Court of First Instance cannot have failed to take account of the requirements laid down by Article 90(2) of the Treaty as defined in *Corbeau*.

35 Third, the appellants consider that paragraph 178 of the contested judgment is fundamentally flawed, not only as regards the offsetting of costs, the limits of which they demonstrated with reference, in particular, to *Corbeau*, but also in so far as the Court of First Instance there states that the aid must enable the undertaking to perform its public service obligations on a break-even basis. According to the appellants, it is not the tax reduction which enables La Poste to break even or to make a profit in the performance of its public service duties but the profits improperly drawn from the commercial activities benefiting from that tax concession.

36 This argument, in so far as it concerns the assessment of the additional costs relating to La Poste's public service obligations with a view to determining whether those costs could be offset by the aid in question, bears upon the facts of the dispute as determined by the Court of First Instance.

37 At paragraph 114 of the contested judgment, the Court of First Instance found that it was not contested that the tax concession in question enjoyed by La Poste under Article 21 of the 1990 Law, namely the 85% reduction in the bases of assessment to local taxation, amounted in 1994 to FF 1.196 billion. In the same paragraph, the Court of First Instance held that the Commission rightly concluded that the amount of that tax concession did not exceed the additional public service costs, even if the minimum estimate was taken into account, that is to say additional costs of FF 1.32 billion.

38 To the extent that by this argument it is claimed that the Court of First Instance erred in considering that the aid did not entail cross-subsidisation of La Poste's competitive activities, it overlaps in any event with the first part of the plea.

39 This argument is therefore clearly inadmissible.

40 It follows that the second part of the plea is both clearly unfounded and clearly inadmissible.

The third part of the plea

41 By the third part of the plea, the appellants challenge the percentage figure of 34.7% arrived at for reducing La Poste's total additional costs, that percentage being equal to the proportion of La Poste's 1993 turnover generated by its competitive activities, including insurance business, to which the Court of First Instance refers at paragraph 110 of the contested judgment. In their view, that figure is purely speculative.

42 Here the appellants are merely challenging, without putting forward any arguments other than those rejected at paragraphs 112 and 113 of the contested judgment, findings of fact which the evidence submitted to the Court of First Instance does not show to be wrong.

43 This part of the plea must therefore be dismissed as clearly inadmissible.

The application for a declaration that the 1990 Law is incompatible with Community law

44 The appellants asked the Court to declare, pursuant to Article 92(1) of the Treaty, that the contested provisions of the 1990 Law are incompatible with the common market.

45 In response to this claim, it is sufficient to note that it was not put forward at first instance.

46 According to Article 113(2) of the Rules of Procedure of the Court, the subject-matter of the proceedings before the Court of First Instance may not be changed in the appeal.

47 This claim is therefore clearly inadmissible.

48 On the basis of all the foregoing, it follows that the appeal must be rejected as both clearly unfounded and clearly inadmissible.

Costs

49 Under Article 69(2) of the Rules of Procedure, which apply to the appeals procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs, if they are applied for in the successful party's pleadings. Since the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber),

hereby orders:

1. The appeal is dismissed.

2. The appellants are ordered to bear the costs.

Luxembourg, 25 March 1998.

R. Grass

Registrar

H. Ragnemalm

President of the Fourth Chamber