86 or decides to take action upon its own initiative under those articles, the reply given cannot be interpreted as a reply by the Commission to such an application.

2. In view of their legal nature and effects, neither the preliminary observations made by the Commission's services at the beginning of a procedure relating to an infringement of the competition rules nor the communication to the complainant provided for in Article 6 of Regulation No 99/63 may be regarded as decisions, within the meaning of Article 173 of the Treaty, against which an action for annulment lies. In the context of the administrative procedure as regulated by Article 3(2) of Regulation No 17 and by Article 6 of Regulation No 99/63, they do not constitute measures having legally binding effect of such a nature as to affect the interests of the applicant, but preparatory measures.

Nor, *a fortiori*, may correspondence addressed to a complainant which neither expresses an opinion on the status of the alleged facts nor, in itself and at that stage of the procedure, has the effect of terminating the investigation carried out by the Commission, be deemed to be a decision within the meaning of Article 173 of the Treaty.

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
30 November 1992 *

In Case T-36/92,

Syndicat Français de l'Express International (SFEI), an association of undertakings governed by French law, with its registered office at 7 Rue de Té, Bâtiment 3444, Roissy-Charles de Gaulle, France,

DHL International, a company incorporated according to French law, whose registered office is at 161 Rue de la Belle Etoile, Bâtiments 1 and 2, Roissy-Charles de Gaulle, France,

Service Crie, a company incorporated according to French law, whose registered office is at 9 Villa Pierre Ginier, Paris, France,

* Language of the case: French.

May Courier, a company incorporated according to French law, whose registered office is at 13 Rue Oberkampf, Paris, France,

represented by Morgan de Rivery, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, Bon and Schmitt, 62 Avenue Guillaume,

applicants,

v

Commission of the European Communities, represented by Giuliano Marenco, Legal Adviser, and by Francisco Enrique González Díaz, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a member of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Letter No 000978 of 10 March 1992 concerning a complaint about the operation of the 'rapid mail' market, lodged by the Syndicat Français de l'Express International,

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

composed of: J. L. Cruz Vilaça, President, D. Barrington, J. Biancarelli, A. Saggio and C. P. Briët, Judges,

Registrar: H. Jung,

having regard to the written procedure,

makes the following

Order

Facts underlying the application

1 On 21 December 1990 the Syndicat Français de l'Express International ('SFEI'), a business consortium governed by French law and comprising 10 'rapid mail' undertakings operating on French territory, lodged a complaint with the Commission of the European Communities challenging the practices of the Société Française de Messagerie Internationale ('SFMI').

2 SFMI, a public limited company under French law, is a joint venture between Sofipost, with 66% of the share capital, and Transport Aérien Transrégional (TAT), with 34%. Sofipost succeeded Cogecom, a wholly-owned subsidiary of La Poste Française (the French Post Office).

3 The complaint challenges the logistical and commercial assistance which the French Post Office is said to provide to SFMI. With regard to logistical assistance, it points in particular to the availability of the whole post office network, to the preferential customs clearance procedure and the granting of preferential financial terms. As regards commercial assistance, it mentions first the transfer of goodwill items such as clientele and a contribution of assets, and secondly the conduct of promotional and advertising operations by La Poste in favour of SFMI.

4 In reply to this complaint, the Commission first notified the applicant on 10 March 1992 by letter No 06873 of the decision of the competent departments to close the file. By an application lodged at the Court Registry on 16 May 1992 (Case C-222/92), the complainant and three of the 10 undertakings belonging to the consortium brought an action for the annulment of that decision. By letter of 9 July 1992 the Commission informed the applicants that it had withdrawn that decision.

5 Secondly, by letter No 000978, also dated 10 March 1992, the Commission notified the applicants that it did not envisage pursuing its enquiries pursuant to Article 86 although it undertook to monitor developments closely in the market in question.

6 The concluding paragraph of that letter was couched in the following terms:

'While we do not propose to pursue enquiries under Article 86 in these circumstances, I can assure you that we shall maintain a close watch on developments in this market. In a separate letter we are informing you of the outcome of our consideration of the linked case presented under the State aids rules'.

Forms of order sought by the parties and procedure

7 On 16 May 1992 the complainant and three undertakings belonging to the business consortium, namely DHL International, Service Crie and May Courier, lodged an application in which they claim that the Court of First Instance should:

— declare the action admissible and well founded;

— annul the Commission decision contained in letter No 000978 of 10 May 1992;

— order the Commission to pay the costs.

8 In its reply of 17 June 1992 the Commission entered an objection of inadmissibility under Article 114 of the Rules of Procedure. In that connection the Commission contends that the Court of First Instance should:

— declare the action inadmissible;

— order the applicants to pay the costs.

9 In their observations on the objection of inadmissibility submitted on 31 July 1992 the applicants claim that the Court should:

— dismiss the objection of inadmissibility raised by the Commission;

— order the Commission to pay the costs;

— continue the proceedings on the substance of the case.

10 On 1 October 1992 Deutsche Bundespost Postdienst, GD Net BV, Ptt Post BV, Sweden Post and La Poste all applied to intervene in support of the form of order sought by the Commission.

11 On 10 November 1992 the applicants submitted observations claiming that the applications to intervene should be rejected and the interveners ordered to pay the costs 'in this regard, including the applicants' legal fees arising from their observations on the applications to intervene'.

12 In support of its objection, the Commission submits three pleas of inadmissibility. It contends:

— first, that no action lies against letter No 000978 of 10 March 1992 since it is not in the nature of a decision;

— secondly, that the contested correspondence cannot be interpreted as a refusal to act by addressing a decision as provided for in Article 90(3) of the EEC Treaty;

— lastly that at least one of the applicants, namely the business consortium, has no interest in bringing an action or, at the very least, does not have standing to do so.

13 The Court of First Instance must rule on the pleas of inadmissibility thus raised in accordance with Article 114(3) and (4) of the Rules of Procedure. The Court considers, first of all, that the examination of the documents in the case has provided sufficient elucidation and that there is no need to open the oral procedure and, secondly, that it should begin by examining the plea of inadmissibility according to which the contested measure is not a decision capable of affecting the legal position of the applicants.

The plea of inadmissibility according to which the contested correspondence is not capable of producing legal effects

Arguments of the parties

14 According to the Commission, the contested measure is in the nature of a simple interim step. It constitutes no more than the initial reaction of its services regarding the possible evaluation of the facts reported in the complaint from the point of view of Article 86 and forms part of the first stage in the investigation of complaints, as analyzed by the Court of First Instance in the *Automec I* judgment (judgment in Case T-64/89 *Automec* v *Commission* [1990] ECR II-367). In the opinion of the Commission, the contents of the measure, the absence of any reference to Article 6 of Commission Regulation No 99/63 of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17

(Official Journal, English Special Edition 1963-64, p. 47, hereinafter referred to as 'Regulation No 99/63') and the status of the signatory of the measure sufficiently establish the preparatory nature of the contested measure.

15 As to the contents of the measure, the Commission considers that the course of events between 21 December 1990, the date of the complaint, and 10 March 1992, the date of the contested measure, is sufficient to establish that in the context in which it occurred the correspondence of 10 March 1992 contains no legal evaluation of the facts from the point of view of Article 86 of the Treaty.

16 After noting that the complaint of 21 December 1990 was based solely on an infringement of Article 92 of the Treaty and merely left open the possibility of a further application to the Commission under Article 86, the Commission states that the facts reported in the complaint were examined in the light of Article 86 during a meeting with the complainant on 18 March 1991. Most of the problems discussed at that meeting, which had previously been raised in an application to the Conseil Français de la Concurrence (French Competition Council) also lodged on 21 December 1990, had been dealt with in the notification made on 28 October 1991 and under Article 4 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Official Journal 1989 L 395, p. 1, and Corrigendum, Official Journal 1990 L 257, p. 13, hereinafter referred to as 'Regulation No 4064/89'). The operation notified to the Commission on that date concerned the creation by the German, Canadian, French, Dutch and Swedish postal administrations and the Australian undertaking TNT Ltd of a joint venture for the operation of rapid-mail services. By a decision of 2 December 1991 the Commission declared that it was not opposed to the operation of this venture, which did not raise 'serious doubts' as to its compatibility with the common market. That decision was taken in accordance with the conditions laid down in Article 6(1)(b) of Regulation No 4064/89.

17 The Commission does not deny that on 9 January 1992 it replied to a further letter from the complainant of 15 November 1991 and maintains that this reply itself gave notice of a preliminary statement of its position under Article 86 of the Treaty. Thus, in the Commission's view, that preliminary statement of position was made in the contested measure of 10 March 1992.

18 According to the Commission, the letter of 10 March 1992 merely explained to the complainant the decision on compatibility adopted by the Commission pursuant to Regulation No 4064/89. It recalled the undertakings given by the postal administrations which were parties to the joint venture and showed the connections between the problems encountered during the examination conducted under Regulation No 4064/89 on the one hand and those raised in the complaint on the other. According to the defendant, the concluding passage of the contested correspondence, cited above, should be interpreted as the preliminary statement of position announced on 9 January 1992 and not as a Commission decision definitively evaluating the facts int he light of Article 86. The sole purpose of the correspondence of 10 March 1989 was to inform the complainant of the new market situation following the creation of the joint venture and of the conditions on which La Poste would conduct its future relations with private undertakings.

19 As to the form of the measure, the Commission notes that the contested correspondence does not satisfy any of the formal conditions laid down in Article 6 of Regulation No 99/63, which specifies the obligations incumbent upon the Commission if it intends to reject a complaint. It points out that the contested correspondence makes no reference to Article 6 of Regulation No 99/63, sets no time-limit for the complainant to submit its observations and makes no mention at all of the Commission's intention to reject the complaint.

20 Finally, as to the status of the signatory of the measure, the Commission points out that its decision of 21 February 1990, which gave the Commissioner for Competition sole authorization to adopt decisions rejecting complaints, makes no provision for delegation of signature. Thus, it argues, decisions to reject complaints must necessarily be adopted and signed by the Commissioner for Competition. This did not happen in the present case, since the contested measure was signed by a director.

21 For all these reasons, the Commission considers that the contested measure cannot be interpreted as a decision rejecting a complaint.

22 The applicants, first, underline the importance of the questions of principle posed by the objection of inadmissibility raised by the Commission in disregard of the undertakings it had given in its remarks on the *Automec I* judgment (see XXth Report on Competition Policy, 1991, p. 118). They then maintain, in reply to the objections raised by the Commission, that the complaint of 21 December 1990 was expressly based on Article 86, as indeed was acknowledged, they say, by the Commission in the course of the procedure.

23 The principle to be applied, they recall, for ascertaining whether a measure adopted by a Community institution is amenable to annulment proceedings under Article 173 of the Treaty is whether the measure in question is capable of producing legal effects (judgment in Case 22/70 *Commission* v *Council* [1971] ECR 263), which must be interpreted as 'legal effects ... which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position' (judgment in Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9). By applying that principle to the present case, it may be seen, they say, that the letter of 10 March 1992 is a measure against which an action lies.

24 In this regard, the Commission is wrong, they say, to rely on the judgment of the Court of First Instance in the *Automec I* case, cited above, since the background to the two cases is different, for at least three reasons. First, whereas in the *Automec I* judgment the Court of First Instance noted that the Director-General for Competition was not involved in the examination of the case, in the present instance the Director-General was the signatory of the correspondence addressed to the applicants on 9 January 1992. Moreover, the contested measure of 10 March 1992 was merely the reply announced in the Commission's letter of 9 January 1992.

25 In this regard, owing to the Commission's silence following the complaint made to it the complainant was, they say, forced on 15 November 1991 to serve on the Commission formal notice to act within the meaning of Article 175 of the Treaty, to which the Director-General for Competition gave an interim reply on 9 January 1992. This interim reply, made within the two-month period provided for in Article 175 of the Treaty, enables the contested correspondence of 10 March 1992 to be

regarded as the Commission's definitive reply to the formal notice which it had received.

26 Secondly, unlike correspondence addressed to *Automec*, which comprised both final and provisional elements, the contested correspondence contained no provisional elements and demonstrated, on the contrary, that the Commission had conducted a definitive examination of the facts in the light of Article 86.

27 Thirdly, the contested correspondence post-dated the decision whereby the Commission undertook to draw the consequences from the *Automec I* judgment. The applicants note that in its XXth Report on Competition Policy the Commission published comments on the judgment of the Court of First Instance in Case T-64/89 *Automec* v *Commission*, cited above. The concluding paragraph of that commentary is couched in the following terms:

'Letters stating the Commission's preliminary observations will be drafted so as to make it clear that they represent only an initial Commission reaction on the basis of the information in the Commission's possession. Complainants will in any event always be asked to submit any further comments within a reasonable time, failing which the case may be considered closed.'

28 It is the applicants' contention that, disregard of the undertakings given in the context of the XXth Report on Competition Policy, the Commission infringed the principles of legal certainty and good faith. By adopting a very clear line of conduct, the Commission created at least the impression that if it did not invite the parties to submit comments the case should be considered permanently closed. Citing the adage 'Tu patere legem quam fecisti' and the judgment of the Court of First Instance in Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, the applicants contend that such an undertaking may be relied on against the Commission. The inference to be drawn, they say, is that since the contested measure does not meet the requirements resulting from the undertakings cited above it constitutes a definitive rejection of the complaint.

29 Furthermore, according to the applicants, quite apart from the circumstances of its adoption, the contested correspondence does constitute a decision against which an action may be brought, as defined in the case-law of the Court cited above. The contested measure closed the investigation that had been commenced, contained an assessment of the practices alleged in the complaint, altered the legal position of the applicants and prevented them from demanding the reopening of the investigation of the complaint unless they put forward new evidence (judgment of the Court in Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1987] ECR 4487, paragraph 12, and judgment of the Court of First Instance in Case T-116/89 *Prodifarma* v *Commission* [1990] ECR II-843, paragraph 70).

30 Finally, according to the applicants, the formal conditions for adopting the measure or the status of its signatory are not relevant to an assessment of whether the contested measure is in the nature of an actionable decision. If the admissibility of an application to annul a Community measure turned on the formal requirements for the adoption of that measure, admissibility would be within the power of the Commission to determine. As to the status of the signatory of the measure, established case-law states that this is a matter which affects the legality of the measure and not the admissibility of an action brought against it.

Assessment by the Court

31 In order to assess the relevance of the Commission's plea of inadmissibility according to which the contested correspondence is not in the nature of a decision, the Court considers that it must first examine whether, as the applicants maintain, the complaint of 21 December 1990 was based not only on Article 92 of the Treaty but also on Article 86; secondly, the Court must assess whether the contested act contains a decision and is capable of producing legal effects, irrespective of whether or not it was adopted under the complaints investigation procedure established by Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (Official Journal, English Special Edition 1959-62, p. 87) and by Regulation No 99/63, cited above.

The scope of the complaint of 21 December 1990

32 The documents before the Court show that the complaint by the business consortium comprises three distinct parts: a 'covering letter' addressed to the Director-General for Competition; a 'summary' of the complaint; the complaint proper, the text of which is itself preceded by a detailed four-page outline.

33 In the first paragraph of the 'covering letter' the complainant asks the Director-General of DG IV to 'initiate an inquiry in order to establish that certain aid granted by the French State must be considered incompatible with the common market in accordance with the principles laid down in Articles 3(f), 5(2) and 92 et seq. of the Treaty ...'. The covering letter concludes with an exclusive reference to Article 92.

34 According to its summary, 'the purpose of the ... complaint is to draw attention ... to a number of aids'. The summary lists all the alleged anti-competitive commercial practices, which are deemed contrary solely to the Community rules governing state aid. The summary refers once only to Articles 85, 86 and 90 of the Treaty, in order to state that one of the practices in question was the subject of an earlier complaint unconnected with the complaint of 21 December 1990. The complainant concludes the summary by expressing the opinion that the most appropriate means of remedying the practices in question would be to order the repayment of the aids.

35 The body of the complaint contains no reference to Article 86 of the Treaty. The concluding passage is worded thus:

' It follows from the foregoing that if the aids described above were maintained, they would soon lead to the complete disappearance of the private express mail companies. Hence, SFMI should in future be required *either* (i) to adjust its charges to reflect the real value of the services provided by La Poste, *or* (ii) if such adjustment proves impossible, to cease using the network of La Poste ... .'

36 In order to maintain that the complaint is not based solely on the alleged violation of Article 92, the applicants rely primarily on the second page of the 'covering letter', in which the complainant first expressly reserves the possibility of lodging a complaint under the competition rules applicable to undertakings and secondly points out that the complaint registered with the Conseil Français de la Concurrence, which it simply appends to the complaint to the Commission and does not incorporate therein, is relevant not only from the standpoint of national law but also from that of the Community's competition rules on undertakings.

37 In the estimation of the Court of First Instance, an examination of the documents notified on 21 December 1990 shows that the Commission is clearly right to maintain that the initial complaint was made exclusively under Article 92, since the complaint itself contains no reference to Article 86 of the Treaty. The fact that a document other than the complaint proper, namely the letter conveying it to the Director-General for Competition, expressly reserves the possibility of a further application to the Commission under these provisions and refers to the application to the Conseil Français de la Concurrence does not call in question such an assessment but merely reinforces it.

Analysis of the contested act

38 Consequently, it is for the Court of First Instance to assess whether the contested correspondence is capable of containing a decision and of producing legal effects and, thus, of being a measure against which an action for annulment may be brought even though, as has just been established, the initial complaint of 21 December 1990 in no way requested the Commission to examine the facts under Article 86 of the Treaty. To that end it is necessary to assess first whether the contested measure may, as the applicants maintain, be regarded as a final decision to reject a complaint or close the file relating thereto on the supposition that the measure in question was adopted in the context of the complaints investigation procedure established by Regulations Nos 17 and 99/63 and, secondly, whether the measure in question would be capable of producing legal effects had it been adopted in a different context.

Its nature as a decision and the legal effects of the contested measure in the event that it was adopted under the procedure established by Regulations Nos 17 and 99/63

39 Under Article 3 of Regulation No 17:

'1. Where the Commission, upon application or upon its own initiative, finds that there is infringement of Article 85 or Article 86 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

2. Those entitled to make application are:

(a) Member States;

(b) natural or legal persons who claim a legitimate interest.'

40 If the contested measure was adopted in the context of the implementation of the abovementioned provisions of Article 3 of Regulation No 17, it follows that the contested correspondence could have stemmed only from a decision by the Commission to take action upon its own initiative under Article 86 against the practices alleged in the initial complaint, a hypothesis that is alleged by neither of the parties, or from a request from the complainant complementing its initial complaint of 20 December 1990 and presented orally during the meeting of 18 March 1991, as alleged by the applicants and conceded by the Commission.

41 There is no need for the Court of First Instance to decide whether the oral submission by the complainant of an additional request of that kind at the information meeting with the Commission on 18 March 1991 was valid. Suffice it that the contested correspondence could not be in the nature of a decision since it predated the concluding stage of an investigation procedure begun on the Commission's own initiative or upon application.

42 It appears from the very wording of the contested correspondence, in which the Commission confined itself to informing the applicants that it did not intend to proceed with the investigation under Article 86 of the Treaty, that the correspondence contains no assessment of the alleged facts in the light of Article 86 of the Treaty. It merely explains the decision as to compatibility taken by the Commission on 2 December 1991 under Regulation No 4064/89, recalls the undertakings given by the postal administrations which were parties to the joint venture and demonstrates the connections between the problems encountered during the investigation carried out under Regulation No 4064/89 and those described in the complaint. While that decision recognizes that the joint venture neither creates nor reinforces a dominant position in the Community market in rapid mail, it rules neither on the evaluation from the point of view of the concept of abuse of a dominant position addressed in Article 86 of the Treaty of the commercial practices of each of the undertakings which were parties to the concentration nor, *a fortiori*, on the legality of the practices described in the complaint of 21 December 1990.

43 Accordingly, even on the supposition that the applicants did make an additional claim under Article 86 of the Treaty under the conditions laid down in Article 3 of Regulation No 17, the contested correspondence cannot be interpreted as a decision to reject or to close the file on such claims since it expresses no opinion on the evaluation of the alleged facts and, contrary to the applicants' assertion, does not itself at that stage in the procedure have the effect of terminating the investigation carried out by the Commission. In point of fact and on the basis of its content, the contested correspondence must be regarded as a document established at a preliminary stage in the investigation, which merely expresses an initial reaction by the Commission's services having no legal effects. Even if the contested measure might be regarded as a provisional communication within the meaning of Article 6 of Regulation No 99/63, a supposition that is apparent neither from its content nor from its form, the contested correspondence could still not be considered capable of producing legal effects. As the Court of First Instance ruled in the *Automec I* case, cited above, in view of their legal nature and effects, neither the preliminary observations made by the Commission's departments at the beginning of a procedure relating to an infringement of the competition rules nor the communication to the complainant provided for in Article 6 of Regulation No 99/63 may be regarded as decisions within the meaning of Article 173 of the Treaty, against which an action for annulment lies. In the context of the administrative

procedure as regulated by Article 3(2) of Regulation No 17 and by Article 6 of Regulation No 99/63, they constitute not measures producing binding legal effects capable of affecting the interests of the applicants, but preparatory measures.

44 This conclusion is not affected by the two arguments put forward by the applicants in reply to the objection of inadmissibility, namely first the alleged infringement of the principles of good faith and legal certainty and secondly the alleged existence of a formal notice.

45 The Court of First Instance is of the opinion that the applicants' argument that the Commission infringed the undertakings it had given in the context of its comments on the *Automec I* judgment (see paragraph 28 above) is based on a misinterpretation of the final sentence of the comments in question. According to the applicants' line of reasoning, that sentence should be construed as meaning that, since the contested correspondence omitted to refer to a time-limit for the complainant to submit comments, it should be treated as a decision to close the case. However, it is clear from an analysis of the text cited above that the true meaning of the sentence in question is only that the file on an application submitted under Article 3 of Regulation No 17 will be closed should the complainant's comments not reach the Commission within the period set in the provisional communication made under Article 6 of Regulation No 99/63. Consequently, the applicants are wrong to contend that the principles of good faith and legal certainty have been disregarded.

46 As regards the applicants' argument that it served formal notice to take action under Article 175 of the Treaty, the Court of First Instance finds that the applicants' reasoning set out above (see paragraph 25) whereby the letter of 15 November 1991 constituted formal notice within the meaning of Article 175 of the Treaty cannot be upheld. It is clear from the wording of that correspondence that, far from constituting formal notice to the Commission to take action under Article 86, it was in point of fact no more than a request for a meeting addressed to the Director-General of DG IV and did not seek to oblige the Commission to address a measure to the author of that correspondence. The argument is, therefore, not substantiated by the facts.

47 It follows from the foregoing that in the abovementioned situation in which the contested measure was adopted in the context of the implementation of the procedure established by Regulations Nos 17 and 99/63, the pleas of annulment are inadmissible.

Its nature as a decision and the legal effects of the contested measure in the event that it was adopted in a context other than that of the procedure established by Regulations Nos 17 and 99/63

48 In a situation, in which the Commission neither intended to take action on its own initiative under Article 86 of the Treaty nor considered itself in receipt of a supplementary request to do so under that Article made by the complainant at the meeting on 18 March 1991, the contested correspondence of 10 March 1992 was merely sent for the sake of good order and is devoid of any legal effect. It cannot therefore be the subject of an action for annulment.

49 Without its being necessary to consider the form of the disputed measure or the status of its signatory, it follows from all the foregoing that the contested correspondence of 10 March 1992 cannot in any circumstance be in the nature of a decision and is not capable of producing legal effects such as to affect the interests of the applicants. Consequently, the first of the three pleas submitted by the Commission in support of its objection of inadmissibility must be accepted. The action must therefore be dismissed as inadmissible without its being necessary for the Court to examine the other two pleas of inadmissibility raised by the Commission.

The applications to intervene

50 It follows from the foregoing that there is no need to rule on the applications made by GD Net BV, Deutsche Bundespost Postdienst, La Poste, PTT Post BV and Sweden Post for leave to intervene in support of the Commission.

Costs

51 Under Article 67(2) of the Rules of Procedure of the Court of First Instance, 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 applicants have failed in their submissions and the Commission applied for costs against the applicants, they must be ordered to pay the costs, including those relating to their own observations on the applications for leave to intervene.

52 Under Article 67/6 of the Rules of Procedure of the Court of First Instance, 'where a case does not proceed to judgment, the costs shall be in the discretion of the Court of First Instance'. The Court of First Instance considers that in the circumstances of the case the interveners should bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Declares that there is no need to give a decision on the applications for leave to intervene;

3. Orders the applicants to pay their own costs and those of the Commission. Each of the parties seeking leave to intervene shall bear its own costs.

Luxembourg, 30 November 1992.

H. Jung

Registrar

J. L. Cruz Vilaça

President