JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
28 September 1995 *

In Case T-95/94,

Chambre Syndicale Nationale des Entreprises de Transport de Fonds et Valeurs (Sytraval), an association governed by French law, and

Brink's France SARL, a company incorporated under French law,

represented by Jean-Michel Payre, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

v

Commission of the European Communities, represented by Michel Nolin and Ben Smulders, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

supported by

French Republic, represented by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Marc Belorgey, *chargé de mission* in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

intervener,

APPLICATION for the annulment of the Commission decision of 31 December 1993 rejecting the applicants' request for a declaration by the Commission that the French Republic has infringed Articles 92 and 93 of the Treaty by granting aid to Sécuripost SA,

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

composed of: K. Lenaerts, President, R. Schintgen, C. P. Briët, R. García-Valdecasas and P. Lindh, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 26 April 1995,

gives the following

Judgment

Background to the proceedings

1 Until 1987, the French post office (hereinafter 'the post office') undertook, through its internal departments, the transportation of its own moneys and valuables. In 1986 the post office decided to carry on certain of its activities through the intermediary of commercial companies. On 16 December 1986 the Société Holding des Filiales de la Poste ('Sofipost'), controlled as to 99% by the French State, was accordingly set up.

2 On 16 April 1987 Sofipost formed Sécuripost SA ('Sécuripost'), which it controls as to 99.92%. The object of that company is the secure transportation of moneys, the provision of caretaking and protection services, and surveillance. The post office seconded over 220 officials to Sécuripost.

3 By private agreement dated 28 September 1987, the post office entrusted Sécuripost with the performance of the activities falling within the spheres referred to above, which it had previously carried on itself. Thereafter, Sécuripost was to widen its customer base and its range of activities.

4 On 30 September 1987 a framework agreement was concluded between the Minister of Posts and Telecommunications and Sécuripost.

5 At the end of 1987, Sofipost advanced the sum of FF 5 000 000 to Sécuripost. That loan was converted into capital during the first half of 1988.

6 On 1 January 1988 Sofipost increased the capital of Sécuripost by means, first, of the subscription of the net value of the money transportation business transferred by the post office to its subsidiary, estimated at FF 19 225 000, and, second, of a contribution in cash of FF 9 775 000.

7 During the course of 1989, Sofipost granted Sécuripost a second loan of FF 15 000 000, at an interest rate corresponding to half a percentage point over the bank base rate.

8 On 4 September 1989 various companies and associations governed by French law, including the applicants, submitted to the Commission two requests for the initiation of a proceeding, one made pursuant to Article 90 of the EEC Treaty in conjunction with Articles 85 and 86, and the other seeking a declaration that Articles 92 and 93 of the EEC Treaty had been infringed. The present action concerns only the second of those requests.

9 On receipt of that complaint, the Commission sought an explanation from the French Government by letter of 14 March 1990.

10 The French Government replied by letter of 3 May 1990.

11 On 28 June 1991 the Commission informed the applicants that their complaint raised 'a number of important points of principle calling, in this instance, for an in-depth examination by the relevant Commission departments'.

12 On 9 October 1991 the Commission again informed the applicants that the matter raised by them appeared 'particularly complex, necessitating extensive technical analysis of the ample documentation produced both by the complainants and by the French authorities ... It has not been possible to complete the inquiry into the matter within the period indicated in (the Commission's) letter of 28 June 1991 because of the complexity of the case and the consequent need to arrive at a decision which takes account of the interests of all of the parties concerned'.

13 On 5 February 1992 the Commission adopted a decision rejecting the applicants' complaint. That decision stated in particular that

'the Commission is aware that the transfer of activities of a public undertaking such as the French post office to a subsidiary could conceal certain factors constituting aid under the Treaty. For that reason, we have been guided, throughout our inquiry into the matter, by the criterion of comparing the conduct of the French State and Sécuripost, of which you complain, with the approach which a private operator would be likely to adopt in comparable circumstances. Having said that, we find from the file as it currently stands that, whilst Sécuripost certainly received support from the parent company and from the State when it was set up and started operating in the market, it cannot be said that there has been a grant of State aid within the precise terms of Article 92(1) of the Treaty. We would inform you, in particular, that the French authorities have formally denied the existence of any circumstances giving rise, prima facie, to aid falling within Article 92(1) — as evidenced, in so far as may be necessary, by the documentary proof adduced in support. In the circumstances, the Commission is compelled to conclude, on the basis of the evidence at its disposal, that the operation which led to the formation of Sécuripost is comparable to a reorganization carried out by an undertaking which has decided to set up a subsidiary to manage one of its activities separately'.

14 On 13 April 1992 the applicants brought an action before the Court of Justice for the annulment of that decision.

15 On 22 June 1992 the Commission withdrew its decision of 5 February 1992 and the action brought by the applicants was removed from the Register on 14 September 1992 as a result of their having discontinued the proceedings.

16 On 24 July 1992 the applicants supplemented the complaint which they had made to the Commission.

17 On 21 January 1993 the Commission informed the complainants that it had entered the measures taken by the French Government with regard to Sécuripost in the register of unnotified aids under No NN 5/93.

18 On 26 March 1993 the French Government authorized Sofipost to transfer Sécuripost's property to the private sector.

19 On 22 April 1993 the applicants submitted a further supplement to their complaint.

20 On 5 May 1993 the Commission informed the applicants that it had decided to divide the inquiry into the matter into two parts, dealing respectively with the situation before and after the privatization.

21 On 11 October 1993 the applicants called upon the Commission, pursuant to Article 175 of the EEC Treaty, to adopt a decision in response to their complaint submitted on 4 September 1989.

22 On 31 December 1993 the Commission adopted the contested decision rejecting the applicants' request for a declaration by the Commission that the French Republic had infringed Articles 92 and 93 of the Treaty by granting aid to Sécuripost.

23 It was in those circumstances that, by application received at the Registry of the Court of First Instance on 2 March 1994, the applicants brought the present action.

24 By letter received at the Registry of the Court of First Instance on 11 July 1994, the French Government applied for leave to intervene in the proceedings in support of the form of order sought by the Commission.

25 By order of 15 September 1994, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance granted leave to the French Government to intervene in support of the form of order sought by the Commission.

26 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry.

27 At the hearing on 26 April 1995 the parties presented oral argument and replied to questions from the Court.

Forms of order sought by the parties

28 The applicants claim that the Court should:

— annul the decision of the Commission of 31 December 1993, together with all its legal consequences;

— order the Commission to pay the costs.

29 The Commission contends, for its part, that the Court should:

— dismiss the action as unfounded;

— order the applicants to pay the costs.

30 Lastly, the French Government contends that the Court should:

— dismiss the action.

Substance

31 The applicants rely on four pleas in support of their action. The first plea is based on infringement of Article 93(2) of the Treaty, in that the Commission wrongly

decided, having regard to the circumstances of the case, not to initiate the procedure provided for by that provision. The second plea alleges breach of the applicants' right to a fair hearing, in that the Commission referred in its decision — which adversely affected the applicants — to documents which were not communicated to them, such as the observations of the French Government. The third plea alleges infringement of Article 190 of the EC Treaty, in that the Commission failed to respond in the contested decision to the objections raised by the applicants in their complaint concerning the grant of aid in the form of the secondment to Sécuripost of administrative staff of the post office, the placing at the disposal of Sécuripost of post office premises, the supply of fuel and maintenance for vehicles on excessively favourable terms and the loan of FF 15 000 000 granted by Sofipost to Sécuripost at a preferential rate. The fourth plea alleges the existence of manifest errors of assessment concerning the way in which the decision dealt with the increase of FF 9 775 000 in the capital of Sécuripost, advances made against orders placed by the post office with Sécuripost and abnormal charges applied and guarantees provided to it by the post office.

32 In the light of the documents in the case, the Court considers it appropriate to focus its examination on the third and fourth pleas jointly, alleging infringement of Article 190 of the Treaty and manifest error of assessment.

Alleged infringement of Article 190 of the Treaty and manifest error of assessment

Arguments of the parties

— Infringement of Article 190 of the Treaty

33 The applicants maintain that, by not showing clearly and coherently the factual and legal considerations on which it based its decision, the Commission failed to fulfil its obligation under Article 190 of the Treaty to provide a statement of reasons, and thereby prevented the parties concerned and the Court from taking cognizance of

the detailed reasoning necessary to enable them to ascertain whether or not the decision was well founded. They point out that scope of the obligation to state reasons for a decision depends on the context in which that decision is adopted and on the parties' submissions in the administrative procedure (see the Opinion of Advocate General Lenz in Joined Cases 62 and 72/87 *Exécutif Régional Wallon and Glaverbel* v *Commission* [1988] ECR 1573, at 1581). They maintain that, in the present case, the decision is vitiated by an inadequate statement of reasons on four essential points.

34 They argue, first of all, that, in the contested decision, the Commission restricted its examination of the aid resulting from the secondment of administrative staff to Sécuripost to the direct financial benefit linked to remuneration and social security contributions, even though the complainants had also objected, in their recapitulatory observations of 24 July 1992, to the specific advantage that officials on secondment may at any time be reassigned to the department originally employing them if staff reductions prove necessary in the undertaking to which they are seconded, and that, in such cases, no contribution to unemployment insurance funds or compensation for redundancy or dismissal is payable.

35 Second, the applicants maintain that the Commission failed to justify to the requisite legal standard why it rejected the complaint in so far as it relates to the placing of premises at the disposal of Sécuripost on excessively favourable terms. The post office states that its premises are let to Sécuripost 'in accordance with the requirements of the State Property Code, in the form of a precarious and revocable occupancy agreement'. Rental levels are fixed by the Property Service 'by reference to those charged for premises used for similar purposes in the same geographical area'. The decision contains no details of the rents charged, although it is well known that the rents charged by the Property Service are lower than those charged for premises to which competitor undertakings have access, constituting aid within the meaning of Article 92 of the Treaty.

36 The applicants recall, third, that they had pointed out in their complaint that the fuel supplied to Sécuripost's vehicles was paid for with post office petrol vouchers,

which qualify, by way of remission of tax, for a reduced tariff of the order of 50 centimes per litre. However, the Commission did not look into the question of the tariff paid by Sécuripost, despite the fact that to allow an undertaking the benefit of a lower than normal energy tariff may be regarded as State aid (judgment of the Court of Justice in Joined Cases 67, 68 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219). The position is the same as regards the maintenance of vehicles.

37 Fourth, the applicants observe that the Commission took the view that the loan of FF 15 000 000 granted by Sofipost to Sécuripost in 1989 did not constitute State aid contrary to Article 92 et seq. of the Treaty, since that loan represented a commercial transaction at half a percentage point over the bank base rate, but it did not consider whether such a rate constituted a special advantage, even though reduced interest rates constitute aid within the meaning of Article 92 of the Treaty (judgments of the Court of Justice in *Exécutif Régional Wallon and Glaverbel*, cited above, and in Case 57/86 *Greece* v *Commission* [1988] ECR 2855).

38 The Commission states in reply that adequate reasons are given in the contested decision with regard to the four points raised by the applicants.

39 The Commission, supported by the intervener, contends, first, that the non-payment of compensation for redundancy or dismissal was merely a secondary aspect of a broader objection raised in the various complaints, concerning the total or partial payment by the State of the remuneration of the staff of Sécuripost. Having concluded that this did not amount to aid, the Commission did not, consequently, consider it necessary to analyse that point in depth. Furthermore, there was no direct or indirect transfer of State funds to Sécuripost and it was therefore inappropriate to uphold the allegations put forward by the applicants.

40 The Commission points out, second, that in their initial complaint the applicants' argument was based on the contention that Sécuripost had benefited, and was

continuing to benefit, from aid in the form of the provision of premises free of charge. However, that statement proved on examination to be unfounded, since the French authorities explained that the premises in question were let, thereby justifying the rejection of the complaint in that regard. The objection concerning the rental level being lower than the market rate differs from that put forward during the administrative procedure, and it could not, therefore, have given a specific and detailed response to it in its decision.

41 Third, the Commission observes that, although the applicants stated in their complaint that they had 'discovered' that 'certain' of Sécuripost's vans were supplied either with fuel intended for post office vehicles or with fuel paid for with post office petrol vouchers qualifying for a reduced tariff, they abandoned the first of those allegations in their application, while their second allegation was not proven to a sufficient extent, having regard to the statements of the French authorities, and did not therefore call for an express response.

42 As regards the maintenance of the vehicles, the Commission notes that the applicants stated in their complaint that this 'was carried out by the Service National des Ateliers et Garages des PTT' (national workshops and garages department of the post office, hereinafter 'SNAG'), and contends that it rightly concluded in its decision that, having regard to the fact that the external services department of the Ministry of Posts and Telecommunications invoices Sécuripost for all of the services which it provides to it, and that the invoices are drawn up on the basis of 'an invoicing system similar to that used by private garages', there was nothing to suggest that that system might conceal any element of aid whatever.

43 Fourth, the Commission observes that, as regards the loan granted by Sofipost to Sécuripost, the applicants' plea differs from the objection raised during the administrative procedure, inasmuch as the applicants are no longer maintaining, as they did in their complaint, that the aid amounted to FF 20 000 000, but merely to the difference between the rate at which the loan of FF 15 000 000 was granted (9.75%) and the market rate in 1988 (11.67%). Furthermore, it stated in its communication regarding regional aid schemes that the capitalization reference rate applicable to

France is the rate applied by the Crédit National to loans in respect of equipment. In accordance with its established practice, that rate is applied to all ad hoc loans. In 1988 it stood at 9.91%, only very slightly above the rate granted to Sécuripost, but far below the rate suggested by the applicants.

— Manifest error of assessment

44 The applicants maintain that the Commission committed a manifest error of assessment in concluding that the increase of FF 9 775 000 in Sécuripost's capital, the advances made against orders placed by the post office with Sécuripost and the tariffs charged and guarantees provided by the post office to Sécuripost did not constitute State aid within the meaning of Article 92 et seq. of the Treaty. They point out, in particular, the contention made in their complaint that the agreements entered into between the post office and Sécuripost, especially those relating to the provision of money transportation services, were concluded at a price substantially higher than that normally charged in that sector, and that they also provided a minimum funds guarantee which was equally unusual. Moreover, this was expressly confirmed by the framework agreement between the post office and Sécuripost of 30 September 1987, which provides that prices 'are to be brought into line as quickly as possible with the prices currently charged on the market for the provision of equivalent services'. According to the applicants, the effect of this was a grant of aid by the French State to Sécuripost equal to the difference between the prices charged in dealings with the post office and normal market prices.

45 The applicants state that, in order to dispose of that objection, the Commission undertook a comparison between the tariffs charged by Sécuripost to the post office and those charged to the Casino chain of shops. However, the calculations arrived at by the Commission were incomprehensible and, above all, did not state the year to which they related, despite the fact that the prices charged in dealings with the post office changed over the course of time.

46 Having grasped the Commission's calculations, as a result of the explanations given by the latter in its defence, the applicants maintain their objections, particularly in relation to the year chosen by the Commission.

47 The applicants state that the Commission's calculations show in any event that the prices charged to the post office by Sécuripost are 10% higher than those charged to the Casino chain, and are in breach of the terms of the agreements concluded between the post office and Sécuripost which they produced in their complaint, as well as the framework agreement of 30 September between the post office and Sécuripost.

48 The Commission states in reply that it did not commit a manifest error of assessment in concluding that neither the increase in Sécuripost's capital, nor the advances made by the post office against orders placed by it, nor the tariffs charged and guarantees provided by the post office to Sécuripost constituted aid within the meaning of the Treaty. As regards the tariffs charged, moreover, the applicants' references to the provisions of the framework agreement of 30 September 1987 are inoperative, inasmuch as the price adjustment clause it contains is wholly consistent with a transfer from direct management to management by a subsidiary, since its aim is to facilitate the transition from one system to the other; the conduct of the post office may thus be compared to the approach which might have been adopted in similar circumstances by a private trader engaged in transferring to a subsidiary an activity previously managed by the parent company.

49 Having clarified the calculations it made in the decision with regard to the tariffs charged, and having stated that these related to 1993, the Commission proceeds to calculate the average prices charged by the post office on the basis of the 1989 tariff system, resulting in an average price for the provision of services which is in line with the prices charged by the post office until 1989. Furthermore, the comparison with the prices charged to Casino which appears in the application is unjustified, since the geographical spread of Casino shops is totally different from that of the post office branches.

Findings of the Court

50 The Court notes, as a preliminary point, that neither the Treaty nor Community legislation lays down the procedural system for dealing with complaints objecting to grants of State aid.

51 Furthermore, the contested decision is a decision of the Commission rejecting the applicants' allegations on the ground that the measures complained of do not constitute State aid within the meaning of Article 92 of the Treaty. It is common ground that the contested decision is a decision within the meaning of the fourth paragraph of Article 189 of the Treaty and that it must contain a statement of reasons pursuant to Article 190 of the Treaty.

52 According to the case-law of the Court of Justice, the statement of reasons required by Article 190 must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Community judicature to exercise its power of review (see the judgment of the Court of Justice in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15, and the references cited). It is also settled case-law that the question whether the statement of reasons for a decision meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see the judgment in *Delacre*, cited above, paragraph 16, and the judgment of the Court of Justice in Case 92/77 *An Bord Bainne* [1978] ECR 497, paragraphs 36 and 37).

53 Consequently, it is necessary to verify whether, in the present case, the contested decision discloses in a clear and unequivocal manner the reasoning which led the Commission to conclude that the measures complained of by the applicants did not constitute State aid within the meaning of Article 92 of the Treaty, in such a way as to make the complainants aware of the reasons for the rejection of their complaint and thus enable them to defend their rights and the Court to exercise its power of review.

54 The judicial review which such a statement of reasons must allow is not, in the present case, a review of the question whether there has been a manifest error of assessment, similar to a review of the exercise by the Commission of its exclusive power to examine the compatibility of national measures already found to constitute State aid (see the judgments in Case 78/76 *Steinike and Weinlig* [1977] ECR 595, paragraph 9, in Case C-354/90 *Fédération Nationale du Commerce Extérieur des Produits Alimentaires and Syndicat National des Négociants et Transformateurs de Saumon* [1991] ECR I-5505, paragraph 14, and in Case C-44/93 *Namur-Les Assurances du Crédit* [1994] ECR I-3829, paragraph 17), but a review of the interpretation and application of the concept of State aid referred to in Article 92 of the Treaty which the Commission has undertaken with a view to determining whether or not the national measures complained of by the applicants are to be classified as State aid.

55 It is necessary, therefore, to bear in mind the context within which the contested decision was adopted, since, as the Court has already stated (see paragraph 52 above), the question whether or not a statement of reasons is adequate must be assessed with regard not only to its wording but also to its context.

56 The Court finds in that regard, first, that the contested decision was adopted on 31 December 1993 after a particularly long period of time had elapsed. It appears that the Commission needed over 51 months in which to deal with the applicants' initial complaint, which was submitted on 4 September 1989. Moreover, during that period of 51 months, the Commission adopted two decisions, the first on 5 February 1992 and the second over 22 months later, on 31 December 1993.

57 Second, the Commission stated in its correspondence with the complainants that their complaint raised a number of important points of principle calling for an in-depth examination and extensive technical analysis (letter of 28 June 1991, Annex 14 to the application), that the matter appeared particularly complex (letter of 9 October 1991, Annex 15 to the application), that the transfer of activities of the French post office to a subsidiary 'could conceal certain factors constituting aid under the Treaty' and that 'Sécuripost certainly received support from the parent

company and from the State when it was set up and started operating in the market' (decision of 5 February 1992, Annex 6 to the application).

58 Third, despite those statements, the inquiry into the complaint gave rise to the adoption of an initial decision on 5 February 1992, 29 months after the original complaint was submitted. That initial decision rejecting the complaint formed the subject-matter of an action for annulment before the Court of Justice, and was subsequently withdrawn by the Commission. The Commission then decided to undertake a further inquiry into the complaint, in the light of the terms of the action for annulment brought before the Court of Justice on 13 April 1992 (Annexes 6 and 8 to the application). It should be noted, however, that the action for annulment merely repeated the various objections raised by the applicants in their original complaint, as subsequently recapitulated, without raising any new objections. Nevertheless, the bringing of that action prompted the Commission to withdraw its decision of 5 February 1992 and to carry out a further inquiry.

59 Furthermore, the Commission informed the applicants that, following the withdrawal of its initial decision of 5 February 1992, it had entered the measures complained of in the register of unnotified aids under No NN 5/93 (Annex 10 to the application). It also sent a letter on 31 December 1993, the date of its adoption of the contested decision, to the French Ministry of Foreign Affairs, in which it regretted that 'no advance notice was given pursuant to Article 93(3) of the Treaty in relation to any of the measures taken with regard to ... Sécuripost' and drew the attention of the French Government to its obligation to notify any plans which may constitute State aid falling to be examined under Article 92 et seq. of the Treaty (Annex I to the defence).

60 In the light of the foregoing findings, it is necessary to examine whether, in the present case, the reasons set out in the contested decision are capable of supporting the contention that the measures complained of by the applicants did not constitute State aid within the meaning of Article 92 of the Treaty.

61 As regards, first of all, the secondment of administrative staff, the Court notes the applicants' objection that the Commission failed to examine the specific advantage, criticized in the recapitulation of their complaint dated 24 July 1992, arising from the fact that the officials seconded to Sécuripost by the post office may at any time be reassigned to the department originally employing them if staff reductions prove necessary in the undertaking to which they are seconded, without that undertaking having to pay in such circumstances any compensation for redundancy or dismissal whatever. The Commission, supported by the intervener, replies that non-payment of compensation for redundancy or dismissal was merely a secondary aspect of an objection raised in the various complaints, regarding the total or partial payment by the State of the remuneration of the staff of Sécuripost, and that it did not, consequently, consider it necessary to analyse that point and to respond expressly to it.

62 The Court finds that, by the Commission's own admission, it did not respond to that objection in the contested decision. Whilst it is clear from the case-law that the Commission is not required to discuss all the issues of fact and law raised by the parties concerned (judgment of the Court of First Instance in Case T-3/89 *Atochem* v *Commission* [1991] ECR II-1177, paragraph 222), it is none the less obliged to give a reasoned answer to each of the objections raised in the complaint, if only by referring where appropriate to the *de minimis* rule where the point in question is so insignificant as not to warrant the Commission spending any time on it. Consequently, the decision is vitiated in that respect by an inadequate statement of reasons.

63 Furthermore, in the contested decision the Commission answered the objection concerning the absence of contributions by Sécuripost to unemployment insurance funds by stating that 'on the other hand, no contributions need to be made to unemployment insurance funds in respect of the employment of officials on secondment, since their employment is guaranteed by their status as officials'. The Commission has accordingly acknowledged that no contributions to unemployment insurance funds were paid by Sécuripost, but has not provided the slightest explanation as to why it concluded that that divergence from the system applying to Sécuripost's competitors did not constitute State aid within the meaning of Article 92 of the Treaty. It follows that the reasons given in the contested decision are inadequate in this respect as well.

64 As regards, second, the placing of premises at Sécuripost's disposal, the Court notes the applicants' objection that the Commission failed to justify to the requisite legal standard the rejection of their complaint in relation to the placing of premises at Sécuripost's disposal on excessively favourable terms and, in particular, that it failed to examine the rental levels, even though the standard rents charged by the Property Service are known to be lower than those charged for premises to which Sécuripost's competitors have access. The Commission states in reply that, in their initial complaint, the applicants claimed that certain premises were placed at Sécuripost's disposal free of charge. Since that claim proved to be incorrect on the basis of the information obtained from the French Government, the Commission had rejected the complaint in that regard. It maintains, therefore, that the objection relating to the rental levels at which the premises are let to Sécuripost differs from that raised by the applicants during the administrative procedure, and that that is why it was unable to give a specific and detailed response to it in its decision.

65 In the Court's view, it is apparent from the information obtained from the French Government, as set out in the decision, that Sécuripost's premises are made available to it within the framework of a special system of precarious occupancy, and that, in its decision, the Commission provided no details regarding either the rents actually charged to Sécuripost, or those which Sécuripost's competitors have to pay for comparable premises. It follows that the decision is not adequately reasoned in that regard, in that it does not explain why the possible non-receipt by the French Government of rent corresponding to the market rate should not amount to a transfer of funds from the Government to Sécuripost.

66 The Court considers that, in the circumstances of the case, the Commission was under a duty, by virtue of its obligation to carry out a detailed and impartial examination of the matter referred to it, to inquire into the level of the rents paid by Sécuripost and, if necessary, to compare them with those paid by its competitors. Where the Commission decides to reject a complaint concerning a measure characterized by the complainant as unnotified State aid, without allowing the complainant to comment, prior to the adoption of the definitive decision, on the information obtained in the context of its investigation, it is under an automatic

obligation to examine the objections which the complainant would certainly have raised if it had been given the opportunity of taking cognizance of that information, as was the position in the present case, having regard to the fact that the Commission was aware that the premises in question had been made available to Sécuripost in accordance with the provisions of the State Property Code, the terms of which for the letting of property are different from those of the market. It follows that, in this regard also, the contested decision is inadequately reasoned.

67 As regards, third, the supply of fuel at a reduced tariff and the maintenance of vehicles, the Court notes the applicants' objection that the Commission failed not only to look into the tariffs charged to Sécuripost by Total and Shell for supplying fuel for its vehicles but also to investigate the rates charged by SNAG for the maintenance of Sécuripost's vehicles. The Commission states in reply that the applicants' allegations concerning the supply of fuel by Total and Shell were not, in the light of the statements made by the French authorities, adequately made out, with the result that it was justified in not answering them expressly. As regards the maintenance of Sécuripost's vehicles by SNAG, the Commission found that that service was provided on the basis of 'an invoicing system similar to that used by private garages'. Since there was nothing to suggest that that invoicing system might conceal any element of State aid whatever, the Commission decided to reject that objection.

68 As regards the supply of fuel, the Court considers that the Commission was right to rely on the explanations given by the French Government, inasmuch as the allegations made in the complaint concerned the use of post office petrol vouchers. Those specific allegations were not supported by any evidence. The validity of the Commission's approach is corroborated, moreover, by the fact that the applicants did not maintain their allegations in that regard before the Court. Furthermore, it is not open to the applicants to object that the Commission failed to examine the tariffs charged to Sécuripost by Total and Shell, since the Commission had no

reason to suppose that commercial companies might charge favourable rates to Sécuripost at the behest of the French Government. It follows that the decision is adequately reasoned in this regard.

69 With regard to the maintenance of Sécuripost's vehicles by SNAG, the Court notes that, in its decision, the Commission did not answer the objection raised by the applicants, since it merely referred to the invoicing system applied by SNAG, without examining whether or not the rates charged disclosed the existence of State aid, even though it was that very point to which the applicants objected. That deficiency in the reasons for the decision is all the more unjustified since, as the Commission stated, the invoicing system used by SNAG was similar to that operated by private garages and the Commission could therefore easily have compared their respective rates. Consequently, the Court considers that in this regard the reasons given in the decision are inadequate.

70 As regards, fourth, the loans granted by Sofipost to Sécuripost, the Court notes the applicants' objection that the Commission failed to inquire whether a loan granted at half a percentage point over the bank base rate might not constitute a special advantage by comparing that rate with the rate which Sécuripost's competitors were able to obtain on the banking market at that time. The applicants further state that it was not open to the Commission to refer to the rate provided for in its communication on regional State aid schemes as justification for the rate used by it for purposes of comparison in its examination of the complaint, since the object of that communication was quite different from that of the State aid alleged to exist in the present case. Having pointed out that the objection raised by the applicants in their application differs from that appearing in their initial complaint, the Commission states that it always uses the same reference rate to determine whether or not a loan contains an element of State aid within the meaning of Article 92 of the Treaty, in order to ensure consistency and transparency.

71 The Court considers that, as regards the loan of FF 5 000 000 granted to Sécuripost for the 1987 financial year, the Commission was right to rely on the explanations

given by the French Government. The Commission explained that the loan of FF 5 000 000 constituted a sum advanced by a shareholder which was incorporated in Sécuripost's capital in 1988. Furthermore, the Commission stated that that advance by a shareholder was not in the nature of State aid, since the fresh capital was subscribed as it would have been by a private investor operating in normal open market conditions, and it is natural for the assets and capital needed for the operation of a new business undertaken by an investor to be transferred only gradually by the latter. The Commission has accordingly provided an adequate statement of reasons for its decision on that point.

72 On the other hand, the Commission has not answered to the requisite legal standard the applicants' objection concerning the advance to Sécuripost of the sum of FF 15 000 000 for the 1989 financial year. In the contested decision, the Commission merely stated that that sum was granted within the framework of a global agreement between the companies in the Sofipost group and that the interest rate applied in that agreement was equal to half a percentage point over the bank base rate. Consequently, the Commission infers from this that the objection should be rejected, since the loan of FF 15 000 000 represented a commercial transaction. It must be stated in that regard that the fact that the transaction was of a commercial nature is not in itself sufficient to show that it does not amount to State aid within the meaning of Article 92 of the Treaty, since such a transaction may none the less be effected at a rate which gives Sécuripost a special advantage by comparison with its competitors. Furthermore, for the reasons referred to in paragraph 66, it is not open to the Commission to rely on the fact that the objection raised before the Court differs from that made in the initial complaint. Consequently, the Court considers that the decision is inadequately reasoned with regard to this point.

73 The Court notes, moreover, the applicants' submission that the contested decision is vitiated by a manifest error of assessment as regards, in particular, the prices charged by Sécuripost to the post office. According to the applicants, the agreements between the post office and Sécuripost, particularly those relating to money transportation services, were concluded at a rate substantially higher than that normally charged in that sector. They contend that this resulted in a grant of aid from

the French State to Sécuripost equivalent to the difference between the rates charged in dealings with the post office and normal market prices. The Commission has sought to dispose of that objection in the contested decision by means of a comparison with a very substantial contract awarded to Sécuripost for the transportation of moneys from Casino shops. The applicants submit in that regard, first, that the Commission did not state the year to which its calculations applied, despite the fact that the prices charged in dealings with the post office changed over the course of time and, second, that it is in any event apparent from the Commission's calculations that the prices charged by Sécuripost to the post office were some 10% higher than those charged to the Casino chain.

74 The Court notes that, in the contested decision, the Commission merely compared the prices charged for the provision of services to the post office and to Casino, that the comparison was based solely on information relating to 1993, and that no attempt was made to justify or clarify it. The Commission has not sought in any way to explain in the contested decision why it concluded that the differences between the prices charged in 1987, 1988, 1989, 1990, 1991 and 1992 did not constitute State aid within the meaning of Article 92 of the Treaty. Nor does the Commission deny that those price differences existed during the years prior to 1993, even though it contends in the present proceedings, that is to say, subsequently to the contested decision, that the reason for that difference, at least from 1989 onwards, was due to differences in geographical spread between post office branches and Casino shops. Furthermore, there was a steady fall in the rates charged by Sécuripost to the post office between 1987 and 1993, in accordance, in particular, with the framework agreement between the post office and Sécuripost of 30 September 1987, thus further magnifying the differences cited by the applicants.

75 In the absence of any details regarding the rates charged by Sécuripost to the post office and to other customers in 1987, 1988, 1989, 1990, 1991 and 1992, the Court considers that it does not have at its disposal the requisite information enabling it to review the validity of the contested decision, and that it is consequently necessary for it to raise of its own motion the ground of lack of reasons in the contested decision on that point (judgment of the Court of Justice in Case 18/57 *Nold* v *High Authority* [1959] ECR 41 and judgments of the Court of First Instance in

Case T-45/90 *Speybrouck* v *Parliament* [1992] ECR II-33 and in Case T-61/89 *Dansk Pelsdyravlerforening* v *Commission* [1992] ECR II-1931, paragraph 129). The Court therefore considers that the contested decision is inadequately reasoned in this regard.

76 Furthermore, in answering that objection in the contested decision, the Commission merely repeated verbatim the reply given by the French Government in its letter to the Commission of 12 January 1993, and there is nothing in the statement of reasons for the contested decision to suggest that the Commission verified its validity.

77 Furthermore, the Court considers that it is not open to the Commission to rely, as it sought to do at the hearing, on the alleged flimsiness of the evidence put forward by the complainants in support of their complaint, in order to justify the inadequacy of the reasons for its decision. It is very much more difficult for the complainants than it is for the Commission to gather the information and evidence needed in order to verify the validity of a complaint which the Commission itself acknowledged as credible in its letters of 28 June 1991 and 9 October 1991. Complainants are generally faced with the administrative obstacles inherent in steps of this kind, since they have to obtain confirmation of their objections from the very authorities whom they suspect of having infringed the Community rules on State aid, without having any means of coercion at their disposal. The Commission, on the other hand, has at its disposal more effective and appropriate means of gathering the information necessary for a detailed and impartial investigation of the complaint. In the present case, having regard to the difficulties inevitably encountered by the applicants, the evidence produced by them in support of their complaint, and in support of the various recapitulatory observations submitted by them to the Commission, would appear to support their objections to an extent sufficient to require the Commission to provide a reasoned response to each of them. The Court points out, in this regard, that the circumstances of the case are such as to reinforce the Commission's obligation to furnish a statement of reasons (see paragraphs 56 to 59 above).

78 The Court considers, moreover, that the Commission's obligation to state reasons for its decisions may in certain circumstances require an exchange of views and

arguments with the complainant, since, in order to justify to the requisite legal standard its assessment of the nature of a measure characterized by the complainant as State aid, the Commission needs to ascertain what view the complainant takes of the information gathered by it in the course of its inquiry (see the Opinion of Advocate General Tesauro in Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487, at I-2502, paragraphs 17 to 19). In those circumstances, that obligation constitutes a necessary extension of the Commission's obligation to deal diligently and impartially with its inquiry into the matter by eliciting all such views as may be necessary.

79 In addition, it is not open to the Commission to claim, as it did at the hearing, that to undertake such an exchange of views and arguments in relation to the contents of the complaint and its own investigation would in fact result in its being required to initiate the procedure provided for by Article 93(2) of the Treaty, and thus suspend the implementation of the measure in question, even though that measure might ultimately prove not to constitute State aid within the meaning of Article 92 of the Treaty. In some cases, as the Commission acknowledged at the hearing, it passes on to the complainants the comments sent to it by the Member State concerned, during the preliminary stage of the examination procedure. The Commission consequently has at its disposal, during the preliminary stage of the procedure, adequate means to carry out a diligent and impartial examination of the complaint and to comply with its obligation to give reasons for its decision to reject a complaint on the ground that the measure complained of does not constitute State aid within the meaning of Article 92 of the Treaty. The Court further notes the Commission's acknowledgement at the hearing that it has already had occasion to initiate the procedure provided for by Article 93(2) of the Treaty, with a view to examining on an *inter partes* basis the nature of the measure at issue, and to find, on completion of that procedure, that the measure at issue does not constitute State aid within the meaning of Article 92 of the Treaty.

80 It follows from all of the foregoing that the contested decision must be annulled, since the reasons stated for the decision do not bear out the conclusion that the measures complained of by the applicants did not constitute State aid within the meaning of Article 92 of the Treaty. There is therefore no need for any further examination of the other pleas.

Costs

81 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has been unsuccessful in its submissions, and since the applicants have applied for costs, it must be ordered to pay the costs.

82 Pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure of the Court of First Instance, the intervener must be ordered to bear its own costs.

On those grounds,

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

hereby:

1. Annuls the Commission decision of 31 December 1993 rejecting the applicants' request for a declaration by the Commission that the French Republic has infringed Articles 92 and 93 of the Treaty by granting aid to Sécuripost;

2. Orders the Commission to bear its own costs and to pay the costs of the applicants;

3. Orders the French Republic to bear its own costs.

Lenaerts Schintgen Briët

García-Valdecasas Lindh

Delivered in open court in Luxembourg on 28 September 1995.

H. Jung K. Lenaerts

Registrar President