17 Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby rules:

1. **Commission Decision No 79/187 of 30 January 1979 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1979 is annulled in so far as it concerns the applicant.**

2. **The Commission is ordered to pay the costs.**

Touffait Pescatore Due

Delivered in open court in Luxembourg on 5 March 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 31 JANUARY 1980 [1]

Mr President,
Members of the Court,

The proceedings on which I shall now give my opinion concern the special arrangements for the importation of frozen beef and veal already familiar to the Court from Case 92/78 *(Simmenthal S.p.A.* v. *Commission,* judgment of 6 March 1979 [1979] ECR 777). With regard to the legal background — at that time Regulation No 535/79 on the

1 — Translated from the German.

temporary suspension of the linking arrangements (Official Journal of 22 March 1979, No L 71, p. 15) and Regulations Nos 1136, 1137 and 1138/79 on the alteration of the arrangements (Official Journal of 9 June 1979, No L 141, pp. 10, 13 and 15) had not yet entered into force — I can thus refer to Case 92/78.

The applicant, who runs a meat-processing factory, in which beef and veal as referred to in Article 14 of Regulation No 805/68 (Official Journal, English Special Edition 1968 (I), p. 187) is processed, participated in the "Notice of invitation to tender No D P 5 — Regulation (EEC) No 2900/77 — for the sale of certain frozen bone-in beef held in stock by the German intervention agency", a notice of invitation to tender to which the "General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing" (Official Journal of 13 January 1978, No C 11, pp. 16 *et seq.)* clearly still applied. That participation comprised *inter alia* five tenders which were submitted on 9 January 1979 to the German intervention agency, the Bundesanstalt für landwirtschaftliche Marktordnung [The Federal Agency for the organization of the Agricultural Market]. Of those tenders one concerned the meat of bulls which was stored in Bremen, that is to say, in the Federal Republic of Germany, and four related to the meat of steers which was stored in Denmark. The tenders were notified by the intervention agency to the Commission as is provided for in Article 4 of Regulation No 2900/77. At this point an error was clearly committed which was only discovered at the stage of the defence in this case. According to the Bundesanstalt's telex message all the tenders of the applicant concerned meat stored *in Germany.* According to the above-mentioned general notice of periodic invitations to tender, separate tenders were required to be submitted for the respective countries of storage; furthermore in accordance with Article 3 of Regulation No 1805/77 (Official Journal of 5 August 1977, No L 198, p. 19) the Commission was required to fix minimum selling prices for each Member State in which the products were stored. As a result of the erroneous notification by the Bundesanstalt the applicant's tenders were disregarded in fixing the minimum prices for meat stored in Denmark.

On 29 January 1979 a decision concerning those minimum prices and the quantities of beef to be imported free of the levy was taken in the competent management committee which decision, it appears, was immediately notified to the German intervention agency. The necessary formal Commission Decision was taken on the next day and published in the Official Journal of 16 February 1979 (No L 41, p. 49).

Since the applicant's tenders were less than the minimum prices fixed for the Federal Republic of Germany — and indeed for meat stored in Denmark — they were not taken into account in the invitation to tender.

The applicant was in fact informed of this by a communication from the Bundesanstalt of 29 January 1979 in which it was stated *inter alia:* "We have to notify you that in accordance with the decision of the Management Committee for Beef and Veal your tender cannot be accepted".

On 7 May 1979 the applicant instituted proceedings before the Court of Justice against that decision. It claims that the Court should annul the said Commission Decision in so far as it affects the applicant. It relied upon the judgment in

Case 92/78 which was delivered in the meantime and on the arguments advanced in that case by the Simmenthal company.

The Commission on the other hand considers primarily that the application is inadmissible on a number of grounds which I shall shortly discuss. It accordingly contends first of all that the application should be dismissed as inadmissible. In the alternative it considers that the application is in any event unfounded as regards the tenders relating to meat of the German intervention agency stored in Denmark.

In my opinion this case should be viewed as follows:

I — Admissibility

1. Of the grounds for the inadmissibility of the application the most important is that of *failure to observe the time-limit.*

In this connexion the Commission expressed the view that, in the case of a tendering procedure such as the one here, which terminates in a Commission Decision and which in accordance with Article 13 of Regulation No 216/69 and with 6 (d) of the above-mentioned general notice of periodic invitations to tender provides for the tenderers to be notified individually of the result of their respective tenders, the period for instituting proceedings begins to run from receipt of such notification where it is effected before the publication of the Commission Decision which, under Article 191 of the EEC Treaty, is not necessary for that decision to take effect. Since the individual notification in this case was made on 5 February 1979 it must be considered that the lodging of 03044the application is out of time, even having regard to the extension on account of distance under Article 81 of the Rules of Procedure.

On the other hand the applicant relies on Article 81 (1) of the Rules of Procedure which states:

"The period of time allowed for commencing proceedings against a measure adopted by an institution shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the 15th day after publication thereof in the Official Journal of the European Communities".

This must be viewed as something approaching a principle of most favoured treatment in accordance with which, where a contested decision is not merely published, although publication is not required, but also individually notified to the persons concerned, the later of the dates must be taken for the purposes of instituting proceedings. As the Commission acknowledges the application was lodged in due time after the publication of the Commission Decision. If that principle were not to be generally recognized it would anyhow be necessary in this case to have regard to the publication of the Commission Decision. The notification issued by the Bundesanstalt to the applicant was in particular not only incomplete, in so far as an important factor, the minimum price fixed by the Commission, was lacking; there was no notification at all of a Commission Decision since the decision was only adopted on 30 January 1979 and the communication from the Bundesanstalt is dated 29 January. Finally the communication of the Bundesanstalt refers to a decision of the Management Committee for Beef and Veal and not to a Commission Decision.

In interpreting Article 81 of the Rules of Procedure, which is certainly not entirely clear, I consider it necessary to assume that it was not intended in the Rules of Procedure to depart in principle from the arrangements laid down in the Treaty. In any event the purpose of Article 81 is to establish clearly when the period for instituting proceedings begins to run and, where publication in the Official Journal is a *requirement*, to provide an extension in view of the fact that a certain time is necessary for delivery of the Official Journal in the Member States and that such delivery takes place at different times. Accordingly the decisive provision is the third paragraph of Article 173 of the EEC Treaty which reads:

"The proceedings provided for in this article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be".

It is accordingly clear that here "notification" is to be understood as "publication". In accordance with that provision however it may in fact be taken — that is how the words "as the case may be" are to be interpreted — that it does not indicate something in the nature of the principle of most favoured treatment; instead it is clear that it is the time of notification which is relevant when notification is an important factor in the applicability of a measure and that with regard to individual decisions in principle the time of *their* receipt is the decisive element.

It must also be recognized that that interpretation is indicated by common sense. Accordingly the Commission's view should be upheld when it states that it is entirely sufficient to meet the need for the protection of legal rights if the period for commencing an action is calculated from the time of receipt of an individual notification. On the other hand if, on the basis of "most favoured treatment" the period were permitted to run from the time of a subsequent publication which was not obligatory the frequent delays in the publication of measures whose publication is not obligatory would often lead to a considerable extension of the period for commencing proceedings or indeed to periods which had already expired starting to run again which certainly would not serve the ends of legal certainty. Furthermore if the applicant's view were upheld the Commission might be tempted, in order to avoid these consequences, to refrain from the publication of such measures which is likewise contrary to the interests of traders.

However if the interpreation of the Treaty and of the Rules of Procedure favoured by the Commission is approved in principle it further remains to ascertain whether in this case the notification received by the applicant is sufficient to meet the requirements which must be fulfilled for the period for commencing proceedings to start running.

In this connexion it may be presumed that notification of the measure in its entirety is not required; that is required as a condition for measures to take effect, within the meaning of Article 191 of the EEC Treaty, only in relation to the notification of decisions to those whom they are addressed, which in cases like this are the Member States. In the case of third parties who are affected it should be sufficient for causing the period for instituting proceedings to start to run that such parties are officially notified — not necessarily by the actual authority taking the decision but alternatively by an agency — of the essential contents, specifically relevant to them, of the measure so that they are able to decide whether they wish to institute proceedings before the Court of Justice.

I may refer here to Article 19 of the Protocol on the Statute of the Court of Justice of the EEC in accordance with which a contested measure may be lodged even after the expiry of the period for commencing proceedings, which certainly means that the time from which the period begins is not dependent on a full acquaintance with the measure. In this case it may also be pointed out that, in the General notice of periodic invitations to tender (as also in Article 13 of Regulation No 216/69) it is expressly provided that tenderers shall be informed without delay by the intervention agency of the outcome of their participation in the invitation to tender.

There appears to me no doubt that in this case the communication sent to the applicant by the Bundesanstalt must suffice. In this connexion it certainly cannot be objected that that communication refers to a decision of the Management Committee for Beef and Veal and that it is dated 29 January whilst the formal Commission Decision was only adopted on 30 January 1979. This is explained, as we have heard, by the fact that the outcome of the consultations in the Management Committee for Beef and Veal are transmitted as quickly as possible to the national authorities to enable them without delay to begin preparation of the documents notifying those concerned. At any rate there are no grounds for believing that the applicant, who is fully conversant with the tendering procedure — a point which it has not disputed — was thereby misled; the applicant was certainly in no doubt that the measure in question merely constituted the *views* of the Management Committee for Beef and Veal and that the final decision in this matter would be taken by the Commission. Likewise I consider that it is not of decisive importance that it was merely stated in the notification that the applicant's tenders had not been accepted because they did not reach the level of the minimum prices and that the minimum prices themselves — other additional details do not appear in the Commission Decision — were not stated in the communication. In fact that did not constitute any impediment to instituting proceedings because a precise acquaintance with this feature of the decision was not material; the applicant in fact criticizes only the arrangement of the linking system as such.

The objection of inadmissibility thus appears to me justified in principle; accordingly findings to this effect with regard to the time-limit should at any rate be incorporated in judgment. Nevertheless the question may still be raised whether in this case that objection *requires* the application to be dismissed as inadmissible. It must however be conceded that the provisions in question are not entirely clear and that the Court has not yet provided an interpretation of them. On that ground, and not least with regard to the content of the notification from the Bundesanstalt, one might well venture in the present case — on the basis, as it were, of the principles underlying Article 42 of the Protocol on the Statute of the Court of Justice of the EEC, that is to say, overrunning the time-limits given the existence of unforeseeable circumstances or of *force majeure* — to consider that the application was not out of time. I accordingly refrain from proposing that the application should be dismissed as inadmissible merely on that ground and shall thus examine the remaining details of the case.

2. A second objection of inadmissibility relates to that part of the contested decision in which the minimum price is fixed for meat of the German intervention agency stored in Denmark. In this connexion we have learned that

when the applicant's tenders were passed on by the German intervention agency to the Commission an error occurred in so far as the applicant's tenders for intervention meat stored in Denmark were included under the tenders for intervention meat stored in Germany. The Commission thus claims that it did not know of the applicant's tenders when it issued its decision relating to the meat in Denmark and the tenders are thus not included in that part of the decision and the applicant accordingly is not affected by it.

I consider that this view is not tenable. On this point I have regard to the course of the tendering procedure as it is laid down in Regulation No 216/69 and also in the General notice of periodic invitations to tender (Official Journal of 13 January 1978, No C 11, p. 16 *et seq.*) which has been frequently mentioned. Accordingly, it is provided (Article 9 of Regulation No 216/69) that persons participating in the tender shall submit offers in writing to the intervention agency. Article 11 of the regulation provides that in the light of the tenders received, minimum selling prices shall be fixed in accordance with the management committee procedure laid down in Article 27 of Regulation No 805/68. According to Article 12 if the tender is for less than the minimum price, it shall be refused. Finally according to Article 13 each tenderer shall immediately be informed by the intervention agency of the decision on his tender.

It is accordingly clear that tenders are duly and effectively incorporated into the procedure when they are lodged *with the competent intervention agency*. It is also clear that when the Commission fixes the minimum price, which is fundamentally on the basis of the tenders, although not exclusively so, a binding decision is taken upon the outcome of *all* the tenders which have been submitted. In my view this is how the said Article 12 of Regulation No 216/69 is to be understood and I cannot conceive that the outcome of duly submitted tenders should remain in doubt because the intervention agency committed an error in their classification in the course of transmitting them or that it is possible to disregard them for that reason. Furthermore, this is how the jugdment in Case 92/78 (paragraphs 23 to 26) is to be understood when it is stated that the Commission directly determines the fate, be it favourable or unfavourable, of each of the tenders submitted in answer to the notices of invitations to tender.

Since in the present case however there is no doubt that the applicant's tenders were duly submitted to the German intervention agency it must consequently be accepted that in fixing the minimum price for the intervention meat stored in Denmark the fate of those tenders was also definitively settled, so that because of the Commission Decision they could not be taken into consideration by the intervention agency with which the necessary contracts of sale would have had to be concluded. Finally it cannot be maintained that the Commission Decision is entirely unconnected with a number of the applicant's tenders and that accordingly the application is inadmissible in so far as it concerns the rejection of the Danish tenders.

It will moreover be necessary subsequently to consider what are the consequences of the error in transmission of the tenders, whether the introduction of an error in the basis of the decision, for which the intervention agency is

responsible, means that the Commission Decision is vitiated in this respect by a particular defect justifying its annulment or whether an action, perhaps for damages, lies against the German intervention agency alone.

3. In the view of the Commission the application is finally inadmissible because the applicant has no *legal interest* in the annulment of the contested decision.

It considers that such an interest, founded on obtaining a change in the system through criticism of the legal basis of the decision, certainly no longer exists since the delivery of the judgment in Case 92/78 in which that criticism has already been upheld. There is likewise no such interest where the advancement of possible claims for damages is concerned because, according to the Community system, it is unnecessary as a preliminary to annul an unlawful harmful act. Finally the existence of such an interest is also to be denied in that the Commission is unable to make good the legal position of the applicant since it is impossible in law and in fact for it now to accept the latter's tenders or at least to issue licences for the importation of frozen meat free of the levy.

(a) It must in principle be acknowledged with regard to those objections that the mere fact that a contested measure is unlawful does not in itself provide sufficient grounds for instituting proceedings for annulment. In fact it is necessary in addition to establish that the finding of unlawfulness — that is in this case the declaration that the Commission Decision in so far as it has led to the rejection of the applicant's tenders was not lawful — has practical consequences for the applicant, that is to say, that it does not merely confirm the criticism which the Court of Justice has already held justified with regard to particular import arrangements.

(b) It is certain that there is no sufficient legal interest which arises from objections concerning the *legal basis* of the contested decision: those objections were found to be irrelevant in the judgment in Case 92/78 before the present proceedings were instituted. That judgment required the Commission to effect appropriate amendments and it could automatically be taken that that obligation would be fulfilled, as indeed it was by the adoption of Regulations Nos 1136, 1137 and 1138/79. However, since in this case further points concerning the validity of the rules have not been advanced — the applicant adopted in their entirety the submissions of Simmenthal in Case 92/78 — a legal interest does not in fact exist.

(c) With regard to possible *claims for damages* the argument that such claims clearly have no prospect of success must be rejected; in this connexion the Commission relies on the one hand on the consideration that the measures which are alleged to have caused the harm, that is to say, the legal basis for the contested decision, are of general application and were adopted in the context of its discretion as to economic policy and on the other on my appraisal of the linking system contained in my opinion in Case 92/78 and the criticism already advanced against the new rules

which establishes that in any event there can be no question of a serious breach of a superior rule of law. In fact in the context of examining the admissibility of an application for annulment which may also be relevant in proceedings for damages it is impossible to decide in advance a case of that nature which is subject to further conditions in addition to unlawfulness. In my view this would constitute interference in another independent action which might be instituted and such interference must be avoided in the restricted consideration of the admissibility of proceedings for annulment.

Although it must on the other hand be conceded that the Commission is correct in its view that a finding that a measure is unlawful in proceedings for annulment is not a condition for the institution of proceedings for damages it is nevertheless doubtful whether that argument alone suffices to establish that no legal interest exists in this case. In this matter I am not thinking so much of the applicant's argument that German law recognizes an interest in obtaining a finding that an administrative measure is unlawful because such a finding constitutes an important step in a future claim for damages. However in my view it is impossible to rule out the consideration — which may constitute a sufficient interest — that in proceedings for damages it is a relevant objection that the applicant did not duly request the annulment of a measure which it considered unlawful and failed to claim, at least in part, due redress in reliance on the obligations of the Commission under Article 176 of the EEC Treaty.

However this argument should not at this stage be examined in detail in all its implications for reasons which are connected with the third objection of the Commission against the existence of a legal interest.

(d) As it will be recalled the Commission's primary claim was that there was no legal interest in the proceedings because the annulment of the contested decision could in no way lead to the adoption of a new measure which could be of any advantage to the applicant.

In this connexion the argument has not been advanced, as it was for example in Case 243/78, that rejection of the applicant's tenders was in any event inevitable since they were under the level of the normal selling price for intervention meat — in fact the applicant's tenders were considerably above that level. The Commission was also unable to establish with certainty that a review of all such tenders as were from processors or persons acting for or on behalf of such processors would at any rate have resulted in minimum prices higher than the applicant's tenders. It merely argued — which in this connexion is certainly insufficient — that the applicant's tenders were amongst the lowest and that the Commission — since the regularity of the tendering procedure had not been called in question — was in no way obliged to accept every tender exceeding the level of the normal sale price.

The Commission instead takes the view that it is in any event *impossible* after the annulment of the contested decision to adopt a further decision favourable to the applicant. The invitation to tender in

fact related to specific quantities of meat of specific quality and stored in specific places and took place under specific market conditions. These quantities of meat were disposed of in their entirety in the course of the prescribed period. However if the applicant were allotted a specified quantity from stocks of comparable quality now available — in view of the altered conditions of the market and the different provisions regarding sale which are now in force — it would constitute not some kind of reinstatement but rather damages for the purposes of the law on compensation and perhaps even the conferment of an unjustified advantage. However if regard is had only for the issue of import licences, which is all that the applicant is basically interested in since meat from intervention stocks is always obtainable at normal selling prices, the weakness of the applicant's position in law and in fact is rendered even clearer. The import quotas provided for by the Council within the framework of its annual estimate have in fact all been allocated in the meantime. In order to comply with the applicant's request it would thus be necessary either to make provision for additional licences for the year 1979 or to issue licences in advance from the quantities estimated for the year 1980. However that would be in breach of a measure of the Council — the limitation on quantities to be imported fixed in the annual estimate — or, in the last-mentioned case, would place other tenderers at a disadvantage in 1980.

On the other hand the applicant considers that the Commission's compliance with a judgment annulling its measure need not necessarily take the form of restitution in kind. If difficulties arise in that connexion it is also possible to award the applicant a sum as damages in satisfaction of its action for making good the consequences of a measure (Folgenbeseitigungsanspruch) and thereby compensate it for the harm suffered.

The Commission again considers that this latter view is untenable. In its opinion there is no such legal principle in Community law. In so far as the applicant relies on German legal practices it must be found that they also do not extend so far. The said principles in fact apply in cases of so-called Eingriffsakten [adverse measures] having continuing effect but not in the context of the so-called Leistungsverwaltung [administrative measures whereby the administration grants the citizen certain advantages of an economic or social nature] as in the present case.

In my view this dispute goes far beyond what can be considered in establishing the existence of a proper legal interest. When the Court of Justice annuls a Commission Decision it is the *latter* which, under Article 176 of the EEC Treaty, is required "to take the necessary measures to comply with the judgment of the Court of Justice". The details of those measures are a matter for the institution in question which is required in adopting the appropriate measures to appraise the particular features of each case. It is undesirable in a prior procedure for annulment to make a detailed appraisal of the chances of success of an application to establish liability and in my view it is equally undesirable at this stage, within the framework of a procedure of a different nature, with a different object in view, to decide in advance what are the possible solutions which under Article 176 of the EEC Treaty must be considered after the annulment of the Commission Decision. The appropriateness of the course adopted by the Commission after the annulment and of the inferences which it draws therefrom or the point whether in the circumstances it has taken too narrow a view of its obligations under Article 176 of the EEC Treaty — which

nevertheless constitute obligations imposed by the *Treaty*, — must instead, if the circumstances require, be considered in detail in a subsequent action. In adopting this view I am fortified in no small measure by Case 92/78. The problem in fact arose in that case in a comparable manner since the Commission had expressly referred to the fact that the contested tendering procedure had already run its course and been concluded. Similarly the Court of Justice recognized that there existed an interest in proceeding with the action for annulment in view of the possibility of a subsequent appropriate rectification of the applicant's legal situation, which the Commission was expressly required by the judgment to review. This can only be interpreted as meaning that in that situation, that is in appraising the admissibility of an application for annulment, it must appear *conceivable* that after the annulment of the contested measure *some* rectification of the legal situation is to be considered.

The findings in that case must also be accepted as the basis for the present proceedings; at all events I consider that it is manifestly not impossible for the Commission to take certain steps and accordingly it cannot be maintained that a legal interest is totally lacking.

4. This means that none of the objections submitted by the Commission require the application to be dismissed as inadmissible.

II — Substance

It is plainly possible for me to be more brief in this second part of my investigation, in particular in view of the judgment in Case 92/78.

1. Lengthy treatment is at any rate unnecessary for that part of the decision in which the minimum prices for the intervention meat stored in Germany were fixed and in which regard was certainly had for the applicant's tender.

Since that decision is based on the special arrangements for imports which were in force up to the spring of 1979 and have already come up for consideration in Case 92/78 and since the applicant referring to the arguments put forward in Case 92/78 advanced the same criticisms the only finding which can be made in this matter is that the Commission Decision of 30 January 1979 must be annulled in so far as it concerns the applicant by reason of its defective legal basis.

2. With regard to the part of the decision relating to the meat of the German intervention agency stored in Denmark the Commission maintained that the failure to take the applicant's tenders into account stemmed from the error in their transmission and not from the unlawful arrangements. In fact even within the framework of other, proper arrangements the tenders would not have been taken into consideration and the contested arrangements were not the cause of their rejection. In addition the said error in transmission is something for which the German intervention agency is liable and thus cannot constitute an additional ground for annulment, for example on the argument that in so far as the Commission Decision relates to minimum prices for meat stored in Denmark it was adopted on an incomplete basis. If any other view were adopted it would lead to legal uncertainty since the errors of an

intervention agency which the Commission cannot influence could mean that an entire tendering procedure might be ineffectual.

This does not however appear to me convincing. As I have already stated I take the view that the decision concerning the intervention meat stored in Denmark also applies, in accordance with the provisions of Regulation No 216/69, to the applicant's tenders and excludes them. This part of the decision was likewise adopted on the basis of the contested arrangements. It is likewise based on provisions which, according to the ruling of the Court of Justice, are unlawful. Different arrangements might have led to the fixing of a different minimum price — it should in fact not be forgotten that there was only one tenderer for the meat stored in Denmark and that the quantities were clearly not used up; if a different price had been fixed the applicant's tenders might perhaps not have been excluded. It is accordingly difficult to maintain that the contested arrangements did not give rise to the decision adversely affecting the applicant.

With regard to the appraisal of the error in the transmission of the tenders to the Commission — which in fact does not call for any further examination — I am inclined to favour the applicant's view in this matter. The main point is that the applicant had to submit its tenders to the intervention agency and that they thereby effectively came within the scope of the market arrangements. Since in the tendering procedure the intervention agencies — as was stated in the judgment in Case 92/78 — are only concerned to collect the tenders, transmit them to the Commission and notify the participants of the result of the procedure it is in fact clear that in this matter they are to be considered as mere agents of the Commission. Errors committed which come within their competence must thus be taken into consideration in appraising the lawfulness of the Commission Decision. The Commission Decision must thus be considered unlawful because its basis was defective since all the necessary tenders were not considered. This view is not affected by the arguments concerning legal certainty advanced by the Commission since in such a case the Commission Decision need not be annulled in its entirety but only in so far as it is contested in an application and to the extent to which it concerns the particular applicant.

It follows that an annulment must also extend to that part of the decision which fixes minimum prices for meat of the German intervention agency stored in Denmark.

III — I am accordingly of the opinion that the application of the Könecke company should be considered admissible and that the contested decision should be declared null and void in so far as it has brought about a rejection of the tenders of the applicant. In view of this result the Commission should bear the costs of the proceedings.