JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)
14 May 1998 *

In Joined Cases T-339/94, T-340/94, T-341/94 and T-342/94,

Metsä-Serla Oy, a company incorporated under Finnish law, established at Helsinki,

United Paper Mills Ltd, a company incorporated under Finnish law, established at Valkeakoski (Finland),

Tampella Corporation, a company incorporated under Finnish law, established at Tampere (Finland),

Oy Kyro AB, a company incorporated under Finnish law, established at Kyröskoski (Finland),

represented initially by Hans Hellmann and Hans-Joachim Voges, Rechtsanwälte, Cologne, and subsequently by Hans Hellmann and Hans-Joachim Hellmann, Rechtsanwalt, Karlsruhe, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

applicants,

* Language of the case: German.

Commission of the European Communities, represented initially by Bernd Langeheine and Richard Lyal, of its Legal Service, acting as Agents, and subsequently by Richard Lyal assisted by Dirk Schroeder, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for annulment of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard, OJ 1994 L 243, p. 1),

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

composed of: B. Vesterdorf, President, C. P. Briët, P. Lindh, A. Potocki and J. D. Cooke, Judges,

Registrar: J. Palacio González, administrator,

having regard to the written procedure and further to the hearing on 8 July 1997,

gives the following

Judgment

Facts

1 These cases concern Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard, OJ 1994 L 243, p. 1), as corrected prior to its publication by a Commission decision of 26 July 1994 (C(94) 2135 final) (hereinafter 'the Decision'). The Decision imposed fines on 19 producers supplying cartonboard in the Community on the ground that they had infringed Article 85(1) of the Treaty.

2 By letter of 22 November 1990, the British Printing Industries Federation ('BPIF'), a trade organisation representing the majority of printed carton producers in the United Kingdom, lodged an informal complaint with the Commission. It claimed that the producers of cartonboard supplying the United Kingdom had introduced a series of simultaneous and uniform price increases and it requested the Commission to investigate whether there had been an infringement of the Community competition rules. In order to ensure that its initiative received publicity, the BPIF issued a press release. The content of that press release was reported in the specialised trade press in December 1990.

3 On 12 December 1990, the Fédération Française du Cartonnage also lodged an informal complaint with the Commission, making allegations relating to the French cartonboard market which were similar to those made in the BPIF complaint.

4 On 23 and 24 April 1991, Commission officials acting pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87, hereinafter 'Regulation No 17'), carried out simultaneous investigations without prior notice at the premises of a number of undertakings and trade associations operating in the cartonboard sector.

5 Following those investigations, the Commission sent requests for both information and documents to all the addressees of the Decision pursuant to Article 11 of Regulation No 17.

6 The evidence obtained from those investigations and requests for information and documents led the Commission to conclude that from mid-1986 until at least (in most cases) April 1991 the undertakings concerned had participated in an infringement of Article 85(1) of the Treaty.

7 The Commission therefore decided to initiate a proceeding under Article 85 of the Treaty. By letter of 21 December 1992 it served a statement of objections on each of the undertakings concerned. All the addressees submitted written replies. Nine undertakings requested an oral hearing. A hearing was held on 7, 8 and 9 June 1993.

8 At the end of that procedure the Commission adopted the Decision, which includes the following provisions:

'*Article 1*

Buchmann GmbH, Cascades SA, Enso-Gutzeit Oy, Europa Carton AG, Finnboard — the Finnish Board Mills Association, Fiskeby Board AB, Gruber & Weber GmbH&Co KG, Kartonfabriek "de Eendracht NV" (trading as BPB de

Eendracht NV), NV Koninklijke KNP BT NV (formerly Koninklijke Nederlandse Papierfabrieken NV), Laakmann Karton GmbH&Co KG, Mo Och Domsjö AB (MoDo), Mayr-Melnhof Gesellschaft mbH, Papeteries de Lancey SA, Rena Kartonfabrik A/S, Sarrió SpA, SCA Holding Ltd (formerly Reed Paper & Board (UK) Ltd), Stora Kopparbergs Bergslags AB, Enso Española SA (formerly Tampella Española SA) and Moritz J. Weig GmbH&Co KG have infringed Article 85(1) of the EC Treaty by participating,

— in the case of Buchmann and Rena from about March 1988 until at least the end of 1990,

— in the case of Enso Española, from at least March 1988 until at least the end of April 1991,

— in the case of Gruber & Weber from at least 1988 until late 1990,

— in the other cases, from mid-1986 until at least April 1991,

in an agreement and concerted practice originating in mid-1986 whereby the suppliers of cartonboard in the Community

— met regularly in a series of secret and institutionalised meetings to discuss and agree a common industry plan to restrict competition,

— agreed regular price increases for each grade of the product in each national currency,

— planned and implemented simultaneous and uniform price increases throughout the Community,

— reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time,

— increasingly from early 1990, took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises,

— exchanged commercial information on deliveries, prices, plant standstills, order backlogs and machine utilisation rates in support of the above measures.

(...)

Article 3

The following fines are hereby imposed on the undertakings named herein in respect of the infringement found in Article 1:

(...)

(v) Finnboard — the Finnish Board Mills Association, a fine of ECU 20 000 000, for which Oy Kyro AB is jointly and severally liable with Finnboard in the sum of ECU 3 000 000, Metsä-Serla Oy in the sum of ECU 7 000 000, Tampella Corporation in the sum of ECU 5 000 000 and United Paper Mills Ltd in the sum of ECU 5 000 000;

(...)'

9 The applicants are Finnish cartonboard producers and were addressees of the Decision. They market their products in the Community and on other markets through Finnish Board Mills Association — Finnboard (hereinafter 'Finnboard'). Finnboard is a trade association governed by Finnish law which, in 1991, had six member companies, including the applicants.

10 As is apparent from point 174 of the Decision, the Commission imposed a fine on Finnboard on the ground that it was Finnboard itself rather than the member companies which actively and directly participated in the cartel. However, it also decided that each of the applicant companies should be jointly and severally liable with Finnboard for that part of the total fine which is approximately proportionate to the cartonboard sales made on its behalf by Finnboard.

Procedure

11 The applicants, Metsä-Serla Oy, United Paper Mills Ltd, Tampella Corporation and Oy Kyro AB, brought these actions by applications lodged at the Registry of the Court on 14 October 1994. They were registered respectively as Cases T-339/94, T-340/94, T-341/94 and T-342/94.

12 By order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 30 March 1995, the four cases were joined for the purposes of the written procedure, the oral procedure and judgment.

13 By decision of the Court of First Instance of 19 September 1995, the Judge-Rapporteur was appointed to the Third Chamber, Extended Composition, to which the case was then re-assigned.

14 The Decision has been the subject of 17 other applications (Cases T-295/94, T-301/94, T-304/94, T-308/94, T-309/94, T-310/94, T-311/94, T-317/94, T-319/94, T-327/94, T-334/94, T-337/94, T-338/94, T-347/94, T-348/94, T-352/94 and T-354/94), brought by all the other addressees of the Decision, apart from Rena Kartonfabrik AS and Papeteries de Lancey SA. However, the applicant in Case T-301/94, Laakmann Karton GmbH, withdrew its action by letter lodged at the Registry of this Court on 10 June 1996 and the case was removed from the Register by order of 18 July 1996 (Case T-301/94 *Laakmann Karton GmbH* v *Commission*, not published in the ECR).

15 Lastly, an action was also brought by an association, CEPI-Cartonboard, which was not an addressee of the Decision. However, it withdrew its action by letter lodged at the Registry of the Court on 8 January 1997 and the case was removed from the Register of the Court by order of 6 March 1997 (Case T-312/94 *CEPI-Cartonboard* v *Commission*, not published in the ECR).

16 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber, Extended Composition) decided to open the oral procedure and adopted measures of organisation of procedure in which it requested the applicants to reply to certain written questions and to produce certain documents. The parties complied with those requests.

17 The parties presented oral argument and gave replies to the Court's questions at the hearing which took place on 8 July 1997.

Forms of order sought

18 The applicants claim that the Court should:

— annul the Decision in so far as it concerns them;

— in the alternative, reduce the amount of the fine;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the applications;

— order the applicants to pay the costs.

Subject-matter of the dispute

20 These applications concern only Article 3(v) of the Decision, pursuant to which the applicants are jointly and severally liable with Finnboard for the payment of the fine of ECU 20 000 000 imposed on it, amounting to ECU 7 000 000 (Metsä-Serla Oy), ECU 5 000 000 (United Paper Mills Ltd), ECU 5 000 000 (Tampella Corporation) and ECU 3 000 000 (Oy Kyro AB) respectively.

The application for annulment of the Decision

The single plea of infringement of Article 15(2) of Regulation No 17 and Article 85(1) of the Treaty

Arguments of the parties

21 The applicants submit that Article 15(2) of Regulation No 17 does not empower the Commission to adopt a decision making one undertaking liable for payment of a fine which has been imposed on another undertaking. That provision allows fines to be imposed only on the undertakings which committed the infringement of the competition rules. In Article 1 of the Decision the Commission finds definitively that the applicants did not infringe Article 85 of the Treaty. Moreover, the infringement of Article 85 allegedly committed by Finnboard is not imputed to them in the Decision.

22 In the present case, the Commission has based its arguments on vicarious liability, a concept which is distinct from liability for one's own acts: unlike the latter, vicarious liability is only secondary liability.

23 The Commission wrongly claims that a finding that the applicants committed an infringement of the competition rules is not essential before they can be held jointly and severally liable with Finnboard for payment of the fine. By virtue of the principles of legality of administrative action (see Joined Cases 42/59 and 49/59 *Snupat* v *High Authority* [1961] ECR 53) and legal certainty the Commission must have the requisite authority on which to base its decision. The Commission's allegation that it could equally well have chosen to impose a fine on the applicants was, in any case, contradicted by its own finding at point 174 of the Decision.

24 The applicants also dispute that the Commission was entitled to hold them jointly and severally liable for payment of the fine on the ground that an economic unit existed.

25 First, contrary to the Commission's arguments in the Decision, the judgment in Joined Cases 6/73 and 7/73 *Istituto Chemioterapico and Commercial Solvents* v *Commission* [1974] ECR 223 cannot be applied by analogy in the present case. In that case the Court accepted that the parent company and its subsidiary had infringed the competition rules together and were therefore jointly and severally liable for the infringement. A fine was accordingly imposed on each of them (see also the judgment in Case 48/69 *ICI* v *Commission* [1972] ECR 619). In the present case, however, the Commission did not consider that Finnboard formed an economic unit with one or other member company or even with all the member companies for the purpose of Article 85(1) of the Treaty. The relevant case-law on the subject of groups of companies concerns the attribution of responsibility for conduct on the market within a group whose main features are a 'hierarchical' structure and pursuit of the same economic objective.

26 Second, the argument that each of the applicant companies forms an economic unit with Finnboard is without foundation. The applicants do not control and, moreover, have no power to control Finnboard. In that connection, they point out that the member companies do not hold shares in Finnboard's capital; that they are not represented as companies on the board of directors, the members of that body being chosen by all the member companies; and, finally, that although the board of directors lays down general guidelines, it has no authority to give specific instructions to the Director-General of Finnboard. The applicants point out that a lack of power to control or issue instructions is considered significant in the case-law (see *ICI* v *Commission*, cited above).

27 In reply to the arguments put forward by the Commission, the applicants add that Finnboard pays its operating costs itself out of the income from commission received and that, contrary to the Commission's claims, those costs are not covered by the member companies.

28 Finally, they dispute that the Commission can justify its decision by arguing that Finnboard acted 'as the *alter ego* and in the interest of' the applicants. Citing the judgment of the Court in Case 170/83 *Hydrotherm* [1984] ECR 2999, they argue that even if there were an identity of interest, *quod non*, that would not lead to the conclusion that they and Finnboard formed an economic unit (judgment in *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission*, cited above, and judgment in Case T-102/92 *Viho* v *Commission* [1995] ECR II-17, particularly paragraphs 48 to 50). Each of the member companies of Finnboard pursues its own economic objective which cannot be deemed equivalent to that pursued by Finnboard.

29 They could not be held liable for acts of an unauthorised agent, as the conditions laid down by Article 15(2) of Regulation No 17 were not fulfilled: that provision requires the addressees of the Decision to have been the perpetrator or co-perpetrator of the infringement. Even if Finnboard had participated in a cartel in the purported interest of its member companies, they would not themselves automatically be members of the cartel.

30 Finally, neither the fear that Finnboard would fail to pay the fine nor considerations of feasibility (see point 174 of the Decision) justify the Commission's holding the undertakings jointly and severally liable.

31 The Commission takes the view that the fine was properly based on Article 15(2) of Regulation No 17, as that provision constitutes a sufficient legal basis for the applicants' joint and several liability for payment of the fine imposed on Finnboard.

32 The applicants did not have sales departments to undertake the marketing of their products. Marketing was therefore carried out exclusively through the intermediary of Finnboard. The contracts of sale for the products concerned were concluded

between the purchasers and Finnboard, the customer being invoiced in the name of the manufacturer concerned, and title passed directly from the member company of Finnboard to the customer. For each product, policy on pricing was decided by the member companies within Finnboard.

33 Finnboard was, moreover, obliged to follow the instructions given by the applicants regarding the volume and prices of the products which it sold on their behalf. Although it had a certain latitude in the negotiation of prices and conditions of sale, the arrangements corresponded to the distribution of tasks between the sales department and the commercial management of one and the same undertaking. As the applicants had entrusted the sale of all their production to Finnboard, it could be considered to be an auxiliary body of each of the applicants (see, in that connection, the judgment in Joined Cases 40/73 to 48/73, 50/73, 54/73, 55/73, 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663).

34 The member companies were able to control the activities of Finnboard with the result that it was not able to determine its conduct on the market in an autonomous manner. As well as issuing instructions concerning the marketing of their products, the member companies also sent their own representative to Finnboard's Board of Directors. It is, moreover, inconceivable that the applicants would place their products in the hands of an organisation over which they had no control, and which could have fixed prices and conditions of sale as it wished without having to take account of their instructions. Furthermore, Finnboard's running costs were paid by the member companies.

35 In those circumstances, and in view of the fact that it was acting on behalf of the applicants, Finnboard formed an economic unit with each of the applicant companies as regards their respective sales.

36 That appraisal is corroborated by the joint conduct on the market of Finnboard and the applicants (see *Viho* v *Commission*, cited above, paragraph 50). It is not credible that, in marketing the applicants' products, Finnboard was not acting in their interest: it acted, as found in the Decision, as their *alter ego*.

37 Although the applicants and Finnboard are distinct legal persons, the conduct of which Finnboard is accused can, in accordance with the case-law, be imputed to each of the respective applicants (see the judgments, cited above, in *ICI* v *Commission*, paragraph 132 et seq., and *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission*, paragraph 36 et seq., and in Joined Cases T-68/89, T-77/89 and T-78/89 *SIV and Others* v *Commission* [1992] ECR II-1403, paragraph 357, and *Viho* v *Commission*, cited above, paragraph 47).

38 Since, given the existence of an economic unit as defined in the case-law, it would have been permissible to adopt a specific decision imposing a fine on each of the applicants, an order that they should be jointly and severally liable can, at the very least, also be made. An express finding, in Article 1 of the Decision, that the applicants had committed an infringement was not necessary, as Finnboard's conduct could be imputed to the applicants. It is thus incorrect to argue that the Commission was alleging that they were vicariously liable.

39 The principles deriving from the case-law, developed in connection with groups of companies, in regard to parent companies and their subsidiaries have to be applied in the present case, because otherwise the undertakings in question could evade the competition rules simply by setting up legally independent sales agencies for whose conduct they would not be liable, even though such agencies acted in accordance with their instructions.

40 Finally, the solution adopted by the Commission does not deprive the applicants of any of their rights, as they received a statement of objections in which the Commission announced its intention to make them jointly and severally liable for the fine.

Findings of the Court

41 Article 15(2) of Regulation No 17 provides:

'The Commission may by decision impose on undertakings or associations of undertakings fines of from 1000 to 1 000 000 units of account, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently:

(a) they infringe Article 85 (1) ...'

42 That provision does not expressly state whether an undertaking which has not been specifically and formally held liable for an infringement found by the Commission may be declared jointly and severally liable with another undertaking for payment of a fine imposed on that other undertaking, which has committed and been penalised for the infringement.

43 However, this provision must be interpreted as meaning that an undertaking may be declared jointly and severally liable with another undertaking for payment of a fine imposed on the latter undertaking, which has committed an infringement intentionally or negligently, provided that the Commission demonstrates, in the same decision, that the infringement could also have been found to have been committed by the undertaking held jointly and severally liable.

44 In the present case, whilst Finnboard is the undertaking held specifically and formally liable for the infringement of Article 85(1) of the Treaty (Article 1 of the Decision), and whilst the fine provided for by Article 3(v) of the Decision is therefore imposed on it, each of the applicants is nonetheless declared jointly and severally liable with Finnboard for payment of part of that fine, because the Commission took the view that Finnboard had acted as their 'alter ego' and in their interest (point 174, second paragraph, of the Decision).

45 The Court should therefore consider whether the economic and legal links between Finnboard and the applicants were such that the Commission was entitled to hold each of them specifically and formally liable for the infringement.

46 It is clear from the Decision that the Commission took the view that the applicants were liable for the acts of Finnboard (point 174, second paragraph).

47 To assess the merits of that claim, the principal information, as contained in the documents before the Court, must be examined and, in particular, the applicants' reply to the written questions of the Court regarding the organisation of Finnboard and its legal and factual relations with its member companies and the applicants in particular.

48 According to its statutes of 1 January 1987 (paragraph 2), Finnboard is an association which markets the cartonboard produced by the applicants and paper goods produced by other members.

49 Under paragraphs 10 and 11 of those statutes, each of the members is to have one representative on the Board of Directors, responsible, *inter alia*, for the adoption of guidelines for the operations of the association; confirmation of the budget, the financing plan and principles regarding the division of expenses among the member companies; and the appointment of the 'Managing Director.'

50 Paragraph 20 of the statutes provides:

'The members shall be jointly and severally liable for undertakings given on behalf of the Association as if it were for their own debt.

The liability for debt and undertakings shall be distributed in proportion to the net invoicings of the members for the current year and for the two preceding years.'

51 As regards the sale of cartonboard products, it is clear from the applicants' reply to the Court's written questions that, at the material time, they had given Finnboard authority to make all their sales of cartonboard, with the sole exception of the intra-group sales of each applicant company and sales of small quantities to occasional customers in Finland (see also paragraph 14 of the statutes of Finnboard). In addition, Finnboard fixed and announced identical prices for the applicants.

52 The applicants also explain that, in the case of individual sales, customers placed their orders with Finnboard and generally indicated which mill they preferred. Such preferences are attributable, *inter alia*, to differences in quality between the products of each of the applicants. Where no preference was expressed, orders were divided amongst the members of Finnboard, pursuant to paragraph 15 of its statutes, under which:

'The orders received are to be divided justly and equally for manufacture by the members, in consideration of the production capacity of each member as well as the principles of distribution laid down by the Board of Directors.'

53 Finnboard was authorised to negotiate conditions of sale, including prices, with each potential customer, the applicants having drawn up general guidelines for such individual negotiations. Each order had nonetheless to be submitted to the applicant company concerned, which decided whether or not to accept it.

54 The procedures for individual sales and the accounting principles applied for such sales are described in a statement of 4 June 1997 by Finnboard's accountants:

'Finnboard acts as Commission agent for the principals, invoicing "in its own name on behalf of each Principal".

1. Each order is confirmed by the Principal mill.

2. At the moment of shipment from the mill, the mill issues a base invoice to Finnboard ("Mill invoice"). The invoice is entered into the Principals' Account as a receivable and into Finnboard's purchase ledger as a debt to the mill.

3. The mill invoice (less the estimated costs of transport, storage, delivery and financing) is prepaid by Finnboard within an agreed period (10 days in 1990/1991). Finnboard thus finances the foreign stocks and customer receivables of the mill without taking title to the goods shipped.

4. At the moment of delivery to the customer, Finnboard issues a customer invoice on behalf of the mill. The invoice is recorded as a sale in the Principals' Account and as a receivable in Finnboard's sales ledger.

5. Customer payments are recorded in the Principals' Accounts and the possible differences between estimated and actual prices and costs (ref. point 3) are cleared through the Principals' Account.'

55 It is thus clear, first, that, even though Finnboard was authorised to negotiate prices and other conditions of sale with the end customer in accordance with the guidelines set by the applicants, a sale could not be made unless the applicant company concerned had first approved the price and the other conditions of sale.

56 Second, it is common ground that title passed directly from the applicant company to the end customer.

57 Finally, the commission received by Finnboard, which appears as its turnover in its annual reports, covers only expenses connected with the sales it effected on behalf of its member companies, such as transport or financing costs. It follows that Finnboard had no economic interest of its own in taking part in collusion on prices, since the price increases announced and implemented by the undertakings meeting in the bodies of the PG Paperboard could not generate any profit for it. On the other hand, the applicants had a direct economic interest in Finnboard's participation in such collusion.

58 In the circumstances of the present case, the economic and legal links between Finnboard and each of the applicants were thus such that, in marketing cartonboard for the benefit of the applicants, Finnboard merely acted as an auxiliary organ of each of those companies. In the light of those links and the fact that it was bound to follow the instructions issued by each of the applicants and could not adopt conduct on the market independently of any of them, Finnboard in practice formed an economic unit with each of its cartonboard-producing member companies (see, by analogy, *Suiker Unie and Others* v *Commission*, cited above, paragraphs 538 to 540).

59 Accordingly, the Commission correctly considered, in the statement of reasons for the Decision, that the applicants were liable for the anti-competitive actions of Finnboard, with the result that it would have been possible to find that each of them had intentionally infringed Article 85(1) of the Treaty. It was thus entitled, instead of imposing a fine directly on each of the applicant companies, to decide to hold each of them jointly and severally liable with Finnboard for payment of part of the fine imposed on that trade association.

60 In the light of the foregoing, the plea must be dismissed.

The application for reduction of the amount of the fine

61 Under Article 44(1) of the Rules of Procedure an application to the Court is to contain a summary of the pleas in law on which the application is based. The Court may consider of its own motion whether infringement of that rule constitutes an absolute bar to proceeding (see, *inter alia*, Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraphs 73 and 74).

62 As the applicants have raised no plea in support of their applications for a reduction in the amount of the fine, those applications must be declared inadmissible.

63 It follows from the foregoing that the applications must be dismissed.

Costs

64 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. As the applicants have been unsuccessful, they must be ordered to pay the costs, as sought by the Commission.

On those grounds,

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

hereby:

1) Dismisses the applications as unfounded in so far as they seek annulment of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard);

2) Dismisses the applications as inadmissible in so far as they seek reduction of the fine imposed by Article 3 of that Decision;

3) Orders the applicants to pay the costs.

Vesterdorf Briët Lindh

Potocki Cooke

Delivered in open court in Luxembourg on 14 May 1998.

H. Jung B. Vesterdorf

Registrar President