ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
4 June 1996 *

In Case T-18/96 R,

Stichting Certificatie Kraanverhuurbedrijf, a foundation governed by Netherlands law, established at Culemborg (Netherlands),

Federatie Nederlandse Kraanverhuurbedrijven, an association governed by Netherlands law, established at Culemborg (Netherlands),

represented by Martijn van Empel, of the Amsterdam Bar, and Thomas Janssens, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 rue Goethe,

applicants,

v

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

defendant,

* Language of the case: Dutch.

APPLICATION for the suspension of the operation of Commission Decision 95/551/EC of 29 November 1995 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.179, 34.202, 216 — Stichting Certificatie Kraanverhuurbedrijf and the Federatie van Nederlandse Kraanverhuurbedrijven, OJ 1995 L 312, p. 79) and for access to the file opened in the course of that proceeding,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 The Federatie Nederlandse Kraanverhuurbedrijven (Netherlands Federation of Crane-Hire Companies, hereinafter 'FNK') is a sector-based association whose object, according to its statutes, is to bring together Netherlands crane-hire companies under one general organization, to promote the development of Netherlands crane-hire companies, to defend the interests of crane-hire companies, in particular of its members, and to facilitate contacts and cooperation between its members.

2 The Stichting Certificatie Kraanverhuurbedrijf (Foundation for the Certification of Crane-Hire Companies, hereinafter 'SCK') is a foundation whose principal object, according to its statutes, is to lay down guidelines concerning the organization of crane-hire companies, to issue certificates to crane-hire companies, in particular to members of FNK who meet those guidelines, and to verify whether certificate holders comply with those guidelines.

3 On 13 January 1992 eleven crane-hire companies, nine of which were established in the Netherlands and two in Belgium, lodged a complaint against SCK and FNK. They alleged that SCK and FNK had breached the competition rules of the EC Treaty by excluding undertakings which were not certified by SCK from hiring out mobile cranes, and by imposing fixed price rates for the hire of those cranes.

4 SCK and FNK notified their statutes and internal rules to the Commission on 15 January and 6 February 1992 respectively. Both organizations made an application for negative clearance or, alternatively, exemption pursuant to Article 85(3) of the Treaty.

5 On 29 November 1995 the administrative procedure before the Commission ended with the adoption of Decision 95/551/EC relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.179, 34.202, 216 — Stichting Certificatie Kraanverhuurbedrijf and the Federatie van Nederlandse Kraanverhuurbedrijven, OJ 1995 L 312, p. 79, hereinafter 'the Decision').

6 According to Article 1 of the Decision, the members of FNK had applied a system of tariffs which infringed Article 85(1) of the Treaty. The system involved the charging of 'recommended rates', applicable to crane-hire transactions with companies not affiliated to FNK, and 'internal rates' applicable to such transactions between members of the association. That enabled members to predict their competitors' pricing policy with a reasonable degree of certainty. According to the Decision, the member companies of FNK had colluded with each other and with FNK in order to fix the rates. They were obliged to observe those rates, since under Article 10(1)(d) of FNK's statutes a failure to do so could be penalized by the removal of the company in question from the register of members.

That scheme, initiated on 15 December 1989, was abolished on 28 April 1992 pursuant to an interim order of the President of the Arrondissementsrechtbank, Utrecht, of 11 February 1992 ordering FNK to desist from applying it.

7 Article 3 of the Decision states that SCK infringed Article 85(1) of the Treaty by prohibiting its affiliated firms from hiring cranes from firms not affiliated to SCK (Article 7, second indent, of its internal rules). In the recitals in the preamble to the Decision, the Commission states that SCK is composed almost entirely of member companies of FNK. It considers that access to the Netherlands market of foreign crane-hire companies was hindered by the certification requirements imposed by SCK, in so far as those requirements were linked to the specific state of the Netherlands market. In that context, the prohibition on hiring led to the complete, or almost complete, exclusion from the Netherlands market of companies established outside the Netherlands.

According to the Decision, the infringement lasted from 1 January 1991 to 4 November 1993 (with the exception of the period between 17 February and 9 July 1992). It ceased following an order of the Gerechtshof, Amsterdam, of 28 October 1993 confirming the order for interim measures of the President of the Arrondissementstrechtbank, Utrecht, of 6 July 1993 ordering SCK to refrain from applying the hire prohibition.

8 On the basis, *inter alia*, of those considerations, the Commission ordered FNK and SCK to terminate the alleged infringements forthwith (Articles 2 and 4 of the Decision). Furthermore, it imposed a fine of ECU 11 500 000 on FNK and ECU 300 000 on SCK (Article 5 of the Decision).

9 By application lodged at the Registry of the Court of First Instance on 2 February 1996, FNK and SCK brought an action primarily for a declaration that the Decision was non-existent, alternatively for a declaration that the Decision was

void, and in the further alternative, for annulment of the Decision in so far as it imposed fines on them.

10 By a separate document lodged at the Registry of the Court of First Instance on the same day, the applicants applied under Article 185 of the Treaty for suspension of the operation of Article 4 of the Decision, ordering SCK to refrain from applying the hire prohibition laid down in the second indent of Article 7 of its rules, and of Article 5 of the Decision, imposing fines on SCK and FNK. In that regard, the applicants seek to be released not only from the obligation to pay the fine immediately, but also from the obligation to 'provide a security in the form of a bank guarantee or other form of security' to ensure payment of those fines. In the same document the applicants applied for an interim order requiring the Commission to permit them to have sight of the file opened in Cases IV/34.179, 34.202 and 34.216.

11 The Commission lodged its observations on the application for interim measures on 20 February 1996.

12 The parties presented oral argument on 1 March 1996.

13 By letter of 4 April 1996 SCK withdrew its application for suspension of the operation of Article 4 of the Decision in so far as it required SCK to refrain from applying the prohibition on hire. The applicants maintained their other heads of claim. In its observations lodged on 12 April 1996, the Commission noted that partial withdrawal and sought an order requiring SCK to pay the corresponding costs, pursuant to Articles 99 and 87(5) of the Rules of Procedure.

Law

14 By virtue of the combined provisions of Articles 185 and 186 of the EC Treaty and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21) and Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29), the Court may, if it considers that circumstances so require, order that operation of the contested act be suspended or prescribe any necessary interim measures.

15 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for the adoption of the interim measures referred to in Articles 185 and 186 of the Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. Those measures must be provisional in nature, in the sense that they must not prejudge the decision on the substance (see, most recently, the order of the President of the Court of First Instance of 22 April 1996 in Case T-23/96 R *De Persio* v *Commission* [1996] ECR II-527, paragraph 19).

Arguments of the parties

16 As to the requirement of a *prima facie* case, the applicants claim, first, that the Decision is non-existent. They observe that in the operative part of the Decision the Commission makes no ruling on their application for exemption under Article 85(3) of the Treaty, although it expressly refers to that application in the grounds of the Decision. They claim that, according to the case-law of the Court of First Instance (Case T-138/89 *NBV and NVB* v *Commission* [1992] ECR II-2181, paragraph 31), whatever the grounds on which a measure is based, it is only its operative part which is capable of producing legal effects. Consequently, the Decision is non-existent.

17 In the alternative, the applicants claim that the Decision is void, first, on the ground that it fails to state reasons and is consequently in breach of Article 85(1) and (3) of the Treaty, and secondly, on the ground that it infringes the rights of the defence.

18 As regards the pleas alleging failure to state reasons and breach of Article 85(1) of the Treaty, the applicants claim that the Commission took the view that, in the present case, trade between Member States was affected within the meaning of that provision without taking account of the relevant criteria to which the Court of First Instance referred in Case T-77/92 *Parker Pen* v *Commission* [1994] ECR II-549, paragraphs 39 and 40.

Furthermore, SCK disputes the finding in the Decision that it is an undertaking or an association of undertakings for the purposes of Article 85(1) of the Treaty. That finding conflicts with the case-law of the Court of Justice, in particular Case C-41/90 *Höfner and Elser* [1991] ECR I-1979 and Joined Cases C-159/91 and C-160/91 *Poucet and Pistre* [1993] ECR I-637. It also claims that, contrary to the view taken in the Decision, the conditions for affiliation to the certification scheme are objective and non-discriminatory and aim solely to provide members with a certain level of security and quality.

According to FNK, the Commission incorrectly refers to a scheme of tariffs having been imposed on member companies of FNK. The applicant claims that those tariffs were intended to serve as an objective basis for negotiations between the companies concerned and that, accordingly, they were not binding.

19 As to the pleas alleging failure to state reasons and infringement of Article 85(3) of the Treaty, SCK claims that the Decision contains no detailed appraisal justifying the failure to apply Article 85(3). Contrary to the Commission's contentions, SCK's scheme offers guarantees over and above those afforded by Netherlands

legislation or any other schemes. Furthermore, such a scheme cannot work unless members of SCK are prohibited from hiring cranes from non-member companies. There is no other means of guaranteeing that only cranes satisfying SCK certification requirements will be used on a particular site, if the site owner so wishes. Moreover, since that prohibition concerns only the hiring of cranes by companies certified by SCK, it in no way affects competition on the crane-hire market.

For its part, FNK claims that its tariff scheme is likely to benefit market transparency. It enables customers to compare competing offers and to ensure that the entire hire sector is organized. In particular, the internal rates applied in contracts for hire between members of the association increase the effectiveness of the scheme by making it easier to enter into such contracts.

20 Secondly, as to the plea alleging infringement of the rights of the defence, the applicants claim, first, that the Commission infringed Article 6 of the European Convention on the Safeguard of Human Rights and Fundamental Freedoms by adopting the Decision almost 47 months after they had notified their statutes and rules and by rejecting their express request for a hearing before the adoption of the Decision, which, by virtue of Article 15(6) of Council Regulation No 17 of 6 February 1962, First Regulation applying Articles 85 and 86 (OJ, English Special Edition 1959-1962, p. 87), deprived them of the immunity from fines provided for in Article 15(5). Secondly, they consider that the Commission adopted an unacceptably restrictive interpretation of their right of access to the file by contending, in response to their request, that they had lost their right to have sight of the file since they had not sought access to it after service of the Statement of Objections and before replying thereto.

21 Finally, the applicants claim that the fines imposed by the Commission were excessive in comparison with the infringements allegedly established and with their financial circumstances. SCK claims in particular that, as at 31 September 1994, it had liquid assets of HFL 796 315 and total assets of HFL 955 407, whereas its short-term debts amounted to HFL 849 208. It claims that payment of the fine fixed by the Commission, equivalent to HFL 650 000, would signify the end of SCK. FNK states that, at 31 September 1994, it had liquid assets of HFL 318 554 and total assets of HFL 992 481. As a result, it is unable to pay a fine amounting to HFL 24 000 000. Furthermore, they claim, the Decision does not indicate the factual considerations used to calculate the amounts of the fines.

22 As to the requirement for urgency, the applicants claim that, in view of the excessive amounts of the fines, they are unable to pay them or to provide, for the remainder of the main proceedings, the bank guarantee requested by the Commission. They claim that the banks they have approached have refused to provide such a guarantee. In the absence of a suspension order under Article 185 of the Treaty, FNK and SCK would run the risk of imminent bankruptcy. Having regard to the irreparable nature of the harm with which they are threatened, it is not in the Commission's interest to proceed with the immediate enforcement of the Decision as regards payment of the fines.

23 As to the requirement of a *prima facie* case, the Commission contends that, contrary to the applicants' claim, it did examine, in particular in points 32 to 39 of the Decision, the arguments relied upon by FNK and SCK in support of their application for exemption under Article 85(3) of the Treaty.

24 As regards the alleged breach of Article 85(1) of the Treaty, it states that trade between Member States is indeed affected. Since the cranes in question are mobile, undertakings from other Member States may wish to gain access to the Netherlands market. That is confirmed by the fact that two of the complainants are Belgian companies.

The Commission considers that SCK is wrong to dispute its finding in the Decision that SCK is an 'undertaking' within the meaning of Article 85(1) of the Treaty. SCK is not a body governed by public law but, rather, a foundation pursuing commercial activities, whose object is to certify crane-hire companies in return for remuneration. It follows that SCK is an undertaking within the meaning of Article 85(1) of the Treaty. The Commission adds that the applicants misunderstand the reasoning of the Decision in maintaining that the Commission has not shown that FNK's tariffs restricted competition. It refers to point 20 of the Decision, in which it is stated that the system contains both an obligation under the statutes to apply 'reasonable rates' and a system of sanctions intended to ensure compliance with that obligation by members of FNK.

25 As to the alleged breach of Article 85(3) of the Treaty, the Commission contends that the applicants have not produced any evidence capable of calling into question the reasoning of the Decision. In particular, they have not shown that the certification system was more efficient than legislative rules or that the prohibition on hire was an indispensable requirement. Since the Commission may refuse to grant exemption even without examining all the qualifying conditions under Article 85(3) of the Treaty, such a finding suffices of itself to justify the rejection of the application for exemption made by SCK and FNK.

26 The Commission denies infringing the applicants' rights of defence. Having regard to the circumstances of the case, it did not adopt the Decision outside a reasonable period. Nor does the failure to grant a hearing to SCK and FNK before the adoption of the Decision on the basis of Article 15(6) of Regulation No 17 constitute an infringement of the rights of the defence. There is no provision requiring the Commission to grant a hearing to the parties. Only specific factual circumstances may make it necessary to do so. Finally, the Commission did not disregard their right of access to the file, since the applicants could have had access to it before the adoption of the Decision and after service of the Statement of Objections.

27 The Commission considers that the fine of ECU 300 000 imposed on SCK cannot be regarded, in absolute terms, as excessive. Nor is the fine of ECU 11 500 000 imposed on FNK excessive, having regard to the turnover of FNK's members, which, according to the case-law of the Court (T-29/92 *SPO and Others* v *Commission* [1995] ECR II-289, paragraph 385), must be taken into consideration when calculating the amount of the fine. Nor is the fine excessive having regard to the duration of the infringement, which lasted more than ten years.

28 As to urgency, the Commission contends that the applicants have not shown that they run an imminent risk of bankruptcy. The figures provided constitute, in reality, only a snapshot of the situation as at 31 December 1994, whereas solvency should be assessed on the basis of fluctuations in liquidity over a period of time. As to FNK, it had failed to contemplate the possibility of its member companies paying the fine of ECU 11 500 000 or providing a bank guarantee, the amount of the fine being well below the ceiling of 10% of their total turnover.

29 Finally, the Commission contends that the applicants have not established the urgency of a measure granting them access to the file and that in any event the request made to that effect seeks in reality the adoption not of an interim measure, as provided for in Article 186 of the Treaty, but of a measure of organization of procedure or a measure of inquiry, as provided for in Articles 64 and 65 to 67 of the Rules of Procedure of the Court of First Instance.

Findings of the Judge hearing the application

30 Following the applicants' partial discontinuance, concerning their application for suspension of the operation of Article 4 of the Decision which required SCK to refrain from applying the prohibition on hire referred to in Article 7, second indent, of SCK's rules, it is necessary to rule solely on the application for suspension of the operation of Article 5 of the Decision and on the application for an

order granting the applicants access to the file of the administrative procedure in this case.

31 As to the application for the suspension of the operation of the Decision in so far as Article 5 thereof imposes a fine of ECU 11 500 000 on FNK and of ECU 300 000 on SCK, the Commission has explained in its written and oral observations that it would be willing to authorize payments of those fines in instalments, provided that a bank guarantee could be issued covering the balance outstanding at any particular moment. Accordingly, it is necessary to assess the urgency of the measure requested by examining not only whether payment of the fine before judgment is given in the main proceedings is likely to lead to serious and irreversible harm to SCK and FNK, which could not be made good even if the Decision were to be annulled by the Court of First Instance, but also whether the mere provision of a bank guarantee would result in serious and irreversible harm (see, most recently, the order of the President of the Court of First Instance in Case T-104/95 R *Tsimenta Chalkidos* v *Commission* [1995] ECR II-2235, paragraph 19).

32 In that regard, the applicants claim that, having regard to their financial situation, the recovery of the fine by the Commission or, alternatively, the provision of a guarantee with its associated expenses would inevitably result in their dissolution. In support of that claim, they refer to the state of their assets as at 31 December 1994 (see paragraph 21 above). Furthermore, they have produced letters, dated 4 and 10 January 1995, from two Dutch Banks refusing to provide a bank guarantee for ECU 300 000 and ECU 11 500 000, having regard especially to the insufficiency of their assets and inadequacy of their 'sureties'. The Commission contends that SCK and FNK have set out their financial situation without taking into account the fact that the member companies of FNK, who also benefited from its certification scheme, had an aggregate turnover of ECU 200 000 000. The fine imposed on SCK was therefore extremely small in comparison with that turnover and the fine imposed on FNK represented a mere 5% of the same total turnover.

33 It is settled case-law that the ceiling on fines, equivalent to 10% of turnover during the previous financial year (Article 15(2) of Regulation No 17), must be calculated by reference to the turnover achieved by each undertaking which is a party to the agreements and concerted practices in question and, where the infringement is a result of a decision of an association of undertakings, by all the member companies of the association, at least where its internal rules permit the association to hold its members liable. Such an approach is based on the idea that the influence which an association of undertakings has been able to exercise on the market does not depend upon its own 'turnover', which reveals neither its size nor its economic power, but rather upon its members' turnover, which constitutes an indication of its size and economic power (*SPO and Others* v *Commission*, cited above, paragraph 385, and Joined Cases T-39/92 and T-40/92 *CB and Europay* v *Commission* [1994] ECR II-49, paragraph 137).

34 In the present case, the statutes and rules of FNK and SCK enable them to hold liable crane-hire companies which are members of the association and/or which benefit from the services provided by SCK.

More precisely, according to the Decision (points 10 and 20), Article 6(1) of FNK's statutes provides that decisions taken in accordance with the statutes and the rules are binding on its members. Moreover, Article 10(1)(d) of those statutes provides that any member acting in breach of those decisions may have its membership cancelled. As regards the application of the recommended rates and the internal rates, which constitutes the infringement penalized by the Commission, the Decision refers to Article 3(b) of the internal rules, under which the members of FNK must apply reasonable rates. It also refers to Article 3(c), which obliges the members to apply the general conditions drawn up by FNK, in which reference is made to FNK's recommended rates. The applicants deny that those rules can be interpreted as instituting a price-fixing system, having regard to the fact that the rates to which the Commission refers are solely recommended rates and constitute 'estimates' used as 'a starting point' for negotiations between the companies. However, there is nothing in the file which, *prima facie*, casts doubt on the fact that the application of those rates was in keeping with the interests of the companies adhering to them. Furthermore, it follows from the terms of the application for interim measures that

the applicants themselves consider such a system to be a 'tariff structure' suitable for the organization of the crane-hire market (points 95 to 97 of the application for interim measures).

Moreover, SCK does not deny that its statutes and rules were binding. It observes in particular that, under the second indent of Article 7 of its rules, holders of a certificate issued by it are obliged 'to supply solely cranes bearing valid certification plates' (point 17 of the application for interim measures). It is therefore common ground that the undertakings benefiting from SCK's services were obliged to observe the above provisions, especially the prohibition on hire, which was found by the Commission to constitute an infringement.

On the basis of those considerations, the President of the Court finds that *prima facie* the crane-hire companies complied with the statutes and rules of FNK and SCK. The applicants' objective interests cannot therefore, *prima facie*, be considered to be independent of those of FNK's member companies and/or the companies which benefit from the services of SCK.

35 It follows, according to the abovementioned case-law, that the risk of serious and irreparable harm, which it is claimed would result if the fines imposed had to be paid or bank guarantees provided, must be assessed having regard to the size and economic power of the companies which are members of FNK and/or which benefit from the services of SCK.

36 As to FNK, the applicants and the Commission have stated that the total turnover of its member companies is between ECU 180 and 200 million. In the absence of evidence to the contrary, they must therefore be presumed to have sufficient financial resources to pay a fine of approximately 5% to 6.5% of that turnover or, *a fortiori*, to provide an equivalent bank guarantee. Consequently, the enforcement of Article 5 of the Decision before the Court has given a ruling on the substance of

the case cannot give rise to the serious and irreparable harm alleged, namely the bankruptcy of FNK.

37 The same approach must be taken when assessing the risk of serious and irreparable harm invoked by SCK, which the latter claims would result from the immediate enforcement of its obligation to pay the fine of ECU 300 000 imposed in Article 5 of the Decision or to provide a bank guarantee for the purposes of ensuring such payment. The President of the Court finds that, even though SCK is a foundation and, unlike FNK, should, as such, therefore act independently of the undertakings that contribute to its assets, it is clear from the file that it acts within the framework of FNK, carries on the same activities, and pursues the same objectives as FNK.

A number of factors point to that conclusion. First, SCK was created by an agent of FNK. Second, according to the Decision, seven of the 190 companies affiliated to SCK in 1994 were not members of FNK, a percentage which appears to have increased since then, but does not at present exceed 11% to 13% according to the evidence supplied by the applicants at the hearing. Third, the statutes founding SCK provide that its object is to lay down for members of FNK guidelines for the organization of the crane-hire business, to issue certificates to members of FNK who comply with those guidelines, and to verify whether the holders of the certificates are acting consistently with them (Article 2 of SCK's founding statutes). Fourth, it is clear from the Decision that until 1987 SCK's internal organization was governed by its founding statutes, which provided for the management of SCK by a board whose members where to be appointed and removed by FNK's directors (Article 5(2) of the statutes) and, moreover, that the board was to be assisted and supervised by an advisory committee whose members were to be appointed and removed by the board in agreement with FNK's directors (Article 7(1) of the statutes). Following an amendment to the statutes on 15 December 1987, a looser relationship between those two bodies was established. However, it remains very close, because, as the applicants indicated at the hearing, two of the four members of the administrative board are still appointed by FNK and two members of the college of experts (the name of the advisory committee since 20 June 1994) sit in the name of FNK, while the other members represent contractors, suppliers and public authorities.

38 Having regard to all those factors, SCK's financial position must be assessed having regard to its links with FNK and, accordingly, with the member companies of that association. When assessing SCK's ability to pay the fine or, alternatively, provide the bank guarantee required by the Commission, it is therefore appropriate to take account of the financial capacity of the undertakings benefiting from SCK's services (see, most recently, the Order of the President of the Court of First Instance in Case T-295/94 R *Buchmann* v *Commission* [1994] ECR II-1265, paragraph 26).

39 On the basis of the same considerations as those used to assess FNK's financial position, the President of the Court finds that the companies benefiting from SCK's services appear to be capable of paying the fine and, *a fortiori*, offering the necessary assistance in order to provide a bank guarantee corresponding to the amount of the fine imposed by Article 5(2) of the Decision. Contrary to the applicants' claim, therefore, the enforcement of that provision is not likely to entail the dissolution of SCK.

40 The application for suspension of the operation of Article 5 of the Decision must therefore be dismissed, without there being any need to consider whether the pleas and arguments relied on by the applicant in support of the main action appear, *prima facie*, to be well founded.

41 Finally, as to the applicants' request for an order that the Commission allow them to have sight of the file in Cases IV/34.179, 34.202 and 34.216, it must be observed that the measure sought falls, in principle, within the scope of measures of organization of procedure or of measures of inquiry, which are within the jurisdiction of the Court of First Instance (Article 64 to 67 of the Rules of Procedure) and not within the scope of interim measures adopted in proceedings for interim relief. It is settled case-law that, if the Commission has refused to grant access to the file to a party to the administrative procedure, it is for the Court of First Instance to assess whether or nor it is expedient to grant him access to that file during the main proceedings, so as to enable the party concerned to ensure the conduct of his defence

and to allow the Court to consider, with full knowledge of the facts, the pleas and arguments relied upon by him (see in Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 15).

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application is dismissed.

2. Costs are reserved.

Luxembourg, 4 June 1996.

H. Jung — Registrar

A. Saggio — President