ORDER OF THE COURT (Fourth Chamber)
25 April 2002 *

In Case C-96/01 P,

The Galileo Company, established in Swindon (United Kingdom),

Galileo International LLC, established in Rosemont (United States of America),

represented by R. Plender QC, instructed by K. Holmes, D. Austin and R. Butler, solicitors, with an address for service in Luxembourg,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities (Second Chamber) of 15 December 2000 in Case T-113/99 *Galileo and Galileo International* v *Council* [2000] ECR II-4141, seeking to have that order set aside,

* Language of the case: English.

the other parties to the proceedings being:

Council of the European Union, represented by A. Lopes Sabino and M. Bishop, acting as Agents,

defendant at first instance,

supported by

Commission of the European Communities, represented by F. Benyon and M. Huttunen, acting as Agents, with an address for service in Luxembourg,

and

Amadeus Global Travel Distribution SA, established in Madrid (Spain),

interveners at first instance,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 27 February 2001 The Galileo Company (hereinafter 'Galileo') and Galileo International LLC (hereinafter 'GILLC') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 15 December 2000 in Case T-113/99 *Galileo and Galileo International* v *Council* [2000] ECR II-4141 (hereinafter 'the order under appeal'), which dismissed as inadmissible their action for partial annulment of Article 1(7)(b) of Council Regulation (EC) No 323/1999 of 8 February 1999 amending Council Regulation (EEC) No 2299/89 on a code of conduct for computerised reservation systems ('CRS') (OJ 1999 L 40, p. 1, hereinafter 'the contested provision'), to the extent that it

adds to Article 6(1)(b) of Council Regulation (EEC) No 2299/89 of 24 July 1989 (OJ 1989 L 220, p. 1) a provision allowing airlines, regardless of their number, to form a group in order to purchase jointly data from CRS operators.

Legal background and facts

2 The facts of the dispute, as they appear from the file before the Court of First Instance and set out in paragraphs 1 to 12 of the order under appeal, can be summarised as follows.

3 GILLC is owned *inter alia* by United Airlines, British Airways, SAir Group, KLM Royal Dutch Airlines, US Airways and Alitalia. Galileo is a 99%-owned subsidiary of GILLC.

4 GILLC owns and operates a CRS which allows subscribers, *inter alia* travel agents, to make automated bookings with a large number of service providers in the travel sector, such as airlines, car-hire companies or hotels. Galileo provides GILLC with support services in the European Union, the Middle East, Africa, Asia, the Pacific, and Latin America.

5 According to the appellants, there are only four CRSs. Apart from those belonging to GILLC, the other CRSs, held by other airlines, are Amadeus, Sabre, and Worldspan. At the material time, those four CRSs were the only ones supplying the air transport products available or in use in the Community and were the only CRSs operating globally.

6 Two kinds of information are stored on the CRS database: information contained in booking requests from travel agents and information received from airlines.

7 That information, generally known as 'marketing information data transfer' ('MIDT'), can be sold as a separate product. The applicants supply four such MIDT products.

8 On 24 July 1989 the Council adopted Regulation (EEC) No 2299/89, amended, *inter alia* in Article 6, by Council Regulation (EEC) No 3089/93 of 29 October 1993 (OJ 1993 L 278, p. 1).

9 On 9 July 1997 the Commission adopted a proposal for a regulation amending Regulation No 2299/89.

10 After a second reading by the Parliament, on 8 February 1999 the Council adopted Regulation No 323/1999, which provided *inter alia* for the addition of a point (v) in Article 6(1)(b) of Regulation No 2299/89.

11 That addition, proposed by the Parliament as an amendment when the first Commission proposal for a regulation, mentioned at paragraph 9 of this order, was adopted, was incorporated by the Commission into its new proposal and was then taken up and adopted by the Council in its common position (EC) No 55/98, adopted on 24 September 1998 (OJ 1998 C 360, p. 69).

12 Following that amendment, Article 6(1)(b) of Regulation No 2299/89 is now worded as follows:

'1. The following provisions shall govern the availability of information, statistical or otherwise, by a system vendor from its CRS:

...

(b) Any marketing, booking and sales data made available shall be on the basis that:

...

(v) a group of airlines and/or subscribers is entitled to purchase data for common processing.'

13 According to the appellants, the purpose of that provision was to ensure that travel agents, mostly small and medium-sized enterprises, should have access to the information contained in databases by forming groups.

Proceedings before the Court of First Instance

14 As they considered that their interests as operators of CRSs providing MIDT were prejudiced by the contested provision, on 7 May 1999 the applicants brought an action for annulment of that provision before the Court of First Instance.

15 By separate document lodged at the Registry of the Court of First Instance on 26 July 1999, the Council raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance. Pointing out that Regulation No 323/1999 was a legislative measure of general application, and that, moreover, the applicants were neither directly nor individually concerned by that measure, the Council asked the Court of First Instance to dismiss the action as clearly inadmissible and to order the applicants to bear the costs.

16 The applicants submitted their observations on the objection of inadmissibility on 2 October 1999. They argued essentially that Regulation No 323/1999, and the contested provision in particular, was of direct and individual concern to them. In that connection, they submitted that, even if it could be classified as a legislative measure, it was of individual concern to them on two grounds recognised by the case-law of the Court of Justice.

17 First, the applicants submitted that, when it adopted Regulation No 323/1999, the Council could not be unaware that the four sole companies operating a global CRS within the Community were individually concerned by that regulation. Those operators formed a closed category distinct from any other companies which might in future operate a global CRS within the Community. Moreover, since, before the adoption of the regulation, the applicants had concluded 36

contracts with airlines for the purchase of MIDT, the immediate implementation of the obligation entailed by the contested provision significantly affected the value of those contracts and, therefore, that regulation was liable to produce or actually produced distinct legal effects for the applicants within the meaning of the case-law.

18 Second, the applicants submitted that the fact that there were only four operators of global CRSs and that it was unlikely that a new system could be created constituted an attribute which differentiated them from all other traders. Furthermore, the applicants were also differentiated from all other traders by the fact that at the time of adoption of Regulation No 323/1999, the Council was under an obligation to take account of their particular circumstances and of those of other operators of global CRSs under Article 75 of the EC Treaty (now, after amendment, Article 71 EC) and Article 78 of the EC Treaty (now Article 74 EC).

19 By order of the President of the Second Chamber of the Court of First Instance of 10 February 2000, Amadeus Global Travel Distribution SA ('Amadeus') and the Commission were granted leave to intervene at first instance in support of the applicants and the Council respectively and submitted their observations on the objection of inadmissibility.

20 In its statement in intervention Amadeus submitted that the contested provision should be considered to be a decision within the meaning of Article 230 EC and not a rule of general application.

21 The Commission, in its statement in intervention, contended that the applicants had not explained why Regulation No 323/1999 should be considered to be a decision albeit taken in the form of a regulation and did not establish how they were individually concerned by it.

The order under appeal

22 By the order under appeal, the Court of First Instance dismissed the application as inadmissible on the following grounds:

'44 Under the fourth paragraph of Article 230 EC, any natural or legal person may institute proceedings against a decision which, although in the form of a regulation, is of direct and individual concern to him.

45 According to settled case-law, the test for distinguishing between a regulation and a decision is whether the measure is of general application or not. A measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged generally and in the abstract (Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 49).

46 Moreover, the fact that the number and even the identity of the persons to whom a measure applies can be determined more or less precisely is not such as to call in question the legislative nature of the measure (orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 30, and Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 34).

47 In the present case, it appears that Article 6(1)(b)(v) of Regulation No 2299/89, as inserted by Regulation No 323/1999, is drafted in general and abstract terms. Like points (i) to (iv) of that article, it lays down the conditions under which a system vendor may provide information, statistics

etc., generated by its CRS. In that regard, it is intended to cover objectively determined situations and to that end contains *inter alia* terms defined in Article 2 in a general and abstract manner. It is therefore only under those conditions that it entails legal effects for categories of undertakings. Even if it were established that the persons to whom the provision in question, and indeed all other provisions of Regulation No 2299/89 entailing effects for system vendors, applies, were identifiable at the time it was adopted, its legislative nature would not thereby be called into question, since it envisages only objective legal or factual situations (order in *CNPAAP* v *Council*, cited above, paragraph 35).

48 None the less, the Court of Justice has held that, in certain circumstances, a provision of a measure of general application may be of individual concern to certain of the traders concerned ([Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501], paragraph 13, and [Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853], paragraph 19). That is the case if the provision in question affects a natural or legal person by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, therefore, singles them out in the same way as the addressee of a decision is singled out (*Codorniu* v *Council*, cited above, paragraph 20).

49 The applicants submit that they form part of a select group of traders covered by the contested provision.

50 However, contrary to their submission, it must be observed that the fact that it is possible to determine more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I-3177, paragraph 17, and Case

C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 24). In the present case the contested provision is of concern to the applicants in their objective capacity as "system vendor", in the same way as any other system vendor, within the meaning of Article 2 of Regulation No 2299/89, as amended by Regulation No 3089/93. All traders covered by Article 6(1)(b)(v) of Regulation No 2299/89, as amended, are concerned by that provision in their objective capacity as operators active on the relevant market, whether system vendors, airlines or subscribers.

51 Moreover, the applicants cite the existence of exceptional economic circumstances. However, the two judgments of the Court of Justice to which they refer, in which it was held that a legal person was individually concerned by the legislative provision it contested, were based on different facts from those in the present case.

52 Thus in *Extramet Industrie* v *Council*, cited above, which concerns anti-dumping legislation, the Court of Justice stressed that the applicant was both the major importer of the product against which the anti-dumping measure was taken and the end user of the product and that it was encountering difficulties in obtaining supplies from the only producer in the Community, who was also its competitor on the market in the processed product.

53 In *Codorniu* v *Council*, cited above, the Court of Justice held that an applicant which has held since 1924 an exclusive right to a trademark which it has traditionally used and which is prevented from using it by reason of the adoption of a legislative provision is individually concerned by that provision.

54 It is clear from those judgments that an undertaking is not individually concerned by a legislative provision simply by virtue of the fact that that provision affects its economic activity. The situations contemplated in those judgments concerned a specific combination of circumstances which do not obtain in the present case. Thus, the applicants have not established that they were prevented from exercising an exclusive right comparable to that in the case which gave rise to the judgment in *Codorniu* v *Council*, cited above. Similarly, while activity in relation to MIDT, which is only an activity derived from the primary function of CRSs, that is to say the computerised reservation of services, is affected by the contested provision, the applicants have not established that they were in a situation comparable to that of Extramet Industrie SA on the market in calcium metal. The applicants are only affected by the regulation in question in their objective capacity as system vendors in the same way as other traders. The specific facts on the basis of which Extramet Industrie SA and Codorniu SA were held to be individually concerned by the measures they contested have no equivalent in the present case.

55 It must be concluded that the applicants have not established that they are individually concerned by the legislative provision whose annulment they seek.'

The appeal

23 In support of their appeal seeking to have the order under appeal set aside and a declaration that their action against Article 6(1)(b)(v) of Regulation No 2299/89, as inserted by Regulation No 323/1999, is admissible, the appellants put forward two pleas alleging errors of law made by the Court of First Instance.

24 By their first plea the appellants argue that, in holding, at paragraphs 47 and 50 of the order under appeal, that the contested provision was of concern to them only in their objective capacity as 'system vendor', in the same way as any other system vendor, the Court of First Instance erred in law.

25 In support of this plea the appellants submit that they are individually concerned by the contested provision within the meaning of the case-law of the Court of Justice and the Court of First Instance because they were part of a group of traders the number and identity of whom was already fixed and ascertainable at the time of the adoption of Regulation No 323/1999 (see *inter alia* Case 62/70 *Bock* v *Commission* [1971] ECR 897, paragraph 10, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 17, and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11), and by virtue of certain attributes which are peculiar to them or circumstances in which they are differentiated from all other persons (see *inter alia* Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50, and Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen* v *Commission* [2000] ECR II-201, paragraphs 48 to 50).

26 By their second plea, the appellants complain that the Court of First Instance held, at paragraphs 51 to 54 of the order under appeal, that the exceptional economic circumstances they cite did not mean that the contested provision was of individual concern to them.

27 In particular, the appellants submit that, in so holding, the Court of First Instance erred in law in disregarding the principles established by the judgments cited above in *Extramet Industrie* v *Council* and *Codorniu* v *Council* and by the subsequent case-law of the Court of Justice and Court of First Instance (see *inter alia* the order of the Court of Justice in *CNPAAP* v *Council*, cited above, paragraph 36, and orders of the Court of First Instance of 10 December 1996 in Case T-18/95 *Atlanta and Internationale Fruchtimport Gesellschaft Weichert* v *Commission* [1996] ECR II-1669, paragraph 47, of 3 June 1997 in Case T-60/96

Merck and Others v *Commission* [1997] ECR II-849, paragraphs 40 and 41, and of 30 September 1997 in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraphs 58 and 59).

28 In its response, the Council contends that the Court of First Instance did not commit the errors in law alleged by the appellants and that the appeal should therefore be dismissed. Moreover, the Council points out that it is possible for the appellants to challenge the validity of the contested provision before a national court, for example in an action brought against a measure concerning the application of the provision in question. The Council adds that issues of interpretation of the contested provision could be the subject of a reference to the Court of Justice for a preliminary ruling.

29 The Commission is also of the view that the Court of First Instance did not err in law. As regards the first plea, it considers that the Court of First Instance correctly applied the case-law of the Court of Justice and the Court of First Instance regarding the fact that even if a legislative measure applies to the traders concerned in general, it may be of direct and individual concern to certain of them. As regards the second plea, it contends that the Court of First Instance correctly applied the judgments in *Extramet Industrie* v *Council* and *Codorniu* v *Council*, cited above.

Findings of the Court

30 Under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss the appeal by reasoned order.

31 It should be noted at the outset that, in its consideration of the admissibility of the action for annulment which was before it, the Court of First Instance undertook an analysis in two parts. In paragraphs 44 to 47 of the order under appeal, it first considered the question whether the contested provision is of a legislative nature given its nature and scope. Second, having concluded that it was of a legislative nature, it considered, at paragraphs 48 to 54 of the order under appeal, whether the appellants could none the less claim that Regulation No 323/1999 was of individual concern to them, because they were affected by it by reason of certain attributes peculiar to them or by reason of circumstances in which they were differentiated from all other persons within the meaning of the case-law of the Court of Justice and the Court of First Instance.

The first plea

32 As regards the first plea of the appellants, alleging that the Court of First Instance erred in holding that the contested provision was of concern to them only in their objective capacity as 'system vendor', in the same way as any other system vendor, it must be held that in so far as it disputes both paragraph 47 and paragraph 50 of the order under appeal, this plea concerns the first and second parts of that order respectively.

33 As regards, first, paragraph 47, concerning the part of the order under appeal dealing with whether or not the contested provision is of a legislative nature, it must be observed that the only argument relied on by the appellants in support of their first plea, which challenges the legislative nature of that provision, relates to the case-law established *inter alia* by the judgment in Case 112/77 *Töpfer* v *Commission* [1978] ECR 1019, paragraph 9, relied on in that connection by the appellants. In particular, they submit that, because of their existing obligations, which are liable to be affected by the provision, it affects them individually just as if it comprised a bundle of decisions addressed to them personally.

34 As to those submissions, the judgment in *Piraiki-Patraiki and Others* v *Commission*, cited above, relied on by the applicants in support of their argument, does not bear out their claim that Regulation No 323/1999 in fact constitutes a bundle of decisions, since, in the case giving rise to that judgment, the Court had to consider whether, despite the fact that the legislative nature of the contested provision was beyond doubt, it was none the less of individual concern to the applicant trader by reason of a factual situation in which it was differentiated from any other trader. Moreover, in concluding that the contested provision was of a legislative nature because of its general and abstract terms, the Court of First Instance made an analysis which was in no way vitiated by an error of law.

35 The other arguments relied on in support of their first plea by the applicants specifically concern the second part of the order under appeal, dealing with the question whether, despite the legislative nature of the contested provision, they are none the less individually concerned by that measure by reason of certain attributes peculiar to them, or a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom a measure is addressed (see *inter alia* the judgments, cited above, in *Extramet Industrie* v *Council*, paragraph 13, and *Codorniu* v *Council*, paragraphs 19 and 20; the order of 28 June 2001 in Case C-351/99 P *Eridania and Others* v *Council* [2001] ECR I-5007, paragraph 45, and the judgment in Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraphs 46 and 49).

36 As to that, it must be held that, contrary to the submissions of the appellants, the Court of First Instance, in paragraphs 48 to 54 of the order under appeal, did consider whether they were individually concerned in the light of the principles established *inter alia* by the judgments in *Extramet Industrie* v *Council* and *Codorniu* v *Council*, cited above.

37 Second, the Court of First Instance was right to dismiss, at paragraph 50 of the order under appeal, the appellants' argument that they form part of a select group of traders covered by the contested provision and that their application for annulment is, therefore, admissible.

38 Even if, as the appellants submit, the four current vendors of CRSs were in fact the only addressees of the contested provision, in that they were the only ones affected by that measure, the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that, as in the present case, that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, in particular, *Antillean Rice Mills* v *Council*, cited above, paragraphs 51 and 52).

39 The contested provision was of concern to the appellants only in their objective capacity as 'system vendor', in the same way as any other current or future system vendor in the same position and the other traders on the relevant market, such as airlines or subscribers who were also covered by the provision by reason of their objective capacity. As the Court of First Instance points out at paragraph 47 of the order under appeal, the provision is drafted in general and abstract terms by Regulation No 2299/89, as amended by Regulation No 323/1999, that is to say, it defines the categories of traders to which it applies, without reference to the specific situation of certain traders (see *inter alia* order of 18 December 1997 in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37).

40 That conclusion is not undermined by the appellants' argument that the specific effects of the contested provision are different for the different legal persons to whom it applies, in that only the four vendors of global CRSs suffer serious adverse financial consequences as a result of the adoption of the provision, in particular because of the consequences on their activities of selling MIDT to airlines. They argue that the Court of First Instance erred in disregarding that difference in the specific effects of the contested provision, which contains no transitional measures, and concluding that the appellants were in the same position as all other traders carrying out their activities on the relevant market, such as other CRS vendors, airlines or subscribers.

41 As to that, suffice it to observe that, according to settled case-law, the fact that a measure may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined (orders in *Sveriges Betodlares and Henrikson* v *Commission*, cited above, paragraph 37, and *Eridania and Others* v *Council*, paragraph 58).

42 The appellants submit that they are in a factual situation which differentiates them from all other persons and, therefore, distinguishes them individually in the same way as a person to whom a measure is addressed. In that connection they essentially rely on two arguments.

43 It is common ground that the first argument, which is based on the involvement of the appellants in the preparation of the contested provision and the Council's awareness of their specific circumstances, was not put before the Court of First Instance and is, therefore, clearly inadmissible at the appeal stage according to settled case-law (see *inter alia* the judgment in Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] ECR I-8147, paragraph 74, and the case-law cited therein).

44 The second argument is essentially based on the case-law of the Court, as established *inter alia* by the judgment in *Piraiki-Patraiki and Others* v *Commission*, cited above, and according to which an action for annulment brought by an individual is admissible if that individual establishes, first, that the institution from which the contested provision emanates is required to take account of the consequences for the situation of certain individuals, including the applicant, of the act they are intending to adopt, and, second, that it had already entered into contracts which were due to be performed during the period of application of the contested decision but which had been prevented from being

performed, in part or at all, by that provision (see *inter alia Antillean Rice Mills and Others*, cited above, paragraphs 57 and 61, and order of 30 January 2002 in Case C-151/01 P *La Conqueste* v *Commission* [2002] ECR I-1179, paragraph 36).

45 In that regard, the factual situation which the appellants claim differentiates them from any other trader derives from the fact that the contracts to supply MIDT which they had concluded before Regulation No 323/1999 was adopted were likely not to be renewed by the airlines. However, such a situation, even if it were proven, is not comparable to that which is the subject of the judgment in *Piraiki-Patraiki and Others* v *Commission*, cited above, which makes the admissibility of an action for annulment conditional on the existence of contracts which have already been concluded and performance of which is prevented wholly or partly by the contested provision. Therefore, the situation on which the appellants rely cannot give rise to the application of the case-law established by that judgment.

46 Moreover, at paragraph 54 of the order under appeal, the Court of First Instance held that the appellants had not established that they were affected by the contested provision by reason of a collection of attributes which differentiate them from any other trader to whom the provision applies, such as *inter alia* other vendors of CRSs, on the basis, in particular, of the finding that, while the appellants were affected by the contested provision, it was because of their activity in relation to MIDT, which is only an activity derived from the primary function of CRSs, that is to say the computerised reservation of services.

47 That appraisal by the Court of First Instance of the evidence put before it does not constitute, save where the clear sense of that evidence has been distorted, a point of law which is subject, as such, to review by the Court of Justice (see *inter alia* judgments in Case C-13/99 P *TEAM* v *Commission* [2000] ECR I-4671,

paragraph 63, and in Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 49).

48 That argument must therefore be rejected as clearly inadmissible since, without adducing any evidence of distortion of the facts put before it, it seeks in practice to make the Court of Justice reconsider a finding of fact already made at first instance, as to whether the circumstances of the appellants, in particular as regards the investments they had made, could be considered sufficiently specific to differentiate them from any other trader.

49 The first plea must, therefore, be dismissed as, in part, clearly inadmissible and, in part, clearly unfounded.

The second plea

50 As regards the second plea relied on by the appellants, alleging that the Court of First Instance erred in holding that the exceptional circumstances cited by them did not mean that they were individually concerned by the contested provision, it must be observed that, at paragraphs 51 to 54 of the order under appeal, the Court of First Instance held that an undertaking is not individually concerned by a legislative provision simply by virtue of the fact that that provision affects its economic activity and, moreover, that the circumstances of the cases giving rise to the judgments cited above in *Extramet Industrie* v *Council* and *Codorniu* v *Council*, on the basis of which the companies in question were considered to be individually concerned, did not obtain in the present case.

51 First, as regards the judgment in *Codorniu* v *Council*, cited above, the Court of First Instance was right to hold that the appellants had not established that they were prevented from exercising an exclusive right comparable to that in the case giving rise to that judgment (see *inter alia* order in *Eridania and Others* v *Council*, cited above, paragraphs 62 and 63).

52 Second, as regards the judgment in *Extramet Industrie* v *Council*, cited above, the Court of First Instance was also right to hold, at paragraphs 52 and 54 of the order under appeal, that the trader in the case giving rise to that judgment was distinguished from any other trader by a collection of factors peculiar to it and by reason of which it had to be regarded as individually concerned by the contested provision, whereas, in the present case, the appellants had not established that they were affected by the contested provision by reason of a collection of attributes which differentiate them from any other trader to whom the provision applies.

53 It is to be noted that the appellants, although they rely on the judgment in *Extramet Industrie* v *Council*, cited above, base the admissibility of their application exclusively on the economic difficulties to which the contested provision gave rise, but fail to establish the existence of a collection of other factors constituting a situation peculiar to them which differentiated them, as regards the measure in question, from all other traders (see *inter alia Industrie des Poudres Sphériques* v *Council*, cited above, paragraph 57).

54 Moreover, as regards the economic difficulties as such relied on by the appellants as a basis for the admissibility of their application, the Court of First Instance made the point, at paragraph 54 of the order under appeal, that they related only to an activity derived from the primary function of CRSs, that is to say the activity relating to MIDT, and went on to conclude that the appellants had not established that they were affected by the contested provision except in their capacity as vendors of CRSs, in the same way as other traders on the relevant market.

55 In those circumstances, it must be held that the appellants have not in fact established that serious consequences resulted from the implementation of the provision in question, which were such as to distinguish them from any other trader to whom it applied (see, in that connection, *Antillean Rice Mills* v *Council*, cited above, paragraphs 53 and 54).

56 For the rest, the appraisal by the Court of First Instance of the seriousness of the alleged consequences of the contested provision concerns the evidence put before it and does not constitute, save where the clear sense of that evidence has been distorted, a point of law which is subject, as such, to review by the Court of Justice.

57 The second plea must therefore be dismissed as clearly unfounded.

58 It follows from all the foregoing considerations that the appeal must be dismissed, under Article 119 of the Rules of Procedure, as being, in part, clearly inadmissible and, in part, clearly unfounded.

Costs

59 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council and the Commission have applied for costs and the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby orders:

1. The appeal is dismissed.

2. The Galileo Company and Galileo International LLC are ordered to pay the costs.

Luxembourg, 25 April 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber