ORDER OF THE COURT (Fifth Chamber)
9 March 2000 *

In Case C-291/98 P,

Sarrió SA, established in Barcelona (Spain), represented by A. Mazzoni, of the Milan bar, M. Siragusa, of the Rome Bar, and F.M. Moretti, of the Venice Bar, with an address for service in Luxembourg at the Chambers of Elvinger, Hoss & Prussen, 2 Place Winston Churchill,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 14 May 1998 in Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-1439, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by R. Lyal, of its Legal Service, acting as Agent, assisted by A. Dal Ferro, of the Vicenza Bar, with an

* Language of the case: Italian.

address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, L. Sevón, P. Jann, H. Ragnemalm and M. Wathelet (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 28 July 1998, Sarrió SA ('Sarrió') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 14 May 1998 in Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-1439, in which the Court of First Instance annulled part 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).

2 By letter of 21 January 2000, Sarrió disputed the Court's decision to dispense with the oral part of the procedure, arguing that it did not satisfy the conditions laid down in Article 120 of the Rules of Procedure of the Court of Justice or observe the principle of the proper administration of justice. It seeks an order that a hearing take place and, in the alternative, permission to lodge a reply.

3 Sarrió refers in that regard to its letter of 11 November 1998 in which it stated as follows:

'As you pointed out in your letter of 29 October last — in which you sent us the Commission's response in the above case — Article 117 of the Rules of Procedure of the Court of Justice provides that an appellant may apply to the Court for permission to submit a reply.

In the present case, Sarrió considers that a reply is not strictly necessary and thus, in the interests of procedural economy, waives the right to request the Court for permission under Article 117 of the Rules of Procedure.

However, as some legal aspects of the present proceedings are particularly significant and important and as the Commission's response contains some aspects which require careful examination, the appellant hereby requests the

Court of Justice to consider the appropriateness of granting Sarrió, at the hearing, a slightly longer period than is normally allowed in order that it may adequately put forward its arguments to the chamber, also in regard to the response.'

4 Sarrió repeated the terms of that letter in its letter of 8 December 1999 in which it replied to the Registry's invitation to submit its views on the possibility that the Court might decide to dispense with the oral part of the procedure.

5 Sarrió submits that if it could have foreseen that the oral part of the procedure would be dispensed with, it would undoubtedly have requested permission to lodge a reply.

6 It should be observed in that regard that, as provided in Article 18 of the EC Statute of the Court of Justice, the procedure before the Court is to consist of two parts: written and oral. The written part is closed before the oral part is opened.

7 In derogation from Article 41 of the Court's Rules of Procedure, which gives parties the right to supplement the application and the defence by a reply and a rejoinder, Article 117(1) of those rules provides that, in the case of an appeal, 'The appeal and the response may be supplemented by a reply and a rejoinder or any other pleading, where the President, on application made ..., considers such further pleading necessary and expressly allows it in order to enable the party concerned to put forward its point of view or in order to provide a basis for the decision on the appeal.'

8 In the present case, Sarrió expressly stated in its letter of 11 November 1998 that it considered that a reply was not strictly necessary. Even assuming that Sarrió intended to waive its right to request permission to lodge a reply in the firm belief that it would have the right to present oral argument, the fact is that it has misconstrued both the wording and scheme of Article 117(1), which leaves it to the Court to assess, prior to closure of the written procedure, whether it is necessary to authorise the lodging of a reply and a rejoinder.

9 As regards the oral procedure, Article 120 of the Rules of Procedure allows the Court to dispense with the oral part of the procedure 'unless one of the parties objects on the ground that the written procedure did not enable him fully to defend his point of view'.

10 It must be observed that the various letters sent by Sarrió to the Registry of the Court do not contain any arguments to that effect. They merely refer to its decision, in November 1998, not to reply to the Commission's response, and request the right to comment orally on the 'aspects' raised by the Commission which 'require careful examination'.

11 However, the appellant's waiver of the right to request, in accordance with Article 117 (1) of the Rules of Procedure, permission to lodge a reply does not give it a right to a decision by the Court, at its request, to hold a hearing, nor does it prove that the written procedure did not give it an opportunity fully to defend its point of view. It would still have been necessary for the appellant to set out, albeit succinctly, the reasons for which it considered that it had not had such an opportunity. Not only do Sarrió's letters not give any such reasons but also Sarrió can hardly claim that the written procedure has not given it an opportunity fully

to defend its point of view, since it voluntarily waived its right to request permission to lodge a reply.

12 Sarrió's request that the Court decide to hold a hearing and, in the alternative, that it be authorised to lodge a reply must therefore be rejected.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Rejects the requests by Sarrió SA that the Court decide to hold a hearing and, in the alternative, that it be permitted to lodge a reply;

2. Reserves the costs.

Luxembourg, 9 March 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber