ORDER OF THE PRESIDENT OF THE COURT
27 February 2002 *

In Case C-480/01 P(R),

Commerzbank AG, established in Frankfurt am Main (Germany), represented by H. Satzky and B.M. Maassen, Rechtsanwälte,

appellant,

APPEAL against the order of the President of the Court of First Instance of the European Communities of 5 December 2001 in Case T-219/01 R *Commerzbank* v *Commission* [2001] ECR II-3501, seeking to have that order set aside and asking for:

— suspension of operation of the Commission's decision of 17 August 2001 refusing the appellant access to certain documents relating to the abandonment, in Case COMP/E-1/37.919 — bank charges for exchanging Euro zone currencies, of the proceeding against other banks,

— an order enjoining the Commission not to continue with the proceeding in Case COMP/E-1/37.919 by sending a proposal for a final decision to the College of Commissioners without having previously granted the access to the file that the appellant requested by letter dated 15 August 2001, and

* Language of the case: German.

— an order that the Commission pay the costs,

the other party to the proceedings being:

Commission of the European Communities, represented by S. Rating, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

THE PRESIDENT OF THE COURT

after hearing Advocate General Tizzano,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 10 December 2001, Commerzbank AG brought an appeal, in accordance with Article 225 EC and the second paragraph of Article 50 of the EC Statute of the Court of Justice, against the Order of the President of the Court of First Instance of 5 December 2001 in Case T-219/01 R *Commerzbank* v *Commission* [2001] ECR II-3501

(hereinafter 'the contested order') dismissing the appellant's application for interim measures; it had sought, first, suspension of the operation of the Commission's decision of 17 August 2001 refusing Commerzbank AG access to certain documents relating to the abandonment of a proceeding against other banks in Case COMP/E-1/37.919 — bank charges for exchanging Euro zone currencies (hereinafter 'the decision of 17 August 2001') and, secondly, suspension of the proceeding under Article 81 EC in the same case in as far as it was concerned.

2 As well as applying to have the contested order set aside, the appellant seeks:

— suspension of the operation of the decision of 17 August 2001,

— an order enjoining the Commission not to continue with the proceeding in Case COMP/E-1/37.919 by sending a proposal for a final decision to the College of Commissioners without having previously granted the access to the file that the appellant requested by letter dated 15 August 2001, and

— an order that the Commission pay the costs.

3 By a document lodged with the Court Registry on 15 January 2002, the Commission submitted its written observations to the Court.

The legal background, the facts of the case and the proceedings before the Court of First Instance

4. Reference is made to paragraphs 1 to 17 of the contested order for the legal background, the facts of the dispute and the proceedings before the Court of First Instance.

The contested order

5 By the contested order, the President of the Court of First Instance dismissed the application for interim measures as inadmissible for lack of serious evidence enabling that Court to consider that the action in the main proceedings might be admissible.

6 In this regard, the contested order states, in essence, that the decision of 17 August 2001 constitutes a preparatory measure forming part of a preliminary administrative procedure and that it cannot therefore be challenged in its own right.

7 In order to reach that conclusion, the judge hearing the application for interim measures recalled the case-law according to which, in the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, an act is, in principle, open to review only if it is a measure definitively laying down the position of the institution at the end of that procedure, and not a provisional measure intended to pave the way for that final decision.

8 That would be the case, in particular, of Commission measures refusing access to the file in competition cases, which produced in principle only limited effects, characteristic of a preparatory measure forming part of a preliminary administrative procedure.

9 According to the judge hearing the application for interim measures, the applicant's assertion as to urgency, according to which the adoption of a final decision fining it was imminent, was irrelevant, since it was insufficiently precise in that it revealed nothing as to the content of any decision regarding the applicant.

10 As to the applicant's argument based on infringement of its rights as addressee of a statement of objections, it is clear from the contested order that such an infringement is capable of producing binding legal effects of such a nature as to affect the applicant's interests only if and when the Commission adopts a decision finding the existence of the alleged infringement.

11 Lastly, with regard to the argument based on Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of hearing officers in certain competition proceedings (OJ 2001 L 162, p. 21), the contested order finds that the applicant had not presented serious evidence that enabled the judge hearing the application for interim measures to consider that the case-law on access to the file in competition cases was no longer applicable.

12 With regard to the request to suspend the proceeding under Article 81 EC instituted against the applicant, the judge hearing the application for interim measures found that the applicant had not presented any evidence of exceptional circumstances which could justify the adoption of such a measure.

The appeal

13 The appellant puts forward four pleas in law in support of its appeal.

14 First, it contends that the judge hearing the application for interim measures erred in law by refusing to recognise its urgency. According to the appellant, he should have taken account of the fact that the closure of the administrative procedure before the Commission was imminent.

15 Secondly, it maintains that the particular features of the case should have led the judge hearing the application for interim measures to recognise that exceptional circumstances justified suspension of the Article 81 EC proceeding against the appellant.

16 Thirdly, the appellant maintains that the contested order wrongly failed to take account of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), as this came into force on 3 December 2001, that is to say, before the adoption of the contested order.

17 Fourthly, the appellant maintains that the contested order shows a misunderstanding of the scope of Decision 2001/462.

Assessment

18 Since the written observations of the parties contain all the information needed to rule on the appeal, there is no need to hear oral argument.

19 It is necessary, at the outset, to examine whether, taking account of the circumstances of the case, the appellant can demonstrate a legal interest in bringing proceedings.

20 In this regard it should be observed that for a person to have an interest in bringing appeal proceedings the appeal must be likely, if successful, to procure an advantage for that party (Cases C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraph 13, and C-174/99 P *Parliament* v *Richard* [2000] ECR I-6189, paragraph 33).

21 It should be added that the assessment of an applicant's interest in obtaining the measures which he seeks takes on particular importance in proceedings on an application for interim relief (order in Case C-89/97 P(R) *Moccia Irme* v *Commission* [1997] ECR I-2327, paragraph 43).

22 The judge hearing an application for interim relief may order suspension of operation of an act or other interim measures only if it is established, *inter alia*, that such an order is urgent inasmuch as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Interim measures which would not serve to prevent the serious and irreparable harm feared by the applicant cannot *a fortiori* be necessary for that purpose. If the applicant does not have any interest in obtaining the interim measures sought, those measures cannot, therefore, satisfy the criterion of urgency (*Moccia Irme* v *Commission*, cited above, paragraph 44).

23 In the present case, it appears that the proceedings for interim relief of which the present appeal forms a part are directed in essence at preventing the Commission from adopting a final decision regarding the appellant in Case COMP/E-1/37.919 before the Court of First Instance has ruled on the legality of the decision of 17 August 2001.

24 The final decision was adopted by the Commission on 11 December 2001, that is to say, the day after the present appeal was lodged.

25 The adoption of that final decision thus had the effect of nullifying any interest the appellant had in pursuing and the application for interim measures.

26 Moreover, it emerges from the appeal that the appellant knew that the Commission intended to adopt a final decision in the immediate future. That being the case, it would have been permissible for the appellant to mention in its appeal any special circumstances that justified its continued interest in pursuing the proceedings for interim relief despite the foreseeable adoption of the final decision, but it did not do so.

27 In those circumstances, since the appellant no longer has an interest in pursuing the proceedings for interim measures, the appeal has become devoid of purpose, so that there is no need to give a decision.

Costs

28 Under Article 69(6) of the Rules of Procedure, which applies to appeals by virtue of Article 118 thereof, where a case does not proceed to judgment, the costs are to be in the discretion of the Court.

29 For the purposes of the decision on costs, the fact that there is no need to give a decision must in this instance be treated as a dismissal of the appeal. For that reason, the appellant must bear all the costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. There is no need to give a decision.

2. Commerzbank AG is ordered to bear the costs.

Luxembourg, 27 February 2002.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President