ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

1 March 2004 *

In Case T-210/99,

Johan Henk Gankema, residing in Veendam (Netherlands), represented by E. Maas, lawyer, with an address for service in Luxembourg,

applicant,

supported by

Kingdom of the Netherlands, represented initially by L. Fierstra and L. Cuelenaere, and subsequently by L. Cuelenaere and V. Koningsberger and, finally, by H.G. Sevenster, acting as Agents,

intervener,

* Language of the case: Dutch.

Commission of the European Communities, represented initially by G. Rozet and H. Speyart, and subsequently by G. Rozet and H. van Vliet, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border (OJ 1999 L 280, p. 87),

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

composed of J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges,

Registrar: H. Jung,

makes the following

Order

1 By Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border (OJ 1999 L 280, p. 87, hereinafter 'the Decision'), the Commission declared the aid granted by the Netherlands to 450 Dutch service stations incompatible with the common market and with the functioning of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), and ordered the recovery of the aid already granted. The applicant carries on the business of one of the service stations named in that Decision.

2 By application lodged at the Court Registry on 20 September 1999, the applicant brought this action.

3 By separate document registered at the Court Registry on 8 December 1999, the Commission raised a plea of inadmissibility of that action under Article 114 of the Rules of Procedure of the Court of First Instance.

4 The applicant lodged no observations on that plea within the period prescribed for him to do so.

5 By letter from the Court Registry of 17 February 2000, the parties were requested to state their views on a stay of proceedings pending the delivery of the judgment of the Court of Justice in a related case, Case C-382/99 *Netherlands* v *Commission*, which also sought the annulment of the Decision.

6 The applicant lodged no observations in response to that request within the period prescribed for him to do so.

7 By order of the President of the First Chamber, Extended Composition, of the Court of First Instance of 9 March 2000, the proceedings were stayed pending delivery of the judgment of the Court of Justice in Case C-382/99.

8 By judgment of 13 June 2002 in Case C-382/99 *Netherlands* v *Commission* [2002] ECR I-5163, the Court of Justice dismissed the Netherlands' action and the stay of these proceedings was therefore lifted.

9 By letter from the Court Registry of 21 June 2002, the applicant was requested to submit his observations on the possible consequences for this case of that judgment of the Court of Justice, and to state, in any case, whether he intended to pursue those of his pleas in law for annulment which are identical, in essence, to those rejected by the Court in that judgment and to envisage, if so advised, the application of Article 99 of the Rules of Procedure of the Court of First Instance.

10 The applicant lodged no observations in response to that request within the period prescribed for him to do so.

11 By letter from the Court Registry of 30 July 2003, the applicant was requested to submit any observations as to the future course of the proceedings before the Court.

12 The applicant lodged no observations in response to that request within the period prescribed for him to do so.

13 The composition of the Court's Chambers having been changed at the start of the new judicial year, the Judge-Rapporteur was attached to the Second Chamber, Extended Composition, to which this case was, as a result, assigned.

14 By order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 25 September 2003, the Kingdom of the Netherlands was given leave to intervene in support of the forms of order sought by the applicant.

15 By letter from the Court Registry of 13 November 2003, the parties were given notice that, in view of the history of this case, the judgment in *Netherlands* v *Commission*, cited above, and the absence of any response from the applicant to the Registry's letters of 21 June 2002 and 30 July 2003, the Court was minded to make, unless they formally objected prior to 27 November 2003, an order that there is no need to adjudicate.

16 Neither the applicant nor the intervener replied to that letter within the period prescribed for them to do so. By letter lodged at the Court Registry on 27 November 2003, the Commission stated that it had no objection to the making of an order that there is no need to adjudicate.

17 It is appropriate, therefore, that the Court declare of its own motion, in accordance with Article 113 of the Rules of Procedure, that the action has become devoid of purpose and that there is no need to adjudicate on it (see, by analogy, the order of the Court of Justice of 23 September 1987 in Case 43/83 *De Naeyer* v *Commission* [1987] ECR 3569, and the order of the Court of First Instance of 6 December 1999 in Case T-81/98 *Boyes* v *Commission* [1999] ECR II-3501).

Costs

18 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court of First Instance. However, under Article 87(4) of those Rules, the Member States which have intervened in the proceedings are to bear their own costs.

19 In this case, it is appropriate to decide, pursuant to those provisions, that the applicant shall bear his own costs and pay the Commission's costs, whereas the Kingdom of the Netherlands shall bear its own costs.

On those grounds,

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

hereby orders:

1. **There is no need to adjudicate on this action.**

2. **The applicant shall bear his own costs and pay the Commission's costs. The Kingdom of the Netherlands shall bear its own costs.**

Luxembourg, 1 March 2004.

H. Jung
Registrar

J. Pirrung
President