Appeal brought on 31 March 2003 by Philip Morris International, Inc., against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands

(Case C-146/03 P)

(2003/C 146/45)

An appeal against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00 [1], T-379/00 [2], T-380/00 [2], T-260/01 [3] and T-272/01 [4] between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands, was brought before the Court of Justice of the European Communities on 31 March 2003 by Philip Morris International, Inc., established in Rye Brook, New York (United States), represented by E. Morgan de Rivery and F. Marchini Camia, lawyers.

The Appellant claims that the Court should:

— annul the judgment of the Court of First Instance of 15 January 2003 in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01; and

— give final judgment on the issue of admissibility, pursuant to Article 61 of the Protocol on the Statutes of the Court of Justice, by declaring the Appellant's actions for annulment admissible and refer the case back to the Court of First Instance for examination of the substance of the case; or

— failing that, refer the case back to the Court of First Instance for judgment on the admissibility issue and subsequently and/or simultaneously on the substance of the case; and

— order the Commission to pay the Appellant's costs before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The Appellant contends that, in the contested judgment, the Court of First Instance made the following errors of law:

1. The Court of First Instance violated the concept of a challengeable act under Article 230 EC by:

   — considering that bringing proceedings on the basis of the contested acts is comparable to bringing proceedings under Article 226 EC;

   — considering that the admitted lack of competence to adopt the contested acts and the subsequent creation and exercise of such competence do not alter the legal position of the parties to the case;

   — failing to consider that the contested acts produced legal effects through the mere fact that they deprived the Appellant of certain legal protections and advantages within the Community legal order;

   — considering that case C-345/00 P, FNAB, can be applied to the instant case;

   — failing to consider that the contested acts are open to judicial review since they are manifestly illegal; and finally

   — as a first alternative, if the Court of First Instance's reasoning is correct (*quod non*) that only the decision of the US District Court of the Eastern district of New York produces legal effects, then the Court of First Instance erred in law by considering, notwithstanding the circumstances of the case, that the contested acts cannot be reviewed under Article 230 EC;

   — as a second alternative, if the Court of First Instance's reasoning is correct (*quod non*) that it is not possible to separately review a decision to initiate a law suit, it should have joined the question of admissibility to the substance.

2. The Court of First Instance contradicted itself on an essential point of law.

3. The Court of First Instance violated Article 292 EC.

4. The Court of First Instance violated the right to effective judicial protection.

(1) OJ C 79, 10.3.2001, p. 23.
(2) OJ C 79, 10.3.2001, p. 24.
(3) OJ C 3, 5.1.2002, p. 39.
(4) OJ C 3, 5.1.2002, p. 45.

Reference for a preliminary ruling by the Oberlandesgericht München — Zivilsenate in Augsburg — by order of that Court of 27 March 2003 in the case of Nürnberger Allgemeine Versicherungs AG against Portbridge Transport International B.V.

(Case C-148/03)

(2003/C 146/46)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht München — Zivilsenate in Augsburg — (Munich Higher Regional Court, Civil Chambers in Augsburg) of 27 March 2003, received at the Court Registry on 31 March 2003, for a preliminary ruling in the case of Nürnberger Allgemeine Versicherungs AG against Portbridge Transport International B.V. on the following question:

Do the provisions on jurisdiction contained in other conventions take precedence over the general provisions on jurisdiction in the Brussels Convention even where a defendant domiciled in the territory of a State which is a party to the Brussels Convention and against whom an action has been brought before a court of another State which is a party to that Convention fails to submit pleas as to the merits of the case in the proceedings before that court?

Reference for a preliminary ruling by the Cour de Cassation of the Grand Duchy of Luxembourg by judgment of that Court of 6 March 2003 in the case of Caisse Nationale des Prestations Familiales against Ursula SCHWARZ, née WEIDE

(Case C-153/03)

(2003/C 146/47)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de Cassation (Court of Cassation) of the Grand Duchy of Luxembourg of 6 March 2003, received at the Court Registry on 3 April 2003, for a preliminary ruling in the case of Caisse Nationale des Prestations Familiales against Ursula SCHWARZ, née WEIDE on the following questions:

1. Must Article 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (1) be interpreted as applying only where a migrant worker is entitled to family benefits under the legislation of the State of employment and under the legislation of the State in which the members of his family are resident?

2. If so, may the bodies of the State of employment suspend entitlement to family benefits where they consider that a refusal to grant family benefits in the State of residence is incompatible with Community law?

3. If not, does Article 76 of Regulation No 1408/71 permit the State of employment to apply the rule against aggregation of benefits where, under the law of the State of residence of the family members, the worker's spouse receives or is entitled to similar family benefits?

(1) as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ L 230, p. 6).

Action brought on 3 April 2003 by the Commission of the European Communities against Ireland

(Case C-154/03)

(2003/C 146/48)

An action against Ireland was brought before the Court of Justice of the European Communities on 3 April 2003 by the Commission of the European Communities, represented by Karen Banks, acting as agent, with an address for service in Luxembourg.