2 – Rectify the judgment in so far as it held that the overall conduct of Adriatica, following the meeting of 24 November 1993, was not such as validly to dissociate it for the purposes of exonerating it from liability for the collusive behaviour found to have taken place;

3 – On the basis of the second plea in law set out below, rectify the judgment in so far as it confirms the duration of the infringement committed by Adriatica, reducing the period of the infringement ascribed to it;

4 – On the basis of the first plea in law set out below, reduce the penalty imposed on Adriatica by the Court of First Instance;

5 – On the basis of the first, second and third pleas in law set out below, reduce the penalty imposed on Adriatica in the light of the lesser gravity and shorter duration of the infringement committed by it;

6 – In the alternative, and independently of the other pleas in law, rectify the judgment in so far as the Court of First Instance erred in calculating the reduction in the fine to be accorded to Adriatica, thereby reducing the fine;

7 – Order the Commission to pay the costs at first instance and on appeal.

Pleas in law and main arguments:

— Infringement of Article 81 of the Treaty and erroneous application of the law in respect of the failure to assess the consequences, in Adriatica's case, of the incorrect definition of the relevant market given by the Commission;

— Infringement of Article 81 of the Treaty and erroneous application of the law in the assessment of the existence of the requirements for the dissociation of Adriatica from the infringement;

— Infringement of Article 81 of the Treaty and Article 19 of Regulation No 4056/86 [1] in determining the duration and gravity of the infringement ascribable to Adriatica;

— In the alternative, infringement of Article 81 of the Treaty and Article 19 of Regulation No 4056/86 and a failure adequately to state reasons in determining the fine to be imposed on Adriatica.

[1] OJ 1986 L 378 of 31.12.1986, p. 4.

Appeal brought on 3 March 2004 by Marlines SA against the judgment delivered on 11 December 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-56/99 between Marlines SA and the Commission.

(Case C-112/04 P)

(2004/C 106/48)

An appeal against the judgment delivered on 11 December 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-56/99 between Marlines SA and the Commission was brought before the Court of Justice of the European Communities on 3 March 2004 by Marlines SA, represented by Dimitrios Papatheofanous and Adamantia Anagnostou, of the Athens Bar.

The appellant claims that the Court should:

— allow the appeal;

— set aside the contested judgment;

— make a decision in accordance with the law;

— order the Commission to pay the costs before both courts.

Grounds of appeal

1. Breach of the duty to state reasons.

2. Failure to observe the rules of logic and lessons derived from common experience.

3. Unreasoned (or implicit) rejection of the applicant's request that witnesses be examined.

Appeal brought on 3 March 2004 by Technische Unie BV against the judgment of 16 December 2003 by the Court of First Instance (First Chamber) in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission of the European Communities, supported by CEF City Electrical Factors BV and CEF Holdings Ltd.

(Case C-113/04 P)

(2004/C 106/49)

An appeal was brought before the Court of Justice of the European Communities on 3 March 2004 by Technische Unie BV, represented by P.V.F. Bos and C. Hubert, advocaten, against the judgment of 16 December 2003 delivered by the Court of First Instance (First Chamber) in Joined Cases T–5/00 and T-6/00 *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* and *Technische Unie BV* v *Commission of the European Communities,* supported by *CEF City Electrical Factors BV* and *CEF Holdings Ltd.*

The appellant claims that the Court should:

(1) set aside the judgment of 16 December 2003 by the Court of First Instance of the European Communities in Joined Cases T–5/00 and T-6/00, at least in so far as it relates to Case T-6/00, and, regard being had to the form of order sought under (2), dispose of the case itself or, in the alternative, set the judgment aside and refer the matter back to the Court of First Instance for further consideration;

(2) annul in its entirety, or at least in part, the decision of the European Commission of 26 October 1999 addressed to Technische Unie, or at least, ruling afresh, decide to reduce substantially the fine imposed on the appellant; and

(3) order the European Commission to pay all costs of the proceedings, including those of the proceedings before the Court of First Instance.

Pleas in law and main arguments:

In the first place, the Court of First Instance infringed EC law and/or the European Convention on Human Rights, and at any rate provided incomprehensible reasoning in that regard, in ruling that the fact that the period within which the procedure was concluded went beyond what was reasonable could not justify annulment of the Commission decision or an additional reduction in the fine.

Second, the Court of First Instance breached Community law, inasmuch as there is internal inconsistency and thus a lack of proper reasoning with regard to the equivocal manner in which it attached significance to the date on which the warning letter was issued.

Third, the Court of First Instance demonstrated misconstruction of the law, or at any rate provided incomprehensible reasoning, in ruling that the Commission would have had good grounds for finding Technische Unie liable for the infringements referred to in Articles 1 and 2 of the decision.

Fourth, the Court of First Instance demonstrated misconstruction of the law, or at any rate provided defective reasoning, in treating earlier the breaches referred to in Articles 1 and 2 of the decision as (continuing) breaches over the periods taken into account and in subsequently taking into account, for the duration of the breach referred to in Article 3 of the decision, the same periods as those which related to the breaches mentioned earlier.

Fifth, the Court of First Instance demonstrated misconstruction of the law, or at any rate provided inadequate reasoning, in not allowing an additional reduction in the fine, notwithstanding the misappraisal of the duration of the breaches and the infringement of the principle that proceedings must be concluded within a reasonable period.

Action brought on 3 March 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-114/04)

(2004/C 106/50)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 3 March 2004 by the Commission of the European Communities, represented by Dr Bernhard Schima of the Legal Service of the Commission, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that by failing to give parallel importers an appropriate period in which to liquidate their stock upon the withdrawal of a licence for a plant protection reference product the Federal Republic of Germany has failed to fulfil its obligations under Article 28 EC;

2. order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission is of the opinion that the measures instituted by the Biologische Bundesanstalt (Federal Biological Agency) are not compatible with the principle of free movement of goods laid down in Articles 28 to 30 EC and the relevant case-law.

The withdrawal of the licence for the reference product without the provision of any period for liquidation of current stocks held by the parallel importers, with the result that the parallel imported products could no longer be sold, constituted an obstacle to the free movement of goods as laid down in the Court's case-law and therefore was fundamentally incompatible with Article 28 EC.

A parallel importer needs to purchase large quantities of the relevant product abroad in order to offer the product for sale on the market of the importing State at a competitive price and to satisfy his clients' orders. For this reason it is unavoidable that the parallel importer should hold a certain amount of stock. The automatic disappearance of the possibility of selling that stock after the withdrawal of the licence for the reference product undoubtedly amounts to a quantitative restriction on imports.

This obstacle to trade in respect of the parallel import of plant protection products is not justifiable, since the withdrawal of the licence was not made on one of the grounds laid down in Article 30 EC and in particular not for reasons of public health.