Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the opposition division and rejected the opposition

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly excluded likelihood of confusion; infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that the marks are not similar or identical.

Action brought on 25 August 2010 — Ecologistas en Acción — CODA v Commission

(Case T-359/10)

(2010/C 288/105)

Language of the case: Spanish

Parties

Applicant: Ecologistas en Acción — CODA (represented by: J. Ramos Segarra, lawyer)

Defendant: European Commission

Form of order sought

— annul the decision of 30 June 2010 of the Secretariat General of the European Commission refusing access to the documents requested by the applicant in the proceedings GESTDEM 2010/957 and declare that the applicant is entitled to receive the information requested:

  — letter of 7 January 2010 from the Servicio de Asesoramiento Urbanístico del Ajuntament de Valencia;

  — communication of 17 January 2010 by the Spanish authorities regarding EU-PILOT 724/09/2ENVI;

  — letter of 21 January 2010 from the Generalität Valenciana — Directorate General for Environmental Management;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant association challenges the decision refusing its request for access to certain documents submitted by Spain in the investigation concerning EU-PILOT-ENVI 72409, which is intended to implement the Special Protection and Internal Reform Plan (PEPRI) for the district of Cabanyal in the City of Valencia, approved by the Ayuntamiento de Valencia and the Generalidad de Valencia.

In support of its forms of order the applicant claims that the contested decision infringes Articles 3, 4 and 6 of Regulation (EC) No 1367/2006. [1]

The applicant states in that regard that, contrary to the Commission's submissions, there are no domestic legal proceedings clearly connected to the procedure initiated by the Commission. The legal proceedings to which the defendant refers concern non-compliance with domestic laws which do not in any way regulate the environment or refer to the environmental impact assessment.

Further, the applicant takes the view that, in any event, the disclosure of the information requested cannot prejudice the environmental protection to which that information refers.

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[1] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 27 August 2010 — Vtesse Networks v Commission

(Case T-362/10)

(2010/C 288/106)

Language of the case: English

Parties

Applicants: Vtesse Networks Ltd (Hertford, United Kingdom), (represented by: H. Mercer QC, Barrister)

Defendant: European Commission

Form of order sought

— Declare the application admissible;

— Annul paragraph 72 of Commission Decision C(2010) 3204 in state aid case N 461/2009 (OJ 2010 C 162, p. 1); and

— Order the defendant to pay the applicant's costs incurred in this action.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Decision C(2010) 3204 in state aid case N 461/2009 (OJ 2010 C 162, p. 1), whereby it has been decided that the aid measure 'Cornwall & Isles of Scilly Next Generation Broadband', providing aid from the European Regional Development Fund to support the deployment of next generation broadband networks in the Cornwall & Isles of Scilly region, is compatible with Article 107(3)(c) TFEU.

In support of their action, the applicant submits the following pleas in law:

Firstly, the applicant alleges that the Commission committed manifest errors in the appreciation of the facts, in particular that the Commission found that:

(a) There was an open, non-discriminatory and competitive tender process when it should have found that competition had been eliminated in relation to the tender;

(b) Existing infrastructure was available to all bidders on request when the incumbent operator has openly admitted that it did not use infrastructure which was packaged into products and available to all bidders on request;

(c) The overall effect on competition was positive when competition was eliminated by the actions of the incumbent operator.

In addition, the applicant contends that the Commission fails to apply and/or breaches Article 102 TFEU so that the assessment in the Commission Decision C(2010)3204 of the impact of the measure on competition is invalid and that therefore the said decision is unlawful and not within Article 107(3)(c) TFEU, the relevant abuses for Article 102 TFEU being:

(a) Unlawful bundling with respect to existing infrastructure of dark fibre with active electronics;

(b) Refusal of access for competing bidders to fibre and/or ducts;

(c) Margin squeeze abuse through bundling fibre with active electronics to construct products which do not permit the Applicant or other competitors to compete in the Tender Process.

Finally, the applicant argues that the Commission breaches its rights of defence, including in particular failing to open a full investigation under the procedure in Article 108(2) TFEU on the following grounds:

(a) In the light of the first and second pleas, it was unlawful to terminate the enquiry under Article 108(3) TFEU and/or not to open a full investigation under Article 108(2) TFEU;

(b) Termination of the investigation prior to a formal investigation deprives the Applicant of its procedural rights;

(c) Breach of rights of defence through not giving the applicant an opportunity to refute arguments and/or evidence presented by the UK authorities.

Action brought on 27 August 2010 — Abbott Laboratories v OHIM (RESTORE)

(Case T-363/10)

(2010/C 288/107)

Language in which the application was lodged: German

Parties

Applicant: Abbott Laboratories (Abbott Park, Illinois, United States of America) (represented by M. Kinkeldey, S. Schäffler and J. Springer, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 June 2010 in Case R 1560/2009-1;