

**Form of order sought**

- Annul the contested Commission Decision of 27 October 2010 on State aid C 14/09 (ex NN 17/09) granted by Hungary to Péti Nitrogénművek Zrt. (notified under document C(2010) 7274); and
- Order the Commission to pay its own costs and those incurred by the applicant.

**Pleas in law and main arguments**

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging
  - the Commission's failure to apply the market transaction principle;
2. Second plea in law, alleging
  - that the contested decision was issued in violation of Article 107(1) TFEU;
3. Third plea in law, alleging
  - that the contested decision was issued in violation of Article 41(2)(c) of the Charter of fundamental rights of the European Union and Article 296 TFEU;
4. Fourth plea in law, alleging
  - that the contested decision was issued in violation of Article 41(1) of the Charter of fundamental rights of the European Union;
5. Fifth plea in law, alleging
  - that the contested decision was issued in violation of principle of the protection of legitimate expectations;
6. Sixth plea in law (as alternative to the first and second pleas), alleging
  - that the contested decision was issued in violation of Article 107(3)(b) TFEU.

**Action brought on 22 July 2011 — Deutsche Post v Commission**

(Case T-388/11)

(2011/C 282/66)

*Language of the case: German*

**Parties**

*Applicant:* Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

*Defendant:* European Commission

**Form of order sought**

- annul the Commission decision of 10 May 2011 in the State aid case C 36/2007 — Germany, State aid to Deutsche Post AG (C(2011) 3081 final);
- order the defendant to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision C(2011) 3081 final of 10 May 2011 in State aid case C 36/2007 — Germany, State aid to Deutsche Post AG, by which the Commission decided to extend the investigation procedure under Article 108(2) TFEU in that case. The extension relates to the State financing of pensions of officials engaged by Deutsche Bundespost prior to the establishment of the applicant, a matter which was already the subject-matter of the Commission's decision of 12 September 2007 to open proceedings in the present case.

In support of its action, the applicant puts forward six pleas in law.

1. First plea in law: breach of Article 107(1) TFEU — Manifestly erroneous classification as aid

The manifest error of assessment committed by the Commission lies in the fact that the Commission failed to apply the *Combust* case-law (judgment in Case T-157/01 *Danske Busvognmænd v Commission* [2004] ECR II-917) to the present case. According to that case-law, measures which relieve former State undertakings from pension burdens which go beyond those normally borne by private undertakings do not constitute aid. Applied to the facts of the present case, it must necessarily follow that the State financing of pension liabilities cannot constitute aid.

2. Second plea in law: breach of Article 1(b) of Regulation No 659/1999,<sup>(1)</sup> Article 107 TFEU and Article 108 TFEU — Manifest error of appraisal in the classification as 'new' aid

The Commission's patent error of assessment lies in the fact that the Commission failed to have regard for the fact that State liability for pension obligations — if the conditions for a finding that there is aid are at all met — can relate only to existing aid. The ongoing liability of the Federal authorities for the pension obligations results from the German *Grundgesetz* (Basic Law), and thus already existed when the Treaties entered into force and has since then undergone no essential alteration. Furthermore, the Commission is bound by the declaration in Case T-266/02 *Deutsche Post v Commission* [2008] ECR II-1233 that, with regard to pension regulation, it denied that there was precondition that there must be an aid-related 'advantage' already in its decision of 19 June 2002, which is equivalent to a negative certification under the law relating to aid.

3. Third plea in law: breach of Article 107(1) TFEU — Manifestly erroneous method for calculating the alleged aid

The applicant alleges that the Commission failed to carry out the compensatory calculation, which by its own submission was necessary, of the social benefits for officials actually borne by the applicant, less alleged 'surcharges' for social burdens unusual in competition in the prices authorised for the regulated products, and of the social contributions to be borne under normal market conditions by private competitors. The Commission's method of calculation thus impermissibly excludes totally the level of the actual social benefits paid by the applicant for officials, with the result that it is immaterial for the level of the alleged aid calculated by the Commission whether and to what extent the applicant deducted social benefits. The applicant further submits that the alleged 'surcharges' in the prices are not verifiable and that, in any case, the social costs which are not normal in competition cannot in fact be covered by the results.

4. Fourth plea in law: breach of Article 107(1) TFEU — Manifestly erroneous classification of the alleged 'cross-subsidisation' of the non-regulated area by the regulated area as a factor determining the existence of aid

In this connection, the applicant submits, in particular, that the Commission failed to carry out the requisite over-compensation calculation and failed to check whether the State compensation payments had at all exceeded the costs in respect of which compensation was payable.

5. Fifth plea in law: breach of Article 107(1) TFEU — Manifest error in the application of the benchmark of the social burdens usual in competition

The applicant submits in this regard in particular that, in its calculation of the social contributions of private employers which are usual in competition, the Commission included employees' contributions, even though these are attributable to the assets of the employees and not to the social contributions to be borne by the employer; furthermore, the Commission, for the purpose of the benchmark, took as its point of reference the (excessive) level of salaries of officials instead of the wage and salary level of private undertakings usual in competition. If these two errors are corrected, as is required, the alleged aid disappears entirely.

6. Sixth plea in law: breach of the second paragraph of Article 296 TFEU — Failure to state reasons

Finally, the applicant submits, the contested decision is not adequately reasoned.

**Action brought on 18 July 2011 — Guccio Gucci v OHIM Chang Qing Qing (GUDDY)**

**(Case T-389/11)**

(2011/C 282/67)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Guccio Gucci SpA (Firenze, Italy) (represented by: F. Jacobacci, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Chang Qing Qing (Firenze, Italy)

**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 14 April 2011 in case R 143/2010-1 insofar as it rejected the opposition for the remainder of goods in classes 9 and 14; and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'GUDDY', for various goods in classes 9, 14, 18 and 25 — Community trade mark application No 6799531

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* Community trade mark registration No 121988 of the word mark 'GUCCI', for goods in classes 9, 14, 18 and 25

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Partially annulled the decision of the Opposition Division and partially dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed (i) to examine accurately the documents submitted to reach the appropriate conclusion regarding the higher distinctiveness of the trademark 'GUCCI' and as regards the phonetic comparison between the trademarks and subsequently erred in (ii) interpreting and applying Article 8(1)(b) of the Community Trade Mark Regulation.

(<sup>1</sup>) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).