

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word element 'smartline' — Application for registration No 12 574 802

Contested decision: Decision of the First Board of Appeal of OHIM of 7 October 2015 in Case R 2258/2014-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order OHIM to pay the costs.

Plea in law

- Misapplication of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 22 December 2015 — EDF v Commission

(Case T-747/15)

(2016/C 078/35)

Language of the case: French

Parties

Applicant: Électricité de France (EDF) (Paris, France) (represented by: M. Debroux, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- principally, annul Articles 1, 2, 3, 4 and 5 of the contested decision for infringement of essential procedural requirements, errors of law and errors of fact;
- in the alternative, annul Articles 1, 2 and 3 of the contested decision, in that the amount that EDF was required to reimburse was very significantly overestimated, and
- in any event, order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea, alleging infringement of Article 266 TFEU.
2. Second plea, alleging infringement of Article 107 TFEU. That plea is composed of two branches:
 - First branch, concerning the applicability of the private investor test, which is divided into five parts.

- First part, according to which the Commission, without justification or stating reasons, did not take into account numerous documents and pieces of evidence which were duly submitted to it by France and EDF;
 - Second part, according to which the Commission systematically confused the elements concerning respectively the applicability and the application of the private investor test.
 - Third part, according to which the Commission wrongly ruled out the applicability of the prudent private investor criterion, solely because, in examining the measure, France had taken into account *inter alia* considerations relating to its status as a public authority, alongside considerations relating to its status as a shareholder.
 - Fourth part, according to which the Commission wrongly individuated an obligation on the part of EDF to have a formal business plan in order to justify the applicability of the prudent private investor criterion.
 - Fifth part, according to which the Commission disregarded the nature and purpose of that measure, its context, the objective it pursued and the rules to which it was subject.
- Second branch, concerning the application of the private investor test, which is divided into three parts.
- First part, according to which the Commission wrongly concluded that the Oxera Report was not admissible as evidence.
 - Second part, according to which the Commission's methodology is vitiated by clear failings. First, the Commission took into account neither the context of the period in question, nor the criteria that investors at that time would have used. Secondly, the Commission's 'tax gift' hypothesis not only constitutes an error of law, but also gave rise to errors in the evaluation of the adequacy of the investment. In the third place, the Commission committed multiple methodological errors, each of which suffices to demonstrate clearly that the private investor criterion was not applied.
 - Third part, concerning the consequences of the methodological errors committed by the Commission.

3. Third plea, alleging a failure to state reasons for the contested decision.

In support of the action, the applicant also raises two pleas in law in the alternative.

1. First plea raised in the alternative, alleging that recovery of the majority of the aid is time barred. That plea is divided into two branches:
 - First branch, according to which the aid in question was mainly existing aid stemming from a measure implemented before the European electricity market was opened to competition.
 - Second branch, according to which a significant portion of the alleged aid stems from a measure implemented more than ten years before the first formal action taken in the investigation.
2. Second plea raised in the alternative, alleging errors of calculation committed by the Commission in determining the alleged aid. That plea is divided into three branches:
 - First branch, according to which the Commission erred in relation to the total amount of the reserves.
 - Second branch, according to which the Commission erred in relation to the applicable tax rate.
 - Third branch, according to which the amount of the alleged aid should be reviewed on the basis of the correct information.