Action brought on 1 August 2012 — Virgin Atlantic Airways v Commission

(Case T-344/12)

(2012/C 295/52)

Language of the case: English

Parties

Applicant: Virgin Atlantic Airways Ltd (Crawley, United Kingdom) (represented by: N. Green, QC and K. Dietzel, Solicitor)

Defendant: European Commission

Form of order sought

— Order the annulment of the decision of the European Commission of 30 March 2012 in Case COMP/M.6447 (IAG/bmi); and

— Order the defendant to pay the applicant's costs in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has committed an error of law by not taking into account relevant information regarding the competitive conditions that would prevail absent the acquisition, allowing the Commission to appraise the acquisition against a less competitive situation than would have been the case. In particular, the Commission erred in its treatment of: (i) the package of slots sold by bmi to IAG/British Airways in September 2011; and (ii) the bmi slots over which IAG/British Airways took security in return for a pre-payment of £60m of the purchase price for bmi.

2. Second plea in law, alleging that the defendant has made a series of material errors and failed to take into account relevant information in relation to the assessment of the impact of the acquisition on the incremental increase in slots (and market power) held by IAG at London Heathrow post-acquisition.

3. Third plea in law, alleging that the defendant made a series of errors and failed to take into account relevant information in failing to identify or in dismissing further horizontal affected markets.

4. Fourth plea in law, alleging that the Commission has committed an error of law by: (i) failing to undertake a Phase II investigation; and (ii) accepting commitments which fail to address the serious doubts found by the Commission to exist.

5. Fifth plea in law, alleging that the defendant has committed an error of law in incorrectly characterising the legal relationship between IAG and each of Iberia and British Airways as falling within Article 5(4) of the EU Merger Regulation ([1]), allowing it to conclude that the acquisition was a concentration with a 'Community dimension' for the purposes of Article 1 of the said regulation and to conclude that it had jurisdiction to review the acquisition. The decision is therefore ultra vires.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, p. 1).

Action brought on 3 August 2012 — Akzo Nobel and Others v Commission

(Case T-345/12)

(2012/C 295/53)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, Netherlands), Akzo Nobel Chemicals Holding AB (Nacka, Sweden) and Eka Chemicals AB (Bohus, Sweden) (represented by: C. Swaak and R. Wesseling, lawyers)

Defendant: European Commission

Form of order sought

— Annulment, in whole or in part, of Commission Decision C(2012) 3533 final of 24 May 2012 rejecting a request for confidential treatment submitted in relation to Case COMP/38.620 — Hydrogen Peroxide and Perboratem;

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on three main pleas in law and two alternative pleas in law.

1. First plea in law, alleging that the Commission has violated the duty to state reasons and the applicants' right to good administration pursuant to Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the publication of the extended non-confidential version of the Hydrogen Peroxide Decision violates the Commission's obligation of confidentiality pursuant Article 339 TFEU as further implemented by Regulation 1/2003 ([1]), Regulation 773/2004 ([2]) and the Commission's 2002 and 2006 Leniency Notices ([3]).

3. Third plea in law, alleging the publication of an extended non-confidential version of the Hydrogen Peroxide Decision that contains information originating from the applicants' leniency application violates the principles of legal certainty, the applicants' legitimate expectations and the right to good administration pursuant to Article 41 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law, applicable to the extent that the Commission decision can be considered to imply a decision to grant access to certain information on the basis of the Transparency Regulation ([4]), alleging that the Commission has violated its duty to state reasons and the right to good administration pursuant to Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law, applicable to the extent that the Commission decision can be considered to imply a decision to grant access to certain information on the basis of the Transparency Regulation, alleging that the publication of the extended non-confidential version of the Hydrogen Peroxide Decision violates the said regulation.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

([2]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, p. 18).

([3]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3) and Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).

([4]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

Action brought on 3 August 2012 — Afepadi and Others v Commission

(Case T-354/12)

(2012/C 295/54)

Language of the case: Spanish

Parties

Applicants: Asociación Española de Fabricantes de Preparados alimenticios especiales, dietéticos y plantas medicinales (Afepadi) (Barcelona, Spain), Elaboradores Dietéticos, SA (Spain), Nova Diet, SA (Burgos, Spain), Laboratorios Vendrell, SA (Spain), Ynsadiet, SA (Madrid, Spain) (represented by: P. Velázquez González, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul recitals 11, 14 and 17 in the preamble to Commission Regulation (EU) 432/2012 as they are seriously detrimental to the applicants' interests;

— in the interest of legal certainty, declare that the rejection of the health claims listed in Article 13 of Regulation (EC) 1924/2006 of the Parliament and of the Council must result from a legislative act;

— order the European Commission to pay the costs of the present action.

Pleas in law and main arguments

On 16 May 2012 the Commission adopted Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health. ([1]) That regulation implements Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. ([2])

In support of their action, the applicants claim that the principle of legal certainty has been infringed.

In that regard, it claims that, in spite of the work which has been carried out, the Commission's task laid down in Article 13(3) of Regulation (EC) 1924/2006 of adopting a Community list of permitted claims has not been fulfilled in its entirety, since not all of the health claims submitted for evaluation by the EFSA were made subject to an authorisation decision. Consequently, a large number of statements remain to be evaluated for the first time or to be evaluated more extensively, including evaluations of botanical substances which the applicants frequently use in their foodstuffs.