

The applicant claims that the Court should:

- Annul the Appointing Authority's decision adopted on 19 July 2004 rejecting the applicant's complaint dated 26 February 2004, by which she challenged the decision refusing to promote her from Grade A5 to Grade A4, for the 2003 promotion procedure;
- If, and in so far as necessary, annul also the Appointing Authority's original decision in November 2003 refusing to promote the applicant from Grade A5 to Grade A4, for the 2003 promotion procedure;
- Order the Defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those in Case T-432/04.

Action brought on 2 December 2004 by Danish Management A/S against the Commission of the European Communities

(Case T-463/04)

(2005/C 6/90)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 December 2004 by Danish Management A/S, Viby J, Denmark, represented by C. Kennedy-Loest and C. Thomas, Solicitors.

The applicant claims that the Court should:

- annul the Commission's decisions of 18 November 2004 and 30 November 2004 rejecting the tender submitted by the applicant in tender procedure service contract for a monitoring system of the implementation of projects and programmes of external co-operation financed by the European Community — lot 2: ACP, South Africa and Cuba — EuropeAid 119453/C/SV/Multi;
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

The applicant submitted a tender for a service contract for a monitoring system of the implementation of projects and programmes of external co-operation financed by the European Community — lot no. 2 covering ACP, South Africa and Cuba, which was published the 26 May 2004 ⁽¹⁾.

The Commission rejected the tender by decision of 18 November 2004 on the grounds that there was a discrepancy between the applicants financial offer and technical offer as to the number of man/days required. The Commission upheld its decision by letter of 30 November 2004.

The applicant submits that the Commission's decision is based on an error of fact since, according to the applicant, there was no such discrepancy between the two parts of the companies tender.

The applicant further alleges that the Commission ought to have sought to clarify the alleged discrepancy and that in not having done so before rejecting the applicants tender the Commission has taken a disproportionate action and failed to exercise due diligence, whereby it infringed its duty of care.

⁽¹⁾ OJ S 102-081573.

Action brought on 3 December 2004 by Impala against the Commission of the European Communities

(Case T-464/04)

(2005/C 6/91)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 December 2004 by Impala, Brussels (Belgium), represented by S. Crosby and J. Golding, Solicitors.

The applicant claims that the Court should:

- Annul the Commission's decision of 19 July 2004 in case no. COMP/M.3333 — Sony/BMG in its entirety;

- In the alternative, annul the contested decision insofar as it relates to either or all of the following:
 - collective dominance on the market for licences for online music;
 - single dominance in the markets for distribution of online music;
 - coordination of the parties' respective music publishing businesses;
- Order the Commission to bear the costs incurred by the applicant in connection with this action.

Pleas in law and main arguments

The applicant is an international association with the purpose of promoting the general interests of its members, which are independent music companies. It requests the annulment of the Commission's decision approving the merger between the global recorded music businesses of Bertelsmann AG and Sony Corporation of America.

In support of its application it submits that in authorising the merger the Commission violated Article 253 EC, Article 81 paragraph 1 EC, Regulation 4064/89 ⁽¹⁾ as well as the rules of law governing their application and committed manifest errors of assessment:

- by finding that a collective dominant position did not exist in the market for recorded music prior to the merger;
- by finding that the merger did not strengthen an existing collective dominant position in that market;
- by finding that the merger would not create a collective dominant position in the market for recorded music, in the market for licences for online music or in the market for the distribution of online music;
- by finding that the merger would not lead to the coordination of the parties' respective music publishing businesses.

⁽¹⁾ OJ L 395, p. 1