

Action brought on 13 December 2001 by Schneider Electric S.A. against the Commission of the European Communities

(Case T-310/01)

(2002/C 56/28)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 December 2001 by Schneider Electric S.A., established at Rueil-Malmaison (France), represented by Francis Herbert, Jacques Steenbergen and Marc Pittie, lawyers.

The applicant claims that the Court should:

- primarily, annul the decision of the Commission of the European Communities of 10 October 2001 declaring a concentration to be incompatible with the common market (Case COMP/M.2283 — Schneider/Legrand), by finding that Article 10(5) of Council Regulation No 4064/89 of 21 December 1989 on the control of concentrations between undertakings is not applicable to the present case;
- alternatively, annul the decision of the Commission of the European Communities of 10 October 2001 declaring a concentration to be incompatible with the common market (Case COMP/M.2283 — Schneider/Legrand);
- order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant is the parent company of a group engaged in the manufacture and sale of products and systems in the sectors of electrical installations, industrial control and automation. On 16 February 2001 it formally notified the Commission of the merger which it was planning with Legrand, the parent company of a group engaged in the manufacture and sale of electrical low voltage switchgear equipment.

The applicant is challenging the Commission's decision declaring that concentration to be incompatible with the common market and the EEA Agreement.

In support of its application, the applicant pleads, first, various infringements of the procedural rules. Thus, the Commission extended the time-limit within which it was required to adopt the decision, in breach of Article 10 of Regulation No 4064/89⁽¹⁾. Nor did the decision extending that time-limit indicate the reasons for it or the conduct on the part of the applicant which caused it to be extended.

Further, the applicant complains of a violation of its rights of defence. First, the statement of objections does not tally with the final decision. Second, the access to the file was irregular and the Commission did not communicate all the facts relied on in the contested decision.

Next, according to the applicant, the hearing officer did not faithfully reproduce the applicant's objection. Moreover, the hearing officer did not comply with his duty to be objective. Thus, there has been an infringement of the applicant's rights of defence and of the Commission's decision on the terms of reference of hearing officers⁽²⁾.

Lastly, the applicant complains of violation of the principles of sound administration, of the protection of legitimate expectations and of collegiate responsibility within the Commission, and of infringement of Article 253 of the EC Treaty.

Second, the applicant pleads several infringements of Article 2 of Regulation No 4064/89 and infringement of Article 253 of the EC Treaty as regards the methodology applied by the Commission and its analysis of the national markets.

Thus, the Commission takes the national markets as its reference framework but goes on to make a global assessment of the effects of the concentration, without providing any statement of reasons and in breach of Article 2 of Regulation No 4064/89. Moreover, according to the applicant, its analysis of the various national markets also infringes Article 2 of Regulation No 4064/89 and is not supported by an adequate statement of reasons. The applicant maintains that the analysis is erroneous in stating that the concentration created a dominant position.

Third, the applicant advances various pleas concerning the assessment and the way in which the applicant's proposals for the giving of undertakings are presented.

Thus, it pleads infringement of Articles 2, 8 and 19 of Regulation No 4064/89 and violation of the principle of sound administration, inasmuch as, according to the applicant, the Commission presents the proposals for undertakings in an excessively summary way for the purposes of their comprehension by third parties, who were consequently unable to assess their real scope.

In addition, according to the applicant, the Commission committed various errors of law and of assessment on that point, in breach of Articles 2, 8 and 19 of Regulation No 4064/89, of Article 253 of the EC Treaty and of the principle of proportionality.

(¹) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395 of 30.12.1989, p. 1) (text republished in its entirety, with corrections, in OJ 1990 L 257, p. 13).

(²) Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of hearing officers in certain competition proceedings (Text with EEA relevance) (notified under document number C(2001) 1461) (OJ L 162 of 19.6.2001, p. 21).

Action brought on 12 December 2001 by Les Editions Albert René against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-311/01)

(2002/C 56/29)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application has been drafted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 12 December 2001 by Les Editions Albert René, of Paris, represented by J. Pagenberg, lawyer. A further party to the proceedings before the Board of Appeal was Trucco S.p.A., of Milan (Italy).

The applicant claims that the Court should:

- annul the decision adopted on 5 October 2001 by the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 1030/2000-1 and order the cancellation of trade mark No 1043090 'OStarix';
- order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: TRUCCO S.p.A.

The Community trade mark applied for: the pictorial mark registered by the Office as 'Starix' for goods in Class 9 — Application No 1043090

Proprietor of the trade-mark right opposed in the opposition proceedings: the applicant

Trade-mark right opposed: the verbal mark 'ASTERIX' (Reg. No 16147)

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: rejection of the appeal

Grounds of claim: — risk of confusion between the two marks;
— infringement of Article 74(1) of Regulation (EC) No 40/94 (¹).

(¹) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 18 December 2001 by Yassin Abdullah Kadi against the Council of the European Union and the Commission of the European Communities

(Case T-315/01)

(2002/C 56/30)

(Language of the case: English)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 December 2001 by Yassin Abdullah Kadi, represented by Mr David Pannick QC, Mr Pushpinder Saini, Barrister, Mr Guy Martin and Mr Adam Tudor (Peter Carter-Ruck & Partners), of London (United Kingdom).