

The applicant also argues that the Commission's assertion that the below-cost selling complained of arose as a result of an aggressive rebate policy and that there is thus no causal link between it and the applicant's public service obligations is not based on any evidence and is clearly inaccurate. Further, the Commission has exceeded its powers in the area of services in the general economic interest, as, according to the case-law, it has no authority to decide on the level of costs or the efficiency of the postal service provider.

The applicant submits that the Commission has misapplied Article 87 and infringed the case-law on findings regarding aid to undertakings providing services in the general economic interest. The Commission has furnished no evidence that the decision on cross-subsidisation in favour of the business client parcel service can be attributed to State-run bodies of the Federal Republic of Germany. Moreover the Commission has disregarded the fact that a purely internal offsetting of losses within an undertaking does not constitute aid, but is merely covered by Article 82. It has also disregarded the fact that the financing of temporary below-cost selling was an economically sound decision.

Finally, the applicant submits that the Commission has infringed the principle of the right to a fair hearing.

(¹) Commission Decision 2001/354/EC of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 Deutsche Post AG) (OJ 2001 L 125, p. 27).

Action brought on 28 August 2002 by MLP Finanzdienstleistungen AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-270/02)

(2002/C 274/58)

(Language of the case: 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 28 August 2002 by MLP Finanzdienstleistungen AG, Heidelberg (Germany), represented by W. Göpfert, lawyer.

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of 26 June 2002 in the appeal procedure R 206/2002-3;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for: Word mark 'bestpartner' — application No 2 268 134

Goods or services: Services in Classes 36, 38 and 42 (*inter alia*, insurance, Internet services and data processing for others)

Decision before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of appeal

- Pleas in law:
- No grounds for refusal under Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (1);
 - No need to keep free.

(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 2 September 2002 by Österreichische Volksbanken-Aktiengesellschaft and Niederösterreichische Landesbank-Hypothekenbank AG against the Commission of the European Communities

(Case T-271/02)

(2002/C 274/59)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 September 2002 by Österreichische Volksbanken-Aktiengesellschaft and Niederösterreichische Landesbank-Hypothekenbank AG, established in Vienna and St. Pölten (Austria), represented by A. Ablasser, R. Roniger and R. Bierwagen, Lawyers.