

Action brought on 28 July 2004 by TV2/DANMARK A/S against the Commission of the European Communities

(Case T-309/04)

(2004/C 262/82)

(Language of the case: Danish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 July 2004 by TV2/DANMARK A/S, Odense (Denmark), represented by Olaf Koktvedgaard, lawyer.

The applicant claims that the Court should:

- annul Commission Decision of 19 May 2004 C(2004)1814 Final in Case C 2/2003 (ex NN 22/2002) concerning measures taken by Denmark in favour of TV2/Danmark in its entirety or, in the alternative, partially;
- order the Commission to pay the costs.

Pleas in law and main arguments:

By the contested decision, the Commission approved the aid granted to TV2/DANMARK from 1995 to 2002 in the form of licence-fee resources and certain other measures as compatible with the common market, except for an amount of DKK 628.2 million which, in the Commission's view, constitutes unlawful State aid which the Kingdom of Denmark is obliged to recover from the applicant.

In support of its action the applicant submits that the contested decision was adopted in a manner contrary to the essential procedural requirements laid down in Article 87(1) EC, Article 86(2) EC, Article 295 EC and the Communication from the Commission on the application of State aid rules to public service broadcasting. The applicant submits in particular

- that the principle that both sides must be heard has been disregarded, that the calculation of the excess compensation includes amounts which do not relate to the period investigated and that the basis and reasoning of the assessment of the building-up of TV2's net capital are insufficient;
- that the Commission's assessment is not based on the context at the time when the measures in favour of TV2 were taken;
- that the licence-fee resources transferred to TV2 and the advertising revenue, which was transferred to TV2 from 1995 to 1997 through the TV2 fund, are not State aid, since they are not State resources;

- that there is no State aid, even though the transferred funds exceed TV2's net costs inherent in the performance of its public service obligations, since the funds have in fact not been used to cross-subsidise commercial activities;
- that TV2 has not obtained an economic advantage that it would not have had under normal market conditions, since the profits achieved by TV2 do not exceed reasonable earnings in the performance of TV2's public service obligations, and since the building-up of TV2's net capital was justified based on market considerations;
- that the building-up of TV2's net capital does not exceed what is necessary for the fulfilment of TV2's public service obligations;
- that there cannot be a decision ordering recovery from a public limited company created after the period of investigation, TV2/Danmark A/S, since there has been no enrichment for that company;
- that the claim for interest on the amount allegedly to be repaid should be dismissed, since the amount claimed for recovery already includes interest.

Action brought on 26 July 2004 by Ferrero oHG mbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-310/04)

(2004/C 262/83)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 26 July 2004 by Ferrero oHG mbH, Frankfurt am Main, Germany, represented by Dr M. Schaeffer, lawyer.

Cornu SA Fontain was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- overrule the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 17 March 2004 in case R 01540/2002-4 and allow the opposition No. B 245 714;
- impose the costs on the Applicant for the trade mark.