

**Action brought on 6 October 2004 by MobilCom Aktiengesellschaft against the Commission of the European Communities**

**(Case T-397/04)**

(2004/C 314/55)

*(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 6 October 2004 by MobilCom Aktiengesellschaft, Büdelsdorf (Germany), represented by K. Jacobsen, U. Wellmann and T. Sharpe.

The applicant claims that the Court should:

- annul the decision of the Commission of the European Communities of 14 July 2004 concerning aid C5/03 (ex N 239/03);
- in the alternative, annul Article 1 of the decision of the Commission of the European Communities of 14 July 2004 concerning aid C5/03 (ex N 239/03), in so far as it is stated in the final clause ‘... provided that Germany satisfies the condition referred to in Article 2 of this Decision’, and annul Articles 2 and 3 of that decision in their entirety.

*Pleas in law and main arguments:*

By the contested decision, State aid granted to the applicant by Germany was declared to be compatible with the common market, subject to compliance by Germany with the condition referred to in Article 2 of that decision. As a result of that condition, the applicant is required to close its ‘online shop’ for seven months.

The applicant submits, first, that the Commission has no material competence. Since the applicant exercises its activity as an intermediary for the sale of mobile telephony contracts exclusively in Germany, the grant of State aid cannot prejudice trade between the Member States.

Moreover, the applicant argues that there is no appropriate legal basis for the imposition of such a condition and that there has therefore been an infringement of the EC Treaty or a provision to be applied in implementing the Treaty.

According to the applicant, the condition imposed on the applicant is arbitrary as the reasons given for it are inadequate. The applicant therefore alleges that the Commission either erred in the exercise of its discretion or failed to exercise that discretion. Furthermore, the Commission failed to show clearly that the contested decision is necessary, appropriate and also the least restrictive measure and thus failed to comply with the principle of proportionality.

**Action brought on 11 October 2004 by Borco-Marken-Import Matthiesen GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case T-405/04)**

(2004/C 314/56)

*(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 11 October 2004 by Borco-Marken-Import Matthiesen GmbH & Co. KG, Hamburg (Germany), represented by M. Wolter, lawyer.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 August 2004 in Case R 912/2002-2;
- declare that the provisions of Article 7(1)(b) and (c) and 7(2) do not prevent publication of the mark applied for, ‘Caipi’, for goods in Class 33 (alcoholic beverages (not including beer));
- order the defendant to pay the costs.