

Pleas in law and main arguments

The applicant in this case is a company controlled by Electrabel SA and ACEA. More precisely, it was one of three operating companies controlled by the holding company ACEA Electrabel Holding SpA, a joint venture company created by Electrabel and ACEA in order to operate in the field of gas and electric energy.

The action concerns the decision of 16 March 2005 by which the Commission concluded the proceedings brought under Article 88(2) EC for the purpose of examining the compatibility with Community law of the funding granted by the Regione Lazio for the extension of a distance heating system in the district of Torrino-Mezzocammino, near Rome (State aid No C-35/03 — ex NN 90/2002).

The applicant requests the Court of First Instance of the European Communities to declare the decision null in so far as it classifies as State aid measures to fund the construction of a distance heating network in the district of Torrino-Mezzocammino, and in that it suspends the grant of aid until Italy has supplied evidence of repayment by ACEA of the aid declared unlawful and incompatible with Decision 2003/193/EC of 5 June 2002 on tax relief for ex-municipal undertakings ('the Tax Relief Decision').

The action is based in particular on the following main grounds:

- (a) the measure in question does not constitute State aid, inasmuch as it is not capable of affecting competition, and does not on any view cause any damage to intra-Community trade. In point of fact, it exhausts its effects at local level, being intended to subsidise a project (the construction of a heating system in a quarter near Rome) that is to benefit a limited number of users in a restricted area of Italian territory, in fact, merely an overspill area for a large town;
- (b) the recipient (i.e. the applicant) of that measure is not the same as the beneficiary of the aid that is the subject-matter of the Tax Relief Decision (i.e. ACEA), nor does it constitute a single economic entity with the latter, so that the order for suspension of the grant of aid appears quite unjustified;
- (c) even leaving aside the error in the identification of the recipient and even if ACEA were, *quod non*, to be considered to be the actual recipient of the aid in question, application of the judgment in *Deggendorf* ⁽¹⁾ would seem to be without bearing on the circumstances of this case. Specifically, the Commission has not demonstrated that there are any grounds (in particular, the cumulative effect of the previous

measures together with the new measures) which, according to the principles to be drawn from that judgment, must be present if grant of the measure/aid? is to be suspended.

⁽¹⁾ Judgment in Joined Cases T-244/93 and T-486/93 *TWD v Commission* [1995] ECR II-2265, upheld by judgment of the Court of Justice in Case C-355/95 [1997] ECR I-2549.

Action brought on 4 August 2005 — Cain Cellars v OHIM

(Case T-304/05)

(2005/C 257/29)

Language in which the application was lodged: German

Parties:

Applicant: Cain Cellars, Inc. (St. Helena, United States) (represented by: W.-W. Wodrich, lawyer, and J.K.F. Albrecht, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought:

The applicant claims that the Court should:

- annul the decision of the defendant (First Board of Appeal) of 23 May 2005 in Case R 0975/2004-1;
- order the defendant to pay the costs.

Pleas in law and main arguments:

Community trade mark concerned: The figurative mark in the form of a pentagon for 'Wine' goods in Class 33 — Application No 3 425 121

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the applicant's appeal

Pleas in law: It is irrelevant from a legal viewpoint that the mark applied for is a geometric figure, since in respect of the role of trade marks and their capability of working as company signs, only the assessment of the average consumer who is reasonably well informed and reasonably observant and circumspect is relevant. The defendant has breached that principle of assessment in the contested decision. The figure in the form of a pentagon is unusual and striking and therefore has distinctive character and indicates the company origin. Article 7(1)(b) of Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark does not thereby preclude registration of the mark of the applicant for which protection is sought.

**Action brought on 10 August 2005 — Italian Republic/
Commission of the European Communities**

(Case T-308/05)

(2005/C 257/30)

Language of the case: Italian

Parties:

Applicant: Italian Republic (represented by: Antonio Cingolo, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought:

The applicant claims that the Court should:

- annul memorandum No 05272 of 7 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — Italy and Malta — concerning POR Campania Ob. 1 — 2005-2006 (No CCI 1999 IT 16 1 PO 007) — Declaration of interim expenditure and request for payment;
- annul memorandum No 05453 of 8 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning DOCUP Ob. 2 — Latium 2005-2006 (No CCI 2000 IT 16 2 DO 009) — Payment from the Commission different from the amount requested;
- annul memorandum No 05726 of 17 June 2005 of the Regional Policy Directorate General of the European

Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;

- annul memorandum No 05728 of 17 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;
- annul memorandum No 05952 of 17 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;
- annul all related and prior measures; and
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are the same as those relied on in Case T-345/04 *Italian Republic v Commission*. ⁽¹⁾

⁽¹⁾ OJ C 262 of 23.10.2004, p. 55.

Action brought on 10 August 2005 — Microsoft/Commission

(Case T-313/05)

(2005/C 257/31)

Language of the case: English

Parties:

Applicant(s): Microsoft Corporation (Washington, USA) [represented by: J.-F. Bellis, lawyer, I. Forrester, QC]

Defendant(s): Commission of the European Communities