

Applicant's claims

The applicant claims that the Court should annul the Commission Decision of 15 November 2005, Case COMP/M.3986 Gas Natural/Endesa.

Pleas in law and main arguments

The application seeks the annulment of the Commission Decision of 15 November 2005 declaring that the public bid announced on 5 September 2005 by Gas Natural SDG to acquire 100 % of the shares of Endesa S.A. does not result in a concentration with a Community dimension.

The action for annulment against the Commission raises, as a preliminary matter, the existence of several procedural defects. In that regard, the applicant states, first of all, that the contested decision should have been adopted prior to the decision on referral, provided for in Article 22 of the Regulation on concentrations, since it is clear from the wording of that provision itself that decisions relating to requests for a referral must relate to concentrations which comply with the threshold laid down by the laws of one or more countries and which lack a Community dimension.

Second, the applicant criticises the Commission for lack of transparency in the procedure and the resulting infringement of its rights of defence.

Thirdly, the applicant asserts that the Commission should have requested the suspension of the national proceedings that were taking place in parallel before the national authorities. The applicant considers that the fact that such a suspension was not requested in itself presupposes a serious procedural omission in the light of the basic principles of the system of control of concentrations.

As regards the merits, the action raises the infringement of specific articles of Regulation (EC) No 139/2004⁽¹⁾ and the existence of manifest errors of assessment. Thus, on one hand the Decision infringes, in the applicant's view, the rules of jurisdiction established in the Regulation on concentrations, in trying to shift the burden of proof concerning the definition of the Community dimension onto Endesa, which is manifestly incompatible with the public policy nature of the rules which establish the exclusive competence of the Commission.

Likewise, the applicant maintains that by failing to take into consideration Endesa's consolidated accounts for the last accounting year, which were properly drawn up in accordance with Community accounting criteria (NIC/NIIF) in force at the time when the concentration took place, the Decision infringes

Article 5 of the Regulation on concentrations by departing from the Commission's practice and conflicting with the principles set out in the Notice on calculation of turnover.

The applicant adds that in relation to the adjustments, which the Decision examines in the light of the Notice on calculation of turnover, a number of those adjustments comply with the strict application of the Community accounting criteria in force and they should not be confused with adjustments in accordance with Article 5 of the Regulation on concentrations. In any event, all the adjustments which are examined in the Decision should be recognised as fulfilling the objective of determining the real economic value of the undertakings which are the subject of the concentration.

Lastly, the applicant submits that the Decision, by incorrectly defining the exclusive competence of the Commission, infringes the principle of legal certainty and is contrary to the uniform application of the Regulation on concentrations.

⁽¹⁾ OJ L 24, of 29.1.2004, p. 1.

Action brought on 9 November 2005 — Investire Partecipazioni v Commission

(Case T-418/05)

(2006/C 22/39)

Language of the case: Italian

Parties

Applicant(s): Investire Partecipazioni S.p.A. (Italy) (represented by: Gian Michele Roberti and Alessandra Franchi)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

- annul the Commission decision of 11 August 2005, file No 08405, and the supplementary decision of 23 August 2005, file No 08720;

- in the alternative, declare unlawful under Article 241 EC and inapplicable paragraph B(12) and paragraph C(2) of datasheet No 19 annexed to the Commission decision of 23 April 1997 (97/322/EC);
- order the Commission to pay the costs.

Pleas in law and main arguments

The present application concerns assistance from a venture-capital fund for an undertaking (Sys S.p.A.) to enable the latter to make an investment in an area which is eligible under objective 2. By its application, the applicant Investire Partecipazioni S.p.A. asks the Court of First Instance to annul the Commission decision of 11 August 2005, file No 08405, concerning the Commission's final position on financial corrections for the purposes of Article 24 of Regulation (EEC) No 4253/88 ⁽¹⁾ in relation to Measure 1.5 of the Piedmont SPD, objective 2 (1997 — 1999) — venture-capital fund for an investment in the company Sys S.p.A. — and of the supplementary decision of 23 August 2005, file No 08720. It follows from those two decisions that the ineligible Community contribution was EUR 542 277.6, corresponding to the Community participation in the venture-capital fund contribution to the undertaking Sys S.p.A.

In support of its claims, the applicant puts forward the following pleas in law:

- In the first place, Investire Partecipazioni S.p.A. considers that, by adopting the contested decisions, the Commission committed a manifest error of assessment in fact and in law. The Commission erroneously assessed the facts concerning the investment in the company Sys S.p.A. and proceeded to misapply the relevant legislation, in particular the provisions of datasheet number 19 concerning eligible expenditure under the Structural Funds, 'Financial engineering: venture-capital funds', annexed to the Commission decision of 23 April 1997, and Article 24 of Regulation No 4253/88. The applicant emphasises in that connection that the company Sys S.p.A. had in fact taken appropriate action unequivocally directed towards setting up an operational network in the objective 2 zone ⁽²⁾.
- Second, the applicant considers that, in adopting the contested decision, the Commission infringed the principle of sound financial management laid down in Article 274 EC and in Article 24 of Regulation No 4253/88.
- In the alternative, that is to say in the event of the interpretation of the relevant legislation made by the Commission being held to be correct, Investire Partecipazioni S.p.A. considers that the decisions with which the present proceedings are concerned in any event constitute an infrin-

gement of the general principles of legal certainty, protection of legitimate expectations and proportionality, in relation to the conduct of, and the positions taken during the management failures of the Piedmont Fund, by both the Piedmont Region and the Commission, regarding interpretation of the legislation at issue.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374 of 31.12.1988, p. 1).

⁽²⁾ Commission Decision (97/322/EC) of 23 April 1997 modifying the decisions approving the Community support frameworks, the single programming documents and the Community initiative programmes in respect of Italy (OJ L 146 of 5.6.1997, p. 11).

Action brought on 21 November 2005 — Combescot v Commission

(Case T-422/05)

(2006/C 22/40)

Language of the case: Italian

Parties

Applicant(s): Philippe Combescot (Lecce, Italy) (represented by: A. Maritati and V. Messa, lawyers)

Defendant(s): European Commission

Form of order sought

The applicant(s) claim(s) that the Court should:

- annul the Commission's decision of 29 July 2004 to reassign him to Brussels headquarters, such decision being in substitution for a previous, similar decision of 13 June 2003;
- acknowledge that the applicant has suffered non-material damage, to his health and to his image as a result of the decision, with serious repercussions on his psychological balance;