

Order of the Court of First Instance of 23 November 2005
— Ruiz Bravo-Villasante v Commission

(Case T-507/04) ⁽¹⁾

(Officials — Action for annulment — Time-limit — Inadmissibility)

(2006/C 36/68)

Language of the case: Spanish

Parties

Applicant: Arturo Ruiz Bravo-Villasante (Madrid, Spain) (represented by: J. Fuertes Suárez, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and L. Lozano Palacios, Agents)

Application for

Annulment of the decision of the selection board for competition COM/B/2/02 to award the applicant a mark lower than the pass mark in the oral test and not to include him on the reserve list for that competition

Operative part of the Order

1. *The application is dismissed as inadmissible.*
2. *Each party shall bear its own costs.*

⁽¹⁾ OJ C 115, 14.5.2005.

Action brought on 18 November 2005 — Gerolf Annemans v Commission of the European Communities

(Case T-411/05)

(2006/C 36/69)

Language of the case: Dutch

Parties

Applicant: Gerolf Annemans (represented by: C. Symons, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- Declare void the European Commission's decision of 5 September 2005 (Case COMP/39.225) in accordance with the first paragraph of Article 231 of the EC Treaty.

Pleas in law and main arguments

The applicant states that he has lodged a complaint against Belgacom and Telenet with the Commission, alleging infringement of Articles 81 and 82 EC on the market for broadband internet connections to end users.

In response, the Commission informed the applicant that at that time it saw no reason, in view of the facts alleged by the applicant, to initiate a further investigation and that its point of view, based on the information available to its services, is provisional whilst awaiting additional indications that the applicant might wish to submit.

The applicant submits, first, that it is not for the complainant to search for proof of his complaint, but that this is for the Commission itself on the basis of the substantive presumptions, advanced by the complainant.

According to the applicant, the Commission's statement that providers often determine their prices by reference to the market leader is an insufficient explanation regarding the question whether the almost non-existent difference between the internet prices of Telecom and Telenet is a result of pure coincidence in the free market or of a breach of Article 81 EC.

The applicant also submits that although higher prices in Belgium, cited by him in his application, do not in themselves prove that there has been an infringement of Article 82 EC, neither do they prove that there has been no infringement. For that reason the Commission cannot, on that basis, clear the undertakings at issue of infringements of Article 82 EC.

The applicant also states that the Commission is wrong to doubt that Belgacom, and Telenet have a dominant position on the Belgian market. The applicant states that both operators apply approximately the same high prices and between them have almost 90 % of the Belgian market for broadband Internet access. The applicant also submits that no conclusion may be drawn from the fact that there are competitive and lower-price internet connections with lower download speed on the market. According to the applicant, the Commission contradicts itself moreover when it argues that, on the one hand, the Belgisch Instituut voor Postdiensten en Telecommunicatie (BIPT) guarantees competition and, on the other hand, that this institution is currently investigating whether competition on the Belgian market is indeed thoroughly guaranteed.

Finally, the applicant submits that the Commission fails to substantiate its claim that there is an insufficient community interest.