By the first plea the applicant relies on the alleged infringement of the principle of equal treatment and non-discrimination in so far as the Commission imposed a requirement for length of service of one year for the employees of each tenderer to be assigned to the contract which, according to the applicant — the current holder of the contract with long-serving employees — placed it at a disadvantage vis-à-vis the other tenderers, who could recruit people with the minimum experience and have lower wage costs than those of the applicant.

By the second plea, the applicant claims that the Commission infringed the provisions of Directive 2001/23/EC [1]. That plea has two parts: alleged irregularity in the tender accepted by the Commission in that that tender did not guarantee the retention of the applicant's employees nor, moreover, did it ensure that all of their rights would be respected. The applicant alleges that the decision to award taken by the Commission was illegal from the time it was taken since the accepted tender involved the infringement of employment law.

The third plea is based on an alleged infringement of the principle of equal treatment in so far as the successful party, at the time of submission of its tender, had privileged information in relation to the applicant, in particular in relation to turnover by client and activity, contracts and their expiry dates, and analysis of their prices and costs, which had been obtained by reason of the merger with the applicant's former parent company. In the applicant's opinion, this would have allowed its competitor to prepare a more favourable tender compared with that submitted by the applicant itself.

By the fourth plea, the applicant relies on the alleged infringement of the decision of Directorate General IV of the Commission of 28 May 2004 [2] and the rules aimed at ensuring undistorted competition in that, by the decision challenged in the present application, the Commission permitted the group to which the successful tenderer selected belonged to recover assets which it was obliged to relinquish at the time of the merger authorised by the decision of 28 May 2004.

The fifth plea is based on the alleged infringement of the obligation to give reasons for the decision, the alleged infringement of the transparency principle and the right of access to documents of the Community institutions. The applicant alleges that the Commission, despite several written requests, send it only a brief explanation, which was limited to comparative tables of the tenders, of the reasons for its decision.

The applicant also relies on the infringement of the rules applying to the award of the contract, a failure to take account of the contract documents and a manifest error of assessment in relation to the analysis and evaluation of the third qualitative award criterion in relation to the basic first-aid and fire fighting training of the security agents. It alleges that it has proof that the tenderer selected by the Commission does not have all of the operatives whom it proposed to assign to the performance of the contract at issue.

By its last plea, the applicant alleges infringement of the principle of transparency and of the right of citizens to access documents of the institutions in so far as the Commission refused it information on the composition of the selection and award committees.

The applicant also seeks, by relying on the principle of extra-contractual liability, compensation for the harm which it claims to have suffered by reason of the illegality of the Commission's conduct in the tender award procedure for the contract at issue.

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[1] Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

[2] Commission Decision of 28/05/2004 declaring a concentration to be compatible with the common market (Case N IV / M. 3396 – Group 4 Falck / Securicor (4064) pursuant to Council Regulation (EEC) No 4064/89).

Action brought on 21 December 2005 — Navigazione Libera del Golfo v Commission

(Case T-444/05)

(2006/C 48/77)

Language of the case: Italian

Parties

Applicant: Navigazione Libera del Golfo (NLG) (Naples, Italy) (represented by: Salvatore Ravenna, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 12 October 2005 refusing access to data and information concerning the extra costs arising as a result of PSO (public service obligations) and payments to offset those costs in respect of the services carried out by Caremar SpA on the Naples Beverello-Capri route;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-109/05 *Navigazione Libera del Golfo* v *Commission*. ([1])

It should, however, be stated that the contested decision in Case T-109/05 is based on Article 4(2) of Regulation No 1049/2001, whereas the decision at issue in this case is based on Article 4(4) and (5) of that regulation. Accordingly, it was not Caremar that was consulted, as 'third party author' of the documents/data to which access was requested, but rather it was the Italian authorities, which did not issue the documents of the case and had no concerns relating to commercial interests, that were consulted.

Further, that consultation was carried out in an artificial manner, given that the Member States have exclusive competence together with a right of veto which is binding on the Commission.

([1]) OJ C 106 of 30.04.2005, p. 43.

Action brought on 19 December 2005 — Associazione italiana del risparmio gestito and Fineco Asset Management v Commission of the European Communities

(Case T-445/05)

(2006/C 48/78)

Language of the case: Italian

Parties

Applicants: Associazione italiana del risparmio gestito and Fineco Asset Management SpA (Italy) (represented by: Gabriele Escalar and Giuseppe Maria Cipolla, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision No C(2005) 3302 of 6 September 2005 which brought proceedings C-19/2004 (ex NN 163/03) to a close;

— order the defendant to pay the costs.

Pleas in law and main arguments

This action concerns the same decision as that challenged in Case T-424/05 *Italian Republic* v *Commission*. ([1])

In support of their pleas, the applicants allege:

— inadequacy and inconsistency of the contested decision, in that it concerns, first, the existence of an economic advantage which is selective, as it is not clear from its wording what economic advantage is conferred by the tax measures at issue and what beneficiaries there are. Secondly, the statement of reasons for the decision is also to be regarded as inadequate as to the existence of a distortion of competition which may affect trade between the Member States;

— infringement of Article 87(1) of the EC Treaty, since the reduction in the tax applicable to the income of undertakings for collective investment in transferable securities (UCITS) specialising in shares of small or medium-sized capitalisation companies (SMCC) does not give rise to State aid. In that regard it is claimed, in particular, that the tax reduction in question constitutes an economic advantage for all the relevant stakeholders, not a selective one for the managers of the undertakings. In fact, all Italian and Community independent asset management companies (*società di gestione del risparmio; SGR*) may manage UCITS and all Italian or Community open-ended investment companies (SICAV) may act as SICAV specialising in SMCC. Further, even if the measures at issue were to result in an economic advantage for UCITS, they would not, however, give rise to State aid, given that the investment funds consist of collections of assets that do not exist as independent entities, do not have their own management bodies and do not pursue economic objectives, and accordingly have no organs which can manifest intent. Finally, the tax measures at issue do not constitute economic advantages of a selective nature for the SMCC.

In the alternative, the applicants claim that:

— the tax measures in question must be regarded as compatible with the common market, pursuant to Article 87(2)(a) of the Treaty; and

— the contested decision infringes Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 since recovery was ordered from the investment vehicles in the form of companies and from the undertakings managing the investment instruments that are established by contract.

([1]) Not yet published in the OJ.