

Action brought on 13 March 2006 — Onderlinge Waarborgmaatschappij Azivo Algemeen Ziekenfonds De Volharding v Commission

(Case T-84/06)

(2006/C 108/48)

Language of the case: Dutch

Parties

Claimant: Onderlinge Waarborgmaatschappij Azivo Algemeen Ziekenfonds De Volharding U.A. (The Hague, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission decision of 3 May 2005 in Cases N 541/2004 and N 542/2004;
- Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The claimant is a healthcare insurance body with approximately 150 000 affiliated policyholders. Those policyholders require, as a general rule, more extensive healthcare services than the average person insured in the Netherlands. As a result, the claimant has over an extended period of time been achieving less positive results than other healthcare insurance bodies. The claimant argues that these negative results stem from shortcomings in the equalisation system.

In its action the claimant challenges the Commission decision⁽¹⁾ to authorise under Articles 87 EC and 88 EC the aid measures which the Netherlands notified in the context of the new healthcare insurance scheme. Those aid measures relate to the retention of financial reserves by healthcare insurance funds and the risk equalisation system⁽²⁾.

According to the claimant, the Commission committed errors of appraisal in regard to the operation of the equalisation system and inadequately investigated the matter. The claimant submits that the decision is in this respect at variance with Article 86(2) EC and is incomprehensible, or at the very least inadequately reasoned.

The Commission has also, the claimant alleges, improperly approved the risk equalisation system on the basis of Article 86(2) EC. Because of the shortcomings in the equalisation system the compensation provided for a number of healthcare insurers is, it submits, higher than is necessary to cover the costs of meeting their public service obligation, whereas the position for a number of other healthcare insurers is that they are inadequately compensated by reason of those shortcomings.

The claimant submits further that, in view of the complexity of the aid scheme notified, the Commission ought to have initiated the formal investigation procedure set out in Article 88(2) EC. The Commission must at any rate have had serious difficulties during the initial investigation procedure under Article 88(3) EC in determining whether the aid scheme was compatible with the common market in view of the fact that it did not have sufficient information at its disposal.

In conclusion, the claimant contends that, in adopting the contested decision, the Commission improperly failed to take account of the fact that the new Netherlands healthcare scheme is incompatible with the non-life insurance directive⁽³⁾ and with Articles 43 EC and 49 EC. The claimant particularly refers in this connection to the provisions of the new healthcare scheme relating to the prohibition of premium differentials, the duty of acceptance and the risk equalisation system. The claimant also takes the view that the Commission has, unlawfully and contrary to Article 253 EC, failed to provide reasons to substantiate its view that the third non-life insurance directive and Articles 43 EC and 49 EC, taken in conjunction with Articles 87 EC and 86(2) EC, do not stand in the way of the notified State aid.

⁽¹⁾ OJ 2005 C 324, p. 28.

⁽²⁾ Aid measures N 541/2004 and N 542/2004.

⁽³⁾ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance directive) (OJ L 228, p. 1).

Action brought on 14 March 2006 — L'Oréal/OHIM

(Case T-87/06)

(2006/C 108/49)

Language in which the application was lodged: English

Parties

Applicant: L'Oréal S.A. (Paris, France) [represented by: X. Buffet Delmas d'Autane, Lawyer]

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

Other party to the proceedings before the Board of Appeal: Revlon (Suisse) S.A. (Schlieren, Switzerland)