

**Action brought on 19 February 2007 — Vtesse Networks v Commission****(Case T-54/07)**

(2007/C 82/107)

*Language of the case: English***Parties***Applicant:* Vtesse Networks Ltd. (St. Albans, United Kingdom) (represented by: H. Mercer, Barrister)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul Article 1 of the decision insofar as it determined that the application by the United Kingdom of the tax on non-domestic property to BT plc from 1995 to the end of 2005 does not constitute aid within the meaning of Article 87(1) EC;
- order the Commission to pay Vtesse's costs of this action.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision 2006/951/EC <sup>(1)</sup> of 12 October 2006 finding that the application by the United Kingdom of the tax on non-domestic property to BT plc and Kingston Communications plc from 1995 until the end of 2005 does not constitute aid within the meaning of Article 87(1) EC.

The applicant alleges that the Commission failed to consider and/or to investigate the competitive disadvantage suffered by the applicant vis-à-vis BT plc at the margin when bidding alongside BT plc for contracts with customers for high capacity retail leased lines using optical fibres.

The applicant submits that the Commission erred in law in the application of Article 87(1) EC in particular by failing to define the relevant market and thereby failing to identify the advantage in fact granted by business rates to BT plc in relation to competition at the margin.

Furthermore, the applicant claims that the Commission committed a manifest error of appraisal of the significance and relevance of the class of contracts where the applicant competed with BT plc and failed to investigate sufficiently the facts of competition at the margin leading to the Commission's reliance on a market share for BT plc of 12 % when the most relevant market share for BT plc was, according to the applicant, 78 %.

Finally, the applicant contends that the Commission did not sufficiently reason the contested decision with regard to the competition actually occurring between the applicant and BT plc.

<sup>(1)</sup> Commission Decision of 12 October 2006 — the United Kingdom's application of the tax on non-domestic property to telecommunications infrastructure in the United Kingdom (No C 4/2005 (ex NN 57/2004, ex CP 26/2004) — notified under document number C(2006) 4378) (OJ 2006 L 383, p. 70).

**Action brought on 23 February 2007 — Kingdom of the Netherlands v Commission of the European Communities****(Case T-55/07)**

(2007/C 82/108)

*Language of the case: Dutch***Parties***Applicant:* Kingdom of the Netherlands (represented by: H.G. Sevenster and D.J.M. de Grave, acting as Agents)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul in part the Commission Decision of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it relates to the Netherlands and more particularly with regard to the financial correction applied in it regarding payment requested for non-subsidisable expenditure in the framework of the EAGGF, Guarantee Section, for the year 2002 in the amount of EUR 5.67 million;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

In support of its application the Netherlands alleges, first, breach of Article 4 of Regulation No 2603/1999 <sup>(1)</sup>, by incorrectly interpreting and applying the concept of 'multiannual expenditure' within the meaning of that article.

Secondly, the applicant complains of breach of Article 44(2) of Regulation 1257/1999 <sup>(2)</sup>, and also the principle of the protection of legitimate expectations through the application of a financial correction of the full amount of the sum concerned, as a consequence of the procedure followed by the Netherlands authorities, when the Commission had previously approved the declaration under the Guarantee section pursuant to the procedure in the framework of the approval of the Netherlands programme document for rural development 2000-2006.