

Pleas in law and main arguments

The pleas and main arguments are the same as those relied on in Case T-62/08 *ThyssenKrupp v Commission*.

Action brought on 13 February 2008 — Spain v Commission

(Case T-65/08)

(2008/C 92/82)

*Language of the case: Spanish***Action brought on 6 February 2008 — Nuova Terni Industrie Chimiche v Commission**

(Case T-64/08)

(2008/C 92/81)

*Language of the case: Italian***Parties**

Applicant: Nuova Terni Industrie Chimiche SpA (Milan, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino, G. Barone, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- declare that the contested decision is unlawful and annul that decision in its entirety inasmuch as it regards as State aid the contested measure, which in fact constitutes a lawful continuation of the measure by which the Italian State granted compensation to Terni SpA (and its assignees) for the expropriation of its electricity plants which occurred in 1962-63;
- order the defendant to pay the costs of the proceedings;
- in the alternative, annul the decision insofar as it:
 - (a) states that Italy unlawfully paid State aid to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche in breach of Article 88(3) of the EC Treaty;
 - (b) states that there are amounts to be recovered from ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche; and consequently
 - (c) orders Italy to recover those amounts plus interest without delay;
- in the further alternative, annul the contested decision insofar as it orders Italy to recover the State aid plus interest without delay, since that recovery infringes the general principle of the protection of legitimate expectations.

Pleas in law and main arguments

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Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision of 5 December 2007 in relation to a procedure pursuant to Article 21 of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Case No Comp/M.4685 — Enel/Acciona/Endesa), and
- Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against Commission Decision C(2007) 5913 Final of 5 December 2007 in relation to a procedure pursuant to Article 21 of Regulation (EC) No 139/2004 (⁽¹⁾) (Case No COMP/M.4685 Enel/Acciona/Endesa). In the contested decision the Commission found that the applicant had infringed Article 21 of Regulation No 139/2004 in subjecting the acquisition of joint control over Endesa, by Enel and Acciona, to a series of conditions, given that those conditions are incompatible with Articles 28, 43 and 56 EC, and thereby unduly interfere with the exclusive competence of the Commission to rule on a concentration at the Community level. Furthermore, the defendant forced the applicant to withdraw those conditions found to be incompatible with Community law.

In support of its claims, the applicant alleges, first, that the Commission lacks the competence to adopt the contested decision on the basis of the procedure pursuant to Article 21 of Regulation No 139/2004. According to the applicant, where the Commission takes the view that a Member State has infringed Article 21 of Regulation No 139/2004, it should initiate infringement proceedings against that Member State on the basis of Article 226 EC.

Second, the applicant claims that the contested decision is vitiated by a lack of reasoning in that the Commission did not examine the grounds of public security on which the Spanish Government relied, as laid down in Article 21(4) of Regulation No 139/2004, to adopt measures in relation to the public bid by Enel and Acciona for the purchase of Endesa.