Form of order sought

— Allow the claims set out in the introduction to the application and, consequently, annul the Regulation which has imposed a ban, as from 16 June 2008, on fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea by purse seiners flying the Italian flag (Article 1 of the Regulation) and has prohibited Community operators, as from 16 June 2008, from accepting landings, placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by such vessels (Article 3(1) of the Regulation).

— Order the Commission to pay the costs of the proceedings, pursuant to Article 87 of the Rules of Procedure of the Court of First Instance, including the applicants' legal assistance costs

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Cast T-305/08 *Italian Republic* v *Commission* and Case T-313/08 *Veromar di Tudisco Alfio & Salvatore S.n.c.* v *Commission*. In particular, it is submitted that the legal basis of the contested regulation is incorrect, in so far as Article 7 of Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59) is not appropriate for the purpose of adopting the measures in the contested regulation, for which recourse should have been had to Article 26(2) and (3) of Regulation No 2371/2002.

Action brought on 14 August 2008 — BNP Paribas and BNL v Commission

(Case T-335/08)

(2008/C 272/79)

Language of the case: Italian

Parties

Applicants: BNP Paribas and Banca Nazionale del Lavoro SpA (BNL) (represented by: R. Silvestri, G. Escalar and M. Todino, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annulment in its entirety of Commission Decision C(2008) 869 final of 11 March 2008 on state aid C-15/2007 (ex NN 20/2007), implemented by Italy 'concerning tax incentives in favour of certain credit institutions undergoing company reorganisation'

Pleas in law and main arguments

The applicants challenge the provision whereby Italian Law No 350/2003, in the part instituting a special system of tax realignment (the 'special system') for the assets of certain credit institutions resulting from reorganisations carried out under Law No 218 of 30 July 1990 ('the Amato law') was declared incompatible with Article 87 of the EC Treaty on state aid. According to the Commission, the unlawfulness on the special system under Article 87 of the Treaty is based on the assumption that, by that system, the Italian legislature granted a 'selective' tax advantage solely to banking institutions concerned by the reorganisations referred to in the Amato law, without providing similar benefits for other institutions and other undertakings in general.

In support of its arguments, the applicants maintain that the Commission erroneously held that the special system of realignment granted an economic advantage to the beneficiary companies and thus a form of unlawful aid. In reality, the system did not confer a tax advantage, but merely constituted an optional system for which companies might opt in anticipation of the payment of tax on the basis of a replacement rate.

Even if the system in question did confer on the undertakings some form of advantage, it did not constitute a state aid because it was not selective in character. The tax system in question constituted a coherent solution in relation to the general taxation system and was based on objective criteria, namely to allow those credit institutions concerned by the privatisations to realign the contributions pursuant to the Amato law through the imposition of a rate taking account of both the previous partial taxation on increases in value already recorded and the other inelasticities in connection with those contributions; inconveniences not affecting all other undertakings — unlike banks concerned by the contributions pursuant to Law No 350/2003 — which had received contributions in a context different from that law, and for which a differently-functioning realignment system was fully justified.

Secondly, the Commission's decision is vitiated by a glaring defect of reasoning arising from the erroneous conviction that Law No 350/2003 did not provide for any general realignment system. Incorrectly holding that there was no general realignment system to be compared with the special system complained of, the Commission failed to make any comparison between the two systems in order to assess all the factors capable of having an impact on the overall tax burdens proper to each system.

According to the applicants, even where a comparison between the two systems was made on the basis of such factors, it is obvious that, in comparison with the general system, the special system confers practically no tax advantage in terms of the applicable rate.

Action brought on 18 August 2008 — BVGD v Commission

(Case T-339/08)

(2008/C 272/80)

Language of the case: English

Parties

Applicant: Belgische Vereniging van handelaars in- en uitvoerders geslepen diamant (BVGD) (Antwerp, Belgium) (represented by: L. Levi and C. Ronzi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— To declare the present action admissible;

— To annul the Commission decision dated 5 June 2008 by which the Commission rejected the complaint lodged by the applicant, in relation to the issue of input foreclosure, for the reason that there are insufficient grounds for acting on it (Case COMP/39.221/E-2-De Beers/DTC Supplier of Choice)

— To order the Commission to provide:

  — a proper and meaningful version of the replies provided by De Beers and Alrosa to the Commission in the framework of the so-called 'supplementary procedure';

  — all non-confidential versions of the complaints and related documents submitted to the Commission concerning the SOC and the Trade Administrative Agreement between De Beers and Alrosa;

  — all non-confidential versions of the investigation documents concerning the SOC and the Trade Administrative Agreement between De Beers and Alrosa;

  — the request filed by Alrosa in Case T-170/06;

  — the statements of objections to which it refers in the 'supplementary rejection decision';

  — the annual reports on De Beers' commitments drafted by the Trustee;

— To order the Commission to pay all the costs.

Pleas in law and main arguments

Following the annulment by the Court of First Instance, on 11 July 2007, of the Commission decision of 22 February 2006 (Case T -170/06 Alrosa v Commission), the Commission decided to open a supplementary procedure based on Article 7 of Regulation (EC) No 773/2004, in order to assess the possible impact of the annulment to the commitment decision on the overall conclusion on input foreclosure as set out in the decision of 26 January 2007 (2007)D/200338 (Case COMP/39.221/E-2-De Beers/DTC Supplier of Choice) rejecting the applicant's complaint filed with the Commission on 14 July 2005 alleging violations of Articles 81 and 82 EC, in connection with the Supplier of Choice system for distribution of rough diamonds applied by the De Beers group ('the rejection decision'). The legality of this decision was challenged by the applicant by action lodged at the Court on 6 April 2007, which is currently subject to proceedings in Case T-104/07 ([1]).

By means of the present action the applicant seeks annulment of Commission's supplementary decision of 5 June 2008 (2008) D/203543 made pursuant to Regulation (EC) No 773/2004 ([2]) by which the Commission concluded that there were no grounds to reconsider the rejection decision in so far as, in relation to input foreclosure, there was an insufficient degree of Community interest for conducting a further investigation into the alleged infringements.

The applicant raises three main pleas in law in support of its claims:

First, the applicant claims that Article 7 of Regulation (EC) No 773/2004 is not the correct legal basis for the supplementary procedure and the impugned decision. In fact, it submits that the said provision does not empower the Commission to re-examine a situation but only deals with the rejection of complaints and allows the Commission thereby to inform the complainant about insufficient grounds to act on a complaint, setting a time-limit within which the complainant may express its views in writing. Moreover, the applicant submits that the Commission misapplied the general legal principles on the retroactive revocation of administrative acts.

Second, the applicant contends that its procedural rights deriving from Articles 7 and 8 of Regulation (EC) No 773/2994 were breached since the applicant was prevented from exercising its right of access to documents on which the Commission based its provisional assessment. On this point the applicant argues that the Commission did not show that the limited access to the file could be justified by the necessity to guarantee the protection of confidentiality understood under commercial secrets.

Third, the applicant claims that the contested decision infringes Articles 2 and 3 EC and the notion of Community interest, as well as the duty to state reasons.

([1]) OJ 2007 C 129, p. 18.

([2]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance) (OJ 2004 L 123, p. 18).