

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 (BVG D) (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 773/2004 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).