In the event that the plea in law alleging breach of essential procedural requirements is held to be unfounded, the applicant puts forward a plea based on the misapplication of the law. According to the applicant, the conditions are not met for the classification of the PPAs it concluded as State aid. First, the Commission is wrong to apply the criterion of private investor, since the situation of MVM cannot be compared to that of a typical private investor. Second, the measure cannot be said to be of a selective nature either, since the conclusion of the PPAs was an express legal obligation. Third, the advantage was not granted by the State as MVM is a commercial company operating under market conditions. Fourth, there was no distortion of competition since there is no evidence that the PPAs have had any effect on competition.

However, in the event that the Court of First Instance should consider that the conditions for State aid are met, the applicant states that the service it supplied is in the nature of a service of general economic interest so that the PPAs which it concluded do not constitute State aid incompatible with the common market.

In support of its claim that it should be exempted from the obligation to repay, submitted in the alternative in its application, the applicant relies on the principles of proportionality, of the protection of legitimate expectations and legal certainty and the right to legal redress.

---

## Action brought on 21 August 2008 — Spira v Commission

**(Case T-354/08)**

(2008/C 285/86)

*Language of the case: English*

### Parties

*Applicant:* Diamanthandel A. Spira BVBA (Antwerp, Belgium) (represented by: J. Bourgeois, Y. Van Gerven, F. Louis, A. Vallery, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul the Commission decision of 5 June 2008, pursuant to Article 7(2) of Council Regulation No 773/2004, in case COMP/38.826/B-2-Spira/De Beers/DTC Supplier of Choice;

— Order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

In the present case, the applicant contests Commission Decision (2008) D/203546 of 5 June 2008 by which the Commission declared that the change in facts due to the annulment by the Court of First Instance of the commitment decision ([1]) was not a decisive element which would require the Commission to revisit its Decision (2007) D/200338 of 26 January 2007, by which it rejected, for lack of Community interest, the applicant's complaint regarding violation of Articles 81 and 82 EC in connection with the Supplier of Choice (SoC) system applied by De Beers Group for the distribution of rough diamonds ('rejection decision' ([2])) (Case COMP/38.826/B-2-Spira/De Beers/DTC Supplier of Choice).

The applicant puts forward three pleas in law in support of its claims.

Firstly, the applicant alleges that the Commission failed to examine with care and impartiality the anticompetitive practices denounced by the applicant in its complaint.

Secondly, the applicant claims that when re-examining the issue of input foreclosure the Commission could not claim that there was a lack of Community interest to act on the complaint in light of the significant damage resulting from the input foreclosure caused by the SoC system. The applicant submits that the input foreclosure should have been considered of Community interest as it affects the availability of rough diamonds EU-wide and even worldwide. It considers that the SoC distribution system is an anti-competitive selective distribution system that restricts intra-brand competition.

Thirdly, in the alternative, the applicant submits that the Commission erred in law and provided inadequate statement of reasons in the application of the foreclosure effects test by:

— not having first defined the analyzed market structure, market power of the company concerned and the market position of its competitors;

— failing to engage the examination of all potential restrictions or monopolization activities of the supplier whose selective distribution system was under scrutiny.

Furthermore, the applicant claims that the Commission made a manifest error of assessment and based its decision on materially incorrect facts when concluding that the SoC arrangement does not appreciably foreclose secondary market operators from access to rough diamonds (the input foreclosure).

(1) Case T-170/06 *Alrosa* v *Commission* [2007] ECR II-2601, appeal lodged by the Commission with the Court of Justice, Case C-441/07, *Commission* v *Alrosa*, OJ 2007 C 283, p. 22.

(2) The rejection decision is appealed by the applicant before the Court of First Instance in Case T-108/07 *Spira* v *Commission*, OJ 2007 C 129, p. 20.

## Appeal brought on 26 August 2008 by Chantal De Fays against the judgment of the Civil Service Tribunal delivered on 17 June 2008 in Case F-97/07 De Fays v Commission

**(Case T-355/08 P)**

(2008/C 285/87)

*Language of the case: French*

### Parties

*Appellant:* Chantal De Fays (Bereldange, Luxembourg) (represented by F. Moyse, lawyer)

*Other party to the proceedings:* Commission of the European Communities

### Form of order sought by the appellant

— Declare the present appeal admissible;

— set aside the judgment under appeal;

— grant the application for annulment made by the appellant before the Civil Service Tribunal;

— order the Commission to pay the costs of both sets of proceedings.

### Pleas in law and main arguments

By the present appeal, the appellant seeks to have set aside the judgment of the Civil Service Tribunal ('the CST') of 17 June 2008 in Case F-97/07 dismissing her action against the decision of the appointing authority of 21 November 2006 applying Article 60 of the Staff Regulations.

The appellant puts forward two pleas in law in support of her appeal:

In first place, the appellant is of the view that the CST erred in law in its definition of the temporal scope of the decision of 21 November 2006 by which the administration, first, found that the appellant had been regularly absent from 19 October 2006 and, secondly, withheld her remuneration for the whole of the period not covered by annual leave. The appellant submits that the CST considered that the effects of the contested decision extended only from 19 October 2006 until 13 December 2006, that is, up to the point at which the administration received a medical certificate justifying the appellant's absence, whereas, in fact, the effects of that decision continue up to the present. That error of law is the outcome of an erroneous judicial assessment of the facts, the inaccuracy of which, in the appellant's view, is attributable to the documents on the case file.

In second place, the appellant states that the fact that the CST based its decision that the administration was entitled to continue the suspension of the remuneration which was due to the appellant on the existence of an implied decision is an error of law, entailing breach of the second paragraph of Article 25, Article 59(1) and Article 60 of the Staff Regulations, the internal provisions of the Commission on the exercise of the powers conferred on the appointing authority and the rights of defence.

## Action brought on 1 September 2008 — Hellenic Republic v Commission of the European Communities

**(Case T-356/08)**

(2008/C 285/88)

*Language of the case: Greek*

### Parties

*Applicant:* Hellenic Republic (represented by: K. Khalkias and E. Leftheriotou)

*Defendant:* Commission of the European Communities

### Form of order sought

— uphold the Hellenic Republic's action and annul the contested Commission decision in its entirety or otherwise alter it in accordance with the matters that have been more specifically set out, ordering that no correction be made with regard to arable crops for the crop years 2004 and 2005 or, in any event, that the correction be restricted to 5 % and only to expenditure in respect of durum wheat;