

**Action brought on 30 September 2008 — GEMA v Commission****(Case T-410/08)**

(2008/C 313/70)

*Language of the case: German***Parties**

*Applicant:* Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA) (Berlin, Germany) (represented by: R. Bechtold and I. Brinker, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- declare Article 3, Article 4(2) and, in so far as it refers to Article 3, Article 4(3) of the decision of the Commission of 16 July 2008 void under Article 231(1) EC, in so far as the applicant is concerned by it;
- order the Commission to pay the applicant's costs under Article 87(2) of the Rules of Procedure of the Court.

**Pleas in law and main arguments**

The application concerns the decision of the Commission of 16 July 2008 in Case COMP/C2/38.698 — CISAC, in which the Commission declared that concerted practices in connection with the mutual exchange of musical copyright between societies of authors and composers belonging to the International Confederation of Societies of Authors and Composers (CISAC) were incompatible with Article 81 EC and Article 53 of the EEA Agreement. The applicant challenges the complaint concerning a concerted practice in Article 3 and the obligations arising from Article 4(2) and (3) of the decision in that regard to bring the infringement to an end.

It relies on four pleas in law in that regard.

First, the applicant submits that the decision of the Commission does not satisfy the requirements of Article 7 of Regulation (EC) No 1/2003 <sup>(1)</sup>. The decision infringes the principle of legality because it does not make it clear which practices are prohibited, is contradictory in itself and is, in addition, contrary to other administrative practice of the Commission. The applicant also complains of an infringement of the principle of proportionality and misuse of powers, as the Commission was guided by irrelevant considerations beyond criteria relevant to competition law and thereby exceeded its powers.

Secondly, the applicant pleads that the Commission committed a substantial procedural error since it gave inadequate reasons for its decision contrary to its obligation under Article 253 EC.

Thirdly, the decision is based on a manifest error of law and assessment, since the Commission concluded that there was a concerted practice from the structure of the market alone and therefore unlawfully reversed the distribution of the burden of proof laid down by law to the detriment of the applicant.

Fourthly, the Commission assumed incorrectly in law that there was an infringement of Article 81 EC, since it failed to understand that the grant of rights restricted to the national territory in the reciprocal contracts concluded between the members of CISAC in accordance with the CISAC standard contract is an essential and necessary element of the international collective protection of rights and an expression of the generally recognised principle of territoriality in copyright law and therefore is not a restriction of competition within the meaning of Article 81 EC.

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<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1 of 4.1.2003, p. 1).

**Action brought on 29 September 2008 — AKKA/LAA v Commission****(Case T-414/08)**

(2008/C 313/71)

*Language of the case: English***Parties**

*Applicant:* Autortiesību un komunikēšanās konsultāciju aģentūra/Latvijas Autoru apvienība (AKKA/LAA) (Riga, Latvia) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul Article 3 of the Commission Decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38698 — CISAC); and
- Order the Commission to pay the costs.