

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

Pleas in law and main arguments

On the 31 October 2001 the applicant and the Commission entered into a 'shared-cost and research development' type of contract, as set out in Annex IV ('Rules for financial participation by the Community') to the European Parliament and Council Decision No 182/1999/EC of 22 December 1998 concerning the fifth framework programme of the European Community for RDT activities (1998-2002) ⁽¹⁾, whereby the applicant, together with other contractors forming a consortium, undertook to implement the project MUTEIS IST-2000-30117, aimed at explaining and understanding the functional and spatial diversity in Europe's digital economy from a macro and local/urban perspective. The applicant proposed to the Commission to participate in the project on the basis of the 'Additional costs' model of reimbursement for the project's eligible costs. Further to an exchange of correspondence between the parties, the Commission informed the applicant that it had to temporarily reject personnel and overhead costs presented by the latter and suggested that the applicant should reconsider its participation on the basis of total eligible costs participation or full participation with the lump sum option in respect of overheads. An amended contract was signed by the applicant, according to such terms, on the 30 April 2004.

On the basis of its application for damages, the applicant claims that the Commission acted without or in excess of its powers by purporting to amend the contract and to invoke Article 3(2) of Annex II of the contract. The applicant submits that whilst the Commission could have declined to accept the cost model proposed to it by the applicant at the time the contract was signed, there is no provision in the contract allowing the Commission to change the cost model in the course of a project. Moreover, in the absence of any reasonable grounds of suspected fraud or financial irregularity on the part of the applicant, the applicant submits that the Commission was not entitled to invoke Article 3(2) of Annex II of the contract in order to justify the alteration of the contract's terms.

Further, the applicant contends that the Commission breached its contractual obligations, thereby infringing Article 1134, first paragraph, of the Belgian Civil Code, according to which agreements legally entered into operate as law for those who engaged in them. According to the applicant, it is the cost model agreed by the parties when signing the contract that should prevail for its duration and the Commission therefore breached the contract in requiring the applicant to change the cost model as agreed by the parties.

In addition, the applicant submits that the Commission breached the principle of legitimate expectations and the principle of sound administration.

⁽¹⁾ OJ 1999 L 26, p. 1.

Action brought on 26 September 2008 — ICO Services Ltd v Parliament and Council

(Case T-441/08)

(2009/C 6/68)

Language of the case: English

Parties

Applicant: ICO Services Limited (Slough, United Kingdom) (represented by: S. Tupper, Solicitor)

Defendants: European Parliament and Council of the European Union

Form of order sought

- Order that Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) is void in accordance with the provisions under Article 230 CE and 231 EC;
- Order that the costs of the present action be paid by the defendants and any other orders that the Court may deem appropriate.

Pleas in law and main arguments

By means of its application pursuant to Article 230 EC, the applicant seeks the annulment of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services ('MSS') ⁽¹⁾.

The applicant claims that the contested decision does not address the existence of, nor gives consideration to, any MSS System's pre-existing rights to band-width on the 2 GHz spectrum, whether derived from the International Telecommunications Union ('ITU') or the European Conference of Postal and Telecommunications Administration regimes. Moreover, the applicant submits that the contested decision has the effect of depriving it of property rights accrued to it under international law that permit the applicant to offer MSS worldwide without unlawful interference. In fact, the applicant claims to be the sole operator with a system, 'ICO-P', providing MSS services in the 2 GHz Band. According to the applicant, the contested decision attempts to allocate frequencies in the 2 GHz Band without affording ICO-P's rights appropriate recognition, thereby putting EU Member States in contravention of their Treaty obligations with respect to the relevant rules of the ITU.

The applicant, moreover, claims that the contested decision ignores the existence of the applicant's rights and sets up a system through which the applicant's right to use the 2 GHz spectrum is infringed. Moreover, it is submitted that the decision puts in great jeopardy the applicant's considerable investments to date and forces the applicant to participate to the EU tender process while interfering in the day-to-day running of its business.

Further, the applicant claims that by adopting the contested decision, the defendant has acted disproportionately and in a discriminatory way, contrary to the applicant's legitimate expectations. In fact, the applicant contends, that contrary to its rights and/or legitimate expectations, the contested decision is founded on the premise that the whole of the 2 GHz spectrum is available for allocation, since it provides for the selection and authorisation of operators of MSS to utilise the entire range of frequencies existing in the 2 GHz spectrum.

In addition, it is submitted that the contested decision violates the applicant's rights to the peaceful enjoyment of the benefits accorded to the ICO-P system as a result of recognition of the recording by the ITU in the Master International Frequency Register maintained by the ITU, and other similar property rights, contrary to Article 1 of Protocol 1 of the European Convention of Human Rights and international law.

(¹) OJ 2008 L 172, p. 15.

Action brought on 6 October 2008 — Coverpla v OHIM — Heinz-Glas (design)

(Case T-450/08)

(2009/C 6/69)

Language in which the application was lodged: French

Parties

Applicant: Coverpla (Nice, France) (represented by: P. Greffe and M. Chaminade, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: Heinz-Glas GmbH (Kleintettau, Germany)

Form of order sought

— Annul the decision of the Third Board of Appeal of 7 July 2008 (Case R 1411/2007-3) in so far as it dismissed the

applicant's appeal and declared the Community design 'Tour' No 29178-0002 invalid;

— declare Community design 'Tour' No 29178-0002 in class 09-01 valid.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community design No 29178/0002 for 'phials'

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity: Heinz-Glas GmbH

Trade mark right of applicant for the declaration: An unregistered phial named 'Empire' (reference number F 3990)

Decision of the Cancellation Division: Declaration of invalidity of the Community design

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The Community design does have the requisite novelty; the documents which Heinz-Glas GmbH submitted to show that it disclosed to the public a prior design of an identical phial have no evidential value.

Action brought on 6 October 2008 — DHL Aviation et DHL Hub Leipzig/Commission

(Case T-452/08)

(2009/C 6/70)

Language of the case: English

Parties

Applicant(s): DHL Aviation NV (Zaventem, Belgium) and DHL Hub Leipzig GmbH (Schkeuditz, Germany) (represented by: A. Burnside, Solicitor and B. van de Walle de Ghelcke, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

— Annul the decision in so far as it identifies the applicants as beneficiaries of State aid that is considered to be incompatible with the common market, and in so far as the decision orders Germany to recover the alleged State aid, and

— Order the Commission to pay the costs.