

Form of order sought

— order that Decision No 2009/449/EC of 13 May 2009 on the selection of operators of pan-European Systems providing mobile satellite services (MSS) is void in accordance with the provisions of Articles 230 and 231 EC;

— order that the costs of the present action be paid by the defendant and any other orders it may deem appropriate.

Pleas in law and main arguments

By means of its application, the applicant seeks the annulment of Commission Decision No 2009/449/EC of 13 May 2009 on the selection of operators of pan-European Systems providing mobile satellite services ("MSS")⁽¹⁾.

It is submitted that the contested decision has the effect of depriving the applicant of property rights legitimately accrued to it under international law. The applicant further claims that the contested decision is unlawful because the Commission has:

- (a) discriminated against the applicant by involving a former chairman of the Inmarsat Ventures Limited Council ("Inmarsat") in the decision-making process, thereby infringing essential procedural requirements and breaching the principle of equal treatment; and
- (b) acted unreasonably, by selecting Inmarsat and Solaris Mobile Limited over the applicant when the latter is allegedly in an objectively better position to provide MSS.

According to the applicant, by adopting the contested decision, the defendant has acted disproportionately and in a way which is discriminatory and contrary to the applicant's legitimate expectations. The applicant further submits that the contested decision also constitutes a violation of its rights to the peaceful enjoyment of its possessions as protected by Article 1 of Protocol 1 to the European Convention of Human Rights ("ECHR"), as well as the right to enjoy its civil rights, including property rights and the right to a fair and public hearing, enshrined in Article 6 of the ECHR.

⁽¹⁾ 2009/449/EC: Commission Decision of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (notified under document number C(2009) 3746) (OJ 2009 L 149, p. 65)

Action brought on 14 September 2009 — Novácke chemické závody/Commission

(Case T-352/09)

(2009/C 267/138)

Language of the case: English

Parties

Applicant: Novácke chemické závody, a.s. (Nováky, Slovak Republic) (represented by: A. Černejšová, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision with respect to the applicant and consequently cancel the fine imposed on the applicant; or

— in the alternative, cancel the fine imposed on the applicant in the Article 2 of the decision or at least significantly decrease the fine imposed on the applicant; and

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of the present application, the applicant seeks the annulment of Commission decision of 22 July 2009 (Case No COMP/F/39.396 — Calcium and magnesium reagents for the steel and gas industries) where the Commission found the applicant together with other undertakings liable for the infringement of Article 81 EC and Article 53 EEA through market sharing, quotas, customer allocation, price fixing and exchanges of sensitive commercial information between suppliers of calcium carbide and magnesium granulates. Alternatively, the applicant seeks the cancellation or reduction of the fine imposed on it pursuant to Article 31 of Council Regulation (EC) No 1/2003.

The application is based on the following grounds:

First, the applicant submits that the Commission has breached the principle of proportionality and equal treatment which are general principles of Community law, by imposing an excessive and disproportionate fine on the applicant.

Second, that applicant claims that the Commission failed to investigate the applicant's ability to pay the fine and the risk that the fine may lead to its bankruptcy. The applicant submits, in particular, that the Commission failed to adhere to the essential procedural requirements, that it did not properly examine the evidence supplied by the applicant showing the imminent risk of a bankruptcy proceeding should the Commission impose a fine on it. Hence, it is submitted that the Commission committed a manifest error of appraisal in failure to establish the aforementioned risk and to apply paragraph 35 of the Guidelines in respect of the applicant.

Third, the applicant contends that the imposition of the fine on the applicant will directly cause its bankruptcy as well as its elimination as a competitor on the relevant market. Thus, according to the applicant, the Commission has violated Article 3(1)(g) EC by distorting or eliminating competition on the relevant market.

Action brought on 16 September 2009 — Commission v Association Fédération Club B2A

(Case T-356/09)

(2009/C 267/139)

Language of the case: French

Parties

Applicant: Commission of the European Communities (Étupes, France) (represented by: A.-M. Rouchaud-Joët and N. Bambara, acting as Agents, and E. Bouttier, lawyer)

Defendant: Association Fédération Club B2A

Form of order sought

- order the Fédération, represented by its President, to pay to the applicant the amount of ... euros ... corresponding to the principal sum of EUR 62 500 and the sum of ... euros ... in late-payment interest falling due on ...;
- order the Fédération to pay the sum of EUR 7 000 in order to cover the costs incurred by the Commission in recovering its debt;
- order the Fédération to pay the costs of the present case.

Pleas in law and main arguments

The European Community, represented by the Commission, concluded a grant contract in respect of a project for the 'creation and operation of a federation of regional networks of Business Angels for Eastern France'. The project, during which the Commission paid, as an advance, the sum of EUR 62 500 to the defendant, was completed on 30 September 2002.

In that contract, the defendant undertook, inter alia, to provide a final report. Since an incomplete report was provided, the Commission put the defendant on formal notice to produce a

report that met the objectives. Since that letter of formal notice and numerous other letters went unanswered by the defendant, the Commission sent a debit note and then an order for recovery of the amount of EUR 62 500 to the defendant.

Since that debt remains unpaid, the Commission is seeking an order that the defendant pay the sum due and the losses suffered in order to cover the entirety of the expenses which the Commission has had to incur in order to recover its debt, submitting that a) the defendant has failed to fulfil its obligations laid down in the contract by failing to submit a full final report and b) payment of the sum of EUR 62 500 by the Commission was made as an advance pending acceptance of the final report.

Action brought on 15 September 2009 — Pucci International v OHIM — El Corte Inglés (Emidio Tucci)

(Case T-357/09)

(2009/C 267/140)

Language in which the application was lodged: English

Parties

Applicants: Emilio Pucci International BV (Baarn, The Netherlands) (represented by: M. Boletto, E. Gavuzzi, G. Lazzarretti and P. Roncaglia, lawyers)

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

Other party to the proceedings before the Board of Appeal: El Corte Inglés, SA (Madrid, Spain)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 June 2009 in joined cases R 770/2008-2 and R 826/2008-2, in so far as it accepted registration of Community trade mark application No 3 679 594 "Emidio Tucci" for all the goods and services it covers in classes 1, 2, 4-17, 19, 20, 21, 22, 23, 26-45;
- Order the defendant to pay the costs incurred by the applicant during these proceedings; and