

First, the applicant argues that the Commission violated Article 9 of Regulation 1/2003 by choosing the procedure set out in this article where its concerns related to a serious violation of Article 102 TFUE to the extent that it intended to impose a fine. Further, it claims that there were no procedural savings in applying Article 9. In the applicant's opinion, the commitments made binding by the Commission were manifestly inappropriate given the facts of the infringement in stake and it submits therefore that the Commission violated Article 9 of Regulation 1/2003, Article 102 TFUE and principle of sound (impartial) administration by accepting Rambus commitments. The applicant further submits that by applying incorrect proportionality test without applying the conditions set out in Article 9 itself and by misstating certain concerns and making erroneous conclusions as to whether the commitments deal with its concerns, the Commission erred in reaching the conclusion that there are no longer grounds for action. Furthermore, the applicant claims that the Commission failed to give reasons as to the appropriateness and adequacy of the commitments and therefore committed a serious error of assessment.

Second, the applicant argues that the Commission misused its powers under Article 9 of Regulation 1/2003.

Third, it claims that the Commission committed procedural errors when adopting the contested decision by not using its powers under Regulation 1/2003 and not further investigating the question of remedy adequately.

⁽¹⁾ 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 2003 L 1, p. 1

Action brought on 25 March 2010 — Hynix Semiconductor v Commission

(Case T-149/10)

(2010/C 148/70)

Language of the case: English

Parties

Applicant: Hynix Semiconductor, Inc. (Icheon-si, Korea) (represented by: A. Woodgate and O. Heinisch, Solicitors)

Defendant: European Commission

Form of order sought

- annul the Commission Decision C(2010) 150 dated 15 January 2010;
- order the Commission to pay the costs;
- grant such other relief as the Court considers appropriate.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the Commission Decision C(2010) 150 rejecting, for lack of the Community interest, the applicant's complaint regarding alleged violations by Rambus of Articles 102 TFUE in connection with claiming of potentially abusive royalties for the use of certain patents for "Dynamic Random Access Memory" (DRAM) (Case COMP/38.636 — Rambus) following the Commission decision of 9 December 2009 by which it made binding upon Rambus certain commitments in accordance with Article 9 of the Council Regulation (EC) No 1/2003 ⁽¹⁾ and decided that there were no longer grounds for action.

In support of its claims, the applicant puts forward five pleas in law.

First, it submits that the Commission violated essential procedural requirements by not granting the applicant sufficient access to relevant documents.

Second, the applicant argues that there remains strong community interest in pursuing its complaint. It submits that the Commission based its rejection decision exclusively on the fact that there is no longer community interest given that it adopted the Article 9 decision. In the applicant's view, in this case the position and reasoning adopted by the Commission makes the question of Community interest and the validity of the rejection decision intrinsically linked to the validity of the Article 9 decision which is contested by the applicant in Case T-148/10.

Third, fourth and fifth plea raised by the applicant are identical to the first, second and third plea that it puts forward in Case T-148/10 and concern the alleged violations committed by the Commission when adopting the Article 9 decision making binding upon Rambus certain commitments.

(¹) 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 2003 L 1, p. 1

Action brought on 26 March 2010 — Telefónica O2 Germany v OHIM — Loopia (LOOPIA)

(Case T-150/10)

(2010/C 148/71)

Language in which the application was lodged: English

Parties

Applicant: Telefónica O2 Germany GmbH & Co. OHG (Munich, Germany) (represented by: A. Fottner and M. Müller, lawyers)

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

Other party to the proceedings before the Board of Appeal: Loopia AB (Västerås, Sweden)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2010 in case R 1812/2008-1; and

— Order the defendant to bear the costs, including those related to the appeal proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark “LOOPIA”, for services in class 42

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: German trade mark registrations of the word mark “LOOP”, for goods and services in classes 9, 38 and 42; Community trade mark registration of the word mark “LOOP”, for goods and services in classes 9, 16, 35, 38 and 42; Community trade mark registration of the word mark “LOOPY”, for goods and services in classes 9, 38 and 42

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Annulled the contested decision, rejected the opposition and allowed the application

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly found that there was no likelihood of confusion between the trade marks concerned.

Action brought on 1 April 2010 — Bank Nederlandse Gemeenten NV v Commission

(Case T-151/10)

(2010/C 148/72)

Language of the case: Dutch

Parties

Applicant: Bank Nederlandse Gemeenten NV (The Hague, Netherlands) (represented by: B. Drijber, lawyer)

Defendant: European Commission

Form of order sought

— Annul the Commission’s Decision of 15 December 2009 (C(2009) 9963) in so far as concerns the Commission’s finding that the opportunity for housing corporations to borrow from the Bank Nederlandse Gemeenten NV constitutes State aid within the meaning of Article 107(1) TFEU;