

Action brought on 22 October 2010 — Prima TV v Commission**(Case T-504/10)**

(2010/C 346/107)

*Language of the case: Italian***Parties***Applicant:* Prima TV SpA (Milan, Italy) (represented by: L. Fossati and L. Perfetti, lawyers)*Defendant:* European Commission**Form of order sought**

— Annul the contested decision.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The decision that is contested in the present case is the same as that in Case T-501/10 *TI Media Broadcasting and TI Media v Commission*.

The applicant relies on three grounds in support of its claims.

By the first ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions in the form of a manifest error of assessment, since the Commission found incorrectly that the conditions in the Italian pay-TV market had changed since 2003 to such an extent that it was possible to revise the commitments given by Newscorp in Case COMP/M.2876. All the evidence shows that, on the contrary, the market conditions which determined the commitments given to and accepted by the Commission in 2003 have not changed in any significant or lasting manner. In particular, Sky Italia still holds a position of absolute dominance in the Italian pay-TV market.

By the second ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions and misuse of power, including as a result of manifest error of assessment, and infringement of the principle of proportionality, since the Commission amended the commitments given by Newscorp in Case COMP/M.2876 on the incorrect assumption that the fact that Sky Italia was not to participate in the next procedure for the allocation of terrestrial digital frequencies would preclude it from engaging in free-to-air television broadcasting in Italy. It is submitted in this connection that, on the contrary, Sky Italia is already active in free-to-air television broadcasting in Italy, broadcasts on digital terrestrial frequencies and will be able to acquire transmission capacity even if the commitments in question are not amended.

By the third ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions and

manifest error of assessment, since the Commission amended the commitments given by Newscorp in Case COMP/M.2876 at the request of Sky Italia, notwithstanding the fact that the replies received during the investigation into the market which took place during the administrative procedure — including those sent by Italian public bodies — gave clear indications of the negative impact which the amendment of the commitments in question would have in terms of competition at national level.

Action brought on 18 October 2010 — Höganäs v OHIM — Haynes (ASTALOY)**(Case T-505/10)**

(2010/C 346/108)

*Language in which the application was lodged: English***Parties***Applicant:* Höganäs AB (Höganäs, Sweden) (represented by: L.-E. Ström, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Haynes International, Inc. (Kokomo, USA)**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 August 2010 in case R 1530/2009-4;

— Reject the opposition decision No B 85624; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings.

Pleas in law and main arguments*Applicant for the Community trade mark:* The applicant*Community trade mark concerned:* The word mark “ASTALOY”, for goods in class 6 — Community trade mark application No 3890233*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal*Mark or sign cited:* Community trade mark registration No 55400 of the word mark “HASTELLOY”, for goods in class 6*Decision of the Opposition Division:* Upheld the opposition*Decision of the Board of Appeal:* Dismissed the appeal