2. Second plea in law, alleging that the Council has violated the applicant's rights of defence and the right to effective judicial protection, as:

   — The restrictive measures provide no procedure for communicating to the applicant the evidence on which the decision to freeze his assets was based, or for enabling him to comment meaningfully on that evidence;

   — The reasons given in the contested measures contain a general, unsupported, vague allegation of a judicial investigation;

   — The Council has not given sufficient information to enable the applicant effectively to make known his views in response, which does not permit a Court to assess whether the Council's decision and assessment was well founded and based on compelling evidence.

3. Third plea in law, alleging that the Council has failed to give the applicant sufficient reasons for his inclusion in the contested measures, in violation of its obligation to give a clear statement of the actual and specific reasons justifying its decision, including the specific individual reasons that led it to consider that the applicant was responsible for misappropriating Tunisian State funds.

4. Fourth plea in law, alleging that the Council has infringed, without justification or proportion, the applicant's right to property and to conduct his business, as:

   — The asset freezing measures have a marked and long-lasting impact on his fundamental rights;

   — They are unjustified in their application to the applicant; and

   — The Council has not demonstrated that a total asset freeze is the least onerous means of ensuring such an objective, nor that the very significant harm to the applicant is justified and proportionate.

5. Fifth plea in law, alleging that the Council committed a manifest error of assessment in deciding to apply these restrictive measures to the applicant, as no evaluation has apparently been carried out by the Council as regards the applicant or, if such assessment has been carried out, the Council erred in concluding that there was justification for including the applicant in the restrictive measures.

(1) Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62).

## Action brought on 4 April 2011 — Si.mobil v Commission

**(Case T-201/11)**

(2011/C 160/39)

*Language of the case: English*

### Parties

*Applicants:* Si.mobil telekomunikacijske storitve d.d. (Ljubljana, Republic of Slovenia) (represented by: P. Alexiadis and E. Sependa, Solicitors)

*Defendants:* European Commission

### Form of order sought

— Annul the European Commission Decision C(2011) 355 final of 24 January 2011 in Case No COMP/39.707 Si.mobil/Mobitel; and

— Order the defendant to pay applicant's costs.

### Pleas in law and main arguments

By means of its application the applicant seeks, pursuant to Article 263 TFEU, the annulment of European Commission Decision C(2011) 355 final of 24 January 2011 in Case No COMP/39.707 Si.mobil/Mobitel, regarding the rejection of a complaint brought under Article 102 TFEU by it on 14 August 2009 for the allegedly abusive practices of Mobitel at the retail and wholesale functional levels of competition across a range of mobile communications markets.

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that the Commission manifestly erred in its application of the jurisdictional allocation rules set forth in Council Regulation (EC) No 1/2003 (1) and in the Commission Notice on cooperation within the Network of Competition Authorities (OJ 2004 C 101, p. 43), as:

   — By adopting the contested decision, the Commission has failed to ensure that an effective application of European Union law will take place, thereby ignoring the over-riding public policy dictates to which Council Regulation (EC) No 1/2003 is subject, while also ignoring its own self-imposed rules contained in the Commission's Notice on cooperation within the Network of Competition Authorities and the relevant case-law;

— The Commission has ignored its obligations under the Notice on cooperation within the Network of Competition Authorities, since it has failed to intervene when an '*National Competition Authority is unduly drawing out proceedings*', which is the case where the two-year deadline imposed by Slovenian law has expired without the National Competition Authority having even sent a final Statement of Objections. Furthermore, the Commission has ignored evidence overwhelmingly demonstrating that it is the '*best placed*' authority to adjudicate on the causes of action at issue. In the circumstances, it is highly unlikely that the Slovenian Competition Authority is '*able to bring the infringement to an ending*' in a reasonable and timely manner. By contrast, in the case at hand, it is clear that the '*Community provisions […] may be […] more effectively applied by the Commission.*'.

2. Second plea in law, alleging that the Commission manifestly erred in its application of the balancing exercise set forth in the *Automec* case-law [2], as:

— The applicant considers that the Commission's discretion in deciding whether or not to assume jurisdiction under the *Automec* case-law is not unfettered. To this end, the applicant has submitted a large body of evidence demonstrating that there exists a 'Community interest' in the Commission exercising jurisdiction over Si.mobil's claims, which the Commission has unduly ignored. Moreover, the Commission has ignored its own Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ 2009 C 45, p. 7), since both types of Competition law infringements (margin squeeze and predatory pricing) to which the applicant is subject are envisaged in the above mentioned document as an enforcement priority for the Commission, and there is an increasing interest in clarifying the ways in which the Commission applies those doctrines, especially in the mobile sector where such precedents have yet to be established.

[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)

[2] Case T-24/90 *Automec* v *Commission*, [1992] ECR II-2223

## Action brought on 4 April 2011 — Aeroporia Aigaiou Aeroporiki and Marfin Investment Group Symmetochon v Commission

**(Case T-202/11)**

(2011/C 160/40)

*Language of the case: English*

### Parties

*Applicants:* Aeroporia Aigaiou Aeroporiki AE (Athens, Greece) and Marfin Investment Group Symmetochon AE (Athens, Greece) (represented by: A. Ryan, Solicitor, G. Bushell, Solicitor, P. Stamou and I. Dryllerakis, lawyers)

*Defendant:* European Commission

### Form of order sought

— Annul the Decision of the European Commission No C(2011) 316 of 26 January 2011 on Case COMP/M.5830 related to the proposed merger of Aegean Airlines S.A. and Olympic Air S.A., Olympic Handling S.A. and Olympic Engineering S.A. under Council Regulation (EC) No 139/2004 [1]; and

— Order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law:

1. First plea in law, alleging breach of essential procedural requirements and/or manifest error of assessment in defining a market for time-sensitive air passengers only, as:

— The Commission uses yield or revenue management as a basis for defining a market for time sensitive passengers which was never discussed in the administrative procedure; and

— The Decision cannot be based on a market comprising of time sensitive air passengers only, as this cannot be supported by mainstream economic thinking and is contradicted by the Commission's own file.

2. Second plea in law, alleging manifest error of assessment in concluding that ferries exert only a "limited competitive constraint" on air services on eight routes, as:

— The evidence cited by the Commission in support of its conclusions is highly selective, breaches all rules of evidence and does not contain any empirical or survey work. Moreover, this evidence, if read objectively, in fact supports the opposite conclusion, *i.e.* that ferries do exert a real competitive constraint for non-time sensitive and/or all passengers on these eight routes.