

**Re:**

First, application for annulment of the Commission's decision of 29 October 2010 rejecting the tender submitted by the applicant in tendering procedure ISM/2010/C05/004/0C concerning a multiple framework agreement for works to construct, restructure and maintain buildings and infrastructure at the Commission's Joint Research Centre's Ispra site, of the decision to award the contract to another tenderer and of the contract notice and, second, an application for damages.

**Operative part of the order**

1. *The action is dismissed.*
2. *Castiglioni Srl is ordered to pay the costs, including those relating to the interlocutory proceedings.*

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<sup>(1)</sup> OJ C 55, 19.2.2011.

**Action brought on 29 January 2013 — Club Hotel Loutraki and Others v Commission**

(Case T-57/13)

(2013/C 114/57)

*Language of the case: English*

**Parties**

*Applicants:* Club Hotel Loutraki (Loutraki, Greece); Vivere Entertainment AE (Athens, Greece); Theros International Gaming, Inc. (Patra, Greece); Elliniko Casino Kerkyras (Athens); Casino Rodos (Rhodes, Greece); and Porto Carras AE (Alimos, Greece) (represented by: S. Pappas, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- Annul Commission Decision COMP F3/MC/erg\*2012/12.7386 dated 29 November 2012, by which the applicants' complaint lodged on 4 April 2012 concerning the alleged granting of State aid to OPAP by the Greek State was rejected;
- Order that the Commission bear the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on four pleas in law.

First plea in law, alleging infringement of the applicants' right to be heard as established in Article 108(2) TFEU by the Commission's failure to initiate a formal investigation procedure according to Article 4(4), 6 and 20 of Regulation No 659/1999, which constitutes a misuse of power.

— The Commission has infringed article 108(2) TFEU and Articles 4 et sec. of the Regulation, to the extent that it substantially conducted a formal investigation procedure without adhering to its formal requirements thus depriving the applicants-complainants, as well as other concerned parties, from their right to be heard.

— The applicants plead to the alternative that their rights of association with the case during the preliminary investigation procedure have been infringed.

Second plea in law, alleging infringement of the obligation to state reasons and the applicants' right to good administration pursuant to Articles 296 TFEU and 41 of the Charter of Fundamental Rights of the European Union respectively.

— By omitting all crucial economic data and figures, the contested decision fails to disclose in a clear and unequivocal fashion the reasoning followed by the Commission in such a way as to allow the applicants' to ascertain the reasons that have lead to the conclusion that the measures in question do not constitute state aid. These deficiencies cannot be justified by reference to the duty to preserve business confidentiality.

— The applicants also contest the confidential nature of the crucial economic sizes.

Third plea in law, alleging infringement of the applicants' right to effective judicial protection provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in Article 47 of the Charter of Fundamental Rights of the European Union.

— For the same reasons set forward under plea No 2, the applicants' right to effective judicial protection is being infringed. The applicants' encounter difficulties in challenging directly the substance of the contested decision, as they are unable to ascertain, by any means, the reasoning behind it, this being solely based on economic data, all of which remains non-disclose.

Fourth plea in law, alleging a manifest error in law in assessing the conformity of the VLT Agreement jointly with the Addendum and in reaching the conclusion that these do not confer an economic advantage on OPAP..

— The conferral of economic advantages, a formal requirement for the existence of state aid, must be assessed within a distinct market and not after joint consideration with other similar measures granted to the same recipient but in a different market, irrespective of whether the alter is comparable to the former. Otherwise, the protection of competition would be highly incomplete.

— At any rate, such a joint assessment may not be conducted on measures to be applied during different time periods.

### Action brought on 29 January 2013 — Club Hotel Loutraki e.a. v Commission

(Case T-58/13)

(2013/C 114/58)

*Language of the case: English*

#### Parties

*Applicants:* Club Hotel Loutraki (Loutraki, Greece); Vivere Entertainment AE (Athens, Greece); Theros International Gaming, Inc. (Patra, Greece); Elliniko Casino Kerkyras (Athens); Casino Rodos (Rhodes, Greece); Porto Carras AE (Alimos, Greece); and Kazino Aigaίου AE (Syros, Greece) (represented by: S. Pappas, avocat)

*Defendant:* European Commission

#### Form of order sought

The applicants claim that the Court should:

— Annul Commission Decision C(2012) 6777 final on the case of State aid SA 33988 (2011/N) dated 3 October 2012;

— Order that the Commission bear the costs of the proceedings.

#### Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

First plea in law, alleging infringement of the applicants' right to be heard as established in Article 108(2) TFEU by the Commission's failure to initiate a formal investigation procedure according to Article 4(4), 6 and 20 of Regulation No 659/1999, which constitutes a misuse of power.

— The Commission has infringed article 108(2) TFEU and Articles 4 et seq. of the Regulation, to the extent that it substantially conducted a formal investigation procedure without adhering to its formal requirements thus depriving the applicants-complainants, as well as other concerned parties, from their right to be heard.

Second plea in law, alleging infringement of the obligation to state reasons and the applicants' right to good administration pursuant to Articles 296 TFEU and 41 of the Charter of Fundamental Rights of the European Union respectively.

— By omitting all crucial economic data and figures, the contested decision fails to disclose in a clear and unequivocal fashion the reasoning followed by the Commission in such a way as to allow the applicants' to ascertain the reasons that have lead to the conclusion that the measures in question do not constitute state aid. These deficiencies cannot be justified by reference to the duty to preserve business confidentiality.

— The applicants also contest the confidential nature of the crucial economic sizes.

Third plea in law, alleging infringement of the applicants' right to effective judicial protection provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in Article 47 of the Charter of Fundamental Rights of the European Union.

— For the same reasons set forward under plea No 2, the applicants' right to effective judicial protection is being infringed. The applicants' encounter difficulties in challenging directly the substance of the contested decision, as they are unable to ascertain, by any means, the reasoning behind it, this being solely based on economic data, all of which remains non-disclose.

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