

Pleas in law and main arguments

Community trade mark concerned: the word mark ULTIMATE for goods and services in Classes 12, 28, 35 and 37

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 24 May 2014 — Fih Holding and Fih Erhvervsbank v Commission**(Case T-386/14)**

(2014/C 253/66)

*Language of the case: English***Parties**

Applicants: Fih Holding A/S (Copenhagen, Denmark); and Fih Erhvervsbank A/S (Copenhagen) (represented by: O. Koktvedgaard, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- Annul the Commission decision of 11 March 2014 C(2014) 1280 final on State aid SA.34445 (2012/c) implemented by Denmark for the transfer of property-related assets from FIH to the FSC; and
- Order the Commission to pay the costs.

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 that the contested decision is contrary to Article 107(1) TFEU in so far as the Commission found 'that no market economy operator would have been willing to invest on terms and conditions equivalent to those of the share purchase agreement' (recital 93), that 'as a result the measures are not in line with the MEOP' (recital 93 and 99), and in Article 1(1) that the asset transfer constitute State aid.
2. Second plea in law, alleging that the FSC should not be compared to a private investor guided by the longer-term prospects of profitability of the capital invested, but to a private creditor seeking to obtain payment of sums owed to it by a debtor in financial difficulties, due to the pre-existing liabilities resting upon the FSC.
3. Third plea in law, alleging that the contested decision is contrary to Article 107(1) TFEU in so far as it finds in recital 116 the gross capital relief effect of the measures to be DKK 375 million, which needed to be remunerated, and the transfer value to be DKK 254 million above the real economic value, which needed to be clawed back, and in the second paragraph of Article 1 and the Term Sheet, commitment 6, makes the approval contingent on this.
4. Fourth plea in law, alleging that the contested decision is contrary to Article 107(1) TFEU in so far as the Commission found in recital 103 (a) 'a benefit related to the share purchase agreement formula (DKK 0,73 billion)', and in recital 103 (b) 'a foregone equity investment remuneration (DKK 1,33 billion)'. Due to this there is no basis for the claim for remuneration of the capital relief demanded by the Commission in the second paragraph of Article 1 and commitment No 6.

5. Fifth plea in law, alleging that the Commission misunderstood the terms of the Agreement when the Commission concluded that FIH should repay DKK 254 million to the FSC (recital 116) as the difference between the Transfer Value and the Real Economic Value of the assets.
6. Sixth plea in law, alleging that the contested decision is contrary to Article 296 TFEU and Article 41(2)(c) of the Charter as the Commission has failed to observe its essential procedural duty to state reasons for its decision.

Action brought on 10 June 2014 — Duro Felguera v Commission

(Case T-401/14)

(2014/C 253/67)

Language of the case: Spanish

Parties

Applicant: Duro Felguera, SA (Gijón, Spain) (represented by: A. López Gómez, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- in the alternative, annul the decision categorising the measures which together constitute the ‘Spanish Tax Lease System’ (‘STLS’) as new State aid that is incompatible with the internal market;
- in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as the only beneficiaries of the alleged aid and, consequently, as solely liable for its recovery;
- in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid in breach of general principles of EU law;
- in the alternative, annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of private contracts between the investors and other entities, and
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-515/13 *Spain v Commission*.

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

1. By its first plea in law, the applicant claims that the contested decision infringes Article 107 TFEU in categorising as State aid the STLS and the individual measures of which it is composed. The applicant alleges that the holistic approach taken by the Commission is erroneous, since it confuses a group of private legal transactions carried out by taxable persons in order to optimise their profits with the establishment of an *ad hoc* mechanism by the tax authorities to generate tax incentives.
2. By its second plea in law, the applicant alleges that the Commission incorrectly identified the beneficiary of the aid, since the Commission itself acknowledges that the recipient of the aid, or most of it, is the ship owner that acquires the ship, and not the EIG. Although the early depreciation is requested by the EIG and first benefits its members, 90 % of that benefit is passed on to the shipping companies.