2. Second plea in law, raised in the alternative, alleging that, even if the aid scheme at issue were not to constitute an existing aid scheme, the Commission was not entitled to carry its investigation back beyond the limitation period of 10 years preceding 25 November 2008, the date on which the Commission sent a request for information to the French authorities. Article 17 of Regulation No 2015/1589 provides that the limitation period is to be interrupted only by action taken by the Commission or by a Member State, acting at the request of the Commission. Thus, the applicants are of the opinion that the Commission was entitled to carry its examination back only until 25 November 1998.

Action brought on 15 May 2017 — Buck-Chemie v EUIPO — Henkel (Representation of flushing systems for water closets)

(Case T-296/17)

(2017/C 239/64)

Language in which the application was lodged: German

Parties

Applicant: Buck-Chemie GmbH (Herrenberg, Germany) (represented by: C. Schultze, J. Ossing, R.-D. Härer, C. Weber, H. Ranzinger, C. Brockmann and C. Gehweiler, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Henkel AG & Co. KGaA (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: other party to the proceedings before the Board of Appeal

Design at issue: Community design No 1663618-0003

Contested decision: Decision of the Third Board of Appeal of EUIPO of 8 March 2017 in Case R 2113/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant and the other party to pay the costs incurred by the applicant in the proceedings before the Court and before the Board of Appeal.

Pleas in law

— Infringement of Article 62 and Article 63 of Regulation No 6/2002;

— Infringement of Article 25(1)(a) and (b) of Regulation No 6/2002;

— Infringement of Article 3(a) of Regulation No 6/2002;

— Infringement of Article 4(1) of Regulation No 6/2002;

— Infringement of Article 5 and Article 6 of Regulation No 6/2002.

Action brought on 29 May 2017 — Martinair Holland v Commission

(Case T-323/17)

(2017/C 239/65)

Language of the case: English

Parties

Applicant: Martinair Holland NV (Haarlemmermeer, Netherlands) (represented by: M. Smeets, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 — Airfreight) in whole for a violation of the prohibition of arbitrariness and the principle of equal treatment in accordance with its first plea; for lack of jurisdiction over air transport from airports outside the EEA to airports within the EEA in accordance with its second plea (in primary order); or

— annul Articles 1(2)(d) and 1(3)(d) of the contested decision, in so far as it is found in these provisions that the applicant committed an infringement in relation to air transport from airports outside the EEA to airports within the EEA, in accordance with its second plea (in subsidiary order); and

— annul Article 1 and Article 1(1)(d), 1(2)(d), 1(3)(d) and 1(4)(d) of the contested decision, in so far as it is found there that the single and continuous infringement included the non-commissioning of surcharges, in accordance with its third plea; and

— order the Commission to pay the costs of these proceedings if the Court annuls the contested decision in whole or in part.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of the prohibition of arbitrariness and the principle of equal treatment.

   — The applicant puts forward that the contested decision violates the prohibition of arbitrariness by excluding undertakings from the operative part of the contested decision which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

   — The applicant further puts forward that the contested decision violates the principle of equal treatment by sanctioning the applicant for an infringement and imposing a fine on the applicant, and exposing it to civil liability, while undertakings are excluded from the operative part which, according to its statement of reasons, have taken part in the same behaviour as the addressees of the contested decision.

2. Second plea in law, alleging a lack of jurisdiction over air cargo transport from airports outside the EEA to airports in the EEA.

   — The applicant puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA was implemented in the EEA.

   — The applicant further puts forward that the contested decision wrongly relies on the assumption that the single and continuous infringement concerning air transport from airports outside the EEA to airports in the EEA had a substantial, immediate and foreseeable effect on competition in the EEA.

3. Third plea in law, alleging a failure to state reasons and manifest error of assessment in finding that the non-commissioning of surcharges constitutes a separate element of the infringement.

   — The applicant puts forward that the two assumptions on which the contested decision relies to qualify non-commissioning of surcharges as a separate element of the infringement, are contradictory in light of the economic and regulatory context of the industry concerned.

   — The applicant further puts forward that the non-commissioning of surcharges is indistinguishable from the practices regarding the fuel surcharge and the security surcharge, and does not constitute a separate element of the infringement.