

**Action brought on 31 October 2007 — Kingdom of Spain
v Commission of the European Communities**

(Case T-398/07)

(2008/C 8/32)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission Decision of 4 July 2007 relating to a proceeding under Article 82 EC (Case COMP/38.784 — Wanadoo España v Telefónica) and
- Order the defendant to pay the costs

Pleas in law and main arguments

The present action is brought against the decision of 4 July 2006 relating to a proceeding under Article 82 EC (Case COMP/38.784 — Wanadoo España v Telefónica) in which the Commission imposed a fine of EUR 151 875 000 on Telefónica, S.A. and jointly and severally on Telefónica de España S.A. U., for an infringement of Article 82 EC. According to the Commission, from September 2001 until December 2006 both companies charged unfair tariffs in the form of disproportion between their wholesale and retail broadband access prices.

In support of its claims, the applicant puts forward the following grounds:

- Breach of the duty to cooperate laid down in Article 10 EC and in Article 7(2) of Directive 2002/21/EC⁽¹⁾ in so far as the Commission did not give the Spanish national regulatory authority the opportunity to collaborate with it, for the purposes of considering the means which might have enabled the alleged infringement to be resolved, in the most effective way possible.
- Infringement of Article 82 EC on account of manifest errors of assessment as regards the indispensability of the wholesale products, the calculation of costs and the effects of Telefónica's behaviour on competitors and consumers.
- *Ultra vires* application of Article 82 EC, since the contested decision impinges on the regulatory framework for current electronic communications in force in Spain, and thus upsets the balance between *ex ante* regulation and competi-

tion rules. Furthermore, inconsistency of the results obtained by the Commission with international experience and the reality of the Spanish market, impeding the Spanish national regulatory authority from attaining the objectives set out in that regulatory framework, and breach of the principle of specificity.

- Breach of the principle of legal certainty, since the contested decision implies an *ex post* change in the concept of the regulatory framework as defined *ex ante*.
- Breach of the principle of legitimate expectation with respect to Telefónica, and with respect to the rest of the operators in that market, by failing to comply with the regulatory framework in a matter that had already been regulated by the Commission for the Telecommunications Market.

⁽¹⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

Action brought on 2 November 2007 — Caixa Geral de Depósitos v Commission

(Case T-401/07)

(2008/C 8/33)

Language of the case: Portuguese

Parties

Applicant: Caixa Geral de Depósitos SA (Lisbon, Portugal) (represented by: Nuno Mimoso Ruiz, Francisca Ponce de Leão Paulouro and Carla Farinhas, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- declare that the action for annulment brought pursuant to Article 230 of the EC Treaty and, simultaneously and cumulatively, the action brought pursuant to Article 238 of the EC Treaty on the basis of the arbitration clause laid down in Article 18 of the agreement concluded on 15 November 1995 between the Commission and the CGD were brought in accordance with law;