*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision and rejection of the opposition in its entirety

*Pleas in law:* The trade marks in question are confusingly similar and the goods applied for are identical to those covered by the opposition trade marks.

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**Appeal brought on 16 April 2007 by Francisco Rossi Ferreras against the judgment of the Civil Service Tribunal delivered on 1 February 2007 in Case F-42/05 *Rossi Ferreras* v *Commission***

**(Case T-107/07 P)**

(2007/C 129/35)

*Language of the case: French*

**Parties**

*Appellant:* Francisco Rossi Ferreras (Luxemburg, Grand Duchy of Luxembourg) (represented by F. Frabetti, lawyer)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

— set aside the judgment of the Civil Service Tribunal of 1 February 2007 in Case F-42/05;

— grant the forms of order sought by the appellant at first instance and, primarily, declare the application in Case F-42/05 to be admissible and well founded;

— in the alternative, remit the case to the Civil Service Tribunal;

— make an order as to costs, expenses and fees and order the Commission to pay them.

**Pleas in law and main arguments**

In his appeal, the appellant seeks the annulment of the judgment of the Civil Service Tribunal dismissing his application for the annulment of his career development report for the period from 1 January to 31 December 2003 and an order requiring the Commission to compensate him for the damage that he claims to have suffered.

In support of his appeal, the appellant claims that the Civil Service Tribunal made several errors of law in its consideration of the two pleas in law put forward at first instance.

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**Action brought on 8 April 2007 — Spira v Commission**

**(Case T-108/07)**

(2007/C 129/36)

*Language of the case: English*

**Parties**

*Applicant:* Diamanthandel A. Spira BVBA (Antwerpen, Belgium) (represented by: J. Bourgeois, Y. van Gerven, F. Louis and A. Vallery, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul the Commission decision of 26 January 2007, pursuant to Article 7(2) of Council Regulation No 773/2004, in case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice;

— order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant contests the Commission's decision of 26 January 2007 in competition Case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice, by which the Commission rejected the applicant's complaint regarding violations of Articles 81 and 82 EC in connection with the Supplier of Choice system applied by the De Beers Group for the distribution of rough diamonds, with the reasoning that there is not sufficient Community interest to act further on the applicant's complaint.

The applicant alleges that De Beers — a producer of rough diamonds who, according to the applicant, was mainly involved upstream with the sale of rough diamonds — is trying through its Supplier of Choice system to extend its control of the market to cover the entire diamond pipeline from mine to consumer, i.e. also the downstream markets.

In support of its application, the applicant invokes three pleas in law.

Firstly, the applicant claims that the Commission failed to honour its duty to conduct a careful and impartial investigation of the complaint and to examine with proper care and impartiality the anticompetitive practices denounced in the complaint.

Secondly, the applicant alleges that the Commission could not claim that there was a lack of sufficient Community interest to act on the complaint, in light of the size of the undertaking involved, the geographic scope of the anticompetitive practices and the damage to competition and the internal market caused by the infringements.

Thirdly and finally, the applicant submits that the Commission concluded to the absence of sufficient Community interest on the basis of an erroneous assessment, in fact and in law, of the circumstances of the case since:

1) the Commission failed to take into account the manifest publicly stated anticompetitive object of De Beers' limited selective distribution system;

2) the Commission could not assess the anticompetitive effects of the De Beers' distribution system without first assessing De Beers' dominance and market power;

3) the Commission failed to take into account the numerous elements brought to its attention in the complaint demonstrating the inherently abusive and anticompetitive nature of the system;

4) the Commission wrongly assessed the effectiveness of the revised Terms of Reference for the Ombudsman that De Beers had introduced to resolve disputes as to the implementation of the distribution system; and

5) the Commission made an error of law and a manifest error of assessment of the facts in finding that De Beers' distribution system does not foreclose the market.

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## Action brought on 13 April 2007 — Agrofert Holding v Commission

**(Case T-111/07)**

(2007/C 129/37)

*Language of the case: English*

### Parties

*Applicant:* Agrofert Holding a.s. (Praha, Czech Republic) (represented by: R. Pokorný, lawyer)

*Defendant:* The Commission of the European Communities

### Form of order sought

— Annulment of Commission Decision SG.E.3/MIB/md D (2007) 1360 of 13 February 2007 relating to the request for access to documents in merger Case No COMP/M.3543 — PKN Orlen/Unipetrol and Commission Decision 16796/16797 of 2 August 2006;

— order the Commission to produce the documents in question;

— order the Commission to pay the costs.

### Pleas in law and main arguments

By means of its application, the applicant seeks the annulment, under Article 230 EC, of Commission's Decision of 2 August 2006 (hereinafter 'Decision I') as well as the Commission's subsequent confirmatory decision of 13 February 2007 (hereinafter 'Decision II') relating to the request for access to all unpublished documents relating to the notification and pre-notification phases of the merger at stake.

The applicant claims that both decisions are contrary to Regulation (EC) No 1049/2001 ([1]), regarding public access to European Parliament, Council and Commission documents (hereinafter 'The Regulation') as they do not fall within the exceptions enshrined in its Article 4(2), relating to protection of commercial interests, protection of the purpose of investigation, protection of Legal Advice or its Article 4(3) relating to protection of decision-making process.

The applicant further submits that Article 4(2), first indent, of the Regulation should not be interpreted as if the exceptions applied to the entirety of the documents but only to the parts due to contain business secrets or commercially sensitive information. Thus, according to the applicant, the defendant could have either released to the public parts of the requested documents or blackened the parts containing the sensitive information without undermining the purpose of inspections, investigations and audits, the notifying parties and third parties right's, the protection of legal advice or the institution's decision-making process.

Moreover, the applicant contends that the defendant, instead of conducting individual examination of each document falling, in its view, under the exception of Article 4(2), third indent, of the Regulation, has generally refused the requested access on the basis of the sole fact that all documents contain business secrets and cannot be disclosed according to Article 17 of the Council Regulation (EC) No 139/2004 ([2]). Such generalisation would be contrary to Article 4(6) of the Regulation.

Besides, the applicant submits that the above-mentioned exceptions apply only if they are not waived by an overriding public interest in disclosure. According to the applicant, such interest to disclose the requested documents, deriving from the damage suffered by the applicant and minority shareholders of the acquired company, exists and outweighs the exceptions to the right of access.

The applicant, moreover, claims that Decision I and II are contrary to Article 1 EU, second subparagraph, enshrining the principle of openness.

Finally, the applicant submits that the defendant did not handle the confirmatory application promptly according to Article 8(1) of the Regulation but exceeded the time-limit for replying by 100 working days.

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([1]) OJ L 145, 31.5.2001, p. 43-48.

([2]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1-22).