Form of order sought

— Declare that the contract No 2006-09120304D1021001FD1507 has not been validly terminated by the Education, Audiovisual & Culture Executive Agency and remains in force;

— Order the Education, Audiovisual & Culture Executive Agency to pay to the applicant the sum of EUR 9 737 remaining payable to it under the contract.

Pleas in law and main arguments

By the present action based on an arbitration clause, the applicant requests that the defendant be ordered to make payment of a sum equivalent to the balance remaining payable to it in implementation of contract No 2006-09120304D1021001FD1507 in relation to Community financial support of a project for videographic distribution of a film within the 'MEDIA Plus' programme adopted by Council Decision 2002/821/EC ([1]).

The contract was signed by the parties on 27 June 2006 and an advance was paid by the defendant to the applicant as provided for by the contract. On 8 May 2007, the defendant sent a letter to the applicant purporting to terminate the contract on the ground that the real total costs were lower than the project's provisional budget and that no written explanation had been provided in the submitted financial report on the project, and requesting repayment of the sum paid as an advance. The applicant considers, however, that, as provided for in the contract, the defendant's contribution to the project was to be as high as 50 % of the real costs of videographic distribution, and accordingly requests payment of a sum still due in addition to the sum paid in advance.

In support of its action, the applicant claims that termination of the contract by the defendant is irregular and unfounded, since it has disregarded the terms of the contract as to the procedure for termination, and in particular, it has not allowed the applicant any period in which to respond on the implementation of the contract. According to the applicant, the Court should rule that the contract remains in force.

Further, the applicant disputes the grounds of termination of the contract which are relied on by the defendant, namely failure to perform its contractual obligations.

([1]) 2000/821/EC: Council Decision of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus — Development, Distribution and Promotion) (2001-2005), OJ L 336, p. 82.

Action brought on 4 July 2007 — Heineken Nederland and Heineken v Commission

(Case T-240/07)

(2007/C 211/81)

Language of the case: Dutch

Parties

Applicants: Heineken Nederland BV and Heineken NV (represented by: T. Ottervanger and M.A. de Jong, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside in whole or in part the decision addressed to, *inter alia*, the applicants;

— set aside or reduce the fine imposed on the applicants;

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

Pleas in law and main arguments

The applicants are challenging the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B-2/37.766 — Netherlands beer market), by which a fine was imposed on the applicants.

In support of their action, the applicants first put forward a number of procedural heads of complaint. First, they allege infringement of the principle of sound administration during the investigation and breach of Article 27 of Regulation No 1/2003 in that the Commission refused access to the defence submissions of the other undertakings. Second, the applicants allege that the Commission failed to carry out a careful and impartial investigation. Third, the applicants submit that the conduct of the Competition Commissioner amounted to an infringement of the principle of the presumption of innocence. Fourth, they claim that the Commission failed to comply with the requirement that proceedings be concluded within a reasonable period of time, as a result of which the applicants argue that their rights of defence were breached.

The applicants further allege a breach of Article 81 EC. In that connection, the applicants first submit that there was a defective adduction of evidence, disregard for the presumption of innocence and infringement of the principle that reasons must be given. Second, the applicants dispute the contention that there were agreements and/or concerted practices in this case. Third, the applicants argue that the Commission erred in its calculation of the duration of the alleged breach.

The applicants also put forward a number of heads of complaint concerning the determination of the amount of the fine. They first allege a breach of Article 23(3) of Regulation No 1/2003, incorrect application of the guidelines on setting fines, infringement of the principles of equality, legal certainty and proportionality and breach of the obligation to state reasons. The applicants argue that the Commission erred in its assessment of the gravity of the breach, in particular through misappraisal of the nature of the breach, by failing to take account of the negligible market impact and through its incorrect determination of the relevant geographical market. They further claim that the Commission erred in determining the basic amount of the fine, the multiplication factor for the deterrent effect and the duration. In addition, it is alleged that the Commission failed to take adequate account of the mitigating circumstances and that the unduly lengthy duration of the administrative proceedings resulted in a disproportionately high fine by reason of the fact that Commission policy in regard to the level of fines had become stricter in the intervening period.

In conclusion, the applicants submit that the reduction applied by the Commission to the amount of the fine by reason of the unreasonable length of the administrative proceedings was disproportionately modest.

Action brought on 10 July 2007 — Buzzi Unichem v Commission

(Case T-241/07)

(2007/C 211/82)

Language of the case: Italian

Parties

Applicant: Buzzi Unichem SpA (represented by: C. Vivani and M. Vellano, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission Decision of 15.5.2007 concerning the national plan for the allocation of greenhouse gas emission allowances notified by Italy in accordance with Directive 2003/87/EC of the European Parliament and of the Council — for infringement of the EC Treaty and the principles and rules of law adopted in its application — to the extent that the national allocation plan must be altered so as to render no longer permissible rationalisation measures which envisage that the operator may maintain part of the allocated allowances in the event of 'closure due to processes of production rationalisation' (Article 1(4) and Article 2(4) of the Decision);

— Order the Commission to pay to the applicant all the costs of these proceedings.

Pleas in law and main arguments

The decision contested by this action has determined that the national allocation plan notified by Italy by letter of 15 December 2006 is incompatible with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

The specific point at issue is the possibility for the operator to maintain part of the allocated allowances in the event of closure, due to processes of rationalisation, of all or part of the production installations.

In support of its claims, the applicant submits:

— That the defendant (the Commission) erroneously applied its own critical analysis in terms of 'adjustment of allocations', excluding the possibility of so-called 'ex-post adjustments'. In that regard, the applicant accepts that any type of adjustment may distort the market and create business uncertainty and infringe Criterion 10 of Annex III to the Directive. According to the applicant, what is at issue is rather avoidance of the loss of ownership of the allocation, and therefore loss of the legal capacity to make use of it at other installations. In essence, the issue should be to avoid an obstacle to the free organisation and development of an undertaking's subjective rights, which is moreover contrary to the principles of reasonableness, proportionality, and protection of the environment and competition, pursuant to Article 5, Article 174 and Article 157 EC.

— The contested decision in addition contradicts the logical premises on which it is based. Specifically on this point, in recital 4 to the contested decision the Commission itself admits that the Directive envisages the possibility that Member States may introduce adjustments, provided that the effect of adjustment is not retroactive, and that it does not harm the functioning of the Community system. In the present case, the operator of an installation which is closed will continue to be present on the market and to operate at other authorised installations. In the words of the Commission itself, an 'adjustment of allocations' should therefore be possible.

— The defendant has failed to explain the reasoning which led it to hold that the criticised scheme was incompatible as 'ex-post adjustment'.