As a result, the applicant claims that a *prima facie* infringement of competition law existed and the Commission should have taken less than 21 months to reach such a conclusion and, accordingly, to initiate proceedings. The duration of the Commission's failure to act therefore exceeded reasonable limits.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) (OJ L 1, p. 1).
(2) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance) (OJ L 123, p. 18).

Action brought on 30 November 2007 — Ryanair v Commission

(Case T-442/07)

(2008/C 37/44)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— To declare that the Commission has failed to define its position pursuant to its obligations under the EC Treaty, including, in particular, Article 232 EC, in response to the applicant's complaints of 3 November and 13 December 2005, 16 June and 10 November 2006, and its letter of formal notice of 2 August 2007;

— to order the Commission to pay the entire costs, including the costs incurred by the applicant in the proceedings even if, following the bringing of the action, the Commission takes action which in the opinion of the Court removes the need to give a decision or if the Court dismisses the application as inadmissible; and

— to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

By means of its application, the applicant initiated an action under Article 232 EC, claiming that the Commission has failed to define its position in connection with the complaints filed on 3 November 2005, 13 December 2005, 16 June 2006 and 10 November 2006, followed by a letter of formal notice of 2 August 2007.

It is submitted as the main plea, that the Commission has failed to conduct and conclude a diligent and impartial examination of the complaints lodged by the applicant, alleging the grant of unlawful aid in the form of advantages conferred by the Italian State to airlines Alitalia, Air One and Meridiana. Alternatively, as a subsidiary plea, the applicant submits that the Commission failed to define its position on the applicant's complaints alleging anticompetitive discrimination and, hence, an infringement of Article 82 EC.

The applicant claims that the measures that are subject to its complaint, namely, (i) payment to Alitalia of '9/11 compensation' aid, (ii) favourable conditions surrounding the transfer of Alitalia Servizi to Fintecna, (iii) the failure of the Italian State to claim payment of debts owed by Alitalia to Italian airports, (iv) public financing of Alitalia's redundancy payments, (v) rebates on fuel costs, (vi) reductions in airport charges at Italian hubs, (vii) the transfer of over 100 Alitalia employees to Meridiana and Air One and (viii) discriminatory restrictions on the operation of the applicant at regional airports including Ciampino airport, are attributable to the Italian State, constitute lost revenue to it and specifically benefit to Alitalia as well as Air one and Meridiana for some of the measures concerned. According to the applicant, these measures constitute State aid, fulfilling all conditions set out in Article 87(1) EC.

Alternatively, as a subsidiary plea, the applicant submits that the failure of Italian airports to obtain payment of debts owed by Alitalia, the reductions in airport charges at Italian hubs, the rebates on fuel costs and the discriminatory restrictions on the operation of the applicant at regional airports constitute an infringement of competition law. Accordingly, the applicant contends that, in the event that the Court found that some of the advantages conferred to Alitalia, Air One and Meridiana were not attributable to the State, because Italian airports and fuel providers that have granted the above advantages would have been acting in an autonomous manner, such advantages would amount to anticompetitive discrimination which cannot be justified by objective reasons and hence, infringe Article 82 EC.

Moreover, the applicant contends that it has a legitimate interest to bring such a complaint both as a customer of airport services and aviation fuel and as a competitor of Alitalia, Air One and Meridiana.

The applicant further submits that the Commission was under an obligation to act, in accordance with the provisions of Council Regulations (EC) 659/1999 (1) and (EC) No 1/2003 (2) and Commission Regulation (EC) No 773/2004 (3). The Commission did not however take any action upon receipt of the complaints, nor did it take position upon receipt of its letter of formal notice.

As a result, the applicant claims that a *prima facie* infringement of competition law existed and that the unreasonable long period of 9 to 21 months which elapsed, depending on the subject-matter of the complaint, between the Commission's receipt of the letter of formal notice and the Commission's inaction constitutes failure to act within the meaning of Article 232 EC.

(1) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).
(2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) (OJ L 1, p. 1).
(3) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance) (OJ L 123, p. 18).

Action brought on 5 December 2007 — Centre de Promotion de l'Emploi par la Micro-Entreprise v Commission

(Case T-444/07)

(2008/C 37/45)

Language of the case: French

Parties

Applicant: Centre de Promotion de l'Emploi par la Micro-Entreprise (CPEM) (Marseilles, France) (represented by: C. Bonnefoi, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission Decision C(2007) 4645 of 4 October 2007, cancelling the assistance granted by the European Social Fund (ESF) to finance an ESF subsidy in France (CPEM) by Decision No C(1999) 2645 of 17 August 1999;

— acknowledgement of a right to damages for public detriment to the reputation of a body acting in the context of a task of general interest (estimated at EUR 100 000);

— acknowledgement of the right of CPEM's staff to individual symbolic damages of one Euro for interference with their peace of mind at work (threat to the future of their employment structure and thus to their jobs, since to pay EUR 1 000 000 would mean the closure of the CPEM and the MSD);

— repayment of lawyers' fees and the costs of legal assistance made necessary, proof of which can be provided.

Pleas in law and main arguments

By this action, the applicant seeks annulment of Commission Decision C(2007) 4645 of 4 October 2007, cancelling, following an OLAF report, the assistance granted by the European Social Fund (1) to finance, by way of a global subsidy, a pilot project carried out by the applicant.

In support of its action, the applicant relies on two groups of pleas in law, the first concerning the way in which OLAF carried out the investigation and enquiry procedure leading to the contested decision and alleging breach of the rights of the defence and the other pleas in law concerning the substance of the contested decision.

First, the applicant claims that the form of the enquiry which OLAF carried out was in breach of a number of principles of Community law and of a dispassionate investigation, such as the presumption of innocence and the right to know the actual and specific content of the accusations contained in the complaints on which the proceedings were based. It claims, moreover, that OLAF confused the procedures laid down by Regulation No 2185/96 (2) with those concerning enquiries under Regulation No 2988/95 (3). Second, the applicant alleges that OLAF based the conclusions for which it was responsible on the different and changing editions of the 'Promoter's Guide'.

As to substance, the applicant alleges that the Commission based its decision on the conclusions of the OLAF report, which seriously infringed the French law concepts of 'non-profit making organisations' and 'secondment'. Moreover, it claims that OLAF asserted against it the superiority of the 'Promoter's Guide' to the content of a Community regulation. It also claims that the Commission was aware of this and even authorised the facts which were alleged against the applicant by OLAF and in the contested decision. Lastly, the applicant relies on a plea in law alleging that Regulation No 1605/2002 (4), on which part of OLAF's reasoning and the contested decision are based, is inapplicable and not capable of being relied on against it.

(1) Commission Decision C (1999) 2645 of 17 August 1999 amended by Decision C (2001) 2144 of 18 September 2001.
(2) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2).
(3) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).
(4) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).