Operative part of the order

1. *The application for interim measures is rejected.*

2. *The costs are reserved.*

Action brought on 26 September 2009 — Applied Microengineering v Commission

(Case T-387/09)

(2009/C 312/50)

Language of the case: English

Parties

Applicant: Applied Microengineering Ltd (Didcot, United Kingdom) (represented by: P. Walravens and J. De Wachter, lawyers)

Defendant: Commission of the European communities

Form of order sought

— annul the Commission decision dated 16 July 2009 ordering the recovery of an amount of EUR 258 560,61 plus interests;

— order the Commission to pay the costs.

Pleas in law and main arguments

In the present application, the applicant seeks the annulment of the Commission decision C(2009)5797 of 16 July 2009 relating to the recovery of certain amount plus interests due by the applicant in the framework of the projects IST-199-11823 FOND MST ('Formation of a New Design House for MST') and IST-2000-28229 ANAB ('Assessment of a New Anodic Bonder') funded under specific programme implementing research, technological development and demonstration activities in the user-friendly information society (1998-2002).

The applicant puts forward seven pleas in support of its claims.

First, it submits that the Commission infringed the essential procedural requirements by failing to conduct a full and proper audit procedure. The applicant states that the Commission failed to inform it of the start of the audit procedure, of the closing of it and it did not take into account the objections submitted by the applicant. The applicant further claims that the Commission violated its rights of defence and the principle of sound administration and the duty of care.

Second, the applicant contends that the action of the Commission was time-barred at least for the payments made more that five years before the official start of the audit procedure.

Third, the applicant argues that the Commission has committed manifest errors of assessment by applying the auditor's erroneous interpretation of the rules regarding the eligible costs.

Fourth, it claims that the Commission violated fundamental social rights and right to a fair remuneration by accepting hourly rates for workers below the minimum wage.

Fifth, the applicant contends that the Commission infringed the principle of legitimate expectations that the working method of average employment costs, as proposed by the applicant, was valid and the 'target salaries' would be considered an acceptable practice for the contractor.

Sixth, it argues that the Commission disregarded its obligation to state reasons as it fully relied on the audit report without considering the applicant's comments or request for reopening the audit procedure.

Finally, the applicant submits that the Commission breached the principle of sound administration and the duty of care by sending letters to the wrong address and not investigating the arguments put forward by the applicant.

Action brought on 22 June 2009 — Labate v Commission

(Case T-389/09)

(2009/C 312/51)

Language of the case: English

Parties

Applicant: Kay Labate (Tarquinia, Italy) (represented by: I. Forrester, QC)

Defendant: Commission of the European Communities

Form of order sought

— find that there has been a failure to act on the part of the Commission within the meaning of Article 232 EC;

— order the Commission to take the measure necessary to comply with Tribunal's order;

— accord to the present action appropriate priority, so as to avoid burdening the file with a separate request for expedited treatment and to render judgment within six weeks;

— order such other or further remedies as justice may require;

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

Pleas in law and main arguments

On 20 February 2009, the applicant made a formal request for the purpose of Article 232 EC that the Commission take a decision recognising the occupational nature of her late husband's lung cancer for the purpose of Article 73 of the Staff Regulations and the Joint Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease.

In the absence of any such decision or any adoption of position within the required time-limit, the applicant requests that the Court find that the Commission, by failing to take a decision within a reasonable time on her husband's occupational disease recognition request, has failed to fulfil its obligations under Article 90 of the Staff Regulations and Article 23 of the Joint Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease and is therefore liable for failure to act within the meaning of Article 232 EC.

Action brought on 6 October 2009 — HSE v Commission

(Case T-399/09)

(2009/C 312/52)

Language of the case: English

Parties

Applicant: Holding Slovenske elektrarne d.o.o. (HSE) (Ljubljana, Slovenia) (represented by: F. Urlesberger, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Article 1 (g) of the contested decision in so far as it holds the applicant responsible of an infringement of Article 81 EC and Article 53 EEA Agreement;

— annul Article 2 (i) of the contested decision;

— *in eventu*, reduce the fine imposed upon the applicant in Article 2 (i) of the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of the present application, the applicant seeks the annulment of Commission decision of 22 July 2009 (Case No COMP/39.396 — Calcium and magnesium reagents for the steel and gas industries) in so far as the Commission found the applicant liable of a single and continuous infringement of Article 81 EC and Article 53 EEA through market sharing, quotas, customer allocation, price fixing and exchanges of sensitive commercial information between suppliers of calcium carbide and magnesium granulates. Alternatively, the applicant seeks the reduction of the fine imposed upon it.

In support of its claims the applicant submits that the Commission infringed Article 81 EC and Regulation 1/2003 by committing the following errors in law:

First, the applicant claims that the Commission may not impute the conduct of TDR Metalurgija d.d. (TDR) to the applicant because HSE and TDR have never formed a single economic entity. In the absence of a rebuttable presumption of liability of the applicant (such presumption would have applied only if HSE had held 100 % in TDR), the Commission has failed to prove that HSE actually exercised decisive control over TDR.

Second, the applicant argues that the Commission erroneously applied to all parties an increase of the basic amount of the fine by 17 % for deterrence purposes. In the applicant's opinion, the Commission should have taken into account that a deterrence factor is not justifiable in relation to HSE since the Commission decided to abstain from fining the direct perpetrator TDR (from whom a deterrence amount may have been appropriate) and the applicant was not directly involved in anticompetitive conduct.

Third, the applicant contends that the Commission disregarded the mitigating circumstances in calculating the amount of the fine as it has not taken into account that the applicant acted, if at all, merely negligently in failing to sufficiently control TDR's business behaviour in order to avoid an infringement of competition law. Furthermore, the applicant claims that the Commission should have taken into account, as a mitigating circumstance, the fact that TDR as a company together with its collusive business habits were "imposed" on the applicant by way of a political decision on the part of the Slovenian government and that neither did the applicant choose to acquire TDR, nor did it choose to influence its business conduct towards participation in a cartel.