Action brought on 9 September 2011 — Technion — Israel Institute of Technology and Technion Research & Development v Commission

(Case T-480/11)

(2011/C 340/55)

Language of the case: French

Parties

Applicants: Technion — Israel Institute of Technology (Haifa, Israel) and Technion Research & Development Foundation Ltd (Haifa) (represented by: D. Grisay and D. Piccininno, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— admit the present application for annulment based on Article 263 of the Treaty on the functioning of the European Union;

— declare it admissible and,

— declare the action well founded, and, consequently,

  — rule that the Commission did not carry out a concrete and individual examination of the documents covered by the request for access,

  — rule that the Commission committed a manifest error of assessment in the application of the exceptions provided for by Article 4 of Regulation No 1049/2001,

  — rule that the Commission disregarded the right of partial access to documents in accordance with Article 4(6) of Regulation (EC) No 1049/2001,

  — rule that the Commission infringed the principle of proportionality by reason of its failure to weigh the exceptions invoked against the public interest;

— on that basis, annul the decision of the Secretariat-General of the European Commission of 30 June 2011;

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging failure to carry out a concrete and individual examination of the documents covered by the request for access and, as a result, an inadequate statement of reasons for the contested decision, in so far as the Commission referred to a category of documents (documents pertaining to an audit) rather than to the actual information contained in those documents.

2. Second plea in law, alleging a manifest error of assessment in the application of the exceptions provided for in Article 4 of Regulation No 1049/2001: ([1])

   — in so far as the Commission took the view that disclosure of the documents to which access was sought would hinder the progress of the audits, whereas (i) the sole purpose of the audit procedure was to check whether or not the costs incurred in performance of a contract were eligible, and (ii) the information in the documents requested is purely factual;

   — in so far as the Commission took the view that disclosure of the documents requested would undermine the protection of privacy and the integrity of the individual, whereas it was necessary for the applicants to see those documents in order to be able effectively to defend their rights in the context of the audit procedure, in which all parties could set out their views.

3. Third plea in law, alleging disregard of the right of partial access to the documents requested in accordance with Article 4(6) of Regulation No 1049/2001 by reason of the refusal to carry out a concrete and individual examination of the documents to which access was sought.

4. Fourth plea in law, alleging infringement of the principle of proportionality resulting from the failure to weigh the exceptions invoked against the public interest, in so far as it would be in the interest of the public to allow it to verify how the Commission conducts its audit procedures and to inform contractors of the procedures to be established in order to meet the formal requirements.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 2 September 2011 — Telekomunikacja Polska v Commission

(Case T-486/11)

(2011/C 340/56)

Language of the case: English

Parties

Applicant: Telekomunikacja Polska SA (Warsaw, Republic of Poland) (represented by: M. Modzelewska de Raad, P. Paśnik, S. Hautbourg, lawyers, C. Vajda, QC, and A. Howard, barrister)

Defendant: European Commission

Form of order sought

— annul the Commission Decision C(2011) 4378 final, dated 22 June 2011, in its entirety; alternatively

— annul Article 2 of the contested decision in its entirety; or in the alternative

— reduce the fine there stated, as appropriate; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging

   — an error of law and reasoning by failing to demonstrate any legitimate interest in pursuing an investigation and in adopting an infringement decision regarding historic conduct;

2. Second plea in law, alleging

   — that Article 2 of the contested decision contravenes Article 6 of the European Convention of Human Rights ('ECHR') and/or Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), by determining a criminal charge by an administrative body, namely the Commission, instead of an independent court complying with the guarantees of Article 6;

3. Third plea in law, alleging

   — that Article 2 is null and void as the Commission failed to respect the applicant's rights of defence during the administrative procedure by failing to set out its position on aggravating and attenuating circumstances for the calculation of the fine;

4. Fourth plea in law, seeking

   — reduction in the level of the fine on the grounds that the Commission erred in its assessment of the gravity of the infringement and breached the principle of proportionality when determining the basic amount of the fine:

     (a) failure to take account of the fact that the infringement involved different practices with different durations and intensities;

     (b) errors of assessment in the finding that the infringement had an actual negative impact on competition and consumers in the relevant market.

5. Fifth plea in law, seeking

   — a reduction in the level of the fine on the grounds that the Commission improperly and unfairly failed to take account of mitigating circumstances:

     (a) failure to give credit for the compensatory measures undertaken by the applicant in the way of substantial investments to improve the broadband infrastructure in Poland for the benefit of competitors and consumers;

     (b) failure to recognise the voluntary termination of the infringement;

     (c) failure to give credit for the commitments offer made by the applicant.

Action brought on 9 September 2011 — Banco Privado Português, S.A. and Massa insolvente do Banco Privado Português v Commission

(Case T-487/11)

(2011/C 340/57)

Language of the case: Portuguese

Parties

Applicants: Banco Privado Português, S.A. — em liquidação ('BPP') and Massa insolvente do Banco Privado Português, S.A. — em liquidação ('assets in the insolvency') (Lisbon, Portugal) (represented by: C. Fernandez, F. Pereira Coutinho, M. Esperança Pina, T. Mafalda Santos, R. Leandro Vasconcelos and A. Kéri, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision No 2011/346/EU of 20 July 2010 on the State aid C 33/09 (ex NN 57/09, CP 191/09) implemented by Portugal in the form of a State guarantee to BPP ('the contested decision'); ([1])

— Or, alternatively, annul the contested decision in so far as it declared the State aid involved in the guarantee to be unlawful and incompatible for the period between 5 December 2008 and 5 June 2009;

— Alternatively, annul the contested decision in so far as it ordered the recovery of the (alleged) aid under Articles 2 to 4 thereof;

— Alternatively, annul the contested decision in so far as it ordered recovery between 5 December 2008 and 5 June 2009;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on the following pleas in law.

1. First plea in law: lack of reasoning:

   — The Commission did not explain to what extent the grant of the guarantee was likely to affect trade between Member States and consequently distort competition. The method of calculating the amount of the alleged aid is not adequately reasoned. The Commission failed to state reasons — or at least it put forward reasoning that was obscure and/or contained an irreconcilable contradiction — so far as the duration of the alleged aid and hence the calculation of the relevant amount was concerned.