

Trade mark at issue: Figurative colour mark in pink — EU trade mark No 10 214 195

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 February 2017 in Case R 930/2016-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and the other party to the proceedings, should it intervene, to pay the costs.

Plea in law

- Infringement of Articles 59 and 83 of Regulation No 207/2009.

Action brought on 27 March 2017 — Naftogaz of Ukraine v Commission

(Case T-196/17)

(2017/C 151/58)

Language of the case: English

Parties

Applicant: NJSK Naftogaz of Ukraine (Kiev, Ukraine) (represented by: D. Mjaaland, A. Haga, P. Grzejszczak, and M. Krakowiak, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision C(2016) 6950 of 28 October 2016 on review of the exemption of the Ostseepipeline-Anbindungsleitung from the requirements on third party access and tariff regulation granted under Directive 2003/55/EC; and
- order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the 2016 Commission Decision is null and void for lack of competence

- Article 36(9) of Directive 2009/73/EC does not confer competence on the Commission to approve a decision of a regulatory authority amending an exemption granted pursuant to Article 36(1) which it has previously approved.
- Alternatively, if the Commission has competence to approve such a decision, it only has such competence in limited situations, such as where there has been a material change of circumstances since the date of its previous approval decision. If the position were otherwise the principle of legal certainty would be undermined. The Commission was not entitled to adopt the Decision in the circumstances of the present case.

2. Second plea in law, alleging breach of Article 36(1) of Directive 2009/73/EC

- Alternatively, if the Commission was competent to adopt the Decision in principle, it could only lawfully do so if the criteria in Article 36(1) of Directive 2009/73 EC were fulfilled.
- The Decision has been adopted in breach of Article 36(1) (a). The Decision will not enhance competition in gas supply and will not enhance security of supply in Central and Eastern European countries of the EU and the Energy Community.
- The Decision has been adopted in breach of Article 36(1) (b). There is no investment risk since the relevant pipeline has been in operation since July 2011.
- The Decision has been adopted in Breach of Article 36(1) (e). The Decision is detrimental to competition, and to the effective functioning of the internal market in the EU and the Energy Community, as it is liable to increase the dominant position enjoyed by PJSC Gazprom and its affiliates in the relevant geographic market and to contribute to the portioning of the internal market along national lines.

3. Third plea in law, alleging failure to give reasons

- In breach of Article 296 of the TFEU, the Decision does not provide sufficient statement of reasons or evidence supporting the Commission's conclusions

4. Fourth plea in law, alleging breach of Article 216(2) of the TFEU

- According to Article 216(2) of the TFEU, international agreements concluded by the European Union are binding upon the institutions of the Union.
- In breach of Article 6 of the Treaty Establishing the Energy Community, the Decision is liable to destabilise the regulatory and market framework stimulating investment in gas networks, reduce security of supply and block the development of competition. In breach of Article 18 of the Energy Community Treaty, the Decision enables Gazprom to abuse its dominant position in the relevant market.
- In breach of Article 6(1) of the Energy Charter Treaty, the Decision has a detrimental effect on competition in the energy sector. In breach of Article 10 (1) of the Energy Charter, the Decision grants Gazprom as an investor preferential treatment and has an adverse effect on Naftogaz's investments in the Ukrainian gas transport system.
- In breach of Article 274 of the Association Agreement between the EU and Ukraine, the Decision was adopted without consulting or cooperating with Ukraine.

Action brought on 28 March 2017 — Abel and Others v Commission

(Case T-197/17)

(2017/C 151/59)

Language of the case: French

Parties

Applicants: Marc Abel (Montreuil, France) and 1438 other applicants (represented by: J. Assous, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare the European Commission's conduct to be unlawful;
- acknowledge the harm sustained by the applicants as a result of the adoption of Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6);