

**Pleas in law and main arguments**

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

1. First plea in law, alleging a manifest error of assessment, together with an insufficient statement of reasons for the contested decision, resulting in a finding that there is no EU interest in pursuing the case.

The applicant argues that the Commission did not take a definitive position either in relation to the prerequisites for a possibility of finding abuse of a dominant position or in relation to any of the seven categories of acts allegedly committed. In assessing the complaint that the dominant undertaking had applied predatory pricing, the Commission uncritically based its decision on the arguments put forward by that undertaking, disregarding the applicant's arguments and failing to carry out even a cursory analysis of the issue. The applicant considers that the sole purpose of the launching of the fighting brand by the dominant undertaking was to make it impossible for its competitors to enter the market or to make development on that market impossible, and that the investment discounts applied by that undertaking are selective, exclusive and discriminatory, with the result that there is an infringement of Article 102 TFEU. The applicant argues that the evidence points clearly to the conclusion by the dominant undertaking of exclusivity agreements contrary to Article 102 TFEU, and that the conducting of investigative proceedings would not require substantial resources to be set aside for that purpose, but would require only verification of the information and evidence submitted by the applicant.

2. Second plea in law, alleging infringement of the principle of sound administration in connection with a manifest error of assessment regarding the lack of EU interest in continuing the proceedings.

More than 71 months elapsed between the submission of the complaint and the issuing of the decision rejecting that complaint. The Commission's tardy handling of the matter is not justified by any special circumstances. The Commission has comprehensive knowledge on the subject of the European roof-window market. The slowness to act on the Commission's part may result in a lack of opportunity for the applicant to assert its rights before the national competition authorities on account of the limitation period for claims laid down in national law.

3. Third plea in law, alleging infringement of Article 8(1) of Regulation No 773/2004 <sup>(1)</sup> through the refusal to provide the applicant with access to the files, resulting in a denial to the applicant of effective rights of defence.

In accordance with the applicable rules, when the Commission informs a complainant of its intention to reject a complaint, the complainant has a right of access to the documents on which the Commission bases its provisional assessment. In the present case, the Commission did not provide the applicant with any such access. Furthermore, the Commission erred in law with regard to the principles for assessing EU interest by failing to carry out a proper assessment of the nature and effects of the acts allegedly committed by the dominant undertaking.

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<sup>(1)</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 TFEU and 102 TFEU] (OJ 2004 L 123, p. 18).

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**Action brought on 13 September 2018 — Vialto Consulting v Commission****(Case T-537/18)****(2018/C 427/108)***Language of the case: Greek***Parties**

*Applicant:* Vialto Consulting (Budapest, Hungary) (represented by: V. Christianos, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the Commission's contested decision, whereby the Commission imposed on the applicant a two-year exclusion and published information on that exclusion on its website;

- order the Commission to pay compensation for the material damage suffered by the applicant, first because of the two-year exclusion, and second because of the publication of information on that exclusion on its website, that damage being estimated at EUR 434 889,82, with interest from the date of delivery of the judgment;
- order the Commission to pay compensation for the non-material damage suffered by the applicant, first because of the two-year exclusion, and second because of the publication of information on that exclusion on its website, that damage being estimated at EUR 400 000, with interest from the date of delivery of the judgment;
- order the Commission to pay all the applicant's costs.

### **Pleas in law and main arguments**

In support of the action against the European Commission decision Ares (2018) 3463041, dated 29 June 2018, the applicant relies on four pleas in law.

1. The first plea in law is based on an infringement of Article 7(1) of Regulation No 2185/1996, as the European Commission assumes without justification that OLAF did not exceed its powers with respect to conduct of the inspection at the premises of Vialto.
2. The second plea in law is based on an infringement of Article 41 of the Charter of Fundamental Rights with respect to the right to good administration and failure to state sufficient reasons.
3. The third plea in law is based on an infringement of the principle of protection of legitimate expectations.
4. The fourth plea in law is based on a breach of the principle of proportionality and of the obligation to state sufficient reasons, first, in that the European Commission imposed a two-year exclusion on Vialto, and, second, in that the Commission proceeded to publish information of that exclusion on its website.

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### **Action brought on 15 September 2018 — Ayuntamiento de Quart de Poblet v Commission**

**(Case T-539/18)**

(2018/C 427/109)

*Language of the case: Spanish*

### **Parties**

*Applicant:* Ayuntamiento de Quart de Poblet (Quart de Poblet, Spain) (represented by: B. Sanchis Piqueras, J. Rodríguez Pellitero, lawyers)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the General Court should:

- declare the action admissible and well founded;
- declare that the applicant has correctly complied with its contractual obligations under the contracts;
- find that, it is, therefore, entitled to the funding in accordance with those contracts;
- declare that the European Commission's claim for the repayment of certain amounts by the Diego Project and by the SEED Project is unfounded and inadmissible;
- annul the debit notes or, in any event, declare them unlawful;