

**Action brought on 2 March 1999 by Dominique Rafoni, court-appointed administrator, acting as liquidator of Société de distribution mécanique et d'automobiles (Sodima), against the Commission of the European Communities**

(Case T-62/99)

(1999/C 160/48)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 March 1999 by Dominique Rafoni, court-appointed administrator, acting as liquidator of Société de distribution mécanique et d'automobiles (Sodima), residing at Aix en Provence (France), represented by Jean Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4, rue Béatrix de Bourbon.

The applicant claims that the Court should:

- annul the Commission's decision of 5 January 1999,
- order the Commission to pay the costs.

*Pleas in law and main arguments*

On 1 July 1994 the applicant submitted to the Commission a complaint based on articles 85 and 86 of the Treaty and on Commission Regulation (EEC) No 183/85 concerning the imposition by the Peugeot company of a dealership system incompatible with the exemption conditions laid down by that regulation.

In the present case, the applicant, by whom two actions have previously been brought for a declaration that the Commission has failed to act<sup>(1)</sup>, contests the Commission's decision of 5 January 1999 definitively rejecting its complaint.

In support of its action for annulment, the applicant pleads:

- failure by the defendant institution to fulfil its obligations to maintain and promote competition,
- failure to examine the complaint seriously and objectively,
- infringement of essential procedural requirements and misuse of powers in the conduct of the procedure and the handling of the evidence,
- infringement of the Treaty and manifest error of assessment of the law,
- breach of the obligation to take a definitive decision within a reasonable time.

<sup>(1)</sup> Cases T-190/95 (OJ C 333, 9.12.1995, p. 20) and T-45/96 (OJ C 145, 18.5.1996, p. 13).

**Action brought on 3 March 1999 by RJB Mining plc against the Commission of the European Communities**

(Case T-63/99)

(1999/C 160/49)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 March 1999 by RJB Mining plc, represented by Mark Brealey and Jonathan Lawrence, with an address for service in Luxembourg at the Chambers of Arendt & Medernach, 8-10, rue Mathias Hardt.

The applicant claims that the Court should:

- annul the contested decision on the grounds set out in this application,
- order the Commission to pay the costs of the action, including those of the applicant.

*Pleas in law and main arguments*

The present application is directed against the Commission's decision of 22 December 1998 [K(1998) 4569 endg.], on subsidies granted by the Federal Republic of Germany ('Germany') to the mineral coal industry in 1999, which purports to authorise Germany to grant those subsidies.

According to the applicant, some, but not all, of the issues raised in this application have been raised in Cases T-110/98<sup>(1)</sup> and T-12/99<sup>(2)</sup>, relating to aid paid to the German Coal Industry for 1997 and 1998 respectively.

The application essentially concerns article 4(c) of the ECSC Treaty and Decision 3632/93/ECSC<sup>(3)</sup>, which lays down a code ('the Code') under which aid may be approved by the Commission in derogation from article 4(c) aforesaid.

The applicant submits that

- The aid in question does not comply with articles 2 to 9 of the Code, so that the Commission has no competence to approve it under article 1(1) of the Code.
- The contested decision purports to approve aid to undertakings or production units which cannot be considered as viable. Even if, contrary to the applicant's contention, there is no obligation on the Commission to demonstrate long-term viability of undertakings or production units, the defendant has committed a manifest error in failing to consider whether the reduction of production costs of recipient undertakings or production units is likely to achieve a degression of aid in the light of falling coal prices on international markets, as required by article 2 (1) of the Code. Finally, the contested decision purports to approve