

The Commission states, as sole reason for the rate of return it regards as usual in the market on the part of the Wfa assets which is economically usable for the applicant, that in its *Crédit Lyonnais* decision of 1995 it likewise regarded a return of 12 % after tax as reasonable. The *Crédit Lyonnais* decision is not applicable to the present case, however, because *Crédit Lyonnais* was a case of restructuring.

The Commission confuses return on equity from the point of view of the undertaking with return on investment from the point of view of the capital investor, and wrongly assumes that expectations as to returns are in principle to be understood as net return.

The rate of return of 12 % after tax for capital investments used by the Commission is not tenable. The Commission has confused pre-tax and after-tax figures.

The transfer of Wfa to Westdeutsche Landesbank Girozentrale does not have any special features which could justify an additional 1.5 % on top of the 12 % after tax.

The Commission wrongly assumes that the applicant also has to pay a consideration for the part of the Wfa assets which is not usable for it.

Finally, the Commission wrongly fails to take account of the synergy effects created by the merger of the two credit institutions in calculating the amount of the consideration to be paid.

**Action brought on 13 October 1999 by Hans Mc Auley
against the Council of the European Union**

(Case T-230/99)

(2000/C 6/52)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 13 October 1999 by Hans Mc Auley, residing at Wezembeek-Oppem (Belgium), represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

- annul the Council's decisions rejecting his applications for the grade LA 3 posts of Head of the English Language Division and Legal Adviser in that division;

- annul the decisions appointing two other persons to the posts of Head of the English Language Division and Legal Adviser;

- order the Council to pay the costs.

Pleas in law and main arguments

The applicant contests the appointing authority's refusal to accept his applications for two grade LA 3 posts.

In support of his claims, he pleads infringement of:

- Articles 29 and 45 of the Staff Regulations;
- the promotions procedure;
- the principles of equal treatment and career progression.

Lastly, the applicant pleads misuse of powers in the present case.

**Action brought on 12 October 1999 by Colin Joynson
against the Commission of the European Communities**

(Case T-231/99)

(2000/C 6/53)

(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 12 October 1999 by Colin Joynson, represented by Beeket Bedford, of the Middle Temple and by Messrs Ferdinand Kelly, Solicitors, 21 Bennetts Hill, Birmingham, B2 5QP, United Kingdom.

The applicant claims that the Court should:

- annul the decision of the Commission in Case IV/36.081/F3 — Bass dated 16 June 1999;
- declare that the Commission is required under Article 233 of the Treaty establishing the European Community to take the necessary measures to comply with the judgment to be delivered;

— order the Commission to pay the costs of this application.

Pleas in law and main arguments

The applicant states that on 3 February 1998, pursuant to Article 19(3) of Regulation No 17/62 the Commission gave notice⁽¹⁾ that it intended to take a favourable position in respect of certain agreements notified to it by Bass, by granting retroactive exemption pursuant to Article 81(3) EC. The agreements in question were a standard form of lease, the subject of which is a fully fitted-out, on-licensed public house in England and Wales with a tie for beer, together with certain related agreements, and the standard agreements for Scotland. Before taking a final decision on this matter, the Commission invited all interested parties to submit their observations.

On 31 March 1999, the applicant submitted observations together with an expert's report to the Commission. In those observations objection was made to the proposal to grant Bass an exemption.

On 16 June 1999, the Commission took a Decision relating to a proceeding pursuant to Article 81 EC (Case IV/36.081/F3 — Bass) (the contested decision)⁽²⁾. In its decision the Commission, overriding the objections made in the said observations, it granted Bass retroactive exemption in respect of the notified agreements with effect from 1 March 1991 to 31 December 2002.

The applicant seeks relief from the Court of First Instance on the grounds that in granting exemption to the notified agreements the Commission:

- (a) failed properly to evaluate the facts and law which establish that the notified agreements do not fulfil the conditions set out in Article 81(3);
- (b) failed to give adequate reasons for its decision that the notified agreements fulfil the conditions set out in Article 81(3).

⁽¹⁾ OJ 1999 C 36, p. 5.

⁽²⁾ OJ 1999 L 186, p. 1.

Action brought on 12 October 1999 by Land Nordrhein-Westfalen against the Commission of the European Communities

(Case T-233/99)

(2000/C 6/54)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 October 1999 by Land Nordrhein-Westfalen, represented by Dr Michael Schütte, of Bruckhaus Westrick Heller Löber, Berlin, with an address for service in Luxembourg at the Chambers of Bonn & Schmitt, 7 Val Ste Croix.

The applicant claims that the Court should:

1. Annul Commission Decision C(1999) 2265 fin. of 8 July 1999;
2. Order the Commission to pay the costs.

Pleas in law and main arguments

The subject-matter of the application is Commission Decision C(1999) 2265 fin. ('the Decision') of 8 July 1999 concerning a measure taken by the Federal Republic of Germany in favour of Westdeutsche Landesbank Girozentrale ('WestLB'), notified to the Federal Republic of Germany on 4 August 1999 by letter of the Commission SG (99) D/6112 of 4 August 1999.

The acting Commission had no jurisdiction to make the Decision, since because of its extent and importance it was not current business of the Commission, nor would the non-adoption of the Decision have run counter to the interests of the Community or of individuals.

The Commission was irregularly composed as a result of the 'suspension' of acting Commissioner Bangemann.

The Commission omitted to make available to the applicant essential documents which were material to the defence, in particular a report by consultants First Consulting, and thereby restricted the applicant's ability to defend itself.

The facts were stated incompletely and manifestly incorrectly on essential points, such as the structure of WestLB's business activity and its performance of public duties. WestLB is not a 'restructuring' case but a profitably operating undertaking. For that reason the Commission wrongly applied to WestLB the criteria of assessment developed for capital injections in undertakings in economic difficulties.