

European Communities on 10 February 2003 by Bioelettrica S.p.A., represented by Ombretta Fabe Dal Negro, lawyer.

The pleas in law and principal arguments are similar to those in Case T-287/01.

The applicant claims that the Court should:

- declare that the European Commission has failed to perform Contract BM/1007/94 of 12 December 1994 (thermie programme);
- declare the contract terminated by the Commission;
- in any event, order the European Commission to pay to the applicant compensation — to be decided in separate proceedings — by way of compensation of the damages sustained by the applicant as a result of the failure of the project;
- in the alternative, declare in any event that Bioelettrica owes no debt to the European Community in respect of the funding received to date or any interest on the same, and
- order the Commission to pay the costs.

(<sup>1</sup>) OJ C 31 of 2.2.2002, p. 15.

(<sup>2</sup>) Not yet published.

**Action brought on 20 February 2003 by Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation) against the Commission of the European Communities**

(Case T-58/03)

(2003/C 101/84)

*(Language of the case: Italian)*

*Pleas in law and main arguments*

The present action concerns the same project as that in which the Commission's decision to withdraw is challenged in Case T-287/01 *Bioelettrica v Commission* (<sup>1</sup>) and T-42/03 *Lurgi AG and Lurgi S.p.A. v Commission* (<sup>2</sup>). The applicant relies upon the statements made by the Commission in the context of the termie project, as follows:

- 6.9.2001 the Commission stated that the contract was at an end;
- 20.11.2001 the contract was regarded as still being in effect;
- 1.3.2002 the Commission confirmed that the contract was still in effect;
- 26.11.2002 the Commission stated that the contract was at an end, having been terminated not on 26.11.2002 but on 6.9.2001.

The applicant submits that the Court of First Instance has not considered the merits of the Commission's second revocation of the contract, that being in issue in Case T-287/01, or the lawfulness of the revocation of 6 September 2001, which was based on Article 8(2)(f) of the General Conditions, Annex II to the contract, whereas the termination of 26 November 2002 is based on Article 8(2)(d) of the General Conditions.

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 February 2003 by *Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation)*, represented by Giovanni Vezzoli, Gianluca Belotti and Elisabetta Stefania Piromalli, lawyers.

The applicant claims that the Court should:

- annul the contested decision;
- in the alternative, reduce the fine imposed to take account of the fact that conduct subsequent to its going into liquidation (25 November 1998/4 December 1998) cannot be imputed to *Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation)* and to take account of wrongful application of the increase in respect of duration to the whole of the basic fine as well as the specific financial situation of *Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation)*, and
- order the Commission to pay the costs.

*Pleas in law and main arguments*

The present action is brought against the same decision as that challenged in Case T-27/03 *S.P. v Commission*. The pleas in law and principal arguments are similar to those in that case. Of particular importance are pleas alleging infringement of the rights of the defence in the procedure conducted by the

Commission and inequality of treatment in that the Commission recognised in the case of another undertaking involved in the same procedure mitigating factors which it denied the applicant.

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**Action brought on 19 February 2003 by TQ3 Travel Solutions GmbH and TQ3 Travel Solutions EMEA GmbH against the Commission of the European Communities**

(Case T-59/03)

(2003/C 101/85)

(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 19 February 2003 by TQ3 Travel Solutions GmbH, Bremen, Germany, and TQ3 Travel Solutions EMEA GmbH, Bremen, Germany, represented by Dr Thomas Jestaedt, Mr Christopher Thomas and Dr Thomas Loest, Lawyers.

The applicant claims that the Court should:

- annul the Commission decision of 9 December 2002 rejecting the applicant's complaint in Case COMP/A.38321/D2-TQ3 Travel Solutions GmbH/Opodo Limited;
- order the Commission to pay the applicants' costs.

*Pleas in law and main arguments*

The applicants are active in the travel agency business, especially for business passenger air transport services and connected services.

On 3 November 2000, a joint venture agreement setting up Opodo Limited, an online travel portal created by nine of the largest European airlines, was notified to the Commission. Following the Notice published by the Commission setting out the undertakings proposed by the notifying parties and the intention of the Commission to clear the joint venture, one of the applicants filed a formal complaint against the creation of

Opodo, alleging infringements of Article 81 and 82 of the EC Treaty. In the contested Decision, the Commission rejects the complaint of the applicant.

In support of their application, the applicants invoke a manifest error of assessment and an infringement of the Commission's obligation to investigate complaints with due diligence, with respect to the risk of coordination under Article 81(1) EC Treaty.

Opodo is a joint selling agency set up by competitors representing most of the airline sector and provides, according to the applicants, a significant opportunity for those airlines to align their prices. The applicants claim that the Commission made a manifest error of assessment in reaching its conclusion that the undertakings will ensure that Opodo is not used for the exchange of commercially sensitive information and that Opodo will not be used as a vehicle for the shareholders to coordinate their competitive behaviour. The applicants invoke furthermore an infringement of the obligation of the Commission to investigate complaints with due diligence, an infringement of the applicant's right to receive a response to its complaint, and a manifest error of assessment with respect to the distortion of competition in the distribution of airline tickets under Article 81(1) EC Treaty.

According to the applicants, the Commission failed to address the specific concern in the complaint that the Opodo infringed Article 81(1) EC Treaty because it was intended to and would have the effect of enabling the airlines to secure joint control of the distribution of airline tickets, forcing independent travel agencies out of the market.

Finally, the applicants invoke an infringement of the obligation of the Commission to investigate complaints with due diligence, an error of law and a manifest error of assessment with respect to discrimination under Article 82(2) EC Treaty.

According to the applicants, the Commission failed to investigate with due diligence the price comparisons provided in the complaint showing apparent discrimination. The applicants claim the Commission made an error of law in taking the position that the denial of lower priced tickets might be justified by the fact that the applicants focus on business travellers and made an error of assessment when rejecting the relevance of the price comparisons.

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