

Action brought on 6 October 2004 by MobilCom Aktiengesellschaft against the Commission of the European Communities

(Case T-397/04)

(2004/C 314/55)

(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 6 October 2004 by MobilCom Aktiengesellschaft, Büdelsdorf (Germany), represented by K. Jacobsen, U. Wellmann and T. Sharpe.

The applicant claims that the Court should:

- annul the decision of the Commission of the European Communities of 14 July 2004 concerning aid C5/03 (ex N 239/03);
- in the alternative, annul Article 1 of the decision of the Commission of the European Communities of 14 July 2004 concerning aid C5/03 (ex N 239/03), in so far as it is stated in the final clause '... provided that Germany satisfies the condition referred to in Article 2 of this Decision', and annul Articles 2 and 3 of that decision in their entirety.

Pleas in law and main arguments:

By the contested decision, State aid granted to the applicant by Germany was declared to be compatible with the common market, subject to compliance by Germany with the condition referred to in Article 2 of that decision. As a result of that condition, the applicant is required to close its 'online shop' for seven months.

The applicant submits, first, that the Commission has no material competence. Since the applicant exercises its activity as an intermediary for the sale of mobile telephony contracts exclusively in Germany, the grant of State aid cannot prejudice trade between the Member States.

Moreover, the applicant argues that there is no appropriate legal basis for the imposition of such a condition and that there has therefore been an infringement of the EC Treaty or a provision to be applied in implementing the Treaty.

According to the applicant, the condition imposed on the applicant is arbitrary as the reasons given for it are inadequate. The applicant therefore alleges that the Commission either erred in the exercise of its discretion or failed to exercise that discretion. Furthermore, the Commission failed to show clearly that the contested decision is necessary, appropriate and also the least restrictive measure and thus failed to comply with the principle of proportionality.

Action brought on 11 October 2004 by Borco-Marken-Import Matthiesen GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-405/04)

(2004/C 314/56)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 11 October 2004 by Borco-Marken-Import Matthiesen GmbH & Co. KG, Hamburg (Germany), represented by M. Wolter, lawyer.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 August 2004 in Case R 912/2002-2;
- declare that the provisions of Article 7(1)(b) and (c) and 7(2) do not prevent publication of the mark applied for, 'Caipi', for goods in Class 33 (alcoholic beverages (not including beer));
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
The trade mark applied for:	Word mark 'Caipi' for goods in Class 33 (alcoholic beverages (not including beer)), application No 2 655 967
Decision of the examiner:	Refusal to register the mark applied for
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds of claim:	Infringement of Article 7(1)(b) and (c) and of Article 12 of Regulation (EC) No 40/94. ⁽¹⁾ Wrongful failure to take account of earlier national registrations.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 11 October 2004 by the Federal Republic of Germany against the Commission of the European Communities

(Case T-414/04)

(2004/C 314/57)

(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 11 October 2004 by the Federal Republic of Germany, represented by C.-D. Quassowski and C. von Donat, lawyer.

The applicant claims that the Court should:

- annul the Commission decision notified by letter of the Directorate-General for Regional Policy of 9 August 2004 in so far as the Community assistance from the European Regional Development Fund for the Operational Programme RESIDER II North Rhine-Westphalia 1995-1999 (ERDF No 94.02.10.036 / ARINCO No 94.DE.16.051) was reduced to EUR 72 794 851.67 and payment to the German authorities of the balance of EUR 2 268 988.33 was refused;
- order the Commission to pay the costs.

Pleas in law and main arguments:

By the contested decision, the Commission reduced the Community assistance from the ERDF Structural Funds for the Operational Programme RESIDER II North Rhine-Westphalia 1995-1999 (ERDF No 94.02.10.036 / ARINCO No 94.DE.16.051) to EUR 72 794 851.67 and refused to pay the German authorities the balance of EUR 2 268 988.33. The reason for the reduction is that, compared with the indicative financial plan, recourse to the programme was lower with respect to certain measures and higher with respect to others. A balance between the more and less heavily used measures was not achieved within the individual priorities of the programme but rather at the level of the programme as a whole.

In support of its action, the applicant first of all observes that, under Article 24 of Regulation No 4253/88, ⁽¹⁾ Community assistance may be reduced only if there has been a significant change affecting the nature or conditions of the operation or measure. In the applicant's view, the adjustments made do not constitute such a significant change.

If those adjustments are to be regarded as a significant change, the applicant submits that the Commission gave prior approval in its 'Guidelines on the closure of operational programmes (1994-1999) of the Structural Funds' (SEC(1999) 1316).

The applicant also complains that the Commission abused its discretion by failing to even exercise it and that there are errors in the reasoning for the contested decision.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 8 October 2004 by Bunker & BKR, S.L. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-423/04)

(2004/C 314/58)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 8 October 2004 by Bunker & BKR, S.L., established in Almansa (Spain), represented by José Enrique Astiz Suárez, lawyer.