

Decision of the Board of Appeal: Annulment of the Opposition Division decision, the matter being referred back to it for reconsideration.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

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**Action brought on 7 October 2004 by Scandlines Sverige AB against the Commission of the European Communities**

(Case T-399/04)

(2005/C 6/78)

(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 7 October 2004 by Scandlines Sverige AB, Helsingborg, Sweden, represented by C. Vajda QC and R. Azelius and K. Azelius, lawyers.

The applicant claims that the Court should:

- annul the Decision of the Commission of the European Communities, of 23 July 2004, rejecting the applicant's complaint of 2 July 1997;
- remit the case back to the Commission for re-examination of the complaint in the light of the Court's judgment;
- order the Commission to indemnify the applicant for the costs of these proceedings irrespective of the outcome.

*Pleas in law and main arguments*

The applicant is Swedish company whose main activity consists in being the port agent of a ferry-operator. The applicant filed a complaint with the Commission, against Helsingborgs Hamn AB (HHAB), a company responsible for running the port in Helsingborg in Sweden and for setting port charges. The applicant considered that HHAB charged the applicant excessive port charges, abusing its dominant position in breach of Article 82 EC. This complaint was rejected by the contested decision.

In support of its application the applicant contends that the Commission erred in concluding that port charges to ferry-operators were not excessive. According to the applicant the

Commission's cost/price analysis established that HHAB has been making returns, on its ferry business, of over 100 % the value of the equity employed in this business. The applicant argues that such returns cannot be achieved in a competitive market and are therefore excessive, unfair and abusive. It considers that in rejecting that conclusion the Commission misapplied the term 'economic value' and failed to apply the principle of proportionality or the correct burden of proof. It also contends that the Commission wrongly rejected the comparison between prices charged to ferry-operators and those charged to cargo-operators as well as the comparison between prices charged at Helsingborg and those charged at Elsinore, at the other end of the same route. The applicant also challenges the Commission's finding that there was no price discrimination in the meaning of Article 82 EC between ferry and cargo operators. According to the applicant, the Commission wrongly concluded that services provided by HHAB to those two branches are not equivalent and that there was no competitive disadvantage to the ferry operators.

The applicant further claims that the Commission's reasoning is wrong, inadequate and contradictory and for this reason violates Article 253 EC. It also invokes a breach of its right to be heard under Article 6 of Regulation 2842/98 and contends that the Commission failed to carry out a proper investigation within a reasonable time, thereby breaching Article 10 EC, Article 6 of the European Convention of Human Rights and the principle that the Commission must act within a reasonable time.

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**Action brought on 8 October 2004 by Nadine Schmit against the Commission of the European Communities**

(Case T-419/04)

(2005/C 6/79)

(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 8 October 2004 by Nadine Schmit, residing in Ispra (Italy), represented by Pierre Paul Van Gehuchten and Pierre Jadoul, lawyers, with an address for service in Luxembourg.