

**Action brought on 9 November 2004 by Bouygues SA and Bouygues Télécom against Commission of the European Communities**

(Case T-450/04)

(2005/C 31/51)

(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 9 November 2004 by Bouygues SA and Bouygues Télécom, established in Paris and in Boulogne Billancourt (France) respectively, represented by L. Vogel, J. Vogel, F. Sureau, D. Théophile, B. Amory and A. Verheyden, lawyers.

The applicant claims that the Court should:

- annul Article 1 of Decision C(2004)3060 of the Commission of the European Communities of 2 August 2004;
- annul Article 2 of that decision;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

The present action is directed against Decision C(2004)3060 of 2 August 2004, whereby the European Commission considered that the shareholder's advance granted by France to the Groupe France Télécom in December 2002, in the form of a credit line of EUR 9,000 million, placed in the context of the statements made since 2002, constituted State aid incompatible with the common market. The Commission also decided that that aid should not be recovered.

As regards the finding that the measure in question constituted aid, the applicants further criticise the decision in issue for having refused to classify as State aid the commitments resulting from the statements of the French Government, which had publicly supported France Télécom's credit between July and October 2002, although that undertaking, which was heavily in debt, was making enormous losses.

In support of their claims, the applicants allege that:

- by refusing to classify as State aid the statements of the French Government of July, September and October 2002, taken either individually or collectively, the Commission misapplied Article 87 of the Treaty. The defendant should have found in that regard that the statements had conferred on France Télécom an advantage which distorted both competition and trade between Member States;
- the contested decision is based on contradictory and inadequate reasons. The applicants maintain on that point that, after finding that the French Government's statements

combined all the characteristics of State aid, it did not draw the logical conclusion and classify the statements as aid;

- as concerns the refusal to order recovery of the aid, there is a breach of Article 14(1) of Regulation No 659/1999 laying down detailed rules for the application of Article 88 of the Treaty and also a breach of essential procedural requirements in that the reasons are inadequate. The applicants maintain that the Commission was perfectly capable of quantifying the amount of the aid without infringing France's rights of defence and that recovery of the aid in question would not in this case have constituted a breach of the principle of protection of legitimate expectations.

**Action brought on 12 November 2004 by Association Française des Opérateurs de Réseaux et Services de Télécommunications – AFORS Télécom against Commission of the European Communities**

(Case T-456/04)

(2005/C 31/52)

(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 12 November 2004 by Association Française des Opérateurs de Réseaux et Services de Télécommunications – AFORS Télécom, established in Paris, represented by O. Fréget, lawyer.

The applicant claims that the Court should:

- annul Article 2 of Decision C(2004)3060 of the Commission of the European Communities of 2 August 2004 concerning State aid paid by France to France Télécom;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

In the context of a scheme designed to restore the balance of the French telecommunications company France Télécom, France, at the time the majority shareholder in that company, granted it a shareholder's advance, in order to shore up its own funds, in the form of a credit line of EUR 9,000 million. By the contested decision, the Commission found that the advance in question constituted State aid. However, by Article 2 of that decision, it decided that no measures to recover the amount concerned should be taken.

The applicant, which claims to represent a large proportion of the alternative telecommunications operators in France, direct competitors of France Télécom, maintains that it is entitled to seek annulment of that article. In support of its action, it claims first of all that the Commission made a manifest error of assessment in taking the view that it would be unable to estimate the advantage received by France Télécom as a result of the conduct and statements of the French State. It further alleges that the Commission breached the principle of proportionality, since it would have been less harmful to the market to take an amount lower than the actual value of the advantage and of its effects on competition than to preclude any recovery. The applicant then argues that, in any event, the Commission is not required to evaluate precisely the amount of the aid.

The applicant also contends that the Commission failed to have regard to the consistent case-law, which allows a derogation from the obligation to recover unlawful aid only where there are exceptional circumstances or where it is absolutely impossible to do so. The applicant also claims that the Commission wrongly considered that recovery of the aid would breach the rights of the defence and also the principle of legitimate expectations.

The applicant further claims that the Commission breached the principle of transparency in failing to submit to interested third parties, including the applicant itself, certain expert reports presented by France, which played a decisive role in the outcome reached by the Commission.

The applicant also maintains that the Commission committed an abuse of process by ignoring the constraints imposed by its own guidelines on aid for restructuring. Furthermore, the mere fact of having declared an aid incompatible and having then not demanded its recovery constitutes in itself a misuse of powers, in the applicant's submission. Last, the applicant claims that there has been a breach of the obligation to State reasons.

---

**Action brought on 9 November 2004 by Camar S.r.l.  
against the Commission of the European Communities**

**(Case T-457/04)**

(2005/C 31/53)

*(Language of the case: Italian)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 November 2004 by Camar S.r.l., represented by Wilma Viscardini, Simonetta Donà and Mario Paolin.

The applicant claims that the Court should:

- annul the Commission's refusal communicated by the Director General for Agriculture by letter of 10 September 2004 (ref D (2004) 29695 A/25707) received on 20 September 2004;
- order that paragraph 1 of the operative part of the judgment of 8 June 2000 in Joined Cases T-79/96, T-260/97 and T-117/98 be enforced;
- order the Commission to give effect to paragraph 1 of the operative part of that judgment by the financial equivalent of the value of the entitlements that it should have, but has not delivered, pursuant to the judgment in question, in the sum of EUR 5 065 600, or such other sum as the Court may fix, increased to reflect changes in monetary values, and interest at a rate to be determined by the Court, with effect from 8 June 2000 until the date of discharge of the judgment debt;
- order the Commission to compensate the applicant for non-pecuniary loss – to be determined equitably by the Court – sustained by the applicant's constituent partners as a result of the failure to enforce the judgment of 8 June 2000;
- order the Commission to pay the costs of the present action.

*Pleas in law and main arguments:*

In support of its pleas in law, the applicant submits that the Commission's failure to act – not only has it not adopted any specific measure, it has not even proposed to Camar appropriate measures to give effect to the judgment delivered in Case T-79/96 (a continuing failure to act since 8 June 2000) – and its express refusal to enforce that judgment, communicated by the letter of 10 September 2000, constitute a serious infringement of Article 233 EC.

To the extent that the Commission is no longer able to deliver the entitlements to the applicant which it should have done to give effect to that judgment – because, in short, imports of third-country bananas will no longer be subject to tariff quota but instead completely liberalised –, Camar seeks equivalent enforcement in the form of compensation for financial loss which, according to settled case-law, is available where it is no longer possible to enforce a judgment in a specific way.

The applicant also seeks equitable damages for the non-pecuniary loss sustained by reason of the failure to enforce the judgment of 8 June 2000. According to settled case-law, that fact alone already constitutes a ground for compensation in that it infringes the principle of legitimate expectations. In this case, that infringement is aggravated by the fact that Camar expected the Commission to enforce the judgment because it said it would do so in a letter of 20 May 2003. That letter has since been withdrawn.