

Decision of the Board of Appeal:

The Board of Appeal held that as a result of amendments to the specification of the relevant goods in accordance with a joint letter from the parties of 4 June 2004, the opposition had been withdrawn and the proceedings had therefore been terminated. Since according to the Board of Appeal the only question to be decided was the allocation of costs, each party was ordered to bear the fees and expenses of the opposition and appeal proceedings which it had itself incurred.

Pleas in law:

The pleas relied on are identical to those put forward in Case T-466/04 brought by the same applicant.

Action brought on 24 November 2004 by Bouygues SA and Bouygues Télécom against the Commission of the European Communities

(Case T-475/04)

(2005/C 69/37)

(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 24 November 2004 by Bouygues SA, established in Paris, and Bouygues Télécom, established in Boulogne-Billancourt (France), represented by Louis Vogel, Joseph Vogel, Bernard Amory, Alexandre Verheyden, François Sureau and Didier Théophile, lawyers.

The applicants claim that the Court should:

1. annul Commission decision C(2004)2647 of 20 July 2004 – State aid – France concerning alteration of the fees payable by Orange and SFR for the Universal Mobile Telecommunication System (UMTS) licences;
2. order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against Commission decision C(2004)2647 final of 20 July 2004 concluding that aid was not granted by the French State to Orange France and SFR by way of the retroactive reduction in the fee of EUR 4 995 000 000 which each of those operators had undertaken to pay to the French State for the Universal Mobile Telecommunication System (UMTS) licence awarded to it on 18 July 2001. By the adoption of that decision, the complaint lodged by the applicant companies was rejected.

It is recalled in that regard that the French Government issued two invitations to apply for the award of the UMTS licences. The first, in which Orange France and SFR participated, was launched in August 2000. The amount of the fee had been set at EUR 4 995 000 000 per licence. Bouygues Télécom had decided not to compete on account of the price set. In the second invitation to apply, the amount of the fee was reduced to EUR 619 000 000. Bouygues Télécom was awarded a UMTS licence following that second procedure. However, in the meantime, the French Government decided to align retroactively the amount of the fees provided for in the first procedure with that provided for in the second invitation to apply.

In support of their claims, the applicants plead, first, infringement of Article 87 of the Treaty. They argue in that regard that:

- State licence fees are public revenue and that the French State, by altering retroactively the amount of the fees payable by Orange and SFR, waived its right to collect a debt in an immediately available form, payable and of a fixed amount;
- By relying on the consideration that the contested decision is justified by the principle of non-discrimination, the Commission avoided discussion of the substance of the issue. It is argued *inter alia* in that regard that Orange and SFR were able, through the effect of the French Government's decision, to enjoy a temporal advantage arising from the possibility of penetrating the UMTS market early while being guaranteed, even though nothing had been envisaged to that effect during the first invitation to apply, that the amount of their UMTS licence fee would be reduced to the level of that required in respect of the second invitation to apply;
- The decision at issue had a real effect on competition by enabling Orange and SFR, which were already powerful operators on the French mobile telephony market, to consolidate their position on the emerging UMTS market and, as a result, to restrict the access of their competitors to that market.

In addition, the applicants submit that, by merely stating, without any further explanation, that the award of the UMTS licences cannot be treated as a market transaction, the defendant, in breach of Article 230 of the Treaty, failed to state proper reasons for its decision.

Finally, the applicants submit that the Commission infringed Articles 87 and 88 EC by not examining the measure at issue by way of the formal review procedure laid down by those provisions.

Action brought on 14 December 2004 by Aktieselskabet af 21. November 2001 against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-477/04)

(2005/C 69/38)

(Language in which the application was lodged: English)

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 14 December 2004 by Aktieselskabet af 21. November 2001, established in Brande (Denmark), represented by C. Barrett Christiansen, lawyer.

TDK Kabushiki Kaisha (TDK Corporation), established in Tokyo (Japan), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- Annul Decision R 364/2003-1 of 7 October 2004 of the First Board of Appeal of the Office for Harmonisation in the Internal Market

Pleas in law and main arguments:

Applicant for Community trade mark:

The applicant

Community trade mark concerned:

Word mark TDK for goods in class 25 (clothing, footwear, head-gear) — application number 1214675

Proprietor of mark or sign cited in the opposition proceedings:

TDK Kabushiki Kaisha

Trade mark or sign cited in opposition:

Community and national word and figurative marks TDK for goods in Class 9 (apparatus for recording etc.)

Decision of the Opposition Division:

Registration denied

Decision of the Board of Appeal:

Appeal dismissed

Pleas in law:

Article 8 paragraph 5 of Council Regulation No 40/94 does not apply in this case.

Action brought on 8 December 2004 by Armour Pharmaceutical Company against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-483/04)

(2005/C 69/39)

(Language in which the application was submitted: French)

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 8 December 2004 by Armour Pharmaceutical Company, established in Bridgewater (United States), represented by Richard Gilbey, lawyer.

Teva Pharmaceutical Industries Limited was also a party to the proceedings before the Fourth Board of Appeal.

The applicant claims that the Court should:

1. annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 September 2004 (Case R 295/2003-4) and confirm the decision of the Opposition Division of 28 February 2003 by upholding the opposition in its entirety;
2. order the defendant to pay the costs.