

The applicant further contends that the Commission also violated its duty under Article 253 EC to provide adequate reasons for its decision, since it relied on information considered confidential and not disclosed to the applicant.

The applicant also invokes the fact that Portugal's gas market qualifies as 'emergent' under Article 28(2) of Directive 2003/55<sup>(1)</sup> and benefits from a derogation from that directive until April 2007. The applicant considers that by assessing the effects of the concentration on a gas market not open to competition, the Commission infringed the right of the Portuguese government to restructure the gas sector during the derogation period. Further, it alleges that the Commission misapplied the substantive test in Article 2 of Regulation 4064/89<sup>(2)</sup> by purporting to evaluate the effects of the proposed concentration at the end of the derogation period, several years later.

A further violation of that article as well as of the duty to state reasons consists, according to the applicant, in the Commission's failure to assess whether the strengthening of the applicant and of Gás de Portugal's dominant position in the electricity and gas markets would have significantly impeded competition.

Finally, the applicant contends that the Commission violated Article 8(2) and 8(3) of Regulation 4064/89 by concluding that, despite the commitments proposed by the parties, the

proposed transaction should be declared incompatible with the common market.

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<sup>(1)</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176 p. 57).

<sup>(2)</sup> Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 257/90 p. 13).

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### Removal from the Register of Case T-131/03<sup>(1)</sup>

(2005/C 82/79)

*(Language of the case: German)*

By order of 13 January 2005, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-131/03, *Sinziger Mineralbrunnen GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)*.

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<sup>(1)</sup> OJ C 158 of 5.7.2003.