Form of order sought

The applicant claims that the Court should:

— declare that the Commission could not terminate the contract of 30 August 2005;

— order the European Commission to pay the sum of EUR 125 906, plus statutory default interest since 12 February 2002;

— order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant is party to Contract BU 209-95 concluded with the Commission in consequence of the invitation to tender in connection with the specific programme for research and technological development in the field of non-nuclear energy ([1]) and covering the execution of a project of renovation of a building in Lyon by using solar and bio-climatic architecture methods. The contract contains an arbitration clause under which the Community judicature has exclusive jurisdiction over disputes between the contracting parties as regards the validity, application and interpretation of the contract.

In execution of its contractual obligations, the applicant, on 12 December 2001, sent the Commission the final report on the project. The Commission did not accept that report and on 5 July 2002 served on the applicant a decision to recover payments made by refusing to accept certain costs declared by it in that report. Neither exchanges of correspondence between the parties, nor the meetings held, nor the intervention of a mediator could bring about an amicable settlement of the dispute. By registered letter of 30 August 2005, the Commission served the applicant with a final recovery decision preceded by a debit note of 23 August 2005. That decision is the subject of this action brought by the applicant on the basis of the arbitration clause.

The action seeks, principally, an order that the Commission pay 20 % of the balance of the subsidy allegedly due to the applicant under Contract BU 209-95.

In support of its claims, the applicant argues that any disagreement with the way the project was executed by the contracting parties should have been expressed by the Commission before the date on which the report was presumed to have been approved (two months from the date of deposit of the final report). In the applicant's view, the Commission is time-barred and cannot therefore constitute itself a creditor of the applicant. Consequently, being time-barred, the Commission remains indebted to the applicant for the balance of the subsidy which it undertook to pay under the contract in question.

([1]) Programme put in place by Council Decision 94/806/EC of 23 November 1994 (OJ L 334 of 22 December 1994, p. 87).

Action brought on 25 November 2005 — Olympic Airways Services S.A. v Commission of the European Communities

(Case T-423/05)

(2006/C 74/42)

Language of the case: Greek

Parties

Applicant: Olympic Airways Services S.A. (Athens, Greece) (represented by: P. Anestis, T. Soames, D. Geradin, S. Mavroghenis and S. Jordan, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul in whole or in part, in accordance with Articles 230 and 231 EC, Decision C11/2004, concerning State aid alleged to have been granted by Greece to Olympic Airways Services S.A.;

— order the Commission to pay the costs.

Pleas in law and main arguments

When the Greek state airline Olympic Airways was privatised, a new company ('NOA') began operating, taking over the flight operations, while the applicant ('OA') retained all other activities, principally ground handling, maintenance and aircraft repair. In the contested decision, the Commission found that Greece had granted to NOA and the applicant State aid that was incompatible with the Treaty, inter alia by reason of:

— overvaluation of NOA's assets at the time when it was set up,

— the making by the Greek State, as guarantor, of payments in respect of debts of OA,

— the continuous forbearance displayed by the Greek State towards OA with regard to tax debts and social security contributions.

By its action, the applicant contests first of all the part of the decision that relates to the supposed overvaluation of NOA's assets when it was set up. The applicant pleads infringement of Article 87(1) and (3) EC and Article 253 EC (duty to state reasons). It submits that the 'private investor' test was misapplied since the Hellenic Republic acted as any well-advised private businessman would act. It further contends that methodology and conclusions were mistaken in relation to the calculation of the amount of the supposed benefit. It also argues that the reasoning with regard to fulfilment of the conditions required in order for Article 87(1) EC to apply was deficient.

So far as concerns the payment of sums by the State in respect of its debts, the applicant does not dispute that those payments were made, but considers that they do not involve elements of State aid and pleads in this regard that Article 87(1) EC has been infringed. More specifically, the applicant pleads that continuance of State aid, of which those payments by the Greek State form part, had been accepted by the Commission, and by the contested decision the Commission argues the contrary under a mistaken legal assessment. In the same context, the applicant contends that the Commission manifestly erred in its assessment in relation to the payments that were made before the alteration of certain guarantees and to the classification of certain payments by the State as State aid. The applicant also pleads, in relation to this part of the decision too, infringement of an essential procedural requirement, that is to say of the duty to state reasons.

In relation to the finding in the contested decision that Greece displayed 'continuous forbearance' towards OA, the applicant submits that Community law was infringed as regards the meaning of State aid, because the Commission did not examine Greece's conduct in the light of the 'private creditor' test and failed to satisfy the burden of proof. It further pleads that there was a manifest error of assessment in relation to the calculation and the quantification of the supposed benefit and that the reasons stated were insufficient.

Finally, the applicant pleads infringement of general principles of Community law, that is to say, first of all, the right to be heard, which it considers to have been infringed because of the Commission's refusal to grant the Hellenic Republic, and by extension the applicant itself as a directly affected party, access to the findings drawn up by a firm of auditors appointed by the Commission. The applicant further pleads infringement of the principle 'non bis in idem' because the contested decision has imposed interest, on the basis of the Community rate of interest, on the sums of aid which must be recovered, but the latter already include fines, interest and additional charges on the basis of the national provisions.

Action brought on 12 December 2005 — Ajinomoto/OHIM

(Case T-436/05)

(2006/C 74/43)

Language in which the application was lodged: English

Parties

Applicant: Ajinomoto Co., Inc. (Tokyo, Japan) [represented by: G. Würtenberger and R. Kunze, lawyers]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal: Kaminomoto Co. Ltd. (Hyogo-Ken, Japan)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM dated 15 September 2005 in case R 1143/2004-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'AJINOMOTO' for goods in classes 1, 5, 29, 30 and 31 — application No 1 307 024

Proprietor of the mark or sign cited in the opposition proceedings: Kaminomoto Co. Ltd.

Mark or sign cited: The national word mark 'KAMINOMOTO' for goods in class 3

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Annulment of the Opposition Division's decision

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 since the Board of Appeal according to the applicant held that the opponent in the opposition proceedings only had to prove the existence of an earlier right at the time of the filing of the opposition. According to the applicant it is the time of the decision of the Opposition Division, or alternatively when the time-limit for providing further evidence expires, by which an earlier right has to be proven to be in force.

Action brought on 13 December 2005 — Royal Bank of Scotland/OHIM

(Case T-439/05)

(2006/C 74/44)

Language in which the application was lodged: English

Parties

Applicant: The Royal Bank of Scotland Group plc (Edinburgh, United Kingdom) [represented by: J. Hull, Solicitor]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal: Lombard Risk Systems Limited and Lombard Risk Consultants limited (London, United Kingdom)