

**Action brought on 5 April 2007 — Freistaat Sachsen v Commission of the European Communities****(Case T-102/07)**

(2007/C 129/31)

*Language of the case: German***Parties***Applicant:* Freistaat Sachsen (Germany) (represented by C. von Donat and G. Quardt, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- annul Commission Decision C(2007) 130 final of 24 January 2007 relating to State aid No C 38/2005 (formerly NN 52/2004) from Germany to the Biria Group in so far as it relates to what the decision terms measures 2 and 3, and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicant challenges Commission Decision C(2007) 130 final of 24 January 2007 in which the Commission held that the three measures comprising State aid from Germany for the benefit of Bike Systems GmbH & Co., Thüringer Zweiradwerk KG, Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) is incompatible with the common market.

The applicant claims that it is directly and individually concerned by the Commission's decision, because measures 2 and 3, which relate to guarantees in favour of Sachsen Zweirad GmbH and Biria GmbH (now Biria AG), were granted by it from its own resources on the basis of the guarantee guidelines of the Freistaat Sachsen.

In support of its claim, the applicant claims, first, that there was an infringement of Community law by reason of an incorrect interpretation of an approved aid measure. In that regard, the applicant claims that the defendant misconstrued the corresponding definition in the approved aid measure so as to treat the undertakings concerned as undertakings in financial difficulties. Since, in the applicant's opinion, that was not the case, measures 2 and 3 relate to approved aid.

In addition, the applicant claims that the defendant wrongly assessed the factual position in proceeding on the basis that the undertakings concerned were undertakings in financial difficulties.

Lastly, the applicant alleges that the contested decision fails to state adequate reasons.

**Action brought on 6 April 2007 — BVGD v Commission****(Case T-104/07)**

(2007/C 129/32)

*Language of the case: English***Parties***Applicant:* Belgische Vereniging van handelaars in- en uitvoerders geslepen diamant (Antwerpen, Belgium) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul the decision dated 26 January 2007 by which the European Commission rejected the complaint lodged by BVGD for the reason that there are insufficient grounds for acting on it (Case COMP/39.221/B-2-BVGD/De Beers);
- order the European Commission to pay all the costs.

**Pleas in law and main arguments**

The applicant contests the Commission's decision of 26 January 2007 in competition Case COMP/39.221/B-2 — BVGD/De Beers, by which the Commission rejected the applicant's complaint regarding violations of Articles 81 and 82 EC in connection with the Supplier of Choice system applied by the De Beers Group for the distribution of rough diamonds, with the reasoning that there is not sufficient Community interest to act further on the applicant's complaint.

The applicant alleges that De Beers — a producer of rough diamonds who, according to the applicant, was mainly involved upstream with the sale of rough diamonds — is trying through its Supplier of Choice system to extend its control of the market to cover the entire diamond pipeline from mine to consumer, i.e. also the downstream markets.

In support of its application, the applicant firstly claims a violation of its procedural rights as complainant. The applicant alleges i) that the Commission prevented it from exercising its right to have access under Article 8(1) of Regulation No 773/2004<sup>(1)</sup> to the documents on which the Commission based its provisional assessment, ii) that the Commission put undue pressure on the applicant by its management of the time-limits in the case, iii) that the Commission created, in its correspondence with the applicant, confusion as to the stage of the procedure, and iv) that the Commission did not associate the applicant closely with the procedure.