2. *Article 15(1)(j) of Directive 2003/96 must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision.*

(1) OJ C 113, 1.5.2010.

Judgment of the Court (Third Chamber) of 8 December 2011 — France Télécom v European Commission, French Republic

(Case C-81/10 P) (1)

(Appeal — State aid — France Télécom's business tax regime — Concept of 'aid' — Legitimate expectations — Limitation period — Obligation to state reasons — Principle of legal certainty)

(2012/C 32/09)

Language of the case: French

Parties

Appellant: France Télécom SA (represented by: S. Hautbourg, L. Olza Moreno and L. Godfroid, avocats)

Other parties to the proceedings: European Commission (represented by: E. Gippini Fournier and D. Grespan, acting as Agents), French Republic (represented by: G. de Bergues and J. Gstalter, acting as Agents)

Re:

Appeal brought against the judgments of the Court of First Instance (Third Chamber) of 30 November 2009 in Joined Cases T-427/04 and T-17/05 *France and France Télécom* v *Commission* by which the Court dismissed the actions brought by the French Republic and the appellant for annulment of Commission Decision 2005/709/EC of 2 August 2004 on the State aid implemented by France (OJ 2005 L 269, p. 30) — Misapplication of the concepts of 'State aid' and 'advantage' in connection with France Télécom's business tax regime for the period 1994 to 2002 — Breach of the principle of legitimate expectations — Limitation period for State aid — Obligation to state reasons and breach of the principle of legal certainty

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders France Télécom SA to pay the costs;*

3. *Orders the French Republic to bear its own costs.*

(1) OJ C 148, 5.6.2010.

Judgment of the Court (Second Chamber) of 8 December 2011 (reference for a preliminary ruling from the Bundespatentgericht — Germany) — Merck Sharp & Dohme Corporation (formerly Merck & Co.) v Deutsches Patent- und Markenamt

(Case C-125/10) (1)

(Intellectual and industrial property — Patents — Regulation (EEC) No 1768/92 — Article 13 — Supplementary protection certificate for medicinal products — Possibility of granting that certificate where the period that has elapsed between the date of the lodging of the basic patent application and the first marketing authorisation in the European Union is less than five years — Regulation (EC) No 1901/2006 — Article 36 — Extension of the duration of the supplementary protection certificate)

(2012/C 32/10)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: Merck Sharp & Dohme Corp., formerly Merck & Co. Inc.

Defendant: Deutsches Patent- und Markenamt

Re:

Reference for a preliminary ruling — Bundespatentgericht — Interpretation of Article 13(1) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Possibility of granting the certificate if the period of time between the filing of the application for the basic patent and the date of first authorisation for marketing in the Community is shorter than five years

Operative part of the judgment

Article 13 of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products, as amended by Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006, read in conjunction with Article 36 of Regulation No 1901/2006, must be interpreted as meaning that medicinal products can be the object of the grant of a supplementary protection certificate where the period that has elapsed between the date of lodging the basic patent application and the first marketing authorisation in the European Union is less than five years. In such a case, the period of the paediatric extension provided for by the latter regulation starts to run from the date determined by deducting from the patent expiry date the difference between five years and the duration of the period which elapsed between the lodging of the patent application and the grant of the first marketing authorisation.

(1) OJ C 161, 19.6.2010.