

Fourth, the applicant submits that the Commission acted in breach of the principle to treat all undertakings equally before the law in that it misapplied the Guidelines on the setting of fines <sup>(2)</sup>. The applicant further submits that the Commission breached the principle of proportionality in that the fine imposed on the applicant was disproportionate in relation to all other addressees of the Tin Stabilisers decision and, in particular, Baerlocher.

Fifth, the applicant alleged that the Commission acted so as to distort competition in the common market in breach of Article 101 TFEU to the extent that it misapplied the Guidelines on fines

Finally, the applicant argues that the Commission acted in breach of the principle of sound administration in not conducting the investigation in a diligent and timely manner, as well as prejudiced the applicant's right of defence in not continuing the investigation during the period of the 'Akzo legal privilege' applications <sup>(3)</sup> to the General Court.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2)

<sup>(3)</sup> Judgment of the General Court of 17 September 2007, in Joined Cases T-125/03 and T-253/03, Akzo Nobel Chemicals et Akros Chemicals/Commission, [2007], ECR II-3523

**Action brought on 22 January 2010 — Ella Valley Vineyards v OHIM — Hachette Filipacchi Press (ELLA VALLEY VINEYARDS)**

(Case T-32/10)

(2010/C 80/65)

*Language in which the application was lodged: French*

**Parties**

*Applicant:* Ella Valley Vineyards (Adulam) Ltd (Jerusalem, Israel) (represented by: C. de Haas, lawyer)

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

*Other part to the proceedings before the Board of Appeal of OHIM:* Hachette Filipacchi Presse SA (Levallois-Perret, France)

**Form of order sought**

- annul the decision of the First Board of Appeal of OHIM of 11 November in all its provisions because it infringed Article 8(5) of Regulation (EC) No 207/2009;
- order OHIM to pay the costs of ELLA VALLEY VINEYARDS pursuant to Articles 87 to 93 of the Rules of Procedure.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Ella Valley Vineyards (Adulam) Ltd.

*Community trade mark concerned:* the figurative mark 'ELLA VALLEY VINEYARDS' for goods in Class 33 (Application for registration No 3 360 914).

*Proprietor of the mark or sign cited in the opposition proceedings:* Hachette Filipacchi Presse SA.

*Mark or sign cited in opposition:* French word mark and the Community word mark 'ELLE' for goods in Class 16 (Community trade mark No 3 475 365).

*Decision of the Opposition Division:* Dismissal of the opposition.

*Decision of the Board of Appeal:* Annulment of the decision of the Opposition Division.

*Pleas in law:* Infringement of Article 8(5) of Regulation (EC) No 207/2009 because the public concerned will not make any link between the marks at issue and because the use of the mark 'ELLA VALLEY VINEYARDS' does not take unfair advantage of the reputation of the earlier 'ELLE' marks

**Action brought on 28 January 2010 — ING Groep v Commission**

(Case T-33/10)

(2010/C 80/66)

*Language of the case: English*

**Parties**

*Applicant:* ING Groep NV (Amsterdam, Netherlands) (represented by: O. Brouwer, M. Knapien and J. Blockx, lawyers)

*Defendant:* European Commission

restructuring commitments listed in Annex I and II of the decision.

### Form of order sought

- annul the contested decision, including for lack of or inadequate reasoning, insofar as the decision qualifies the amendment to the CTI transaction as additional aid in the amount of EUR 2 billion;
- annul the contested decision, including for lack of or inadequate reasoning, insofar as the Commission has subjected the approval of the aid to the acceptance of price leadership bans as set out in the decision and Annex II thereof;
- annul the contested decision, including for lack of or inadequate reasoning, insofar as the Commission has subjected the approval of the aid restructuring requirements that go beyond what is appropriate and required under the Restructuring Communication;
- order the Commission to bear the costs of the proceedings.

By means of its application, the applicant seeks partial annulment of the decision of 18 November 2009 on the state aid No C 10/2009 (ex N 138/2009) implemented by the Netherlands for the applicant's Illiquid Assets Back-Up facility and Restructuring Plan insofar as it allegedly (i) qualifies the amendment to the CTI transaction as additional aid in the amount of EUR 2 billion, (ii) has subjected the approval of the aid to the acceptance of price leadership bans and (iii) subjected the approval of the aid to restructuring requirements that go beyond what is proportionate and required under the Restructuring Communication.

The applicant submits that the contested decision should be partially annulled on the following grounds:

On the basis of its first plea, relating to the amendment to the CTI transaction, the applicant claims that the Commission:

- (a) infringed Article 107 TFEU, in finding that the amendment to the Core Tier transaction between the applicant and the Dutch State constituted State aid; and that it
- (b) infringed the principle of care and Article 296 TFEU resulting from a failure to carefully and impartially examine all the relevant aspects of the individual case, to hear the persons concerned and to provide adequate reasoning for the contested decision.

### Pleas in law and main arguments

In the context of the turmoil on the financial markets in September/October 2008, the Dutch State injected, on 11 November 2008, EUR 10 billion of Core Tier 1 capital (hereinafter: 'CTI Transaction') in ING (referred to also as 'the applicant'). This aid measure was provisionally approved by the European Commission on 12 November 2008 for a period of six months.

In January 2009, the Dutch State agreed to take over the economic risk relating to a part of some of the applicant's impaired assets. This measure was provisionally approved by the European Commission on 31 March 2009, whereby the Dutch State committed itself to submit a restructuring plan concerning the applicant. In October 2009, the applicant and the Dutch State concluded an amendment to the original CTI transaction in order to allow an early repayment of half of the CTI capital injection. A final version of the applicant's restructuring plan was submitted to the Commission on 22 October 2009.

On 18 November 2009, the Commission adopted the contested decision in which it approved the aid measure subject to the

On the basis of its second plea, relating to the price leadership ban for ING and ING Direct, the applicant submits that the Commission:

- (a) infringed the principle of sound administration as a result of not having carefully and impartially examined all relevant aspects of the individual case and that it moreover violated the duty to provide adequate reasoning for the decision;
- (b) infringed the principle of proportionality by making the approval of the aid measure conditional upon price leadership bans which are not adequate, necessary or proportionate;

- (c) infringed Article 107(3)(b) TFEU and misapplied the principles and guidelines set out in the Restructuring Communication.

On the basis of its third plea, relating to disproportionate restructuring requirements, the applicant contends that the decision is vitiated by:

- (a) an error of assessment, since the Commission wrongly calculated the absolute and relative aid amount and violated principle of proportionality and sound administration by requiring excessive restructuring without having carefully and impartially examined all the relevant facts provided to it; and
- (b) an error of assessment and inadequate reasoning by deviating from the Restructuring Communication when assessing the required restructuring.

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**Appeal brought on 28 January 2010 by Carlo de Nicola against the judgment of the Civil Service Tribunal delivered on 30 November 2009 in Case F-55/08, De Nicola v EIB**

(Case T-37/10 P)

(2010/C 80/67)

*Language of the case: Italian*

### Parties

*Appellant:* Carlo De Nicola (Strassen, Luxembourg) (represented by L. Isola, lawyer)

*Other party to the proceedings:* European Investment Bank (EIB)

### Form of order sought by the appellant

The appellant claims that the General Court should:

- set aside the judgment under appeal;
- order the European Investment Bank (EIB) to pay the costs of the proceedings, together with interest, currency revaluation to be taken into account in fixing the amount awarded.

### Pleas in law and main arguments

The present appeal is brought against the judgment of the Civil Service Tribunal (CST) of 30 November 2009. That judgment dismissed the action brought by Mr De Nicola for (i) annulment of the decision by which the EIB rejected his appeal seeking a review of his assessment for 2006 and annulment of the EIB's decision on the promotions for 2006, in so far as Mr De Nicola was not promoted; (ii) annulment of Mr De Nicola's staff report for 2006; (iii) a declaration that Mr De Nicola had been the victim of psychological harassment; (iv) an order that the EIB pay compensation for the damage purportedly sustained as a result of that harassment; and (v) annulment of the decision refusing to meet the cost of certain medical expenses for laser therapy treatment.

Mr De Nicola relies on the following pleas in law in support of his appeal:

- The CST declined, unlawfully, to give a ruling and, when it did not completely forget the subject-matter of the action (for example, the second and third arguments in the application for annulment; the refusal of the Appeals Committee to rule on the merits; and so on), deliberately decided to examine only some of the pleas;
- The CST did not rule on Mr De Nicola's request that it examine whether the conduct of his superiors was lawful in the light of the evaluation criteria adopted by the EIB. Moreover, it incorrectly attributed to other employees the harassment of which Mr De Nicola complained, whereas he attributes this directly and solely to the EIB;
- By way of ground of appeal, Mr De Nicola also refers to the refusal of the requests for production of evidence and the reversal of the burden of proof, as well as the failure to state reasons. On that last point, it is argued that the CST failed to state the reasons relating to many decisive issues, or gave contradictory and/or illogical reasons. In that connection, Mr De Nicola refers, in particular, to the refusal to apply Article 41 of the Staff Regulations, and the rejection of the request for annulment of the staff report for 2006;
- Lastly, Mr De Nicola submits that, as the contract of employment is a private-law contract, the necessary pre-conditions are not met for the application by analogy to his case of the rules and procedural conditions for Union officials under public-law contracts.