

**Order of the General Court of 15 September 2010 —
Marcuccio v Commission**

(Case T-157/09 P) ⁽¹⁾

*(Appeal — Civil Service — Officials — Reasonable time for
the submission of a claim for compensation — Lateness —
Appeal in part manifestly inadmissible and in part manifestly
unfounded)*

(2010/C 301/52)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

Re:

Appeal lodged against the order of the European Union Civil Service Tribunal (First Chamber) of 18 February 2009 in Case F-42/08 Marcuccio v Commission ECR-SC 0000, seeking the annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*
2. *Mr Luigi Marcuccio shall bear his own costs and pay those incurred by the European Commission in the present proceedings.*

⁽¹⁾ OJ C 141, 20.6.2009.

**Order of the President of the General Court of 31 August
2010 — Babcock Noell v The European joint undertaking
for ITER and the Development of Fusion Energy**

(Case T-299/10 R)

*(Application for interim measures — Public contracts —
Tendering procedure — Rejection of a tender — Application
for suspension of operation of a measure — Prima facie case
— Urgency — Balance of interests)*

(2010/C 301/53)

Language of the case: English

Parties

Applicant: Babcock Noell GmbH (Würzburg, Germany) (represented by: M. Werner and C. Elbrecht, lawyers)

Defendant: The European joint undertaking for ITER and the Development of Fusion Energy (represented by: A. Verpont, Agent, assisted by C. Kennedy-Loest, K. Wilson and C. Thomas, Solicitors, and N. Pourbaix, lawyer)

Re:

Application for suspension of operation of decisions taken by the defendant, in the context of a tendering procedure, to reject the applicant's tenders and to award to another tenderer Lot D of the contract for the supply of ITER toroidal field coils winding packs

Operative part of the order

1. *The application for interim measures is dismissed.*
2. *Costs are reserved.*

**Action brought on 10 August 2010 — Viaguara v OHIM —
Pfizer (VIAGUARA)**

(Case T-332/10)

(2010/C 301/54)

Language in which the application was lodged: Polish

Parties

Applicant: Viaguara S.A. (Warsaw, Poland) (represented by: R. Skubisz, legal adviser)

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

Other party to the proceedings before the Board of Appeal of OHIM: Pfizer Inc.

Form of order sought

— annul in its entirety the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2010 in Case R 964/2009-1;

— order the defendant and Pfizer Inc. to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Viaguara.

Community trade mark concerned: Word mark 'VIAGUARA' for goods in Classes 32 and 33 — application No 4630562.

Proprietor of the mark or sign cited in the opposition proceedings: Pfizer Inc.

Mark or sign cited in opposition: Community word mark 'VIAGRA' for goods in Class 5.

Decision of the Opposition Division: Opposition dismissed.

Decision of the Board of Appeal: Decision of the Opposition Division annulled and trade mark application rejected in its entirety.

Pleas in law: Infringement of Article 8(5) of Regulation No 207/2009⁽¹⁾ on account of an incorrect methodology for assessment of the connection between the marks and flawed findings in relation to the risk of exploitation of the repute and image of the trade mark cited in opposition.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Action brought on 20 August 2010 — F91 Diddeléng and Others v Commission

(Case T-341/10)

(2010/C 301/55)

Language of the case: French

Parties

Applicants: F91 Diddeléng (Dudelange, Luxembourg), Julien Bonnetaud (Yutz, France), Thomas Gruszczynski (Amnéville, France), Rainer Hauck (Maxdorf, Allemagne), Stéphane Martine (Esch-sur-Alzette, Luxembourg), Grégory Molnar (Moyeuvre-Grande, France) and Yann Thibout (Algrange, France) (represented by: L. Misson, C. Delrée and G. Ernes, lawyers)

Defendants: European Commission

Form of order sought

- Annul the contested decision of the European Commission, adopted on 3 June 2010;
- Annul the rules which are contrary to Articles 45 and 101 TFEU;
- Impose any appropriate sanction.

Pleas in law and main arguments

The applicants (Dudelange football club and the non-Luxembourg players employed by that club) seek annulment

of the Commission decision of 3 June 2010, communicated by letter of 21 June 2010, in which the Commission informed the applicants that it intended to take no action in regard to their complaint against the Fédération Luxembourgeoise de Football (FLF), based on Articles 45 and 101 TFEU, concerning the FLF rules preventing the applicants from taking part in certain football matches if the number of foreign players appearing on the match sheet is greater than a number laid down in the FLF rules;

In support of their action, the applicants put forward two pleas in law alleging:

— an infringement of Article 45 TFEU, inasmuch as the obligation currently laid down in the FLF rules to place, on the official match sheet, seven players who had obtained their first licence in Luxembourg and the prohibition on placing, on the same match sheet, more than four players transferred during the sporting year constitutes direct discrimination preventing a national of a Member State from exercising an economic activity in Luxembourg territory. The applicants also claim that, in so far as the FLF rules constitute, not direct discrimination, but indirect discrimination, the objectives invoked by the FLF, namely, that its purpose is to promote the game of football as an amateur sport, are unfounded and cannot therefore be regarded as legitimate objectives. The restrictions are therefore disproportionate compared to the objective invoked.

— an infringement of Article 101 TFEU, inasmuch as the FLF must be regarded as an association of undertakings infringing competition law, and more particularly, Article 101 TFEU, in so far as the restrictions on the number of foreign players have economic consequences for professional sportsmen and adversely affect competition between Luxembourg football clubs.

Action brought on 25 August 2010 — Portuguese Republic v Commission

(Case T-345/10)

(2010/C 301/56)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes and J. Saraiva de Almeida, Agents, assisted by M. Figueiredo, lawyer)

Defendant: European Commission