4. Fourth plea in law, alleging infringement of the vacancy notice COM/2017/1739 and manifest error of assessment. In that regard, the applicant submits that, unlike her, the selected candidate does not meet the requirements set out in the notice referred to above in order to fill the position at issue, that is, inter alia, good knowledge of the Staff Regulations and of the rules applicable to officials and other members of staff, together with experience in conflict resolution.

Action brought on 22 November 2018 — Sony Interactive Entertainment Europe v EUIPO — Vieta Audio (Vita)

(Case T-690/18)

(2019/C 35/31)

Language of the case: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vieta Audio, SA (Barcelona, Spain)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: European Union word mark Vita — European Union trade mark No 9 993 361

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 10 September 2018 in Case R 695/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to pay their own costs and pay those of the applicant.

Pleas in law

— Infringement of Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 November 2018 — KPN v Commission

(Case T-691/18)

(2019/C 35/32)

Language of the case: English

Parties

Applicant: KPN BV (Rotterdam, Netherlands) (represented by: P. van Ginneken and G. Béquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision C(2018) 3569 final of 30 May 2018 declaring the concentration involving the acquisition by Liberty Global plc of sole control over Ziggo NV to be compatible with the internal market and the EEA agreement (Case M.7000 — Liberty Global/Ziggo);

— revert the case to the Commission for further investigation pursuant to Article 10(5) of the Merger Regulation, ([1]) and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging that the Commission committed a manifest error in the market definition regarding premium pay TV sports and film channels

   — In this regard, the applicant submits that, during the administrative procedure, it put forward that Ziggo Sport Totaal ('ZST') is 'must-have' for providers of retail TV, broadband and mobile services, and bundles including one or more of these services, in order to be able to compete on the retail market. Allegedly, this was confirmed by the market investigation conducted by the Commission. As a consequence, the two premium pay TV sports channels ZST and FOX Sports would not be substitutable.

   — The applicant further claims that the Commission nonetheless concluded that there was one market for the wholesale supply and acquisition of premium pay TV sports channels, comprising ZST and FOX Sports, and that no further market segmentation was needed.

   — Pursuant to the applicant, these errors in the market definition would affect the Commission's further assessment and ultimately the conclusion to allow the merger.

2. Second plea in law, alleging that the Commission insufficiently motivated the market definition regarding premium pay TV sports and film channels

   — In this regard, the applicant submits that the Commission's assumption that FOX Sports and ZST are part of the same market would have required an extensive explanation because this assumption is contrary to the Commission's market investigation which pointed out that ZST is 'must-have' and the Commission's earlier decisions.

   — The applicant further claims that the Commission did not motivate the market definition for premium pay TV film channels.

   — Pursuant to the applicant, this lack of motivation of the market definition would affect the Commission's further assessment and ultimately the conclusion to allow the merger.

3. Third plea in law, alleging that the Commission made a manifest error of assessment of the ability to foreclose ZST and of the impact thereof on the market for the wholesale supply and acquisition of ZST

   — In this regard, the applicant submits that the merger extended the power of the merging parties on the market for ZST to the entire Dutch territory.

   — The applicant further claims that by refusing to provide access to ZST to a third party (on economically viable terms), the merging parties have the ability to foreclose ZST from their downstream competitors.

4. Fourth plea in law, alleging that the Commission insufficiently motivated the assessment of the ability to foreclose ZST and of the impact thereof on the market for the wholesale supply and acquisition of ZST

   — In this regard, the applicant submits that the Commission dismisses the argument that ZST is 'must-have', and therefore can be foreclosed, based on its market definition in section 5.1.2.1 of the contested decision. Based on the applicant's submission that the contested decision does not provide a market definition, or provides an erroneous market definition, it argues that the Commission's assessment would depart from a wrong starting point.

   — The applicant further claims that the Commission insufficiently motivated its assessment of the lack of ability of the merging parties to foreclose ZST and of the impact thereof.

5. Fifth plea in law, alleging that the Commission made a manifest error of assessment of the ability to foreclose HBO content

   In this regard, the applicant submits that the Commission incorrectly assessed that the merged parties have no significant market power, based on lacking market definition and wrong assumptions.

6. Sixth plea in law, alleging that the Commission insufficiently motivated the assessment of the ability to foreclose HBO content

   In this regard, the applicant submits that without reliable market definition regarding film content, the Commission's assessment of the effects of the merger on the said market is automatically insufficiently motivated.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

Action brought on 23 November 2018 — Montanari v EEAS

(Case T-692/18)

(2019/C 35/33)

Language of the case: French

Parties

Applicant: Marco Montanari (Reggio Emilia, Italy) (represented by: A. Champetier and S. Rodrigues, lawyers)

Defendant: European External Action Service

Form of order sought

The applicant claims that the Court should:

— declare this action admissible and well founded;

— annul the contested decision refusing the applicant access wholly or in part to the document referred to [below]; and

— order the defendant to pay the full costs of the proceedings.

Pleas in law and main arguments

The action has been brought against the decision of 24 October 2018 of the European External Action Service refusing to grant the applicant access to the report of 29 July 2017 drawn up following the mediation mission carried out by the Head of the 'Mission Support' Division.