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COURT OF JUSTICE OF THE EUROPEAN UNION

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Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 298, 8.10.2011

Past publications

OJ C 282, 1.10.2011

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OJ C 238, 13.8.2011

OJ C 232, 6.8.2011

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

GENERAL COURT

Appointment of the Registrar

(2011/C 305/02)

The term of office of Mr Emmanuel Coulon, Registrar of the General Court of the European Union, expired on 5 October 2011.

At its Plenary Meeting of 13 April 2011, the General Court decided to renew the term of office of Mr Emmanuel Coulon, in accordance with Articles 20 and 7(3) of the Rules of Procedure, for the period from 6 October 2011 to 5 October 2017 inclusive.

Assignment of Judges to Chambers

(2011/C 305/03)

On 20 September 2011, the General Court decided, following Ms Kancheva's taking up of her duties as a Judge, on her assignment to Chambers and the extension of the assignments of the other Judges until 31 August 2013.

In consequence, the decision of the General Court of 20 September 2010 on the assignment of Judges to Chambers, as amended by the decisions of 26 October 2010 ([1]) and 29 November 2010 ([2]), is amended as follows:

'For the period from 20 September 2011 to 31 August 2013, the assignment of Judges to Chambers is as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Azizi, President of the Chamber, Ms Cremona, Ms Labucka, Mr Frimodt Nielsen and Mr Gratsias, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

Ms Cremona, Judge;

Mr Frimodt Nielsen, Judge.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Schwarcz, Mr Popescu and Ms Kancheva, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;

(a) Mr Dehousse and Mr Popescu, Judges;

(b) Mr Dehousse and Mr Schwarcz, Judges;

(c) Mr Schwarcz and Mr Popescu, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Czúcz, President of the Chamber, Ms Cremona, Ms Labucka, Mr Frimodt Nielsen and Mr Gratsias, Judges.

Third Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;

Ms Labucka, Judge;

([1]) OJ C 317 of 20.11.2010, p. 5
([2]) OJ C 346 of 18.12.2010, p. 2

Mr Gratsias, Judge.

Fourth Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr van der Woude, Judges.

Fourth Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

Ms Jürimäe, Judge;

Mr van der Woude, Judge.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr van der Woude, Judges.

Fifth Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber;

Mr Vadapalas, Judge;

Mr O'Higgins, Judge.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Moavero Milanesi, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Kanninen, Judges.

Sixth Chamber, sitting with three Judges:

Mr Moavero Milanesi, President of the Chamber;

Mr Wahl, Judge;

Mr Soldevila Fragoso, Judge.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Schwarcz, Mr Popescu and Ms Kancheva, Judges.

Seventh Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber;

(a) Ms Wiszniewska-Białecka and Mr Prek, Judges;

(b) Ms Wiszniewska-Białecka and Ms Kancheva, Judges;

(c) Mr Prek and Ms Kancheva, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Kanninen, Judges.

Eighth Chamber, sitting with three Judges:

Mr Truchot, President of the Chamber;

Ms Martins Ribeiro, Judge;

Mr Kanninen, Judge.

In the Second and Seventh Chambers, sitting in Extended Composition with five Judges, the Judges who will sit with the President of the Chamber to make up the extended formation of five Judges will be the other two Judges of the formation initially hearing the case, the fourth Judge of that Chamber and a Judge of the other Chamber of four Judges. The last-mentioned Judge, who must not be the President of the Chamber, will be designated for one year in accordance with a rota in the order laid down in Article 6 of the Rules of Procedure of the General Court.'

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Action brought on 19 July 2011 — European Commission v Kingdom of Belgium

(Case C-387/11)

(2011/C 305/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Mölls and C. Soulay, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by maintaining different rules for the taxation of income from capital and immovable property earned by Belgian investment companies and the taxation of income from capital and immovable property earned by foreign investment companies, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 and 63 of the Treaty on the Functioning of the European Union and Articles 31 and 40 of the European Economic Area Agreement;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By the present action, the Commission criticises the different treatment of resident investment companies and non-resident investment companies as regards taxation of revenue from capital and immovable property. Unlike resident investment companies, non-resident investment companies which do not have a fixed establishment in the national territory are not permitted to recover the amount paid by way of withholding tax on income from capital and immovable property. That discrimination is incompatible with the provisions of the Treaty on freedom of establishment, inasmuch as it makes the founding of non-resident investment companies less attractive, and with the provisions of the Treaty on free movement of capital, inasmuch as the financing of a Belgian company by a foreign investment company is more costly than financing through a Belgian investment company.

Furthermore, the Commission rejects the justifications put forward by the Belgian authorities. First of all, the Belgian authorities did not plead objective grounds justifying the conclusion that there is any difference between the situations of resident investment companies and non-resident investment companies which is relevant to their tax status. Secondly, the tax scheme in question bears no relation to a balanced division of the power of taxation between the States concerned. In any event, a member State cannot rely on a bilateral convention to escape from its obligations under the Treaty. Finally, as regards the alleged risk of tax fraud by non-resident investment companies, the Belgian authorities cannot rely on obstacles to tax inspections which result from the provisions adopted by Belgium itself to justify failure to apply the freedoms guaranteed by the Treaty.

Action brought on 25 July 2011 — European Commission v Kingdom of Belgium

(Case C-391/11)

(2011/C 305/05)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Patakia and A. Marghelis, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt the legislative, regulatory and administrative measures necessary to transpose correctly the provisions of Article 2(1) and (3) and Article 5(1), (2) and (4) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2000/53/EC expired on 21 April 2002. However, at the date on which the present action was brought, the defendant had not yet adopted the measures necessary to transpose the directive or, at least, had not informed the Commission of them.

([1]) OJ 2000 L 269, p. 34.

GENERAL COURT

Judgment of the General Court of 7 September 2011 — Meredith v OHIM (BETTER HOMES AND GARDENS)

(Case T-524/09) ([1])

(Community trade mark — Application for the Community word mark BETTER HOMES AND GARDENS — Absolute ground for refusal — Partial refusal by the examiner to register the mark — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 305/06)

Language of the case: English

Parties

Applicant: Meredith Corp. (Des Moines, United States of America) (represented by: R. Furneaux and E. Hardcastle, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, Agent)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 September 2009 (Case R 517/2009-2), concerning an application for registration of the word sign BETTER HOMES AND GARDENS as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Meredith Corp. to pay the costs.*

([1]) OJ C 51, 27.2.2010.

Judgment of the General Court of 8 September 2011 — MIP Metro v OHIM — Metronia (METRONIA)

(Case T-525/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark METRONIA — Earlier national figurative mark METRO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 305/07)

Language of the case: English

Parties

Applicant: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Metronia, SA (Madrid, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 October 2009 (Case R 1315/2006-1), concerning opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and Metronia, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders MIP Metro Group Intellectual Property GmbH & Co. KG to pay the costs.*

([1]) OJ C 80, 27.3.2010.

Action brought on 8 August 2011 — Western Digital and Western Digital Ireland v Commission

(Case T-452/11)

(2011/C 305/08)

Language of the case: English

Parties

Applicants: Western Digital Corp. (Dover, Delaware, United States) and Western Digital Ireland, Ltd (Grand Cayman, Cayman Islands) (represented by: F. González Díaz, lawyer, and P. Stuart, Barrister)

Defendant: European Commission

Form of order sought

— Order the defendant to produce the questionnaires sent by it to third parties during the first phase and second phase of its investigation into the proposed acquisition by Western Digital Corporation of Viviti Technologies Ltd. and into the proposed acquisition by Seagate of the hard disk drive business of Samsung Electronics Co. Ltd.;

— Order the defendant to grant access to its pre-notification and post-notification file in the Seagate transaction, including, in particular, access to the non-confidential versions of any correspondence and records of contacts between Seagate, Samsung, and the Commission until the notification date, and any internal communications within the Commission – in both the Seagate/Samsung and Western Digital Ireland/Viviti Technologies cases – concerning the prioritization of the two transactions;

— Annul the priority decision included in the Decision (2011/C 165/04) of the European Commission of May 30, 2011, in Case COMP/M.6203 – Western Digital Ireland/ Viviti Technologies, to open a second phase investigation with regard to the proposed concentration, in accordance with Article 6(1)(c) of Council Regulation No 139/2004 [1] (OJ 2011 C 165, p. 3); and

— Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging the defendant lacks the powers to adopt a priority rule based on the date of notification of a concentration.

2. Second plea in law, alleging that the defendant committed an error of law and violated the general principles of fairness and good administration, as:

   — The priority rule chosen by the defendant has no basis in EU law, does not follow from settled case-law, and is not inherent in the merger control system;

   — The priority rule chosen by the defendant leads to unsound policy outcomes; and

   — The priority rule chosen by the commission violates general principles of law.

3. Third plea in law, alleging that the defendant breached applicants' legitimate expectations that the proposed acquisition by Western Digital Corporation of Viviti Technologies Ltd. would be assessed against the market structure that prevailed when it was signed, announced and pre-notified to the Commission.

4. Fourth plea in law, alleging that the defendant breached the principles of good administration, fairness, proportionality and non-discrimination, by imposing additional burdens on the applicants, and by not disclosing the fact that there was a parallel transaction affecting the same relevant markets.

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

Action brought on 29 July 2009 — Barloworld v Commission

(Case T-459/11)

(2011/C 305/09)

Language of the case: Spanish

Parties

Applicant: Barloworld International, S.L. (Madrid, Spain) (represented by F. Alcaraz Gutierrez and A.J de la Cruz Martínez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1(1) of the contested decision (Commission Decision of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions No C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain) in that it declares that Article 12 of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (the consolidated text of the Spanish Company Tax Act) contains elements of State aid regulated by Article 107(1) TFEU and lacks the reasoning required by Article 296 TFEU;

— or, in accordance with the principle of protection of legitimate expectations, annul Article 1(2) and (3) of the decision the object of these proceedings, in that it does not allow transactions effected from the date on which the Commission's Opening Decision was published (21 December 2007) to the date on which the contested decision was published (21 May 2011) to continue to apply the fiscal deduction under Article 12(5) TRLIS throughout the period of amortisation;

— or, annul Article 1(4) and (5) of the decision the object of these proceedings, in that it gives no reasons for establishing a scheme on the basis that legal obstacles to legal barriers to cross-border business combinations have supposedly not been demonstrated, and

— order the Commission of the European Union to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant puts forward four pleas in law.

1. The first plea in law, alleging infringement of Article 107(1) TFEU, inasmuch as Article 12(5) TRLIS does not meet the conditions for being regarded as State aid.

   — Article 12(5) TRLIS, considered in the Spanish tax system as a whole, does not constitute an economic advantage for the purpose of Article 107(1) TFEU. On the other hand, the measure at issue is general in nature, for it cannot be concluded that is in fact selective, in the terms recognised by the Commission's legal opinion and Community case-law.

2. The second plea in law, claiming that the contested decision is supported by no reasoning at all

   — The Decision lacks the reasoning called for by Article 296 TFEU, inasmuch as the Commission has not therein carefully and impartially examined all relevant matters, nor given reasons enough for the conclusions of that decision. What particularly attracts attention is the insufficient reasoning in analysing whether or not there are legal barriers to cross-border business combinations.

3. The third plea in law, arguing that the measure is in keeping with Article 107(3) TFEU

   — Amortising of financial goodwill pursues the aim, for want of fiscal harmonisation at EU level, of removing obstacles to cross-border investment, for it obviates the negative effect of barriers to cross-border and national business combinations, which ensures that decisions adopted concerning those transactions are not based on fiscal considerations, but rather on purely economic considerations.

4. The fourth plea in law, alleging breach of the principle of the protection of legitimate expectations, given that the transitional scheme arising from the application of that principle ought to be applied until the date on which the Decision was published in the *OJEU*, i.e., 21 May 2011.

   — The Decision on extra-EU acquisitions was maintained pending resolution, it being expressly stated in the first Decision on intra-EU acquisitions that there may, outside the EU, persist legal barriers to cross-border business combinations that would place such transactions in a different situation of law and fact from that of intra-Community transactions. The first Decision therefore led certain undertakings to entertain legitimate expectations regarding the Spanish legislation, especially in the light of the knowledge that, in the vast majority of jurisdictions, it is in fact impossible to effect cross-border business combinations outside the European Union.

Action brought on 26 August 2011 — Globula v Commission

(Case T-465/11)

(2011/C 305/10)

Language of the case: English

Parties

Applicant: Globula a.s. (Hodonín, Czech Republic) (represented by: M. Petite, D. Paemen, A. Tomtsis, D. Koláček and P. Zákoucký, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's Decision dated 27 June 2011 ordering the Czech Republic to withdraw the notified decision of the Czech Ministry of Industry and Trade of 26 October 2010 granting the applicant temporary exemption from the obligation to provide negotiated third party access to a planned Underground Gas Storage Facility in Dambořice (C(2011) 4509); and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant wrongly applied Article 36(9) of the Third Gas Directive ([1]), instead of applying Article 22(4) of the Second Gas Directive ([2]). As a result, the defendant incorrectly issued the contested decision in the form of a binding decision instead of an informal request. Furthermore, relying on the time period under Article 36(9) of the Third Gas Directive the defendant issued the contested decision late, as under the Second Gas Directive the original time period could only be extended by one additional month. As a result the contested decision is of no legal effect.

2. Second plea in law, alleging that the defendant infringed the applicant's legitimate expectations when it first provided precise, unconditional and consistent assurances as to when and under what circumstances the notified decision of the Czech Ministry of Industry and Trade would become final, later unequivocally reconfirmed this and then, unexpectedly, issued the contested decision inconsistent with its previous statements.

3. Third plea in law, alleging that the defendant infringed the Treaties and the rules of law relating to their application. In this regard, the contested decision applied incorrect substantive law. The applicant contends that the applicable substantive rules in light of which the Commission should have reviewed the notified decision are to be found in Article 22 of the Second Gas Directive. The Commission therefore infringed the principles of legal certainty and the applicant's legitimate expectations.

4. Fourth plea in law, alleging that the defendant committed a manifest error in assessment of the facts when it wrongly rejected the explanation offered by the Czech Ministry of Industry and Trade that the applicant was and remains unable to find a reliable long-term partner under the storage capacity allocation rules of Czech law, applicable both at the time when the applicant filed the application for an exemption to the Ministry as well as today.

([1]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94)

([2]) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57)

Action brought on 5 September 2011 — Éditions Jacob v Commission

(Case T-471/11)

(2011/C 305/11)

Language of the case: French

Parties

Applicant: Éditions Odile Jacob SAS (Paris, France) (represented by: O. Fréget, M. Struys and L. Eskenazi, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision SG-Greffe (2011) D/C(2011)3503 of 13 May 2011, adopted in Case COMP/M.2978 Lagardère/Natexis/VUP following the judgment of the General Court of 13 September 2010 in Case T-452/04 *Éditions Odile Jacob* v *Commission*, by which the Commission once again approved Wendel as purchaser of the assets transferred in accordance with the commitments attached to the Commission's decision of 7 January 2004 authorising the concentration Lagardère/Natexis/VUP;

— 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 it was clearly impossible for the Commission to adopt a confirmatory decision — with, moreover, retroactive effect — which validated *ex post facto* the approval of Wendel as purchaser of Editis. The applicant maintains that:

   — by acting in that way, without drawing any of the conclusions entailed by the Court's finding of illegality related to the lack of independence of the trustee responsible for overseeing that transfer, the Commission infringed Article 266 TFEU;

   — by setting 30 July 2004 as the date on which the contested decision became effective, the Commission infringed the principle of non-retroactivity, disregarding the case-law of the Court of Justice, which allows retroactivity, by way of an exception, only if two conditions are met — that it is required by overriding reasons related to the public interest and that the legitimate expectations of the persons concerned have been duly respected.

2. Second plea in law, alleging that there was no legal basis for the contested decision, since the Commission's decision of 7 January 2004 authorising the concentration had ceased to apply following the Court's finding that Lagardère had failed to comply with some of the commitments.

3. Third and fourth pleas in law, alleging that the Commission made errors of law and manifest errors of assessment in its appraisal of Wendel's bid, both in 2004 and in the new decision granting approval; it also alleged that the Commission had made errors deriving, first, from its taking into account, when adopting the contested decision, facts subsequent to 30 July 2004 and, second, from those later facts being used in a selective and partial manner.

4. Fifth plea in law, alleging misuse of powers inasmuch as, by adopting *ex post facto* a decision retroactively approving an unlawful transfer and approving a new trustee whose only task was to draw up a further report confirming Wendel's suitability as a purchaser of the assets transferred, the Commission failed to apply Article 266 TFEU and Regulation No 4064/89 [1] for their proper purpose, Regulation No 4064/89 providing, inter alia, for the possibility of revoking the clearance decision and penalising the parties responsible for the illegality.

5. Sixth plea in law, alleging that the statement of reasons is defective since the reasoning in the contested decision is both inadequate and contradictory.

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[1] Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1; entire text republished following correction in OJ 1990 L 257, p. 13).

Order of the General Court of 30 August 2011 — PASP and Others v Council

(Case T-177/11) [1]

(2011/C 305/12)

Language of the case: French

The President of the Fifth Chamber has ordered that the case be removed from the register.

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[1] OJ C 145, 14.5.2011.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 28 July 2011 — ZZ v Council

(Case F-75/11)

(2011/C 305/13)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis, E. Marchal and S. Orlandi, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the Appointing Authority's decision not to promote the applicant to Grade AST 7 in the 2007 promotion exercise

Form of order sought

— Annulment of the Appointing Authority's decision of 18 April 2011 to reject the applicant's complaint against the decision not to promote him to Grade AST 7 in the 2007 promotion exercise;

— So far as necessary, annulment of the Appointing Authority's decision not to promote the applicant to Grade AST 7 in the 2007 promotion exercise;

— An order that the Council pay the costs.

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