3. Third plea in law, alleging a manifest error of assessment in that the Commission refused to accept a rate of 7 % as the discount rate for the exceptional flat-rate contribution.

Action brought on 12 April 2012 — Deutsche Börse v Commission

(Case T-175/12)

(2012/C 174/42)

Language of the case: English

Parties

Applicant: Deutsche Börse AG (Frankfurt am Main, Germany) (represented by: C. Zschocke, J. Beninca and T. Schwarze, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission Decision COMP/M.6166 Deutsche Börse/NYSE Euronext of 1 February 2012; and

— Order the defendant to pay the costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to properly assess the horizontal competitive constraints to which the parties are subject to, alleging that the Commission's consideration of over-the-counter ('OTC') derivatives trading and its claim that the constraints the parties supposedly exercise on each other's exchange fees was vitiated by errors of law and assessment. In addition, the Commission's claim that the parties constrain each other through innovation competition is manifestly incorrect and its analysis of competition among trading platforms was not based on cogent and consistent evidence. Furthermore, the Commission failed to properly consider the demand-side constraints because it failed to analyze and assess the crucial role of the parties' customers among which are the main participants of OTC trading, and to carry out any quantitative analysis.

2. Second plea in law, alleging that the defendant's assessment of the parties' efficiencies claims was vitiated by manifest errors and not supported by cogent and consistent evidence. The Commission inaccurately accepted only some of the efficiencies as verifiable, merger-specific and likely to directly benefit customers, and incorrectly claimed that they were insufficient to counteract the competitive effects of the merger. In relation to its evaluation of both collateral savings and liquidity benefits, the Commission violated the parties' right to be heard by relying on evidence and arguments introduced after the oral hearing on which the parties were not given opportunity to comment. The Commission's 'claw back' theory and its assessment of the merger-specificity of collateral savings were based on new theories and requirements that are not supported by the Commission's Horizontal Merger Guidelines ([1]).

3. Third plea in law, alleging that the defendant failed to properly assess the remedies offered by the parties. The rejection of the commitment concerning the full divestiture of NYX' (the applicant and NYSE Euronext) overlapping single equity derivatives business, including the divestiture of NYX' BClear facility, was based on incorrect evidence. The alleged 'symbiotic relationship' between single equity and equity index derivatives does not exist, contradicts the Commission's own market definition analysis, and was raised in violation of the parties' right of defence. The Commission's rejection of the software licensing commitment is vitiated by error and contradicts its conclusions regarding technology competition.

([1]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5)

Action brought on 16 April 2012 — Bank Tejarat v Council

(Case T-176/12)

(2012/C 174/43)

Language of the case: English

Parties

Applicant: Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, and F. Zaiwalla, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 19, p. 22), insofar as it relates to the applicant;

— Annul paragraph 2 of table I.B. of Annex I to Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ L 19, p. 1), insofar as it relates to the applicant;

— Annul paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, p. 1), insofar as it relates to the applicant;

— Declare Article 20(1) of Council Decision 2010/413/CFSP inapplicable to the applicant;

— Declare Article 23(2) of Council Regulation (EU) No 267/2012 inapplicable to the applicant;

— Declare that the annulment of paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP and Council Implementing Regulation (EU) No 54/2012 and paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 has immediate effects; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that the substantive criteria for designation under the contested measures are not met in the applicant's case and there is no legal or factual basis for its designation; and/or that the Council committed a manifest error of assessment in determining whether or not the criteria had been met; and

   — that the Council designated the applicant on the basis of insufficient evidence to establish that the criteria had been met and thereby committed a (further) manifest error of assessment, since the applicant does not satisfy any of the five criteria for designation provided for in Article 23(2) of Regulation No 267/2012; and that the Council has provided no evidence as to the contrary.

2. Second plea in law, alleging

   — that the designation of the applicant is in violation of its fundamental rights and freedoms, including its right to trade and carry out its business activities and to peaceful enjoyment of its possessions and/or is in violation of the principle of proportionality.

3. Third plea in law, alleging

   — that the Council has in any event breached the procedural requirements: (a) to notify the applicant individually of its designation, (b) to give adequate and sufficient reasons and (c) to respect the rights of defence and the right to effective judicial remedies.

Action brought on 20 April 2012 — Spraylat v ECHA

(Case T-177/12)

(2012/C 174/44)

Language of the case: German

Parties

Applicant: Spraylat GmbH (Aachen, Germany) (represented by: K. Fischer, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— annul the administrative charge made known to it by the defendant on 21 February 2012 (invoice No 10030371);

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

As a precautionary claim, the applicant seeks the annulment of Decision SME(2012)1445 of 15 February 2012.

Pleas in law and main arguments

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

1. First plea in law: infringement of Regulation (EC) No 1907/2006 ([1]) and of Regulation (EC) No 340/2008 ([2])

   The applicant submits that, as evidenced by both of the regulations, the sole permissible ground for the levying of an administrative charge under Article 13(4) of Regulation No 340/2008 is to cover the costs incurred by the ECHA in verifying a registration in relationship to the size of an undertaking, and that this was not taken into account when determining the administrative charge in accordance with the decision of the ECHA administrative council (MB/29/2010). It further submits that it is not permissible to determine the administrative charge payable on the basis of the size of an undertaking, since this leads to a situation whereby larger undertakings bear the brunt of the costs involved in the evaluation of smaller undertakings.