2. infringement of the principle of the right to a fair hearing and trial,

3. infringement of Article 69 (c) and (d) of the Rules of Procedure of the General Court,

4. infringement of Article 8(1)(b) CTMR ([1]).

The Applicant is of the opinion that its fundamental right to be heard has not been respected by the General Court as (1) the Registrar of the General Court informed the Applicant on 3 July 2015 that the Applicant's submission — informing the General Court that the trademark forming the basis of the opposition *ex tunc* no longer exists — could not be taken into consideration and (2) as the judgment of the General Court issued on 15 July 2015 did not mention at all the fact that the other party's trade mark on which the opposition was mainly based no longer existed at the time of the judgment.

The Applicant is of the opinion that its fundamental right to a fair trial has been violated by the General Court as (1) the General Court denied the Applicant's request for a stay of the proceedings and consequently ignored the fact, that the request for revocation filed by the Applicant on 13 June 2013, as well as the cancellation request based on absolute ground filed by the Applicant on 5 January 2015 against the other party's trade mark, are legitimate means of defense which impact directly on the outcome of the present proceedings and (2) as the General Court refused to take the Applicant's observations of 12 June 2015 into consideration.

The Applicant is of the opinion that the General Court infringed Article 69 (c) and (d) of the Rules of Procedure of the General Court when it rejected both requests by the Applicant to stay the proceedings without any explanation, although in both cases the Defendant did not have any objections against such a stay of the proceedings and the Applicant provided substantial reasons why a stay of the proceedings appeared necessary.

The Applicant is of the opinion that the General Court infringed Article 8 (1) (b) CTMR as it erred in law and distorted relevant facts of the case since the assessment of likelihood of confusion was based on a mark which was revoked on 22 May 2015, with effect from 13 June 2013; thus before the Applicant filed its action before the General Court on 17 June 2013, and before the General Court issued its decision. Consequently, at the time of the judgment on 15 July 2015, the other party's Community trade mark No. 003915121, word/device:, could neither be taken into consideration nor could any conclusions be based on said mark.

Finally, the Applicant requests the Court, should it conclude that the judgment of the General Court of 15 July 2015 has become devoid of purpose, due to the fact that the other party's mark on which the opposition was based has been revoked in its entirety with effect from 13 June 2013, to declare that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

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

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 17 September 2015 — CTL Logistics GmbH v DB Netz AG

(Case C-489/15)

(2015/C 406/18)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: CTL Logistics GmbH

Defendant: DB Netz AG

Questions referred

1. Are the provisions of European law, in particular Article 30(1) (first sentence), (2), (3), (5) (first subparagraph), and (6) of Directive 2001/14/EC, ([1]) to be interpreted as precluding claims for repayment of charges for the use of railway infrastructure agreed or specified in a framework contract between an infrastructure manager and an applicant in so far as such claims are not made in the proceedings envisaged as taking place before the national regulatory body and the corresponding judicial proceedings in which decisions of that regulatory body are reviewed?

2. Are the provisions of European law, in particular Article 30(1) (first sentence), (2), (3), (5) (first subparagraph), and (6) of Directive 2001/14/EC, to be interpreted as precluding claims for repayment of charges for the use of railway infrastructure agreed or specified in a framework contract between an infrastructure manager and an applicant if the disputed charges have not previously been submitted to the national regulatory body for review?

3. Is it compatible with the requirements of EU law, which requires an infrastructure manager to comply with general requirements for setting charges, such as covering costs (Article 6(1) of Directive 2001/14/EC) or taking into account market sustainability criteria (Article 8(1) of Directive 2001/14/EC), for there to be a review in the civil courts of the equitable nature of charges for the use of railway infrastructure on the basis of a national civil law provision which permits the courts to review the fairness of performance unilaterally specified by one of the parties and, where appropriate, to specify performance themselves in the exercise of their own discretion?

4. If question 3 is answered in the affirmative: in exercising its discretion, must the civil court apply the criteria in Directive 2001/14/EC as regards the setting of charges for the use of railway infrastructure, and, if so, which ones?

5. Is the assessment by the civil courts of the fairness of charges on the basis of the national provision referred to in question 3 compatible with European law in so far as the civil courts set charges which depart from the general charging principles and the amounts of the charges of a railway manager, notwithstanding the fact that that railway manager is obliged by EU law to treat all persons entitled to access equally and in a non-discriminatory manner (Article 4(5) of Directive 2001/14/EC)?

6. Is the review by the civil courts of the equitable nature of charges imposed by an infrastructure manager compatible with EU law taking into account the fact that EU law assumes that it is the regulatory body that is competent to determine differences of opinion between an infrastructure manager and a person entitled to access as regards charges for the use of railway infrastructure, or the amount or structure of such charges, which the person entitled to access is or would be obliged to pay (third subparagraph of Article 30(5) of Directive 2001/14/EC), and the fact that the potentially large number of disputes before different civil courts means that the regulatory body would not be able to ensure the uniform application of railway regulatory law (Article 30(3) of Directive 2001/14/EC)?

7. Is it compatible with EU law, in particular Article 4(1) of Directive 2001/14/EC, for national provisions to require that all charges for the use of railway infrastructure imposed by infrastructure managers be calculated solely on the basis of direct costs?

(1) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

Appeal brought on 18 September 2015 by Ori Martin SA against the judgment of the General Court (Sixth Chamber) delivered on 15 July 2015 in Joined Cases T-389/10 and T-419/10

(Case C-490/15 P)

(2015/C 406/19)

Language of the case: Italian

Parties

Appellant: Ori Martin SA (represented by: G. Belotti and P. Ziotti, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

(1) primarily: set aside the judgment under appeal in so far as, by that judgment, the General Court of the European Union dismissed its action in Case T-419/10 to the extent that it sought the annulment of the contested decision for unlawfully extending joint liability to the appellant for acts committed by its subsidiary SLM; set aside the judgment for infringement of Article 47 of the Charter of Fundamental Rights [of the European Union] or, alternatively, grant the appellant fair compensation;

(2) in the alternative: amend the judgment under appeal, giving a definitive ruling on the dispute and, exercising its unlimited jurisdiction, reducing the fine imposed on the appellant, taking into account (i) the evidence produced in the proceedings at first instance, (ii) the sanctioning Guidelines in force at the time of the alleged events, and (iii) the shorter period of participation in the cartel which, for SLM/ORI, started at the end of 1999, the only date for which there is consistent evidence available to support allegations of such participation;

in any event: order the European Commission to pay the costs.

Grounds of appeal and main arguments

ORI raises, in essence, [five] grounds of appeal, intended to show that the General Court:

(a) redefined, in a way that was disproportionate and inconsistent with the evidence produced, the fine imposed on the appellant, thereby infringing Article 49(3) of the Charter of Fundamental Rights and the established principles of EU law on the subject of the proportionality of antitrust sanctions as well as the duty to state reasons;