

The Commission takes the view that by levying an extraordinary contribution which was intended to cover the costs of universal services during the period prior to the adoption of Law No 35/2012, the Portuguese Republic has failed to comply with the principles of transparency, least market distortion, non-discrimination and proportionality, as required by Article 13(3) and Part B of Annex IV to the Universal Service Directive.

(¹) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Appeal brought on 25 January 2019 by Sigma Alimentos Exterior, S.L. against the judgment of the General Court (Ninth Chamber) delivered on 15 November 2018 in Case T-239/11 Sigma Alimentos Exterior v Commission

(Case C-50/19 P)

(2019/C 112/35)

Language of the case: Spanish

Parties

Appellant: Sigma Alimentos Exterior, S.L. (represented by: M. Muñoz Pérez, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant submits that the Court should:

- Uphold the present appeal;
- Set aside the judgment of the General Court of 15 November 2018, given in Case T-239/11; (¹)
- Annul Article 1(1) of Commission Decision 2011/282/EU of 12 January 2011; (²)
- In the alternative, annul Article 4 of the contested decision;
- Order the European Commission to pay the costs.

Grounds of appeal and main arguments

The present appeal is based on two grounds, the second of which is divided into three parts:

- Incorrect interpretation of the judgment in *World Duty Free*, (³) setting erroneous comparability criteria which lead, in turn, to an incorrect assessment of the existence of selectivity and, accordingly, to the assessment of unlawful aid, thus infringing the provisions of Article 107 TFEU;
- Error in holding, on the basis of an erroneous analysis of the three-step method used by the Commission in determining whether there was unlawful aid, that the finding that there may be legal obstacles to cross-border combinations does not preclude the contested measure being selective. The judgment therefore errs in the following respects:
 - Error in the identification of the national common tax scheme, infringing the provisions of Article 107 TFEU relating to the categorisation of unlawful State aid;

- Error in failing to find that the measure examined was a general measure, thus also infringing the provisions of Article 107 TFEU;
- Error in the assessment of whether there was an exception to the national common tax scheme as a reference framework, thereby infringing Article 107 TFEU.

The appellant submits that the General Court of the European Union has committed various infringements of Article 107 (1) TFEU and of the principle of fiscal neutrality and that, in various respects, it has essentially supplemented the reasoning set out by the Commission in the contested decision or even replaced it with its own, which would, in itself, constitute sufficient grounds for setting aside the judgment under appeal.

⁽¹⁾ Judgment of 15 November 2018, *Sigma Alimentos Exterior v Commission* (T-239/11, not published, EU:T:2018:781).

⁽²⁾ Commission Decision 2011/282/EU 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 (OJ 2011 L 135, p. 1).

⁽³⁾ Judgment of 21 December 2016, *Commission v World Duty Free Group and Others* (C-20/15 P and C-21/15 P, EU:C:2016:981).

Appeal brought on 25 January 2019 by World Duty Free Group, S.A., formerly Autogrill España, S.A., against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 15 November 2018 in Case T-219/10 RENV, World Duty Free Group v Commission

(Case C-51/19 P)

(2019/C 112/36)

Language of the case: Spanish

Parties

Appellant: World Duty Free Group, S.A., formerly Autogrill España S.A. (represented by: J. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados)

Interveners in support of the applicant at first instance: Kingdom of Spain, Federal Republic of Germany, and Ireland

Other party to the proceedings: European Commission

Form of order sought

The appellant submits that the Court should:

- Set aside the judgment of the General Court of 15 November 2018;
- Uphold the application for annulment and definitively annul the contested decision; and
- Order the European Commission to pay the costs.

Grounds of appeal and main arguments

On 15 November 2018, the General Court gave judgment in Case T-219/10 RENV, *World Duty free Group, S.A. v European Commission*, ⁽¹⁾ against which this appeal is brought. The judgment dismissed the appellant's action against the European Commission's decision of 28 October 2009, ⁽²⁾ on 'financial goodwill' regulated by Article 12.5 of the Spanish Ley de Impuesto sobre Sociedades (Law on Corporation Tax).

In support of its appeal, the appellant relies on a single ground of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), in relation to the concept of 'selectivity'.