

Defendant: CX

Questions referred

1. Does the term ‘public’ in Articles 3(1) and 4(1) of Directive 2001/29/EC ⁽¹⁾ of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society have a uniform meaning?
2. If question 1 is answered in the affirmative, is a court to be regarded as falling within the scope of the term ‘public’ within the meaning of those provisions?
3. If question 1 is answered in the negative:
 - (a) in the event of communication of a protected work to a court, can that court fall within the scope of the term ‘public’?
 - (b) in the event of distribution of a protected work to a court, can that court fall within the scope of the term ‘public’?
4. Does the fact that national legislation lays down a general principle of access to public documents in accordance with which any person who makes a request can access procedural documents submitted to a court, except where they contain confidential information, affect the assessment of whether submission to a court of a protected work amounts to a ‘communication to the public’ or a ‘distribution to the public’?

⁽¹⁾ OJ 2001 L 167, p. 10.

Appeal brought on 30 August 2019 by Ja zum Nürburgring eV against the judgment of the General Court (First Chamber, Extended Composition) delivered on 19 June 2019 in Case T-373/15, Nürburgring eV v European Commission

(Case C- 647/19 P)

(2019/C 372/22)

Language of the case: German

Parties

Appellant: Ja zum Nürburgring eV (represented by: D. Frey et M. Rudolph, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of 19 June 2019 in Case T-373/15;
2. annul Commission Decision C(2014) 3634 final of 1 October 2014 in so far as it found that
 - a. the company which acquired the assets sold in the tender, Capricorn Nürburgring Besitzgesellschaft GmbH, and its subsidiaries are not concerned by any recovery of aid which it incompatible with the internal market and
 - b. the sale of the assets of Nürburgring GmbH, Motorsport Resort Nürburgring GmbH and Congress- und Motorsport Hotel Nürburgring GmbH did not amount to State aid to Capricorn Nürburgring Besitzgesellschaft GmbH or its subsidiaries;

3. in the alternative, set aside the judgment under appeal and refer the case back to the General Court
4. order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant relies on five grounds of appeal.

1. The General Court erred in law in finding that there was no effect on the appellant as a competitor:

The General Court disregarded the pleas in law and arguments advanced by the appellant which are clear from the evidence and therefore breached the obligation to state reasons. The reasoning of the General Court is flawed and, in any event, insufficient. In addition, it breached the rights of the defence and the appellant's right to an effective remedy (Article 47 of the Charter). Furthermore, the General Court erred in interpreting and applying the fourth paragraph of 263 TFEU.

2. The General Court erred in law in finding that there was no effect on the appellant as a trade association:

The General Court disregarded the pleas in law and arguments advanced by the appellant which are clear from the evidence and therefore breached the obligation to state reasons. The reasoning of the General Court is flawed and, in any event, insufficient. In addition, it also breached in that regard the rights of the defence and the appellant's right to an effective remedy (Article 47 of the Charter). Furthermore, the General Court erred in interpreting and applying the fourth paragraph of 263 TFEU.

3. The General Court erred in procedure and law in finding that the appellant had no standing to bring an action as a competitor nor as a trade association in respect of the second decision at issue:

For the reasons relating to the first and second grounds of appeal, the General Court erred by finding that the appellant had no standing in respect of the second decision at issue.

4. The General Court erred in law in disregarding the Commission's obligation to initiate the formal investigation procedure regarding the grant of new aid by way of the sale of assets to Capricorn:

The General Court erred in law in finding, in breach of Articles 107 and 108(2) TFEU, of the obligation to state reasons, of the rights of the defence and of the right to an effective remedy, and in distorting the facts and evidence, that there had been an open, transparent, non-discriminatory and unconditional tender. The market price was not determined in that way. That should have raised doubts which should have led the Commission to initiate the formal investigation procedure.

5. The General Court erred in its legal reasoning in respect of the Commission's failure to state reasons concerning the second decision at issue:

The General Court erred in disregarding the fact that the Commission breached its obligation to state reasons in respect of the decisions at issue.
