

**Form of order sought**

- Set aside and/or vary the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/085;
- Annul the Commission Decision of 3 July 2008 (State aid C1/2004 Italy — SG-Greffe (2008) D/204339) concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98'.

**Pleas in law and main arguments**

The appellant relies on two grounds in support of its appeal.

The first ground of appeal concerns breach of Article 107(3) TFEU. In particular, the appellant alleges breach and misapplication of the principle of the necessity of aid and of the principle of the incentive effect, as a result of an excessively formalistic approach, which is contrary to the principle that the substance must take precedence over the form, and failure to take account of specific details relating to issues of transitional law which characterise the case in question.

The second ground of appeal concerns breach of the principles of legal certainty and the protection of legitimate expectations and breach of Article 14 of Regulation (EC) No 659/1999.<sup>(1)</sup> The bases of this ground of appeal arise from the specific inter-temporal circumstances of the case, which were disregarded in the judgment under appeal. The General Court went beyond what is prescribed by the relevant case-law, requiring of the economic operator a degree of diligence that is not possible in practice, given that the requirement that an application for aid be made before work commences is a Community rule which was introduced at exactly the same time as the facts of the case and, therefore, the undertaking could not have been aware of it at the time at which it made its decision.

<sup>(1)</sup> OJ 1999 L 83, p. 1.

**Appeal brought on 8 December 2011 by Timsas Srl against the judgment of the General Court (Fourth Chamber) delivered on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission**

(Case C-632/11 P)

(2012/C 118/14)

*Language of the case: Italian*

**Parties**

*Appellant:* Timsas Srl (represented by: D. Dodaro and S. Pinna, avvocati)

*Other parties to the proceedings:* European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and Others

**Form of order sought**

- Set aside the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 in so far as it rejects the appellant's complaint alleging failure to state reasons with regard to the assessment of the incentive effect of the aid at issue;

- Annul Commission Decision 2008/854/EC of 2 July 2008 concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98' C/104 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9);

- the European Commission to pay the costs of the appeal proceedings.

**Pleas in law and main arguments**

The judgment under appeal is flawed on the basis that it distorts the pleas in law relied on in the application; error of law and illogical and inconsistent reasoning. In particular, the appellant submits that the General Court failed to give reasons, even implicitly, for rejecting the complaint alleging manifest error on the part of the Commission in its assessment of the incentive effect of the aid. The General Court stated that 'it is necessary ... only to consider whether the applicants have demonstrated, in the present case, the existence of circumstances such as to ensure the incentive effect of the scheme at issue, even where no application had been submitted before work had commenced on the projects in question'. However, it did not state that the applicants had not demonstrated this and nor did it give any reason on the basis of which it would be possible to understand the ground for such a (wholly implicit) belief.

The statement at paragraph 227 of the judgment under appeal that the Commission was not under any obligation to assess the particular circumstances of the individual beneficiaries is insufficient and contradictory. It is impossible to understand how the applicants could substantiate their argument that there was an incentive effect other than by setting out their own individual circumstances: the Commission and the General Court, when the case was brought before it, should have devised a uniform principle enabling an objective assessment of the position of each person represented, which could be regarded as particular or specific to that person only in relation to specific facts, but which nevertheless lends itself to a general and abstract statement.

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

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**Appeal brought on 8 December 2011 by Grand Hotel Abi d'Oru SpA against the judgment delivered by the General Court (Fourth Chamber) on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission**

**(Case C-633/11 P)**

(2012/C 118/15)

*Language of the case: Italian*

**Parties**

*Appellant:* Grand Hotel Abi d'Oru SpA (represented by: D. Dodaro and R. F. Masuri, avvocati)

*Other parties to the proceedings:* European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and others

**Form of order sought**

— Set aside the judgment of the General Court of the European Union of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 in so far as it:

- (a) rejects the appellant's complaint alleging breach of the obligation to notify the adjustment decision laid down in Article 254(3) EC and Article 20(1) of Regulation (EC) No 659/1999 <sup>(1)</sup> (paragraphs 103 to 112 of the judgment);
- (b) rejects the appellant's complaint alleging failure to state adequate reasons with regard to the assessment of the incentive effect of the aid at issue (paragraphs 136 to 145 and 218 to 228 of the judgment)

on the grounds of distortion of the pleas in law relied on in the application, error of law and illogical and inconsistent reasoning;

— annul Commission Decision 2008/854/EC of 2 July 2008 concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98' C/104 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9);

— order the European Commission to pay the costs of the appeal proceedings.

**Pleas in law and main arguments**

The judgment under appeal is defective as a result of misapplication of Article 254 EC and Regulation (EC) No 659/99 and illogical and inconsistent reasoning, in so far as it states that 'the adjustment decision was directed solely at the Italian Republic and not the beneficiaries of the scheme at issue. Consequently, Article 254(3) EC did not require the Commission to notify the adjustment decision to Grand Hotel Abi d'Oru' (paragraph 107 of the judgment). In the appellant's view, that reasoning is inconsistent with paragraphs 71 and 72 of the judgment under appeal.

The judgment under appeal fails to recognise the different functions of an adjustment decision and a decision to open a formal investigation, and the fact that the latter is a step in a procedure that has already been instigated requires, in the appellant's view, account to be taken of the parties who have in fact already participated in that procedure. The error made by the General Court in equating the adjustment decision to the decision to initiate the formal investigation procedure entailed an erroneous assessment of the scope of application of Article 20(1) of Regulation No 659/1999.

The judgment under appeal is flawed as a result of distortion of the pleas in law relied on in the application; errors of law and illogical and inconsistent reasoning in so far as the General Court failed to give reasons, even implicitly, for its rejection of the complaint alleging manifest error on the part of the Commission in its assessment of the incentive effect of the aid.

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

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<sup>(1)</sup> OJ 1999 L 83, p. 1.