

In addition, in finding that nothing indicated that the length of the procedure before the FMA had seriously compromised the chances of privatisation of Bank Burgenland, the General Court ignored the hard evidence put forward by the applicant.

Finally, the General Court applied an incorrect standard of examination and review.

Appeal brought on 14 May 2012 by the Republic of Austria against the judgment of the General Court (Sixth Chamber) delivered on 28 February 2012 in Joined Cases T-268/08 and T-281/08 Land Burgenland and Republic of Austria v European Commission

(Case C-223/12 P)

(2012/C 194/26)

Language of the case: German

Parties

Appellant: Republic of Austria (represented by: C. Pesendorfer, Agent)

Other parties to the proceedings: European Commission, Land Burgenland

Form of order sought

- Set aside the judgment of the General Court of 28 February 2012 in Joined Cases T-268/08 and T-281/08;
- give final judgment itself in the matter and annul Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/06) implemented by Austria for the privatisation of Bank Burgenland (OJ 2008 L 239, p. 32) and order the European Commission to pay the costs of the proceedings before the General Court and the Court of Justice;
- in the alternative to the second head of claim above, refer the case back to the General Court for determination in line with the legal assessment contained in the judgment of the Court of Justice, and reserve its decision on costs.

Pleas in law and main arguments

By the present appeal the appellant challenges the judgment of the General Court (Sixth Chamber) of 28 February 2012 in Joined Cases T-268/08 and T-281/08 by which the General Court dismissed the appellant's action against Commission Decision 2008/719/EC of 30 April 2008 on State aid imple-

mented by Austria for the privatisation of Bank Burgenland.

The appellant submits two grounds of appeal:

1. Infringement of Article 107(1) TFEU in so far as it was determined that the Commission did not err in law in its evaluation of the offers by failing to consider the risks arising for the Land Burgenland from the *Ausfallhaftung* (deficiency liability)

The General Court wrongly relies on case-law that is not applicable to the present case or — inasmuch as it is applicable, at least in principle — is inconsistent with the General Court's considerations.

The General Court moreover failed to consider other case-law that is inconsistent with its considerations.

Lastly, the General Court erred in taking the view that the risks arising from the *Ausfallhaftung* could not be taken into account, even though the *Ausfallhaftung* constitutes existing and thus lawful aid.

2. Infringement of Article 107(1) TFEU in so far as it was determined that the Commission did not err in law in finding that neither the outcome nor the length of the procedure before the Austrian Financial Market Authority (FMA) justified the sale of Bank Burgenland to Grazer Wechselseitige Versicherung

The General Court considered the Commission's conclusion that there was no indication that the FMA would forbid the purchase by the consortium to be correct, but erred in proceeding on the assumption that the information supplied by the appellant had not been relevant to the FMA approval process and had not been taken into account by the FMA.

The General Court also overlooked specific evidence adduced by the appellant when it found that there was no indication that the length of the FMA procedure had seriously jeopardised the chances of privatising Bank Burgenland.

Lastly, the General Court applied the wrong standard of assessment and review.