

Action brought on 14 March 2007 — Kliq Reïntegratie (in liquidation) v Commission

(Case T-83/07)

(2007/C 117/39)

Language of the case: Dutch

Parties

Applicant: Jean Leon Marcel Groenewegen, acting in his capacity as receiver in the liquidation proceedings relating to Kliq Reïntegratie B.V., a private company with limited liability (Amersfoort, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the Commission's decision of 19 July 2006 in Case C 30/2005;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Netherlands for KG Holding NV ⁽¹⁾.

The aid measure mentioned related to restructuring aid which the Netherlands wished to grant to KG Holding NV by converting a previously approved rescue loan and the interest payable thereon into equity capital. In the contested decision, the Commission declares the aid measure, in the form of restructuring aid, to be incompatible with the common market.

The Commission also rules that the Netherlands must recover from KG Holding NV and its subsidiary Kliq BV that portion of the aid which KG Holding NV transferred to Kliq BV as a rescue loan and which was converted into equity capital, and that the Netherlands must register with the receiver their claim against KG Holding NV and/or Kliq Reïntegratie as a creditor in the liquidation proceedings.

In support of his application, the applicant submits, first, that the Commission committed errors of appraisal, as a result of which the contested decision is inadequately reasoned and at variance with Article 87(1) EC. The applicant claims in particular that the Commission erred in deciding that the Netherlands had to register with the receiver their claim in the amount of EUR 35.75 million against KG Holding and Kliq Reïntegratie as a creditor in the liquidation proceedings.

The applicant submits in this regard that the Netherlands State has no claim against Kliq Reïntegratie. Furthermore, Kliq Reïntegratie is not an undertaking which was a recipient of State aid

and is also not described as such by the Commission in the contested decision. There is therefore, it is contended, no basis for any recovery by the State against Kliq Reïntegratie or for the application to Kliq Reïntegratie of, in particular, point 23(d) of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁾.

It is also, the applicant contends, unclear whether the Commission concluded in the contested decision, in regard to Kliq Reïntegratie, that there was unlawful aid in the amount of EUR 35.75 million that had to be claimed back by the Netherlands or whether what was in issue was rescue aid which the Commission approved in the contested decision on the basis of point 23(d) of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽³⁾. Further, it is alleged that the Commission, in its decision of 16 December 2003 ⁽⁴⁾, had agreed that this amount was to be used to finance the redundancies of staff members and the redemption of the redundant contracts of Kliq Reïntegratie, and that Kliq Reïntegratie was thereafter to be placed in liquidation.

The applicant submits, second, that the Commission wrongly failed to establish that the alleged aid might be liable to have an adverse effect on competition and trade between Member States; at any rate, the Commission's findings in this regard are inadequately reasoned.

Third, it is submitted that the Commission erred in finding that the alleged aid of EUR 35.75 million had to be recovered from KG Holding and/or Kliq Reïntegratie by registering those claims in the liquidation proceedings. By reason of the liquidation of KG Holding, Kliq Reïntegratie and Kliq BV, recovery of the amounts of alleged aid will, it is argued, be definitively impossible and would in any event be pointless in the sense that recovery through registration in the liquidation proceedings relating to those companies is unnecessary and, indeed, entirely superfluous for the purpose of putting an end to the distortion of competition.

Fourth, it is argued that the Commission erred in its statements and findings in law with regard to a current-account credit facility of EUR 17 million which had already been provided by the Netherlands to KG Holding when the latter was established and was in accordance with the rules on State aid, and which did not form part of the measure under examination in the contested decision.

⁽¹⁾ OJ 2006 L 366, p. 40.

⁽²⁾ OJ 1999 C 288, p. 2.

⁽³⁾ OJ 1999 C 288, p. 2.

⁽⁴⁾ Aid measure N 510/2003 — Rescue aid for Kliq Holding NV (OJ 2004 C 33, p. 8).