

**Pleas in law and main arguments**

The applicant seeks the annulment of the decision C(2008) 1089 final of the Commission of the European Communities of 2 April 2008 by which the Commission declared incompatible with the common market the State aid granted by the applicant and the Région Nord-Pas-de-Calais in favour of Arbel Fauvet Rail SA in the form of advances repayable at an annual rate of interest of 4,08 % corresponding to the Community reference rate applicable when the loan was granted. The Commission considered that, taking into account its financial standing, Arbel Fauvet Rail SA would not have been able to obtain funds on such favourable terms in the financial market.

The pleas in law and main arguments relied on by the applicant are similar to those relied on in Case T-267/08 *Région Nord-Pas-de-Calais v Commission*.

**Action brought on 15 July 2008 — Austria v Commission****(Case T-281/08)**

(2008/C 247/30)

*Language of the case: German***Parties***Applicant:* Republic of Austria (represented by: C. Pesendorfer)*Defendant:* Commission of the European Communities**Form of order sought**

- annul Commission Decision C(2008) 1625 Final of 30 April 2008 on State aid No C 56/2006 (ex NN 77/2006) of Austria for the privatisation of Bank Burgenland;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicant challenges Commission Decision C(2008) 1625 Final of 30 April 2008 in which the Commission decided that the State aid implemented by Austria in breach of Article 88(3) EC for the insurance company Grazer Wechselseitige Versicherung AG and to GW Beteiligungserwerbs- und -verwaltungs-GmbH in connection with the privatisation of HYPO Bank Burgenland AG is incompatible with the common market.

With regard to the grounds of the application, reference is made to the summary of pleas in law relating to Case T-268/08 *Land Burgenland v Commission*.

**Action brought on 17 July 2008 — Grazer Wechselseitige Versicherung v Commission****(Case T-282/08)**

(2008/C 247/31)

*Language of the case: German***Parties***Applicant:* Grazer Wechselseitige Versicherung AG (Graz, Austria) (represented by: H. Wollmann, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- Pursuant to Article 231(1) EC, annul Commission Decision C(2008) 1625 final of 30 April 2008 (No C 56/2006, ex NN 77/2006 — Privatisation of the Bank Burgenland) in its entirety;
- Pursuant to Article 87(2) of the Rules of Procedure of the Court, order the Commission to pay the applicant's costs.

**Pleas in law and main arguments**

The applicant contests Commission Decision C(2008) 1625 final of 30 April 2008 in which the Commission decided that the State aid which Austria granted in contravention of Article 88(3) EC to the Versicherungsgesellschaft Grazer Wechselseitige Versicherung AG and the GW Beteiligungserwerbs- und -verwaltungsGmbH in the context of the privatisation of the HYPO Bank Burgenland AG is incompatible with the common market.

In support of its action the applicant claims first that the Commission misapplied Article 87(1) EC in a number of respects. In particular it argues in that regard that there are several indications that the market value of the privatised bank at the time of the sale was significantly lower than the purchase price offered by the applicant, meaning that it was not given preferential treatment when the sale took place.

Moreover, it is claimed that the defendant misapplied the private vendor test. In that regard the applicant asserts that the Commission's argument that it was impermissible in the context of the decision to award aid to take into account the legal guarantee ('Ausfallhaftung') by the Land of Burgenland for certain liabilities of the privatised bank is wrong. Furthermore, the applicant claims in that context that the Commission proceeds not from the model of a genuine private sector investor but from the fiction of a seller prepared to assume a 100 % risk.

In addition, the applicant argues that the Commission has not proved that the applicant's offer was nominally worse than the offer of the competing bidder after all the necessary adjustments were carried out.