

- give final judgment on the substance of the matter in accordance with Article 61 of the Statute of the Court and grant the order sought by Orange at first instance;
- in the alternative, refer the case back to the General Court for judgment;
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant relies on several grounds of appeal.

In the first place, it is alleged that the General Court erred in law in finding that the criteria for finding that there was State aid within the meaning of Article 107(1) TFEU had been satisfied. First, the General Court erred in law in considering that Orange had benefited from an advantage, despite the fact that the measure aimed to remove the structural disadvantage which resulted from the continued application of the provision laid down by the Law of 1990 and aimed to enable there to be full competition in the context of the complete liberalisation of the telecommunications markets. Second, the appellant also complains that the General Court erred in law in concluding that, in order to uphold the selective character of the contested measure, it was not necessary in the circumstances of the case to ascertain whether that measure might differentiate between operators in a factually and legally comparable situation, despite the fact that, in the circumstances of the case, no other undertaking could have been included in the framework of reference decided upon by the Commission. Third, the General Court failed to comply with the duty to state the reasons for its decision and erred in law in not proceeding to assess any of the arguments submitted by the appellant for considering the measure to be incapable of distorting or threatening to distort competition within the meaning of Article 107(1) TFEU.

In the second place, it is alleged that the General Court erred in law when adopting the Commission's analysis with regard to the compatibility of the measure at issue. First, the General Court failed to comply with the duty to state the reasons for its decision and distorted the facts in concluding that Article 30 of the Law of 1996, as amended, did not make any provision concerning the purpose of the exceptional lump-sum contribution and in concluding that that article does not therefore exclude the Commission's conclusion according to which the exceptional lump-sum contribution did not constitute a social charge for the undertaking. Second, the General Court is alleged to have failed to comply with the duty to state the reasons for its decision when it adopted the Commission's assessment of the facts and merely stated that the precedent established in the 'La Poste' case was not applicable to that of France Télécom (Orange).

Lastly, the appellant considers that the General Court erred in law in its assessment of the period in which the aid defined by the decision was neutralised by the exceptional lump-sum contribution. In particular, the General court distorted the facts and substituted its own reasoning for that of contested decision when it affirmed that the discontinuance of the charges of compensation and over-compensation formed part of the aid defined in Article 1 of the contested decision.

Appeal brought on 8 May 2015 by the European Commission against the judgment of the General Court (Second Chamber) of 27 February 2015 in Case T-188/12 Patrick Breyer v European Commission

(Case C-213/15 P)

(2015/C 245/10)

Language of the case: German

Parties

Appellant: European Commission (represented by: P. Van Nuffel and H. Krämer, acting as Agents)

Other parties to the proceedings: Patrick Breyer, Republic of Finland, Kingdom of Sweden

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- give final judgment in the matter and dismiss the action;
- order the applicant to pay the costs.

Pleas in law and main arguments

By its appeal, the European Commission claims that the Court should set aside the judgment of the General Court of 27 February 2015 in *Breyer v Commission*, Case T-188/12, in so far as the General Court annulled the Commission's decision of 3 April 2012, by which the Commission had refused to grant the applicant full access to documents concerning the Republic of Austria's transposition of Directive 2006/24⁽¹⁾ and to documents concerning the case which had given rise to the judgment of 29 July 2010 in *Commission v Austria*⁽²⁾ in so far as the decision had refused access to the written submissions lodged by the Republic of Austria in the course of that case.

The applicant had founded his action for annulment *inter alia* of the contested decision on a single ground by which, in substance, he had complained of an infringement of Article 2(3) of Regulation No 1049/2001⁽³⁾. The General Court annulled the contested decision in so far as by that decision access was refused to the written submissions lodged by the Republic of Austria in the course of that case. With regard to the ground on which the action had been founded, the General Court stated, in essence, that the written submissions at issue were documents within the meaning of Article 2(3) read in conjunction with Article 3(a) of Regulation No 1049/2001, and consequently fell within the scope of application of that regulation, and that subparagraph 4 of Article 15 (3) TFEU does not preclude the application of Regulation No 1049/2001 to the written submissions at issue on the basis of their special nature.

The Commission founds its appeal on a single point of law by which it complains of the interpretation of Article 15(3) TFEU on which the General Court based its conclusion that that provision did not preclude the application of Regulation No 1049/2001 to the written submissions at issue on the basis of their special nature.

⁽¹⁾ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

⁽²⁾ C-189/09, EU:C:2010:455.

⁽³⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Request a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) of 11 May 2015 — Criminal proceedings against Massimo Orsi

(Case C-217/15)

(2015/C 245/11)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Party to the main proceedings

Massimo Orsi