

Form of order sought

The applicant claims that the Court should:

- annul the European Commission's decision (EU) of 14 October 2019 on State aid SA.55394 (2019/N) — Germany — Rescue aid to Condor ⁽¹⁾, and
- order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the aid falls outside the material scope of the European Commission's Rescue and Restructuring Guidelines ⁽²⁾, because Condor's difficulties are the result of an arbitrary allocation of costs within the Thomas Cook group.
2. Second plea in law, alleging that the rescue aid does not satisfy the compatibility condition that the aid should contribute to an objective of genuine common interest. The European Commission committed manifest errors of assessment, both regarding the needs of German independent tour operators and travel agencies and the alleged absence of aircraft capacity for the repatriation of stranded passengers during the IATA winter season which is marked by seasonal overcapacity.
3. Third plea in law, alleging that the European Commission failed to review the satisfaction of the one time last time condition for rescue aid by the Thomas Cook group.
4. Fourth plea in law, alleging that the European Commission failed to initiate a formal investigation procedure despite serious difficulties and violated the applicant's procedural rights.
5. Fifth plea in law, alleging that the European Commission violated its duty to state reasons.

⁽¹⁾ OJ 2020 C 294, p. 3

⁽²⁾ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ 2014 C 249, p. 1

Action brought on 24 September 2020 — Polwax v Commission

(Case T-585/20)

(2020/C 399/57)

Language of the case: Polish

Parties

Applicant: Polwax S.A. (Jasło, Poland) (represented by: E. Nessmann, G. Duda and M. Smółka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul the European Commission Decision of 14 July 2020, in Case M.9014 PKN Orlen/Grupa Lotos ('the decision');
- Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging infringement of the rules for appraisal of concentrations laid down in Article 2(1) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('Regulation No 139/2004')⁽¹⁾, in so far as the Commission, by conditionally allowing PKN Orlen to acquire Grupa Lotos, failed to take into account the market for refined and dehydrated paraffin, paraffin waxes and paraffin-based products and did not assess the impact of the concentration on that market.

— In support of that plea, the applicant claims that during the course of the investigation, evidence was submitted to the Commission showing that the market for refined and dehydrated paraffin, paraffin waxes and paraffin-based products connected with the business activities of the parties involved in the concentration. The Commission's statement of objections makes no reference to that market, which could indicate that the Commission did not take that market into account in the decision when assessing the effects of the concentration on competition.

2. Second plea in law alleging infringement of the rules for the appraisal of concentrations laid down in Article 2(1) of Regulation No 139/2004, in so far as the Commission did not take into account the fact that the acquisition by PKN Orlen of Grupa Lotos affects access to the supply of raw material for operators on the market for refined and dehydrated paraffin, paraffin waxes and paraffin-based products, and nor did it take into account the legal barriers to entry to that market arising as a result of the concentration.

— In support of that plea, the applicant claims that, after the acquisition of Grupa Lotos by PKN Orlen, all the raw material in the form of slack wax (heavy and light) along with the whole transport and logistic infrastructure in Poland, Lithuania and the Czech Republic would fall into the hands of one entity, so that that entity would be able to dictate price conditions and/or the conditions associated with the supply of the raw material not only to the entities currently operating on that market, but also to any entity that intends to enter that market in the future. The above difficulties in carrying out business activities would not be encountered by Orlen Południe S.A., the company controlled in its entirety by PKN Orlen.

3. Third plea in law, alleging infringement of the rules for the appraisal of concentrations laid down in Article 2(2) and (3) of Regulation No 139/2004, in so far as the Commission allowed PKN Orlen to acquire Grupa Lotos, even though that control could significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position on the part of PKN Orlen.

— In support of that plea, the applicant claims that so far the only competitor for PKN Orlen on the market for the production and distribution of slack wax in Poland, the Czech Republic and Lithuania has been Grupa Lotos. After acquiring control PKN Orlen would have a monopoly.

4. Fourth plea in law, alleging infringement of Article 9(1) of Regulation No 139/2004, in so far as the Commission has not informed the Member State that the acquisition by PKN Orlen of Grupa Lotos threatens to have a significant effect on competition in the market for refined and dehydrated paraffin, paraffin waxes and paraffin-based products, which has the characteristics of a distinct market on Polish territory.

— The applicant submits that plea in the alternative in the event that it is held that the market for refined and dehydrated paraffin, paraffin waxes and paraffin-based products has no Community-wide coverage. In that situation, in the applicant's view that market satisfies the requirements for recognition as a distinct market.

⁽¹⁾ OJ L 24 2004, p. 1.