

Case T-35/99

Keller SpA and Keller Meccanica SpA

v

Commission of the European Communities

(State aid — Undertakings engaged in manufacture of railway rolling stock — Undertakings under special administration — Aid to the regions of Sicily and Sardinia — Soft loans — Existing or new aid — Extent of decisions approving schemes at issue — Aid for rescue or restructuring of undertakings in difficulties — Commission guidelines — Article 92 of the EC Treaty (now Article 87 EC) — Obligation to provide statement of reasons)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 30 January 2002 II- 264

Summary of the Judgment

1. *State aid — Prohibition — Derogations — Commission's discretion — Possibility of adopting guidelines — Judicial review — Limits (EC Treaty, Art. 92(3) (now, after amendment, Art. 87(3) EC)*

2. *State aid — Adverse effect on competition — Aid for restructuring an undertaking in difficulty — Restructuring plan which does not ensure restoration of the undertaking's viability*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))
3. *State aid — Recovery of illegally granted aid — Date from which interest is payable — Fixed by the Commission as the date of payment of the aid*
(EC Treaty, Art. 93(2) (now Art. 88(2) EC))

1. Article 92(3) of the Treaty (now, after amendment, Article 87(3) EC) confers on the Commission a wide margin of discretion to allow aid by way of derogation from the general prohibition laid down in paragraph (1) of that article, inasmuch as the determination in such cases of whether State aid is compatible with the common market raises problems which make it necessary to examine and appraise complex economic facts and conditions. The judicial review carried out by the Community judicature must therefore be limited to checking that the rules on procedure and the statement of reasons have been complied with, that the facts are materially accurate, and that there has been no manifest error of assessment and no misuse of powers. It is not for the Community judicature, therefore, to substitute its economic assessment for that of the Commission.

the rescue or restructuring of undertakings in difficulty inasmuch as those acts contain indications as to the direction to be followed by that institution and do not depart from the Treaty rules. In that context it is for the Community judicature to verify whether the requirements which the Commission has itself laid down have been observed.

(see para. 77)

The Commission may provide itself with guidance for the exercise of its powers of assessment by adopting acts such as the guidelines on State aid for

2. The Commission is not required to demonstrate the real effect of illegal aid on competition and trade between Member States. Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC) declares not only aid which 'distorts' competition to be incompatible with the common market but also aid which 'threatens' to do so.

The finding that the recovery plan for an undertaking in difficulty which has received State aid does not ensure to the requisite legal standard that the undertaking concerned will be returned to viability is sufficient in itself to substantiate the existence of at the very least potential distortions of competition brought about by the aid at issue.

(see paras 85–86)

3. In the event of recovery of State aid, the interest on the sums to be reimbursed can run only from the date as from which recipients of the aid were actually able to avail themselves of the capital amounts in question. That rule must be interpreted as meaning that interest begins to run with effect not from the date of actual utilisation of the aid but from the date of the grant of that aid.

(see paras 107–108)