

Case T-176/01

Ferriere Nord SpA

v

Commission of the European Communities

(State aid — Community guidelines on State aid for environmental protection — Steel undertaking — Products coming under the EC Treaty — Approved aid scheme — New aid — Initiation of the formal procedure — Time-limits — Rights of the defence — Legitimate expectation — Statement of reasons — Applicability *ratione temporis* of the Community guidelines — Environmental objective of the investment)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 18 November 2004 II - 3937

Summary of the Judgment

1. *State aid — General aid scheme approved by the Commission — Individual aid presented as being covered by the approval — Examination by the Commission — Assessment primarily from the point of view of the approval decision and as a subsidiary matter from the point of view of the Treaty — Aid constituting the strict and foreseeable application of the conditions laid down in the approval decision — Aid coming within the scheme of existing aid*

(Arts 87 EC and 88 EC)

2. *ECSC — Aid to the steel industry — Plans to grant aid — Examination by the Commission — Setting by Article 6(6) of Decision No 2496/96 of a time-limit for initiating the formal examination procedure — Scope (Decision No 2496/96, Art. 6(6))*

3. *State aid — Administrative procedure — Right of the parties concerned to submit their comments — Amendment during the procedure of the applicable Community guidelines — Commission's obligation where new principles are implemented (Art. 88(2) EC)*

4. *State aid — Plans to grant aid — Examination by the Commission — Observance of the principle of protection of legitimate expectations — Commission's obligation to respect, in its final decision, the indications set out in its decision to initiate the examination procedure*

5. *State aid — Administrative procedure — Compatibility of the aid with the common market — Burden of proof on the provider and the potential recipient of the aid (Art. 88(2) EC)*

6. *State aid — Administrative procedure — Planned aid for an investment by a steel undertaking manufacturing some products which come under the ECSC Treaty and others which do not — Project having been notified twice successively, once under the ECSC Treaty, and again under the EC Treaty — Determination by the Commission of the legal basis on which to base its decision — Whether permissible in the light of the principle of sound administration*

7. *State aid — Prohibition — Derogations — Protection of the environment — Discretion of the Commission — Possibility of adopting guidelines — Binding effect — Judicial review (Arts 6 EC and 87 EC)*

8. *State aid — Plans to grant aid — Examination by the Commission — New Community guidelines — Immediate application — Application to planned aid notified before their adoption and still being examined*

9. *State aid — Prohibition — Derogations — Protection of the environment — Community guidelines — Eligibility of an investment for aid for the protection of the environment — Criterion — Objective — Environmental performance*

1. When the Commission has before it a specific grant of aid alleged to have been made in pursuance of a previously authorised scheme, it cannot at the outset examine it directly in relation to the Treaty. Prior to the initiation of any procedure, it must first examine whether the aid is covered by the general scheme and satisfies the conditions laid down in the decision approving it. If it did not do so, the Commission could, whenever it examined an individual aid measure, go back on its decision approving the aid scheme, which had already involved an examination in the light of Article 87 EC. This would jeopardise the principles of the protection of legitimate expectations and legal certainty. Aid which constitutes the strict and foreseeable application of the conditions laid down in the decision approving the general aid scheme is thus considered to be existing aid, which does not need to be notified to the Commission or examined in the light of Article 87 EC.

aid to the steel industry mentions a period of two months beyond which, if a formal procedure has not been initiated, the planned aid measures may be put into effect provided that the Member State has first informed the Commission of its intention. That provision does not impose on the Commission a period on pain of nullity but, in accordance with the principle of proper administration, invites it to act diligently and allows the Member State concerned to put the aid measures into effect once a period of two months has elapsed, subject to having previously informed the Commission that it intends to do so.

(see para. 62)

(see para. 51)

2. Article 6(6) of Decision No 2496/96 establishing Community rules for State

3. Where, in order to assess the compatibility of State aid with the common market, the Commission applies Community guidelines which have replaced

the guidelines in force when the parties concerned, within the meaning of Article 88(2) EC, submitted their comments, it is required, where it intends to base its decision on new principles, to ask those parties for their comments in that regard, failing which it will breach their procedural rights.

(see para. 75)

parties concerned to respond as fully as possible, it is for the Member State and the potential recipient of the aid to put forward the arguments whereby they seek to show that the planned aid corresponds to the exceptions provided for in application of the Treaty, since the object of the formal procedure is specifically to ensure that the Commission is fully informed of all the facts of the case.

(see paras 93-94)

4. The principle of protection of legitimate expectations means that in carrying out the procedure involving review of State aid, the Commission must take account of the legitimate expectations which the parties concerned may entertain as a result of what was said in the decision opening the procedure and, subsequently, that it does not base its final decision on the absence of elements which, in the light of those indications, the parties concerned were unable to consider that they must provide to it.

(see para. 88)
5. Although when the Commission decides to initiate the formal procedure it is required to express its doubts clearly as to the compatibility of the aid, in order to allow the Member State and other

(see paras 99-101)
6. Where aid is planned for a steel undertaking manufacturing products which come under the ECSC Treaty and at the same time products which do not, and not keeping separate accounts for the two activities, the Commission cannot be criticised for procedural errors constituting a breach of the principle of sound administration for having sought to ascertain the legal basis on which to found its decision when it was not immediately certain whether the investment which was to benefit from the aid related to the ECSC Treaty or to the EC Treaty; when the planned aid was notified to it successively under each of the Treaties; and when in any event it was required to ascertain that the aid was not likely to benefit activities other than those in respect of which it would be granted.

7. The compatibility with the common market of planned aid aimed at environmental protection is assessed in accordance with the combined provisions of Articles 6 EC and 87 EC and by reference to the Community guidelines which the Commission has previously adopted for the purposes of such an examination. The Commission is bound by the guidelines and notices that it issues in the area of supervision of State aid where they do not depart from the rules in the Treaty and are accepted by the Member States. The parties concerned are therefore entitled to rely on those guidelines and the Court will ascertain whether the Commission complied with the rules it has itself laid down when it adopted the contested decision.

principle of protection of legitimate expectations, which, like the principle of legal certainty, concerns situations already in existence and not a temporary situation, such as that of a Member State which has notified a new aid project to the Commission and is awaiting the outcome of its examination.

(see paras 137-139)

(see para. 134)

8. Since it follows from new guidelines on State aid that those guidelines enter into force on the date on which they are published and that the Commission is then required to apply them to all notified aid projects, even where they were notified prior to the publication of the Guidelines, it is required to apply them when taking its decision on planned aid which is the subject of a formal examination procedure which has not yet been closed. That immediate application is inspired by Article 254(2) EC on the entry into force of regulations and directives of the Council and of the Commission and observes the

9. The benefit of the Community provisions on State aid for environmental protection depends on the purpose of the investment in respect of which aid is sought. Thus the 2001 Guidelines, which are identical in that regard to the 1994 Guidelines, mention investments intended to reduce or eliminate pollution or nuisances, or to adapt production methods, and state that only the additional investment cost linked with environmental protection is eligible for aid. The eligibility for aid for environmental protection of an investment which meets, inter alia, economic considerations assumes that those considerations are not in themselves sufficient to justify the investment in the form chosen.

It follows from the scheme of the 2001 Guidelines, which is identical in that regard to the scheme of the 1994

Guidelines, that any investment which adapts plant to standards, whether mandatory or not, national or Community, which exceeds such standards or which is carried out in the absence of any standards is not eligible for aid, but only investment whose very object is that environmental performance. It is therefore irrelevant that investment brings improvements from the point of view of environmental protection, or indeed from the point of view of environmental protection or of the health and safety of workers. Admittedly, it is possible that a project should have an objective of improving economic productivity and at the same time an objective of environmental protection, but the existence of the second objective cannot be inferred from the mere finding that the new equipment has a less negative impact on the environment than the old equipment, which may be merely a collateral effect of a change in technology for economic purposes or of

the renewal of used equipment. In order that a partially environmental object of the assisted investment may be accepted in such a case, it is necessary to establish that the same economic performance could have been obtained by using less costly, but more environmentally harmful, equipment.

The question is therefore not whether the investment brings environmental improvements or whether it goes beyond existing environmental standards, but, primarily, whether it was carried out in order to bring such improvements.

(see paras 147-152)