

Case T-316/04 R

Wam SpA

v

Commission of the European Communities

(State aid — Loans at reduced rates to enable a firm to establish itself in certain third countries — Obligation to recover payment — Application for interim measures — Suspension of operation of a measure — Urgency — None)

Order of the President of the Court of First Instance, 10 November 2004 . . . II - 3919

Summary of the Order

Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof — Serious and irreparable damage suffered by the applicant — Financial loss — Situation capable of jeopardising the existence of the applicant company or of irremediably altering its market position — Commission decision ordering recovery of State aid

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

The urgency of an application for interim measures must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim measure. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering damage of this kind. It is not necessary for the imminence of the damage to be demonstrated with absolute certainty, it being sufficient, especially when the occurrence of the damage depends on the concurrence of a series of factors, to show that damage is foreseeable with a sufficient degree of probability. However, the applicant is required to prove the facts forming the basis of its claim that serious and irreparable damage is likely.

Moreover, in order to prove that the condition of urgency is met an applicant is required to show that suspension of the operation of a measure or other interim measures sought are necessary in order to protect his own interests. However, in order to establish urgency, an applicant cannot plead damage to an interest which is not personal to him, such as for example to an aspect of public interest or to the rights of third parties, be they individuals or a State. Such interests may be taken into consideration only when the Court comes to balance the interests at stake.

Lastly, although it is firmly established that damage of a pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable, or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation, it is also settled case-law that an interim measure is justified if it appears that, without that measure, the applicant would find itself in a position which could jeopardise its existence before final judgment in the main action or irremediably alter its position in the market.

An adverse effect on the rights of the persons considered to be the recipients of State aid which is incompatible with the common market forms an integral part of any Commission decision requiring the recovery of such aid and cannot be regarded as constituting in itself serious and irreparable damage, whether or not a specific assessment is made of the seriousness and irreparability of the precise prejudice alleged in each case considered.

(see paras 26-29, 33)