

Case C-260/05 P

Sniace SA

v

Commission of the European Communities

(Appeal — State aid — Admissibility — Measure of individual concern to the applicant)

Opinion of Advocate General Kokott delivered on 1 February 2007 I - 10009
Judgment of the Court (First Chamber), 22 November 2007 I - 10025

Summary of the Judgment

1. *Appeals — Grounds — Mistaken assessment of the facts — Inadmissibility — Review by the Court of the assessment of the evidence — Possible only where the clear sense of the evidence has been distorted*
(Art. 225 EC; Statute of the Court of Justice, Art. 58, first para.)
2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them*
(Arts 88(2) EC and 230, fourth para., EC)

3. *Community law — Principles — Right to effective judicial protection*
(Art. 230, fourth para., EC)
4. *Procedure — Measures of inquiry — Hearing of witnesses*
(Rules of Procedure of the Court of First Instance, Arts 64 and 65)

1. In an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. Save where the evidence adduced before the Court of First Instance has been distorted, the appraisal therefore does not constitute a point of law which is subject to review by the Court of Justice. Such distortion exists where, without recourse to new evidence, the assessment of the existing evidence is manifestly incorrect.
2. Persons other than those to whom a decision is addressed may claim to be individually concerned, for the purposes of the fourth paragraph of Article 230 EC, only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed.

As regards the field of State aid, applicants who challenge the merits of a decision appraising aid taken on the basis of Article 88(3) EC or at the end of the formal examination procedure are considered to be individually concerned by that decision if their market position is substantially affected by the aid to which the contested decision relates.

(see paras 35, 37)

In addition to the undertaking in receipt of aid, competing undertakings have been recognised as individually concerned by a Commission decision terminating the formal examination procedure where they have played an active role in that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the contested decision.

Commission's decision is likely to harm its legitimate interests by substantially affecting its position on the market in question.

(see paras 53-57, 60)

The fact that an undertaking was at the origin of the complaint which led to the opening of the formal examination procedure, that its views were heard and that the conduct of that procedure was largely determined by its observations are factors which are relevant to assessment of the locus standi of that undertaking. However, such participation in that procedure is not a necessary condition for the finding that a decision is of individual concern to an undertaking within the meaning of the fourth paragraph of Article 230 EC. The possibility cannot be excluded that that undertaking might put forward other specific circumstances which distinguish it individually in a way that is similar to the case of the person addressed by that decision.

3. An individual who is not directly and individually concerned by a Commission decision relating to State aid and whose interests consequently could not be affected by the State measure covered by that decision cannot invoke the right to judicial protection in relation to that decision.

(see paras 64, 65)

In that context, it is in any event for the applicant undertaking to indicate in a relevant way the reasons why the

4. As regards the assessment by the Court of First Instance of applications made by a party for measures of organisation of the procedure or enquiry, the Court of First Instance is the sole judge of any need to supplement the information available to it concerning the cases

before it. Even where a request for the examination of witnesses, made in the application, refers precisely to the facts on which and the reasons why a witness or witnesses should be examined, it falls

to the Court of First Instance to assess the relevance of the application to the subject-matter of the dispute and the need to examine the witnesses named.

(see paras 77, 78)