



## Reports of Cases

### Judgment of the General Court (Sixth Chamber) of 28 February 2012 — Grazer Wechselseitige Versicherung v Commission

(Case T-282/08)

(State aid — Aid granted by the Austrian authorities to the Grazer Wechselseitige group (GRAWE) in connection with the privatisation of Bank Burgenland — Decision declaring the aid to be incompatible with the common market and ordering its recovery — Private investor in a market economy test — Application where the State acts as vendor — Determination of the market price)

1. *State aid — Concept — Sale of an asset by a public body to a private person on preferential conditions — Included — Assessment according to the criterion of the private investor (Art. 87(1) EC) (see paras 45, 46)*
2. *State aid — Concept — Legal nature — Interpretation on the basis of objective factors — Judicial review — Scope (Art. 87(1) EC) (see paras 47, 48, 56)*
3. *Actions for annulment — Grounds — Lack of or inadequate statement of reasons — Distinguished from manifest error of assessment (Arts 230 EC and 253 EC) (see para. 68)*
4. *State aid — Concept — Assessment according to the criterion of the private investor — Transfer of an undertaking — Determination of a price — Preference to be given to the result of an open, transparent and unconditional tendering procedure rather than to an export report (Art. 87(1) EC) (see paras 76-80, 86)*
5. *State aid — Concept — Assessment according to the criterion of the private investor — Transfer of an undertaking — Uncertain outcome and duration of an authorisation procedure not automatically implying the exclusion of a buyer by a private investor (Art. 87(1) EC) (see paras 88, 90, 100, 101)*
6. *State aid — Concept — Assessment according to the criterion of the private investor — Whether account to be taken, in determining the transfer price of an undertaking, of the risk represented by the existence of a statutory guarantee scheme benefiting the undertaking to be transferred — Not included (Art. 87(1) EC) (see paras 122, 128, 130, 131)*

7. *State aid — Recovery of unlawful aid — Aid granted in breach of the procedural rules of Article 88(3) EC — Legitimate expectations entertained by the recipients — Legal certainty — Protection — Conditions and limits (Art. 88(3) EC) (see paras 152, 153)*
8. *State aid — Prohibition — Exceptions — Aid to support or facilitate the economic development of certain regions or activities — Discretion of the Commission — Judicial review — Limits — Strict interpretation of derogations (Art. 87(3)(a) and (c) EC) (see paras 158, 161)*

**Re:**

APPLICATION for annulment of Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/06) implemented by Austria for the privatisation of Bank Burgenland (OJ 2008 L 239, p. 32).

**Operative part**

The Court:

1. Dismisses the action;
2. Orders Grazer Wechselseitige Versicherung AG to pay the costs.