

Case C-140/09

Fallimento Traghetti del Mediterraneo SpA

v

Presidenza del Consiglio dei Ministri

(Reference for a preliminary
ruling from the Tribunale di Genova)

(State aid — Subsidies paid to a maritime transport undertaking discharging public service obligations — National law providing for the possibility of making payments on account prior to the approval of an agreement)

Judgment of the Court (Fourth Chamber), 10 June 2010 I - 5246

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Assessment of whether a particular grant of aid is compatible with the common market — Not covered (Arts 88 EC and 234 EC)*
2. *State aid — Concept — Subsidies paid to an undertaking required to discharge public service obligations, pursuant to national legislation providing for payments on account before an agreement is approved (Art. 87 EC)*

1. The Court does not have jurisdiction to rule upon the compatibility of a national measure with European Union law. Nor does the Court have jurisdiction to rule on the compatibility of State aid or of an aid scheme with the common market, for that assessment falls within the exclusive competence of the European Commission, subject to review by the Court. Nor does it have jurisdiction to give a ruling on the facts in an individual case or to apply the European Union law rules it has interpreted to national measures or situations, those questions being matters for the exclusive jurisdiction of the national court.
2. European Union law must be interpreted to the effect that subsidies paid to an undertaking required to discharge public service obligations, pursuant to national legislation providing for payments on account before an agreement is approved, without the prior establishment of precise and stringent criteria, constitute State aid if those subsidies are liable to affect trade between Member States and distort or threaten to distort competition, which it is for the national court to determine.

However, the Court does have jurisdiction to give the national court full guidance on the interpretation of European Union law in order to enable it to determine the issue of compatibility of a national measure with that law for the purposes of deciding the case before it. In the area of State aid, the Court has jurisdiction, in particular, to give the national court guidance on interpretation in order to enable it to determine whether a national measure may be classified as State aid under European Union law.

Admittedly, when a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure does not constitute State aid under European Union law. However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied.

(see paras 22, 24)

First, the undertaking receiving such compensation must actually have public

service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage that could favour the recipient undertaking over competing undertakings. Third, the compensation is not to exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. Fourth, the compensation must be determined on the basis of an analysis of the costs that a typical undertaking, well run and adequately provided with the requisite means in order to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

Subsidies not fulfilling all those conditions cannot escape classification as State aid under European Union law. The fact that the subsidies were paid on account, pending approval of the agreements which, moreover, were concluded and took effect only many years later, is of no consequence. Such a fact does not eliminate the advantage conferred on the recipient undertaking or the effects which an advantage of that kind may have on competition, for not all the conditions referred to have been fulfilled.

It is for the national court to determine whether those subsidies are liable to affect trade between Member States and distort or threaten to distort competition.

(see paras 35-40, 44, 45, 52, operative part)