By the first plea, the Committee maintains that the Court of First Instance erred in law, infringing Article 87(1) EC, and failed to fulfil its obligation under Article 253 EC to state reasons. In particular, the judgment under appeal does not adequately examine the compensatory nature of the aid covered by the contested decision or the effects of that aid on the market, failing to state the related grounds, and breaches the principle of non-discrimination and equal treatment so far as concerns the examination of the situation of the municipalised undertakings *vis-à-vis* the applicant undertakings.

By the second plea, the Committee alleges infringement of Article 86(2) EC and, in particular, failure to examine the applicability to the case before it of the derogation relating to the operation of services of general economic interest. By contrast, such an examination was carried out in the case of the municipalised undertakings.

By the third plea, alleging infringement of Article 87(3) EC, the Committee criticises the approach taken in the judgment under appeal so far as concerns the Commission's absolute discretion regarding the applicability of the derogation relating to regional difficulties and so far as concerns the lack of an adequate examination of circumstances of the case.

By the fourth plea, the Committee alleges infringement of Article 87(3((d) EC and, in particular, criticises the granting to the Consorzio Venezia Nuova of the derogation for 'cultural' purposes and the failure to undertake an examination of that aspect in the case of the other undertakings.

By the fifth plea, the Committee criticises the failure to attribute due significance to the continuity between the aid found to be unlawful (introduced after June 1994) and the rules previously in force (as far back as 1973), in breach of Articles 1 and 15 of Council Regulation (EC) No 659/1999 [2] of 22 March 1999 laying down detailed rules for the application of Article [88 EC].

By the sixth plea, the Committee criticises the automatic nature of the order for recovery, maintaining that this is in breach of Article 14 of Regulation No 659/99.

---

[1] Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50).

[2] OJ 1999 L 83, p. 1.

Appeal brought on 16 February 2009 by Hotel Cipriani SpA against the judgment delivered on 28 November 2008 in Joined Cases T-254/00, T-270/00 and T-277/00 Hotel Cipriani SpA and Others v Commission

(Case C-73/09 P)

(2009/C 113/42)

Language of the case: Italian

Parties

Appellant: Hotel Cipriani SpA (represented by: A. Bianchini, avvocato)

Other parties to the proceedings: Società Italiana per il gas SpA (Italgas), Italian Republic, Coopservice — Servizi di fiducia Soc. coop. rl, Comitato 'Venezia vuole vivere', Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance;

— uphold the forms of order sought at first instance and, in consequence:

  — annul the Commission decision [1] contested at first instance;

  — in the lesser alternative, annul Article 5 of that decision in so far as the order for recovery provided for therein was interpreted by the Commission as covering also the aid granted on the basis of the *de minimis* principle and/or annul Article 5 in so far as it provides for interest to be paid at a rate which is higher than that actually paid by the appellant on its own debts;

— order the Commission to pay the costs of the proceedings both at first instance and before the Court of Justice.

Pleas in law and main arguments

1. By the first plea in law, Hotel Cipriani alleges infringement and misapplication of Article 87(1) EC, together with the statement of inadequate/contradictory grounds for the judgment under appeal. The laws and regulations found to be incompatible with Article 87 EC in no way distort or threaten to distort competition on the common market in hotel and catering (the very market on which Hotel Cipriani operates), the reasons being that (i) the city of Venice is such a special context that it does not affect the common market in any way, and (ii) the social security relief at issue was granted merely in order to offset the additional costs borne by the undertakings concerned on account of the difficulties inherent in operating on the relevant geographical market in accordance with the same conditions as the other areas of the European common market. The Court of First Instance failed to take proper account of those special circumstances, and simply concluded — without considering this issue in sufficient depth — that the advantages derived by the Venetian undertakings outweighed the disadvantages relating to their location: hence the claim that the grounds for the judgment under appeal are either inadequate or contradictory.

2. By the second plea in law, Hotel Cipriani alleges infringement and misapplication of Article 87(3)(c) EC, together with unsound reasoning in the grounds stated for the judgment under appeal. First the Commission, and then the Court of First Instance, erred in concluding that the regional derogation provided for under Article 87(3)(c) EC did not apply: as is amply attested by the documents produced before the Court of First Instance, the relevant geographical market justified the social security relief granted under the Italian legislation, because it was designed solely to preserve the socio-economic fabric of the city of Venice, and not — as is also clear from the first plea in law — to bring about any anti-competitive distortion of trade on the common market.

3. By the third plea in law, Hotel Cipriani alleges infringement and misapplication of Article 87(3)(d) EC, together with unsound reasoning in the grounds stated for the judgment under appeal. In the case before the Court of First Instance, the social security relief had clearly been granted in order to facilitate the preservation of the undeniable cultural and artistic heritage of the city of Venice, which entails significant costs for the undertakings located in the lagoon areas, which undertakings located elsewhere do not have to bear. In rejecting those arguments — put forward, inter alia, by Hotel Cipriani — the judgment under appeal states, wrongly, that there was insufficient documentary evidence of the reasons for which, item by item, the costs linked to the preservation of the cultural and artistic heritage of Venice were borne by the applicant undertakings. That statement is wrong in a number of respects, and especially because ample documentation had been produced, even before the Commission, substantiating the fact that the entire historic city centre is, as such, subject to indiscriminate restrictions for the preservation of the buildings and architectural heritage.

4. By the fourth plea in law, Hotel Cipriani alleges that the provision made for the compulsory recovery of the amounts accounted for by the aid is unlawful, in that it is contrary to Article 14(1) of Council Regulation (EC) No 659/1999 ([2]) of 22 March 1999 laying down detailed rules for the application of Article [88 EC]. The rule laid down in that provision as regards recovery does not apply where, in the circumstances of the case, it would be contrary to a general principle of Community law; such principles were identified before the Court of First Instance, namely, the principles of proportionality, equal treatment and legal certainty.

5. By the fifth plea in law, Hotel Cipriani alleges infringement of Article 15 of Regulation No 659/99. In the case of the Commission's decision of 25 November 1999, the 10-year limitation period specified in Article 15 of Regulation No 659/99 (which clearly applies *ratione temporis* to the present case) had already expired, with the result that, as regards the effects of the State aid at issue, reference must be made to Law No 171/1973, the 'Special law for Venice'.

([1]) Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50).

([2]) OJ 1999 L 83, p. 1.

Appeal brought on 19 February 2009 by Società Italiana per il gas SpA (Italgas) against the judgment delivered on 28 November 2008 in Joined Cases T-254/00, T-270/00 and T-277/00 Hotel Cipriani and Others v Commission

(Case C-76/09 P)

(2009/C 113/43)

Language of the case: Italian

Parties

Appellant: Società Italiana per il gas SpA (Italgas) (represented by: M. Merola, M. Pappalardo, T. Ubaldi, avvocati)

Other parties to the proceedings: Hotel Cipriani SpA, Italian Republic, Coopservice — Servizi di fiducia Soc. coop. rl, Comitato 'Venezia vuole vivere', Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— annul Articles 1 and 2 of the decision, ([1]) in so far as they declare that the tax relief granted by Italy is incompatible with the common market, and Article 5 thereof or, in the alternative, refer the case back to the Court of First Instance in accordance with Article 61 of the Statute of the Court of Justice;

— order the Commission to pay the costs of the proceedings both at first instance and before the Court of Justice.

Pleas in law and main arguments

By the first plea in law, Italgas alleges an error of law in the application of Article 87(1) EC and faulty reasoning in the grounds stated for the judgment under appeal in relation to the compensatory nature of the relief at issue and in relation to the evidence of distortion of competition and the affecting of trade. Although the Court of First Instance acknowledged that a measure does not constitute State aid if it merely offsets objective financial disadvantages, it erred in holding that that principle did not apply to the case before it because: (i) there must be a direct connection between the amount of the compensation and the amount of the additional costs borne by the undertakings on account of their location in the lagoon areas of Venice and Chioggia; (ii) the additional costs borne by the beneficiary undertakings must be assessed in relation to the average costs borne by undertakings in the Community, not in relation to the average costs borne by undertakings located on the Italian mainland. Moreover, the Court of First Instance failed to note the contradiction in the contested decision where the Commission, appraising the position of the undertaking responsible for operating water services, found that it is possible to categorise a measure as compensatory even where the public service does not precisely account for the additional costs borne by the undertakings, and that these need not necessarily be calculated by reference to the average costs borne by undertakings in the Community.