

In support of its appeal, the Council relies on two grounds of appeal alleging:

- an error of law, in so far as the CST exceeded the limits set by the case-law to the review by the Community judicature of the wide discretion enjoyed by the appointing authority for the purposes of the comparative consideration of the merits of officials who are candidates for promotion;
- an infringement of the obligation to state reasons, as the judgment under appeal is marred by numerous omissions and imprecisions which render incomprehensible the basis on which the CST actually concluded that there was a manifest error on the part of the Council difficult to understand.

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**Action brought on 28 April 2009 — Dunamenti Erőmű v Commission**

(Case T-179/09)

(2009/C 167/32)

Language of the case: English

**Parties**

*Applicant:* Dunamenti Erőmű Zrt. (Százhalombatta, Hungary), (represented by: J. Lever, QC, A. Nourry and R. Griffith, Solicitors)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the decision and each of the operative provisions of the *dispositif* in so far as they apply to the applicant;
- alternatively, annul Articles 2 and 5 of the Decision in so far as they order recovery of aid from the applicant in excess of any aid which should have been found by the Commission to be incompatible with the common market;
- order a measure of inquiry under Article 65 of the Rules of procedure requesting the Commission to provide to the Court copies of all written communications between the Commission and the Hungarian authorities and all records of meetings and discussions between them, such as are contemplated by paragraph 466 of the contested decision;
- if the Court in its wisdom agrees that it could be assisted by an expert or experts, order a measure of inquiry commissioning a report or reports from same and any other measures of inquiry as the Court in its wisdom considers to be appropriate;
- order that the Commission pays the applicant's costs herein.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision C (2008) 2223 final, of 4 June 2008, declaring incompatible with the common market the aid granted by the Hungarian authorities to certain electricity generating producers in the form of long-term power purchase agreements ('PPA') of electricity concluded between the transmission operator Magyar Villamos Művek Rt. ('MVM'), owned by the Hungarian State, and these producers at a date prior to accession of the Republic of Hungary to the European Union [State aid C 41/2005 (ex NN 49/2005) — Hungarian 'Stranded Costs']. The applicant is identified in the contested decision as a beneficiary of the alleged State aid and the decision orders Hungary to recover the aid, including interest, from the applicant.

The applicant puts forward four pleas in law in support of its claims.

In its first plea, the applicant submits that the Commission infringed Article 87(1) EC in as much as it qualified the applicant's PPA as aid measure even so the Commission recognised that it constituted an 'essential' pre-privatisation agreement. In applicant's opinion, the Hungarian authorities were therefore acting in accordance with the market economy investor principle. The applicant contends that the Commission misapplied the Treaty of accession of Hungary and Article 1(b)(v) of Council Regulation No 659/1999 <sup>(1)</sup>.

Second, the applicant claims that even if, *quod non*, the PPA had granted State aid to the applicant in 1995, the applicant was entitled to rely on a legitimate expectation that, under Community law, such aid would be treated as existing aid.

Third, the applicant argues that by qualifying the applicant's PPA as incompatible State aid the decision infringes the principle of proportionality as the aid was wrongly classified as operating aid and should not have been held to be incompatible even in so far as it compensated the applicant for its stranded costs. Further, the applicant submits that this conclusion is vitiated by inadequate and/or defective reasoning and infringes Article 87(3)(a) EC by failing to recognize any role for applicant's PPA in promoting the economic development.

Fourth, the applicant claims that the recovery order infringes Article 14(1) of Council Regulation No 659/1999 and general principles of Community law such as principle of legitimate interests and legitimate expectations. Furthermore, the applicant states that the Commission infringed essential procedural requirements, such as its procedural rights to a fair hearing.

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<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ 1999 L 83, p. 1