



## Reports of Cases

### Joined Cases T-479/11 and T-157/12

**French Republic**

**and**

**IFP Énergies nouvelles**

**v**

**European Commission**

(State aid — Oil exploration — Implied and unlimited State guarantee conferred on the Institut français du pétrole (IFP) by the grant of the status of publicly-owned industrial and commercial establishment (EPIC) — Advantage — Presumption of an advantage)

Summary — Judgment of the General Court (Eighth Chamber), 26 May 2016

1. *State aid — Concept — Grant of an advantage to the beneficiaries — State guarantee in favour of an undertaking not subject to ordinary recovery and liquidation procedures — Burden of proving an advantage on the Commission — Assessment having regard to all the relevant factors — Advantage materialising in relations between the undertaking enjoying that guarantee and its creditors*

(Art. 107(1) TFEU)

2. *State aid — Concept — Grant of an advantage to the beneficiaries — State guarantee in favour of an undertaking not subject to ordinary recovery and liquidation procedures — Burden of proving an advantage on the Commission — Purely hypothetical reasoning — Reasoning not satisfying the burden of proof*

(Art. 107(1) TFEU)

3. *State aid — Administrative procedure — Obligations of the Commission — Diligent and impartial examination — Undertaking not carrying on its market activities in normal conditions of competition with private operators — Scope of the obligation*

(Art. 108(2) TFEU)

4. *State aid — Concept — Legal nature — Interpretation on the basis of objective factors — Judicial review — Scope*

(Art. 107(1) TFEU)

5. *Acts of the institutions — Statement of reasons — Obligation — Scope — Correction of an error of reasoning during the proceedings before the Court — Not permissible*

(Art. 296 TFEU)

6. *State aid — Concept — Grant of an advantage to the beneficiaries — Need to take into account the effects of a measure to determine the advantage to the beneficiary*

(Art. 107(1) TFEU)

7. *State aid — Concept — Grant of an advantage to the beneficiaries — State guarantee in favour of an undertaking not subject to ordinary recovery and liquidation procedures — Proof of the existence of an advantage by means of a presumption that the financial position of that undertaking improved — Limits*

(Art. 107(1) TFEU)

8. *State aid — Examination by the Commission — Examination of an aid scheme as a whole — Lawfulness — Examination of the general characteristics of an aid granted on the basis of an aid scheme and having to be notified — Not permissible*

(Art. 108 TFEU)

9. *State aid — Concept — Grant of an advantage to the beneficiaries — State guarantee in favour of an undertaking not subject to ordinary recovery and liquidation procedures — Proof of the existence of an advantage by means of a presumption that the financial position of that undertaking improved — Rebuttal of that presumption*

(Art. 107(1) TFEU)

1. The concept of State aid within the meaning of Article 107(1) TFEU embraces not only positive benefits, but also measures which, in various forms, reduce the charges which normally encumber the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect. Thus, State measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions, are regarded as aid.

In order to verify whether the beneficiary undertaking is receiving an economic advantage which it would not have obtained under normal market conditions, the Commission is required to carry out a complete analysis of all factors that are relevant to the transaction at issue and its context, including the situation of the beneficiary undertaking and of the relevant market.

In that regard, the method chosen by the Commission in order to determine whether a public research establishment enjoyed an economic advantage by virtue of its status as a publicly-owned industrial and commercial establishment enjoying an implied and unlimited State guarantee, consisting in examining the advantage which emerged in that establishment's dealings with its creditors, is not erroneous in law.

The advantage which arises from a State guarantee inherent in the status of the undertaking benefiting from it materialises in that undertaking's dealings with its creditors. The conclusion that an advantage exists in a particular case is, however, subject to the condition that the more favourable treatment which creditors afford to the undertaking benefiting from the guarantee and the charges and revenue of that undertaking which are reduced or increased by that treatment must be determined with due regard for all the factors relevant to the transaction at issue and its context, including the situation of the beneficiary undertaking and the market concerned.

(see paras 70, 71, 82, 83, 87, 88)

2. See the text of the decision.

(see paras 71, 94-108, 114, 115)

3. See the text of the decision.

(see para. 72)

4. See the text of the decision.

(see paras 73-75)

5. See the text of the decision.

(see paras 126, 130)

6. See the text of the decision.

(see para. 129)

7. Although the Court of Justice held in the judgment of 3 April 2014 in *La Poste* (C-559/12 P) that a simple presumption existed that the grant of an implied and unlimited State guarantee in favour of an undertaking which was not subject to the ordinary compulsory administration and winding-up procedures resulted in an improvement in its financial position through a reduction of the charges which would normally have encumbered its budget, the possibility of using a presumption as a means of proof depends nevertheless on the plausibility of the hypotheses on which it is based.

In that regard, the presumption established in the judgment cited above is based on the dual premiss, recognised as plausible by the Court of Justice, to the effect, first, that the existence of a guarantee by the public authorities of a Member State has a favourable influence on the assessment by creditors of the risk of default on the part of the beneficiary of that guarantee and, secondly, that that favourable influence is reflected in a reduction in the cost of credit. By contrast, the plausibility of the hypothesis relied on by the Commission, according to which the favourable influence of the existence of a guarantee provided by the public authorities of a Member State on the assessment by creditors of the risk of default on the part of the beneficiary of that guarantee is reflected in a reduction of the prices offered to that beneficiary by its suppliers, is not self-evident.

In any event, the Commission cannot rely on the simple presumption set out by the Court of Justice in its judgment for the purposes of establishing the existence of an advantage in the relations between, on the one hand, a public research establishment enjoying an implied and unlimited State guarantee, and, on the other, its suppliers and customers, inasmuch as that presumption is confined to dealings involving a financing transaction, a loan or, more broadly, credit from a creditor of such a public establishment, in particular the dealings of that establishment with banks and financial institutions.

(see paras 136-139, 142, 160)

8. See the text of the decision.

(see paras 165-173)

9. See the text of the decision.

(see paras 187-195)