

**Appeal brought on 14 February 2012 by Deutsche Post AG against the judgment of the General Court (Eighth Chamber) delivered on 8 December 2011 in Case T-421/07 Deutsche Post AG v Commission**

(Case C-77/12 P)

(2012/C 118/29)

*Language of the case: German*

**Parties**

*Appellant:* Deutsche Post AG (represented by: J. Sedemund und T. Lübbig, Rechtsanwälte)

*Other parties to the proceedings:* European Commission, UPS Europe NV/SA, UPS Deutschland Inc. & Co. OHG

**Form of order sought**

— Set aside the judgment of the General Court (Eighth Chamber) of 8 December 2011 in Case T-421/07 in its entirety;

— Order the European Commission to pay the costs.

**Pleas in law and main arguments**

In the present appeal, the central question is whether and under which conditions a Commission decision to initiate the formal investigation procedure under Article 108(2) TFEU and Article 4(4) of Regulation 659/1999/EC constitutes a decision which may be challenged under the fourth paragraph of Article 263 TFEU. In particular, the question arises whether such a decision to initiate the procedure produces autonomous binding legal effects over and above a previous decision to initiate the procedure which allegedly dealt with the same aid measures.

The General Court denied that such an action is admissible, in essence, on the basis that the 2007 decision to initiate the procedure in Case 36/07 (ex NN 25/07) — which is challenged in the present case — concerns the same measures which had already formed the subject-matter of a 1999 decision to initiate the procedure in Case C 61/99 (ex NN 153/96) prior to the contested decision to initiate the procedure. The fact that in the investigation procedure which preceded the formal main investigation procedure in the present case the Commission had already five years earlier issued a negative decision within the meaning of Article 7(5) of Regulation 659/1999/EC has no influence on this assessment, as that negative decision closed the previous investigation procedure only in part.

The appellant relies on four grounds of appeal:

1. In the judgment under appeal, the General Court failed to recognise that the contested 2007 decision to initiate the procedure produced autonomous legal effects as that decision to initiate the procedure related to aid measures which went far beyond those to which the Commission objected in its 1999 decision to initiate the procedure. Furthermore, the main investigation procedure opened in 1999 was entirely closed by a 2002 negative decision (2002/753/EC); thus the 1999 decision to initiate the procedure could not have any further legal effects. In denying the admissibility of the application in question, the General Court infringed the fourth paragraph of Article 263 TFEU, since every decision which has autonomous legal effects must, under this provision, be open to review.
2. Second, the General Court erred in law by misconstruing the scope of the Commission's infringement of the principles of the protection of legitimate expectations, legal certainty and sound administration and their effects on the present investigation procedure. The General Court did not consider it to be an error in law that the Commission — without making it sufficiently clear to the Federal Government and the appellant — did not subsequently consider the formal investigation procedure which was opened in 1999 to be exhaustively closed and reopened that procedure five years after its formal closure.
3. Third, the fact that the General Court denied the appellant in the present case any direct legal remedy against the 2007 decision to initiate the procedure constitutes a refusal of judicial protection, which directly contravenes the appellant's fundamental right to effective judicial protection under Article 6(1) TEU together with Article 47(1) of the Charter of Fundamental Rights and Article 6(3) TEU together with the first sentence of Article 6(1) the European Convention on Human Rights.
4. Fourth, as regards the last two points set out above, which were not mentioned at all in the judgment under appeal, the General Court neglected to give at least a few explanations in the grounds of its judgment. This omission by the General Court infringes its obligation to state reasons in judgments which stems from the principle of the rule of law.