



Reports of Cases

Case T-143/12

Federal Republic of Germany
v
European Commission

(State aid — Postal services — Funding of additional salary and social costs relating to some of the staff of Deutsche Post by means of subsidies and revenue generated by remuneration for price-regulated services — Decision declaring the aid incompatible with the internal market — Concept of advantage — ‘Combus’ judgment — Proof of the existence of an economic and selective advantage — None)

Summary — Judgment of the General Court (Eighth Chamber), 14 July 2016

- Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision on State aid*
(Arts 107(1) TFEU and 296 TFEU)
- State aid — Concept — Intervention having the effect of mitigating the charges of an undertaking — Revenue derived from a lawfully subsidised business of an undertaking — Cross-subsidy in favour of competitive activities of the same undertaking — Inclusion*
(Art. 107 TFEU)
- Actions for annulment — Grounds — Misuse of powers — Definition — Decision declaring an aid incompatible with the internal market*
(Art. 107 TFEU)
- Actions for failure to fulfil obligations — Right of the Commission to bring judicial proceedings — To be exercised at its discretion — Judicial review — Limits*
(Art. 258 TFEU)
- State aid — Concept — Grant of an advantage to the beneficiaries — Measures designed to compensate for charges imposed on an undertaking by legislative provisions in derogation from the rules generally applicable to competing undertakings — Exclusion — Conditions*
(Art. 107(1) TFEU)
- State aid — Concept/Meaning/Definition — Assessment having regard to Article 107(1) TFEU — Taking into account previous practice — Not included*
(Art. 107(1) TFEU)

7. *State aid — Examination by the Commission — Discretion of the Commission — Classification of a measure as an aid within the meaning of Article 107(1) TFEU — Assessment of the compatibility of the said measure with the internal market — Judicial review — Scope*

(Art. 107 TFEU)

1. See the text of the decision.

(see paras 59-66)

2. The aim of Article 107 TFEU is to prevent trade between Member States from being affected by advantages granted by public authorities which, in various forms, distort or threaten to distort competition by favouring certain undertakings or the production of certain goods. The concept of aid therefore embraces not only positive benefits, such as subsidies, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have identical effects.

More specifically, the proper application of EU law assumes a determination of whether the revenue from a lawfully subsidised activity does not serve to finance other activities carried out by the same undertaking, as the Commission has a certain discretion in deciding on the most appropriate method for making sure that the competitive activities do not receive any cross-subsidy.

Thus, not only does Article 107(1) TFEU not preclude a check as to the existence of such subsidies, but, on the contrary, it implies that a check of that nature is to be carried out.

(see paras 73-75)

3. See the text of the decision.

(see paras 78-85)

4. See the text of the decision.

(see para. 79)

5. Classification as State aid within the meaning of Article 107(1) TFEU requires four conditions to be satisfied, namely that there must be an intervention by the State or through State resources, the intervention must be liable to affect trade between Member States, it must confer a selective advantage on the recipient and it must distort or threaten to distort competition.

With regard to the third criterion, it is for the Commission to demonstrate, when assessing the concept of an advantage, that the measure being examined constitutes an advantage of an economic and selective nature.

When verifying the existence of an economic advantage, the Commission must take into account, as factors of the relevant context, all the particular features of the legal scheme of which the national measure under consideration forms part. In that regard, a measure of intervention which does not have the effect of putting the undertakings to which it applies in a more favourable competitive position than the undertakings competing with them is not caught by Article 107(1) TFEU, which does not distinguish by reference to the causes or objectives of State interventions, but defines them by reference to their effects.

Since the sole purpose of Article 107(1) TFEU is to prohibit advantages for certain undertakings, the concept of aid covers only measures which lighten the charges which are normally included in the budget of an undertaking and which are to be regarded as an economic advantage which the beneficiary undertaking would not have obtained under normal market conditions.

That concept of ‘charges which are normally included in the budget of an undertaking’ does not include charges imposed on a single undertaking by virtue of legislative provisions which derogate from the rules generally applicable to competing undertakings and which have the effect of imposing upon it obligations which do not weigh upon the latter. In that regard, it cannot be maintained that the cost of a retirement scheme not covered by the general law and imposed by the legislation of a Member State forms part of the normal charges of an undertaking.

Thus the imposition, by an act of a public authority, of an obligation to bear the full cost of the pensions of the staff having the status of official instead of contributing to retirement insurance precludes the funding of that cost being classified as an advantage, on condition that that funding does not exceed what is necessary to place the obligations of the said undertaking on an equal footing with the obligations of the undertakings competing with it. In such a case, the existence of an advantage can therefore be accepted only if the funding in question exceeds that threshold. It is perfectly possible that, following the said financing, the undertaking is less disadvantaged than before, but that it continues to be disadvantaged by comparison with its competitors, or rather that it is on a par with them, without thus being the beneficiary of an advantage.

(see paras 88, 106, 108, 110, 130, 132, 143, 144, 147)

6. See the text of the decision.

(see para. 126)

7. In State aid matters, the EU judicature carries out a comprehensive review as to whether a measure falls within the scope of Article 107(1) TFEU. It follows that it is for the EU judicature to check whether the facts relied on by the Commission are substantively accurate and whether they establish that all the conditions justifying the classification of ‘aid’ within the meaning of Article 107(1) TFEU are fulfilled.

Moreover, since Article 107(3)(c) TFEU confers on the Commission a discretion the exercise of which entails assessments of an economic and social nature, review of such assessments by the EU judicature involves ascertaining that the rules of procedure have been complied with, that the reasoning is sufficient, that the facts are correct and that there is no manifest error of assessment or misuse of power.

(see para. 152)