— in the alternative, refer the case back to the General Court;

— order the Commission to pay the costs necessarily incurred by the appellant in the direct action and in the appeal.

Pleas in law and main arguments

First ground of appeal: The General Court considers the appellant to have no legal interest in bringing proceedings, since the regulation at issue contains a clarification to the effect that 'Edam' is generic. The relevant wording in the registration regulation is, however, merely tautological. The annulment of the registration regulation would therefore, contrary to the view taken by the General Court, give the members an advantage that would justify a legal interest in bringing proceedings. For that reason, the action is admissible. It is also, for the same reason, well founded, as the clarification was authorised by the Netherlands applicants. The Commission therefore erred in nevertheless failing to provide that clarification.

Second ground of appeal: The appellant stated that its members had, in the past, supplied milk to the Netherlands, which could be, and probably was, processed there into Gouda or Edam. The General Court did not infer from this that there was any legal interest in bringing proceedings. In fact, that submission was factually incorrect. The General Court thus distorted the facts of the case, as the submission is correct. Furthermore, according to the General Court, the appellant had not raised its objection or brought its action on behalf of 'milk producers'. This too is a distortion of the facts, since the objection was made on behalf of the appellant's members, in so far as they process milk (the milk sold into the Netherlands being processed milk) and market milk or cheese.

Third ground of appeal: The General Court considers that the dismissal of the objection does not establish a legal interest in bringing proceedings on the part of the appellant itself. This is because the objection was, in legal terms, not made by the appellant but by the Federal Republic of Germany. This does not correspond to the legal position under basic Regulation No 510/2006 ([2]), nor, contrary to the view taken by the General Court, has that question yet been determined with regard to the basic Regulation. There are differences between basic Regulation No 510/2006 and its predecessor, Regulation (EEC) No 2081/92 ([3]) , which the General Court failed to take into account and which mean that certainly under the basic regulation, objectors such as the appellant assert their own right to object.

Fourth ground of appeal: The General Court rejects the appellant's submission that the EU's blue PGI label gives Netherlands producers a competitive advantage over the appellant's members. This is not correct. The competitive advantage exists, and establishes a legal interest on the part of the appellant's members in bringing proceedings to have the registration regulation annulled.

([1]) OJ 2010 L 317, p. 14.
([2]) Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).
([3]) Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

Appeal brought on 20 November 2014 by the European Commission against the judgment delivered by the General Court (Third Chamber) on 9 September 2014 in Case T-461/12 Hansestadt Lübeck v European Commission

(Case C-524/14 P)

(2015/C 026/21)

Language of the case: German

Parties

Appellant: European Commission (represented by: T. Maxian Rusche and R. Sauer, acting as Agents)

Other parties to the proceedings: Hansestadt Lübeck, previously Flughafen Lübeck GmbH

Form of order sought

— Set aside the judgment under appeal;

— declare the action at first instance inadmissible;

— alternatively: declare the action at first instance devoid of purpose;

— alternatively: declare unfounded that part of the fourth plea in law by which it is alleged that there has been an infringement of Article 107(1) TFEU in relation to the selectivity criterion, and refer the case back to the General Court as regards the other parts of the fourth plea in law and the first, second, third and fifth pleas in law;

— order the applicant in the proceedings at first instance to pay the costs of those proceedings and of the appeal, or, alternatively, in the event that the case is referred back to the General Court, reserve the decision on the costs of the first-instance proceedings and of the appeal for the final judgment.

Pleas in law and main arguments

First plea in law: No individual concern.

In the view of the General Court, the decision at issue is of individual concern to the Hanseatic City of Lübeck in its capacity as legal successor to the public undertaking which operated Lübeck airport until 1 January 2013, since, through the grant of State aid, that public undertaking exercised powers conferred exclusively on it. That conclusion is based on the following facts: the public undertaking proposes the schedule of charges to a regulatory authority of the *Land* which is authorised to approve or reject the schedule of charges (paragraphs 29 to 34 of the judgment under appeal).

In the Commission's view, the General Court established the facts correctly, but erred in law in deeming the public undertaking which operated Lübeck airport until 1 January 2013 to be a granting authority which exercised its own exclusively conferred powers. According to the case-law of the Court of Justice, in examining individual concern to a public or private entity which implements an aid scheme (such as the public undertaking which operated Lübeck airport until 1 January 2013), what is decisive is whether it is the entity itself or the State that is able to determine its management and policies ([1]). The facts established by the General Court show that the State has that power, for two reasons. The schedule of charges requires prior approval by the regulatory authority of the *Land*. The regulatory authority is in turn bound by Federal law on airport charges. Consequently, the mere fact that the airport operator has to propose the schedule of charges does not mean that that operator is in a position to determine its own management and the objectives pursued by the schedule of charges.

In finding that the power to perform a preparatory step in respect of the grant of aid (in this case, proposing the schedule of charges to the regulatory authority) represents the exercise of a power to grant aid, the General Court erred in law, since it interpreted the expression 'individually concerned' too broadly.

Second plea in law: No interest in bringing proceedings.

The General Court considers that the Hanseatic City of Lübeck, in its capacity as legal successor to the public undertaking that operated Lübeck airport until 1 January 2013, continues to have an interest in bringing proceedings even after the sale of Lübeck airport to a private investor. The General Court did not consider it necessary to establish whether the duty to suspend the schedule of charges ended on 1 January 2013 because the schedule of charges no longer represented State aid, given that no further State resources were being applied. Even if that were the case, the applicant at first instance would, in the General Court's view, retain an interest in bringing proceedings because the formal investigation procedure had not yet been completed and the decision at issue was, therefore, still producing legal effects.

The first argument of the General Court fails because, even without a final decision on the completion of the formal investigation procedure, the decision at issue can lose its only legal effect — that is the duty to suspend the aid measure while the investigation is ongoing — if the aid measure comes to an end for reasons unrelated to the formal investigation procedure (in this case, the privatisation of the airport).

The second argument of the General Court is inconsistent with case-law, which requires there to be a vested and present interest. In the present case, the risk of the measure being suspended before 1 January 2013 did not materialise because the airport was privatised. The Hanseatic City of Lübeck failed to prove its interest in pursuing its claim following the privatisation of the airport.

On those grounds, the General Court erred in law in finding that the applicant at first instance had a present interest.

Third plea in law: Incorrect interpretation of the concept of selectivity for the purposes of Article 107(1) TFEU

In order to establish whether the schedule of charges of a public undertaking is selective, it is necessary, according to the General Court, to assess whether it applies on a non-discriminatory basis to all users and potential users of the goods or services provided by that public undertaking (paragraph 53 of the judgment under appeal).

This view is in stark contrast to the case-law of the Court of Justice, according to which a measure is not a general measure of fiscal or economic policy and is thus selective if it applies only to a particular economic sector or to particular undertakings in that economic sector ([2]) . The Court has thus decided that preferential rates for goods and services that are set by public undertakings are selective even if all users and potential users could avail themselves of them ([3]) . In his Opinion in *Deutsche Lufthansa*, Advocate General Mengozzi applied that case-law to a situation that corresponds precisely to the situation at issue here, namely an airport's schedule of fees with discounts for certain major users, and confirmed the selectivity of the measure ([4]).

Fourth plea in law: failure to give adequate reasons and contradictory reasons

The General Court's grounds are erroneous. First, an essential part of the selectivity assessment is omitted, namely determination of the objective pursued by the schedule of charges, since the question as to which undertaking is in a comparable position in law and in fact has to be investigated by reference to that system. Secondly, the Court's reasons are contradictory, since it first applies the case-law on the selectivity of fiscal measures (paragraphs 51 and 53 of the judgment under appeal) and then finds that it is not relevant (paragraph 57 of the judgment under appeal).

Fifth plea in law: erroneous application of a strict standard of judicial review to a decision initiating a procedure.

The General Court refers to the correct legal criterion, but completely overlooks in its reasoning the fact that the present case concerns a decision initiating a formal investigation procedure, which is subject only to light judicial review, particularly with regard to the statement of reasons ([5]) . No explanation is given in the judgment under appeal as to why the schedule of charges was so obviously not selective as to preclude the Commission from initiating a formal investigation procedure.

([1]) Case 282/85 *DEFI* v *Commission* [1986] ECR 2649, paragraph 18.
([2]) Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 99, and Case C-148/04 *Unicredito* [2005] ECR I-11137, paragraph 45.
([3]) See, in particular, Case C-126/01 *GEMO* [2003] ECR I-13769, paragraphs 35 to 39.
([4]) Opinion in Case C-284/12 *Deutsche Lufthansa* [2013] ECR, paragraphs 47 to 55.
([5]) See, most recently, order in Case T-172/14 R *Stahlwerk Bous* v *Commission* [2014] ECR, paragraphs 39 to 78 and the case-law cited.