

Operative part of the order

1. There is no longer any need to adjudicate on the action.
2. PepsiCo, Inc. shall pay the costs.

⁽¹⁾ OJ C 228, 14.6.2021.

Action brought on 1 September 2021 — Bastion Holding and Others v Commission**(Case T-513/21)****(2021/C 462/54)***Language of the case: English***Parties**

Applicants: Bastion Holding BV (Amsterdam, Netherlands) and 35 other applicants (represented by: B. Braeken, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Commission decision C(2021) 4735 final of 22 June 2021 in State aid case SA.63257 (2021/N) — The Netherlands COVID-19: Fourth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241);
- order the Commission to bear the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea in law, alleging the failure of the Commission to open a formal investigation procedure by wrongly deciding that the State aid measure raises no doubts as to its compatibility with the internal market.
 - It is argued that the State aid measure raises serious doubts as to its compatibility with the internal market since it is inappropriate to obtain its objective and disproportionate to that aim.
 - First, the applicants argue that the State aid measure is disproportionate to the objective it aims to achieve. The current scheme goes beyond what is necessary in order to prevent liquidity shortages faced by SMEs and support their fixed costs. In fact, the disproportionate amount granted to SMEs allows them to be more competitive as they are not as restricted by their fixed costs. Additionally, SMEs that received aid are not required as much as the applicants to revert to their equity capital in order to remain competitive. The applicants are eligible only to receive a maximum amount of EUR 1 200 000 in total to keep thirty-three hotels running. Most of Bastion's competitors are eligible to receive aid of up to EUR 550 000 per individual hotel under the current scheme simply because they are franchise and/or because they outsource many related hotel services to other undertakings and have less money on their balance sheet. The State aid measure thus grants a comparatively much higher amount of State aid to undertakings that qualify as an SME than the amount of State aid granted to large undertakings, despite the fact that large undertakings have more substantial fixed costs and a (relatively) higher loss of turnover. This grants SMEs an unfair competitive advantage vis-à-vis larger undertakings like the applicants.

- Second, the applicants argue that the State aid measure is not appropriate to pursue its objective, which is to remedy a serious disturbance in the Dutch economy by compensating the fixed costs of undertakings that have suffered a loss of turnover of 30 % as a result of the COVID-19 outbreak and the subsequently imposed governmental measures. The maximum amount of aid is inappropriate to attain the objective pursued by the State aid measure. The State aid measure grants a maximum of EUR 1 200 000 to large undertakings. Such an amount is insufficient to remedy a serious disturbance in the Dutch economy by ensuring that undertakings remain economically viable. Especially for large undertakings, such as the applicants, that maximum amount of EUR 1 200 000 is not enough to effectively respond to the loss of turnover suffered as a result of the COVID-19 outbreak.
 - In particular, the current scheme is, in the applicants' view, inappropriate to remedy the disturbance in the hotel sector. As emphasised in much international and national research, the hotel sector is one of the sectors that has been affected most severely by the COVID-19 crisis and the subsequent tight governmental measures. The average decrease in turnover in the hotel sector is significantly higher than in other sectors. The average decrease in turnover in the accommodation and food sectors amounted to 33,9 % over 2020, whereas the turnover of the applicants decreased 60 % in the second quarter of 2021 in comparison to the second quarter of 2019. The applicants, being a large undertaking, thus suffered a loss of turnover significantly higher than the average loss of turnover suffered by undertakings active in the (already) worst hit sectors of food and accommodation. The State aid measure does not take this into account at all. Instead, it applies a one-size-fits-all system that is evidently not appropriate to the highly complex situation.
2. Second plea in law, alleging procedural shortcomings by the Commission, as the contested decision contains an inadequate statement of reasons.
- The second ground for annulment relates to alleged procedural shortcomings of the contested decision. That decision, it is argued, contains an inadequate statement of reasons, since it does not address the (justification of the) disproportional difference in the maximum aid between SMEs and larger undertakings in any shape or form. Nor does it address the appropriateness of the measure itself or the fact that SMEs were eligible to receive aid under two previous aid measures. By its decision, the Commission has thus not enabled the applicants to ascertain the reasons for deciding that the State aid measure was deemed compatible with the internal market. This violates Article 296 TFEU.

Action brought on 27 August 2021 — Neratax v EUIPO — Piraeus Bank and Others (ELLO ERMOL, Ello creamy, ELLO, MORFAT Creamy and MORFAT)

(Case T-528/21)

(2021/C 462/55)

Language of the case: English

Parties

Applicant: Neratax LTD (Nicosia, Cyprus) (represented by: V. Katsavos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Piraeus Bank SA (Athens, Greece), National Bank of Greece (Athens), Eurobank Ergasias SA (Athens)

Details of the proceedings before EUIPO

Proprietor of the trade marks at issue: Applicant before the General Court

Trade marks at issue: European Union word marks ELLO, MORFAT and European Union figurative marks ELLO ERMOL, Ello Creamy, MORFAT Creamy — European Union trade marks Nos 12 549 499 (ELLO), 12 549 821 (MORFAT), 14 715 783 (ELLO ERMOL), 14 722 243 (Ello creamy), 14 715 726 (MORFAT Creamy)