Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

22 June 2016*

(Actions for annulment — State aid — Household appliances — Restructuring aid — Decision declaring the aid compatible with the internal market, subject to compliance with certain conditions — Decision taken following the annulment by the Court of the earlier decision concerning the same procedure — Lack of individual concern — No substantial effect on the competitive position — Inadmissibility)

In Case T-118/13,

Whirlpool Europe BV, established in Breda (Netherlands), represented by F. Wijckmans and H. Burez, lawyers,

applicant,

supported by

Electrolux AB, established in Stockholm (Sweden), represented by F. Wijckmans and H. Burez, lawyers,

intervener,

v

European Commission, represented by L. Flynn, É. Gippini Fournier and P.-J. Loewenthal, acting as Agents,

defendant,

supported by

French Republic, represented by G. de Bergues, D. Colas and J. Bousin, acting as Agents,

and by

Fagor France SA, established in Rueil-Malmaison (France), represented by J. Derenne and A. Müller-Rappard, lawyers,

interveners,

APPLICATION based on Article 263 TFEU for the annulment of Commission Decision 2013/283/EU of 25 July 2012 on State aid SA.23839 (C 44/2007) that France plans to grant to FagarBrandt (OJ 2013 L 166, p. 1),

* Language of the case: English

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni and L. Madise (Rapporteur), Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 24 November 2015,

gives the following

Judgment

Background to the dispute

1 The applicant, Whirlpool Europe BV ('Whirlpool'), operates in the manufacture and marketing of large home appliances sector.

2 By letter of 6 August 2007, the French Republic notified the European Commission of planned restructuring aid of EUR 31 million for FagorBrandt SA, now Fagor France SA ('FagorBrandt' or 'the recipient').

3 By letter of 10 October 2007, the Commission informed the French Republic of its decision to open the formal investigation procedure laid down in Article 88(2) EC (OJ 2007 C 275, p. 18).

4 By letters of 14 December 2007, 26 February and 12 March 2008, Electrolux AB, also operating in the manufacture and marketing of large home appliances sector, submitted observations.

5 By letter of 17 December 2007, Whirlpool submitted observations.

6 By Decision 2009/485/EC of 21 October 2008 on State aid C 44/07 (ex N 460/07) which France is planning to implement for FagorBrandt (OJ 2009 L 160, p. 11), the Commission authorised the aid under the condition, in particular, that FagorBrandt stop the marketing of refrigerators, freezers, cooking and dishwashing products under the Vedette brand for a period of five years.

7 By judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76) on the actions brought by Electrolux and by Whirlpool, the Court annulled Decision 2009/485 after having found that the Commission had made manifest errors of assessment by taking into account an invalid compensatory measure (the transfer of Brandt Components) and by having failed to analyse the cumulative effect on competition of the notified aid, mentioned in paragraph 2 above, and of another aid granted by the Italian Republic to FagorBrandt through its subsidiary FagorBrandt Italia ('the Italian aid').

8 On 25 July 2012, following the judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76), the Commission adopted Decision 2013/283/EU on State aid that France plans to grant FagarBrandt SA.23839 (C 44/2007) (OJ 2013 L 166, p. 1; 'the contested decision'), in which it declared the notified aid compatible with the internal market ('the aid referred to in the contested decision' or 'the measure at issue') under the conditions stated therein.

9 In the contested decision, the Commission, after having examined the cumulative effect of the measure at issue and of the Italian aid (recitals 85 to 88), essentially held that the transfer of Brandt Components (classified as a compensatory measure by Decision 2009/485) and the cessation of the marketing, for a duration of five years, of certain products (cooking, refrigeration, dishwashing) of the

Vedette brand (imposed by Decision 2009/485) were not sufficient to prevent any excessive distortion of competition (recitals 100 and 112). Accordingly, it decided to impose, as a condition of compatibility of the measure at issue, the extension for a further three years of the cessation of the marketing of the aforementioned products of the Vedette brand (recital 112). It took the view that that measure sufficed by itself to reduce, in a manner that is proportionate, the negative effects on competition resulting from the grant of the aid (recital 117) and offset the cumulative effect of that aid and the Italian aid (recital 118).

10 The operative part of the contested decision reads as follows:

‘Article 1

The aid amounting to EUR 31 million which [the French Republic] plans to grant to FagorBrandt is compatible with the internal market subject to the conditions laid down in Article 2.

Article 2

1. The French authorities shall suspend payment to FagorBrandt of the aid referred to in Article 1 of this Decision until such time as the recovery from FagorBrandt of the incompatible aid referred to in Commission Decision 2004/343/EC of 16 December 2003 has become effective.

2. FagorBrandt’s restructuring plan, as communicated to the Commission by [the French Republic] on 6 August 2007, must be implemented in full.

3. FagorBrandt’s own contribution to the cost of restructuring, which FagorBrandt proposes should be EUR 31.5 million, must be increased by EUR 3190878.02 plus the interest on that sum running from the date on which the Italian aid was put at FagorBrandt’s disposal until 21 October 2008. That increase must take place before the end of the period of restructuring of the undertaking, which has been set at 31 December 2012. The French authorities must produce evidence of this increase within two months after 31 December 2012.

4. FagorBrandt shall cease marketing refrigeration, cooking and dishwashing products of the Vedette brand for a period of eight years.

5. In order to ensure that the conditions laid down in paragraphs 1 to 4 of this Article are observed, [the French Republic] shall inform the Commission, by means of annual reports, of progress with the restructuring of FagorBrandt, the recovery of the incompatible aid described in paragraph 1, the payment of the compatible aid, and the implementation of the compensatory measures.

Article 3

[The French Republic] shall inform the Commission within two months of the date of notification of this decision of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the French Republic.’

Procedure and forms of order sought

11 By application lodged at the Court Registry on 20 February 2013, the applicant brought the present action.

12 By document lodged at the Court Registry on 6 June 2013, Electrolux sought leave to intervene in these proceedings in support of the applicant. By documents lodged on 25 June 2013 and 8 July 2013, FagorBrandt and the French Republic applied for leave to intervene in support of the Commission.

13 By orders of 11 September 2013, the President of the Fourth Chamber of the Court granted the applications to intervene lodged by Electrolux, FagorBrandt and the French Republic.

14 By letter lodged at the Court Registry on 3 October 2013, the applicant requested that the Court authorise the applicant, by way of a measure of organisation of procedure, to submit written observations in response to the Commission's submissions on the admissibility of the application, since they had been submitted for the first time in the rejoinder.

15 By letters of 14, 24 and 29 October 2013, the Commission, the French Republic and FagorBrandt submitted observations on the request for measures of organisation of procedure lodged by the applicant.

16 By documents lodged at the Court Registry on 5 December 2013, FagorBrandt and the French Republic submitted their statements in intervention.

17 By document lodged at the Court Registry on 6 December 2013, Electrolux submitted its statement in intervention.

18 By document lodged at the Court Registry on 19 February 2014, the Commission submitted its observations on the statements in intervention of the French Republic, FagorBrandt and Electrolux.

19 By document lodged at the Court Registry on 4 March 2014, the applicant submitted its observations on the statements in intervention of FagorBrandt and the French Republic.

20 By document of 23 September 2015, the Court sent measures of organisation of procedure to the parties. The Court inter alia asked the applicant to respond to the Commission's argument seeking to contest the admissibility of its action and to substantiate the arguments raised to that effect in its written pleadings.

21 By letters of 9 and 30 October 2015, the Commission, and then the applicant, replied to the questions put by the Court.

22 The composition of the chambers of the Court having been altered, the Judge-Rapporteur was assigned to the Second Chamber, to which this case was, consequently, assigned.

23 The applicant claims that the Court should:

— primarily, annul the contested decision in its entirety on the ground that one or more of the cumulative conditions of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2) are not met or that, in any event, the Commission has failed to ascertain to the requisite legal standard that each of such conditions is met;

— in the alternative, annul the contested decision in its entirety on account of the failure to comply with the duty to state reasons laid down in Article 296 TFEU;

— order the Commission to pay the costs;

— order the French Republic and FagorBrandt to bear their own costs.

24 Electrolux claims that the Court should:

— primarily, annul the contested decision in its entirety on account of the fact that one or more of the (cumulative) conditions of the Community guidelines on State aid for rescuing and restructuring firms in difficulty are not met or that, in any event, the Commission has failed to ascertain to the requisite legal standard that each of such conditions was met;

— in the alternative, annul the contested decision in its entirety on the ground of infringement of Article 296 TFEU.

25 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs;

26 FagorBrandt contends that the Court should:

— dismiss the action as inadmissible or unfounded;

— order the applicant to pay the costs.

27 The French Republic submits that the Court should dismiss the action.

Law

28 The Commission, supported by the French Republic and FagorBrandt, asserts, in the rejoinder, that, in accordance with the case-law, the fact that an undertaking's views were heard and that the conduct of the procedure was largely determined by its observations, although a factor which is relevant to the assessment of *locus standi*, does not relieve that undertaking of having to show that the aid at issue is liable to result in its market position being 'substantially affected'. As regards that 'substantial effect', the Commission states that, in accordance with the case-law, it cannot suffice, in order to prove that the undertaking at issue is individually concerned, to establish that the aid at issue may exercise 'an influence' on the competitive relationships and that the undertaking concerned is in a competitive relationship with the addressee of the aid. On the contrary, it should be demonstrated that the applicant was particularly affected by the aid in relation to its competitors. The Commission states that that fundamental requirement was recently reiterated by the Court of Justice in the judgment of 13 June 2013 in *Ryanair* v *Commission* (C-287/12 P, not published, EU:C:2013:395).

29 In its observations on the statements in intervention submitted by FagorBrandt and the French Republic and in its responses to the questions put by the Court on 15 October 2015, the applicant states in the first place that the contested decision clearly shows that its market position was substantially affected by the aid to which the measure in question relates.

30 The applicant, supported by Electrolux, refers in that regard, first, to recital 18 of the contested decision, which states that 'without aid, FagorBrandt would be forced out of the market' and that 'the disappearance of FagorBrandt would accordingly enable its European competitors to increase their sales and output significantly', secondly, to recital 93 of that decision, which states that 'restructuring aid automatically distorts competition, because it prevents the recipient from being forced out of the market, and thus hinders the development of competing firms', thirdly, to recital 94 of that decision, which states that, 'without aid from the French State, FagorBrandt would soon exit the market [...;] consequently, the disappearance of FagorBrandt would enable those European competitors appreciably to increase their sales and hence their production' and, fourthly, to recitals 105 and 109 of the

contested decision, which state that Whirlpool is one of 'FagorBrandt's main competitors' in the market for refrigerators, freezers and dishwashing products. The applicant infers from this that, by citing those recitals of the contested decision in its written pleadings, it demonstrated to the requisite legal standard that its market position was substantially affected.

31 The applicant also observes that the Commission did not dispute, until the rejoinder, that it was individually concerned by Decision 2009/485 or that the Court did not call into question the admissibility of the application in its judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76). In response to the questions put by the Court, the applicant essentially states in that regard that the judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76) is *res judicata* in respect of the issue of the admissibility of the action, in particular in so far as the contested decision is precisely based on the same administrative file as Decision 2009/485, the arguments which it raised are the same and the Commission has not submitted arguments or evidence enabling the Court to distinguish the issue of the admissibility of the action in the present proceedings from that of the admissibility of the action which was duly established by the judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76), in the previous proceedings.

32 In the second place, the applicant submits that, in any event, it is different from the other undertakings acting in the market.

33 It asserts that, first, in its capacity as number two in the French market, it would necessarily have benefited more from an exit of the recipient than its competitors. The applicant maintains, in that regard, that, since the recipient of the aid ceased its activities in the middle of 2013, it has 'gained a considerable number of market shares on the French market' and that, even if it had recovered only 1% of FagorBrandt's market shares, that amount corresponded to the amount of the aid referred to in the contested decision. The applicant thus asserts that the disappearance of FagorBrandt could have generated for it a significant increase in market shares given its classification as number two in the market, with the result that the aid referred to in the contested decision is the source of a considerable loss of earnings which characterises, as such, the substantial effect of its market position within the meaning of the case-law.

34 Secondly, the applicant submits, in connection with evidence that its position is particularly affected, that it was included, as it established in the application, amongst the potential purchasers of the recipient in 2001/2002 when the latter was the subject of insolvency proceedings. However, the takeover of Brandt was finally granted to Fagor because that undertaking had undertaken not to restructure it for two years, in consideration for the aid at issue.

35 Thirdly, the applicant states that it was closely involved in the proceedings at issue, to an extent which clearly distinguishes it from other participants in the market.

36 As a preliminary point, it should be observed that it was for the first time in the rejoinder that the Commission called into question, the admissibility of the action, alleging that the applicant lacked standing to bring proceedings.

37 However, it should be stated that the Court may at any time, of its own motion, examine the conditions governing admissibility of the action (see, to that effect, judgment of 22 October 1996 in *Skibsværftsforeningen and Others* v *Commission*, T-266/94, EU:T:1996:153, paragraph 40). Therefore, the lack of any challenge by the Commission to the admissibility of the action or, *a fortiori*, a late challenge to it does not mean that the Court is to refrain from considering that point.

38 Moreover, there is nothing to prevent the Court from taking account of the observations in reply on the plea of inadmissibility, submitted by the applicant, after the rejoinder (see, to that effect, order of 7 March 2013 in *UOP* v *Commission*, T-198/09, not published, EU:T:2011:354, paragraph 32), as the Commission expressly acknowledged at the hearing.

39 It is therefore appropriate to consider the admissibility of the action brought by the applicant.

40 In so far as the Commission claims that the applicant has no interest in bringing proceedings, it is important to note that the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against a European Union act not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, they may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them.

41 In the present case, the contested decision is addressed solely to the French Republic and concerns individual aid within the meaning of Article 1(e) of Council Regulation (EU) No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article [108 TFEU] (OJ 2015 L 248, p. 9). Therefore, since the contested decision is a measure of individual scope, it cannot constitute a regulatory act, within the meaning of the fourth paragraph of Article 263 TFEU, which covers all acts of general application apart from legislative acts (see judgment of 3 December 2014 in *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 23 and the case-law cited). It follows that, since the applicant is not the addressee of the contested decision, its action is admissible only if the applicant is directly and individually concerned by that decision.

42 According to settled case-law of the Court of Justice, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are particular to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed (judgments of 15 July 1963 in *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223; 22 November 2007 in *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 53; and 9 July 2009 in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 29).

43 As the action concerns a Commission decision on State aid, it must be borne in mind that, in the context of the procedure for reviewing State aid provided for in Article 108 TFEU, the preliminary stage of the procedure for reviewing aid under Article 108(3) TFEU, which is intended merely to allow the Commission to form a prima facie opinion on the partial or complete conformity of the aid in question, must be distinguished from the examination under Article 108(2) EC. It is only at the latter stage, which is designed to enable the Commission to be fully informed of all the facts of the case, that the Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments (see judgment of 9 July 2009 in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 30 and the case-law cited).

44 Where an undertaking calls into question the merits of the decision appraising the aid taken on the basis of Article 108(3) TFEU or after the formal investigation procedure, the mere fact that it may be regarded as concerned within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible. It must go on to demonstrate that it has a particular status within the meaning of the judgment of 15 July 1963 in *Plaumann* v *Commission* (25/62, EU:C:1963:17) (see, to that effect, order of 10 November 2015 in *Compagnia Trasporti Pubblici and Others* v *Commission*, T-187/15, not published, EU:T:2015:846, paragraph 18). That applies in particular where its market position is substantially affected by the aid to which the decision at issue relates (see, to that effect, judgment of 13 December 2005 in *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, C-78/03 P, EU:C:2005:761, paragraph 37 and the case-law cited).

45 In that regard, not only the undertaking in receipt of the aid but also the undertakings competing with it which have played an active role in the procedure initiated pursuant to Article 108(2) TFEU in respect of an individual aid have been recognised as individually concerned by the Commission decision closing that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the contested decision. An undertaking cannot therefore rely solely on its status as a competitor of the undertaking in receipt of aid but must additionally show, in the light of its participation in the procedure and the magnitude of the harm to its position on the market, that its factual circumstances distinguish it in a similar way to the undertaking in receipt of the aid (see order of 7 March 2013 in *UOP* v *Commission*, T-198/09, not published, EU:T:2013:105, paragraphs 25 and 26 and the case-law cited; see also, to that effect, judgment of 28 January 1986 in *Cofaz and Others* v *Commission*, 169/84, ECR, EU:C:1986:42, paragraph 25, and order of 27 May 2004 in *Deutsche Post and DHL* v *Commission*, T-358/02, EU:T:2004:159, paragraphs 33 and 34).

46 As regards establishing such an effect, the Court of Justice has had occasion to explain that the mere fact that a measure such as the contested decision may have some influence on the competitive relationships existing on the relevant market and that the undertaking concerned was in a competitive relationship with the addressee of that measure cannot in any event suffice for that undertaking to be regarded as individually concerned by that measure (see, to that effect, judgments of 10 December 1969 in *Eridania and Others* v *Commission*, 10/68 and 18/68, EU:C:1969:66, paragraph 7, and 22 December 2008 in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 47).

47 According to settled case-law, the applicant must provide evidence to establish the particularity of its competitive situation (order of 27 May 2004 in *Deutsche Post and DHL* v *Commission*, T-358/02, EU:T:2004:159, paragraph 38, and judgment of 10 February 2009 in *Deutsche Post and DHL International* v *Commission*, T-388/03, EU:T:2009:30, paragraphs 49 and 51) and demonstrate that its competitive position is substantially affected in comparison with the other undertakings competing in the market at issue (see, to that effect, order of 27 May 2004 in *Deutsche Post and DHL* v *Commission*, T-358/02, EU:T:2004:159, paragraph 41; see also, to that effect, judgments of 10 February 2009 in *Deutsche Post and DHL International* v *Commission*, T-388/03, EU:T:2009:30, paragraph 51; 13 September 2010 in *TF1* v *Commission*, T-193/06, EU:T:2010:389, paragraph 84; 15 January 2013 in *Aiscat* v *Commission*, T-182/10, EU:T:2013:9, paragraph 68; 5 November 2014 in *Vtesse Networks* v *Commission*, T-362/10, EU:T:2014:928, paragraph 55; and 3 December 2014 in *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraphs 35 to 37).

48 In the present case, the applicant claims, in essence, that it is individually concerned by the contested decision in that the aid made it possible to maintain on the market at issue an undertaking which, in the absence of such a measure, would have disappeared from that market. The maintenance of the recipient on the market results, it claims, in a loss of earnings for the applicant, since, in its capacity as number two in the French market, it could have acquired the market shares vacated by the disappearance of FagorBrandt.

49 It should be recalled that the conditions governing admissibility of an action are judged at the time of bringing the action, that is, the lodging of the application (order of 15 December 2010 in *Albertini and Others* and *Donnelly* v *Parliament*, T-219/09 and T-326/09, EU:T:2010:519, paragraph 39, and judgment of 3 December 2014 in *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 34).

50 In the circumstances of the present case, the Court finds, without needing, however, to determine whether the information referred to by the applicant is transposable to the competitive situation that existed on the day on which the action was brought and resulted from the contested decision, that that information does not show that, on account of the measure at issue, there is a significant effect on its market position.

51 The tables of market shares in Annex 14 to the application list more than 15 operators on the French and European markets for large electrical household appliances. However, as the Commission stated at the hearing, it cannot simply be presumed that the applicant would have significantly increased its sales in the event of the disappearance from the market of the undertaking benefiting from the measures at issue, without any evidence to support that claim, in a situation where, as in the present case, the structure of the market is unconcentrated and characterised by the presence of a large number of operators (see, to that effect, order of 11 January 2012 in *Phoenix-Reisen and DRV* v *Commission*, T-58/10, not published, EU:T:2012:3, paragraph 50).

52 Moreover, the recitals of the contested decision referred to by the applicant (reproduced in paragraph 30 above) simply set out general considerations which are potentially valid for all the operators present on the market at issue. Whilst they state, inter alia, that the disappearance of FagorBrandt would enable its European competitors appreciably to increase their sales and hence their production (recitals 18 and 94), they do not in any case allow it to be presumed that the applicant would have been more affected by the measure at issue than all of its competitors on average (see, to that effect, judgment of 3 December 2014 in *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 35) or that its development would have been significantly better in the absence of authorisation of the measure at issue (see, to that effect, order of 27 May 2004 in *Deutsche Post and DHL* v *Commission*, T-358/02, EU:T:2004:159, paragraph 43). Specifically, there is no way of determining that the applicant would have been more capable than an average competitor of capturing the demand resulting from the disappearance of FagorBrandt. In particular, the applicant has not shown that the aid at issue helped the recipient to maintain market shares which would have otherwise been held by it (judgment of 13 June 2013 in *Ryanair* v *Commission*, C-287/12 P, not published, EU:C:2013:395, paragraph 113) and, therefore, that it suffered a sufficiently considerable loss of earnings in comparison with its other competitors, so as to characterise it as a substantial effect on its market position. In that regard, contrary to the applicant's submissions, its position as number two in the market, behind the recipient, cannot by itself give rise to a presumption of the existence of a substantial effect on its market position (see, to that effect, order of 27 August 2008 in *Adomex* v *Commission*, T-315/05, not published, EU:T:2008:300, paragraph 28).

53 None of the arguments raised by the applicant invalidates the finding in paragraphs 50 to 52 above that the applicant lacks standing to bring proceedings in the absence of proof of a substantial effect on its competitive position at the time of bringing the action.

54 First, the claim that, since the recipient of the aid ceased its activities in the middle of 2013, the applicant has 'gained a considerable number of market shares on the French market' (see paragraph 33 above) is not substantiated by any evidence. In any event, even assuming that were established, the applicant does not submit that it characterises, in accordance with the case-law (see paragraph 47 above), the particularity of its competitive situation in comparison with that of its competitors. The same is true of the fact that, even though the applicant had recovered only 1% of FagorBrandt's market shares, that amount corresponded to the amount of the aid referred to in the contested decision, for that applies to all market operators.

55 Nor, secondly, can the participation of the applicant in the examination procedure give rise to a presumption of any substantial effect on its market position. It cannot be inferred from the mere participation of an applicant in the administrative proceedings that it has standing to bring proceedings (order of 7 March 2013 in *UOP* v *Commission*, T-198/09, not published, EU:T:2013:105, paragraph 27; see also, to that effect, judgment of 22 November 2007 in *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 60) even if it played an important part in the proceedings, inter alia by lodging the complaint which led to the contested decision (see, to that effect, judgment of 9 July 2009 in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraphs 94 and 95).

56 Thirdly, the fact that the applicant was one of the potential purchasers of the recipient in 2001/2002 when the latter was the subject of insolvency proceedings (see paragraph 34 above) is irrelevant for the purpose of establishing its ability, more than ten years after those proceedings, to recover, in a proportion significantly higher than that of its competitors, the market shares available as a result of the disappearance of FagorBrandt.

57 Fourthly and lastly, with regard to the principle of *res judicata*, it is irrelevant that, in the judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76), the Court did not raise of its own motion the applicant's lack of standing to bring proceedings even though the arguments raised in the earlier application in support of the appeal against Decision 2009/485 were, according to the applicant, in all respects similar to those raised against the contested decision in the present action.

58 The question whether a natural or legal person is individually concerned is to be assessed on the date on which the proceedings are brought and is determined only by the contested decision (order of 29 March 2012 in *Asociación Española de Banca* v *Commission*, T-236/10, EU:T:2012:176, paragraph 38). Thus, the force of *res judicata* attaching to the judgment of 14 February 2012 in *Electrolux* v *Commission* (T-115/09 and T-116/09, EU:T:2012:76), which concerned the lawfulness of Decision 2009/485, cannot prejudge the applicant's standing to bring proceedings in relation to the present action which is brought against the contested decision.

59 In those circumstances, it must be held that the applicant has not established that its position was substantially affected by the aid covered by the contested decision. The action brought by the applicant must therefore be dismissed as inadmissible.

Costs

60 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to bear its own costs as well as those incurred by the Commission, in accordance with the form of order sought by the latter.

61 In accordance with Article 138(1) of the Rules of Procedure, Member States which have intervened in proceedings are to bear their own costs. The French Republic shall, therefore, bear the costs which it has incurred. The other interveners shall also each bear their own costs, pursuant to Article 138(3) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action as inadmissible;**

2. **Orders Whirlpool Europe BV to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the French Republic, Electrolux AB and Fagor France SA to bear their own costs.**

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 22 June 2016.

[Signatures]