

II. Second ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the statement that the Altmark conditions were not satisfied

The classification of an economic outlay by the public authorities as compensation automatically precludes the application of the rules regarding State aid. Given the nature of compensation for public service tariff obligations, a company that has discharged those obligations cannot be considered to have gained any advantage. The appellant also analyses the Altmark judgment point by point, in order to demonstrate that the principles set out therein have all been observed.

III. Third ground of appeal, alleging that the judgment is vitiated by an error of law regarding the assessment that the economic measure is incompatible with the EU rules regarding State aid, and asserting that the measure is not capable of '[distorting] competition'

The General Court failed to take account of the fact that the Local Public Transport market in Campania during the period relevant to the case (1996 — 2002) was, as it still is today, closed to competition, and that the concessions gave rise to an exclusive right. Accordingly, there could be no competition either 'for the market' or 'in the market'.

IV. Fourth ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding its confirmation that the decision of the Commission prevails over the judgment of the national court and alleging misapplication of the procedural guarantees provided for by Regulation No 659/1999⁽²⁾ (Regulation 2015/1589⁽³⁾) and the principle of legitimate expectations

The General Court failed to take account of the fact that the judgment of the national court had been delivered more than five years before the Commission's decision. Therefore, the case-law relied on by the General Court was not relevant, there being no precedents to the present case. Instead, by applying Regulation No 1191/69, the Council of State had exercised a power reserved for that court. The Commission also cannot claim any exclusive decision-making power in the present case. The long period that had elapsed between the judgment [of the national court], which had applied EU law, and the Commission's decision had established a legitimate expectation. It cannot be claimed that the Council of State was not aware of the rules applied, but merely that the Commission interpreted them differently.

V. Fifth ground of appeal, alleging that the judgment is vitiated by an improper application of Regulation (EC) No 1370/2007⁽⁴⁾ for the purpose of assessing the compatibility of the aid with EU law and alleging a failure to state reasons

The Commission made its decision on an incorrect legal basis as Regulation No 1370/2007 was not applicable because it entered into force after the declaratory judgment confirming the right to compensation delivered by the Council of State on the basis of Regulation No 1191/69.

⁽¹⁾ Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1).

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

⁽³⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

⁽⁴⁾ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Appeal brought on 19 September 2018 by CSTP Azienda della Mobilità SpA against the judgment of the General Court (Second Chamber) delivered on 11 July 2018 in Case T-186/15, CSTP Azienda della Mobilità v Commission

(Case C-587/18 P)

(2018/C 399/35)

Language of the case: Italian

Parties

Appellant: CSTP Azienda della Mobilità SpA (represented by: G. Capo and L. Visone, avvocati)

Other parties to the proceedings: European Commission and Asstra Associazione Trasporti

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35842 (2014/C) (ex 2012/NN) (in respect of EUR 4 951 838,25) is entirely null and void in so far as it finds that the sums awarded by way of compensation in respect of public service obligations within the meaning of Regulation (EEC) No 1191/69 (award of compensation under Article 11 in respect of tariff obligations in the Local Public Transport sector ⁽¹⁾) are to be held to be a non-notified measure constituting State aid within the meaning of Article 107(1) of the Treaty which is incompatible with the internal market;
- declare, pursuant to Articles 263 and 264 TFEU, that the decision of the European Commission of 19 January 2015 in State aid proceedings SA.35842 (2014/C) (ex 2012/NN) (in respect of EUR 4 951 838,25) is entirely void in so far as it imposes operational measures for the recovery of the aid by the Italian State;
- order the Commission to pay the costs incurred by CSTP Azienda della Mobilità SpA, under extraordinary administration.

Grounds of appeal and main arguments

The appellant relies on five grounds in support of its appeal, according to which the judgment should be set aside:

I. First ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the classification of the compensation in question as ‘new aid’

The compensation was awarded to the appellant following a declaratory judgment by the Consiglio di Stato (Council of State, Italy) in 2009 confirming the existence of the right thereto, on the basis of Regulation No 1191/69, in respect of public service tariff obligations. That judgment, given its scope, could never be construed as establishing a compensation measure, having merely served to confirm the existence of that right.

II. Second ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding the statement that the Altmark conditions were not satisfied

The classification of an economic outlay by public authorities as compensation automatically precludes the application of the rules regarding State aid. Given the nature of compensation for public service tariff obligations, a company that has discharged those obligations cannot be considered to have gained any advantage. The appellant also analyses the Altmark judgment point by point, in order to demonstrate that the principles set out therein have all been observed.

III. Third ground of appeal, alleging that the judgment is vitiated by an error of law regarding the assessment that the economic measure is incompatible with the EU rules regarding State aid, and asserting that the measure is not capable of ‘[distorting] competition’

The General Court failed to take account of the fact that the Local Public Transport market in Campania during the period relevant to the case (1996 — 2002) was, as it still is today, closed to competition, and that the concessions gave rise to an exclusive right. Accordingly, there could be no competition either ‘for the market’ or ‘in the market’.

IV. Fourth ground of appeal, alleging that the judgment under appeal is vitiated by an error of law regarding its confirmation that the decision of the Commission prevails over the judgment of the national court and alleging misapplication of the procedural guarantees provided for by Regulation No 659/1999 ⁽²⁾ (Regulation 2015/1589 ⁽³⁾) and the principle of legitimate expectations

The General Court failed to take account of the fact that the judgment of the national court had been delivered more than five years before the Commission’s decision. Therefore, the case-law relied on by the General Court was not relevant, there being no precedents to the present case. Instead, by applying Regulation No 1191/69, the Council of State had exercised a power reserved for that court. The Commission also cannot claim any exclusive decision-making power in the present case. The long period that had elapsed between the judgment [of the national court], which had applied EU law, and the Commission’s decision had established a legitimate expectation. It cannot be claimed that the Council of State was not aware of the rules applied, but merely that the Commission interpreted them differently.

V. Fifth ground of appeal, alleging that the judgment is vitiated by an improper application of Regulation (EC) No 1370/2007 ⁽⁴⁾ for the purpose of assessing the compatibility of the aid with EU law and alleging a failure to state reasons

The Commission made its decision on an incorrect legal basis as Regulation No 1370/2007 was not applicable because it entered into force after the declaratory judgment confirming the right to compensation delivered by the Council of State on the basis of Regulation No 1191/69.

- ⁽¹⁾ Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1).
- ⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).
- ⁽³⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).
- ⁽⁴⁾ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

**Appeal brought on 21 September 2018 by Brugg Kabel AG and Kabelwerke Brugg AG Holding
against the judgment of the General Court (Eighth Chamber) delivered on 12 July 2018 in Case T-441/
14 Brugg Kabel AG and Kabelwerke Brugg AG Holding v European Commission**

(Case C-591/18 P)

(2018/C 399/36)

Language of the case: German

Parties

Appellants: Brugg Kabel AG and Kabelwerke Brugg AG Holding (represented by: A. Rinne and M. Lichtenegger, Rechtsanwälte)

Other party: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court of 12 July 2018 in Case T-441/14 and annul the decision of the respondent of 2 April 2014 (Case AT.39610 — Power Cables) insofar as it relates to the appellants;
- in the alternative, set aside the judgment of the General Court referred to in first point and annul the decision of the respondent referred to in the first point insofar as:
 - the fine against the appellants is set at EUR 8 490 000, and
 - the appellants are ordered to pay the costs
- and reduce the fine in accordance with the submissions made by the appellant at first instance as the General Court sees fit;
- in the further alternative, set aside the judgment of the General Court referred to in the first point and refer the case back to the General Court;
- order the respondent to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellants rely on six grounds of appeal.