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EN

Price:
EUR 3

⁽¹⁾ Text with EEA relevance, except for products falling under Annex I to the Treaty

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

Authorisation for State aid pursuant to Articles 107 and 108 of the TFEU

Cases where the Commission raises no objections

(Text with EEA relevance, except for products falling under Annex I to the Treaty)

(2012/C 316/01)

Date of adoption of the decision	24.7.2012	
Reference number of State Aid	SA.33969 (11/N)	
Member State	Hungary	
Region	—	—
Title (and/or name of the beneficiary)	Nem termelő beruházások erdőterületen – erdőszerkezet átalakítása – EMVA (1698/2005/EK 49. cikk) tarvágást követő szerkezetátalakítás fajokcserével célprogram	
Legal basis	Az Európai Mezőgazdasági Vidékfejlesztési Alapból az erdőszerkezet átalakításához nyújtandó támogatások részletes feltételeiről szóló 139/2009. (X. 22.) FVM rendelet	
Type of measure	Scheme	—
Objective	Forestry, Environmental protection, Rural development (AGRI)	
Form of aid	Direct grant	
Budget	Overall budget: HUF 8 378 million Annual budget: HUF 4 189 million	
Intensity	100 %	
Duration (period)	Until 31.12.2013	
Economic sectors	Forestry and logging	
Name and address of the granting authority	Vidékfejlesztési Minisztérium Budapest Kossuth Lajos tér 11. 1055 MAGYARORSZÁG/HUNGARY	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Date of adoption of the decision	10.8.2012	
Reference number of State Aid	SA.34707 (12/N)	
Member State	Czech Republic	
Region	Zlínský	—
Title (and/or name of the beneficiary)	Závazná pravidla pro poskytování finančních příspěvků na hospodaření v lesích na území Zlínského kraje a způsob kontroly jejich využití	
Legal basis	1) Závazná pravidla pro poskytování finančních příspěvků na hospodaření v lesích na území Zlínského kraje a způsob kontroly jejich využití 2) Zákon č. 129/2000 Sb., o krajích, ve znění pozdějších předpisů 3) Zákon č. 289/1995 Sb., o lesích a o změně a doplnění některých zákonů (lesní zákon)	
Type of measure	Scheme	—
Objective	Forestry	
Form of aid	Direct grant	
Budget	Overall budget: CZK 175 million Annual budget: CZK 25 million	
Intensity	100 %	
Duration (period)	1.1.2013-31.12.2019	
Economic sectors	Forestry and logging	
Name and address of the granting authority	Zlínský kraj třída Tomáše Bati 21 761 90 Zlín ČESKÁ REPUBLIKA	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Date of adoption of the decision	17.9.2012	
Reference number of State Aid	SA.35189 (12/N)	
Member State	Denmark	
Region	—	—
Title (and/or name of the beneficiary)	Tilskud til privat skovrejsning	
Legal basis	Skovloven. Lovbekendtgørelse nr. 1044 af 20. oktober 2008 med senere ændringer. Bekendtgørelse nr. 423 af 8. maj 2012 om tilskud til privat skovrejsning. Det Nationale skovprogram	
Type of measure	Scheme	—
Objective	Environmental protection, Rural development (AGRI)	
Form of aid	Direct grant	
Budget	Overall budget: DKK 120 million Annual budget: DKK 60 million	
Intensity	100 %	
Duration (period)	1.11.2012-31.12.2013	
Economic sectors	Silviculture and other forestry activities	
Name and address of the granting authority	Naturstyrelsen Haraldsgade 53 2300 København Ø DANMARK	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

18 October 2012

(2012/C 316/02)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,3118	AUD	Australian dollar	1,2632
JPY	Japanese yen	104,01	CAD	Canadian dollar	1,2843
DKK	Danish krone	7,4593	HKD	Hong Kong dollar	10,1671
GBP	Pound sterling	0,81190	NZD	New Zealand dollar	1,5983
SEK	Swedish krona	8,5843	SGD	Singapore dollar	1,5972
CHF	Swiss franc	1,2094	KRW	South Korean won	1 448,93
ISK	Iceland króna		ZAR	South African rand	11,3305
NOK	Norwegian krone	7,3770	CNY	Chinese yuan renminbi	8,2006
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5430
CZK	Czech koruna	24,756	IDR	Indonesian rupiah	12 599,42
HUF	Hungarian forint	277,19	MYR	Malaysian ringgit	3,9843
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	54,078
LVL	Latvian lats	0,6961	RUB	Russian rouble	40,3022
PLN	Polish zloty	4,1027	THB	Thai baht	40,207
RON	Romanian leu	4,5803	BRL	Brazilian real	2,6631
TRY	Turkish lira	2,3570	MXN	Mexican peso	16,7891
			INR	Indian rupee	70,0470

⁽¹⁾ Source: reference exchange rate published by the ECB.

Opinion of the Advisory Committee on restrictive agreements and dominant position given at its meeting of 12 March 2012 regarding a draft decision relating to Case COMP/39.793 — EPH and others

Rapporteur: Sweden

(2012/C 316/03)

1. The Advisory Committee agrees with the Commission's qualification of the two incidents relating to the handling of e-mails as a refusal to submit to an inspection according to Article 23(1)(c) of Regulation (EC) No 1/2003.
 2. The Advisory Committee agrees with the Commission that the infringement of Article 23(1)(c) of Regulation (EC) No 1/2003, i.e. the refusal to submit to the inspection, was committed negligently with regard to the unblocking of an e-mail account and intentionally with regard to the diversion of incoming e-mails.
 3. The Advisory Committee agrees with the Commission's assessment that the two incidents relating to the handling of e-mails constitute a single infringement.
 4. The Advisory Committee agrees with the Commission that Energetický a průmyslový holding a.s. and EP Investment Advisors, s.r.o. are each liable for the infringement.
 5. The Advisory Committee agrees with the factors taken into account when calculating the level of the fine for Energetický a průmyslový holding a.s. and EP Investment Advisors, s.r.o. pursuant to Article 23(1)(c) of Regulation (EC) No 1/2003.
 6. The Advisory Committee agrees with the actual level of the fine proposed by the Commission.
 7. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
-

Final Report of the Hearing Officer ⁽¹⁾**COMP/39.793 — EPH and others**

(2012/C 316/04)

I. BACKGROUND

- (1) On 24-26 November 2009, the Commission conducted an inspection pursuant to Article 20 of Regulation (EC) No 1/2003 ⁽²⁾ at the premises of J&T Investment Advisors, s.r.o. (hereinafter 'J&T IA') ⁽³⁾ and Energetický a průmyslový holding, a.s. (hereinafter 'EPH') ⁽⁴⁾.
- (2) On 17 May 2010, the Commission opened proceedings, pursuant to Article 23(1)(c) of Regulation (EC) No 1/2003, against J&T IA and EPH (hereinafter 'the parties') concerning an alleged refusal to submit to the inspection ⁽⁵⁾.

II. INITIAL WRITTEN AND ORAL PROCEDURE

- (3) On 17 December 2010, the Commission adopted a statement of objections ('SO') against J&T IA and EPH concerning an alleged infringement as referred to in Article 23(1)(c) of Regulation (EC) No 1/2003. The objections related to three incidents that took place during the inspection.
- (4) The parties received access to the Commission's file on 6 January 2011. I did not receive any request from the parties regarding access to the file, and therefore conclude that no problem arose in this regard.
- (5) The parties submitted written comments on the SO on 17 February 2011, within the time limit set by the Commission. In their written comments, the parties requested to develop their arguments at an oral hearing, which took place on 25 March 2011.
- (6) In the letter inviting the parties to the oral hearing, I included certain questions of clarification relating to one of the three incidents that occurred during the inspection and was mentioned in the SO ⁽⁶⁾. The parties were invited to address these questions at the oral hearing, and this led to a helpful discussion concerning this incident at the oral hearing.

III. SECOND WRITTEN AND ORAL PROCEDURE

- (7) Following the oral hearing, the parties were informed by the Directorate-General for Competition during a state-of-play meeting that the Commission would not further pursue the one incident which is mentioned in paragraph 6 above.
- (8) Also following the oral hearing, the Commission addressed to EPIA and EPH a supplementary statement of objections ('SSO') on 15 July 2011, changing the qualification of the alleged infringement for another one of the three incidents from intentional to intentional or at least negligent.
- (9) The parties were granted access to the file on 1 August 2011 and submitted written comments on the SSO within the time limit set by the Commission. They requested to develop their arguments at a second oral hearing, which took place on 13 October 2011.

IV. THE DRAFT COMMISSION DECISION

- (10) Pursuant to Article 16 of the Terms of Reference, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views, and I have come to a positive conclusion.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision of the President of the European Commission 2011/695/EU of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) (the 'Terms of Reference').

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽³⁾ J&T IA's name changed to EP Investment Advisors ('EPIA') during the course of the proceedings. On 18 March 2011, the case name was changed from 'J&T and others' to 'EPH and others' upon request from the parties.

⁽⁴⁾ J&T IA was a wholly-owned subsidiary of EPH.

⁽⁵⁾ See Commission press release IP/10/627.

⁽⁶⁾ Pursuant to the then applicable Article 11 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of hearing officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21), now Article 11(1) of the Terms of Reference.

V. CONCLUDING REMARKS

- (11) Overall, I conclude that the parties have been able to effectively exercise their procedural rights in this case.

Brussels, 13 March 2012.

Wouter WILS

Summary of Commission Decision

of 28 March 2012

relating to a proceeding under Article 23 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

(Case COMP/39.793 — EPH and others)

(notified under document C(2012) 1999 final)

(Only the English text is authentic)

(2012/C 316/05)

On 28 March 2012, the Commission adopted a decision relating to a proceeding under Article 23 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty⁽¹⁾. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽²⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) The Decision is addressed to Energetický a průmyslový holding ('EPH') and its 100 % subsidiary EP Investment Advisors ('EPIA'). It imposes a fine on them for refusal to submit to an inspection, an infringement within the meaning of Article 23(1)(c) of Council Regulation (EC) No 1/2003. The refusal took the form of a failure to block an e-mail account and of diversion of incoming e-mails which occurred during the inspection carried out at the premises shared by EPH and EPIA.

2. PROCEDURE

(2) On 17 May 2010, the Commission decided to initiate proceedings against J&T IA (now EPIA⁽³⁾) and EPH with a view to adopting a decision sanctioning an alleged infringement within the meaning of Article 23(1)(c) of Council Regulation (EC) No 1/2003.

(3) On 17 December 2010, the Commission adopted a statement of objections ('SO') against EPIA and EPH concerning an alleged infringement within the meaning of Article 23(1)(c) of Council Regulation (EC) No 1/2003. The SO was notified to the parties on 22 December 2010. The parties submitted their response on 17 February 2011. The oral hearing took place on 25 March 2011.

(4) On 15 July 2011, the Commission adopted a supplementary statement of objections ('SSO') setting out additional factual and legal elements with regard to one of the instances of an alleged infringement within the meaning of Article 23(1)(c) of Council Regulation (EC) No 1/2003. The SSO was notified to the parties on 19 July 2011. The parties submitted their response on 12 September 2011. The oral hearing took place on 13 October 2011.

(5) The Advisory Committee on restrictive practices and dominant positions was consulted on the existence of an infringement and on the proposed amount of the fine on 12 March 2011. The Advisory Committee delivered a unanimous positive opinion on the draft decision, including the proposed fine.

(6) The Hearing Officer issued his final report on 13 March 2012. The report concludes that the parties' right to be heard has been respected.

3. FACTS

(7) The Decision addresses two incidents relating to the handling of e-mails that occurred during the inspection of 24-26 November 2009: (i) failure to block an e-mail account and (ii) diversion of incoming e-mails.

Failure to block an e-mail account

(8) On 24 November 2009, after the notification of the inspection decision, the Commission inspectors requested to block e-mail accounts of key persons until further notice. This was done by setting a new password only known to the Commission inspectors. This is a standard measure taken at the beginning of inspections, to ensure that inspectors have exclusive access to the content of e-mail accounts and prevent modifications to those

⁽¹⁾ With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102 respectively of the TFEU. The provisions laid down in the respective articles are, in substance, identical in both cases. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty where appropriate.

⁽²⁾ OJ L 1, 4.1.2003, p. 1.

⁽³⁾ On 10 November 2010, J&T IA was renamed EPIA without changes in the corporate structure or the organisation of the company. The following text refers to EPIA also for the time when it was named J&T IA.

accounts while they are searched. On the second day of the inspection, the Commission inspectors discovered that the password for one account had been modified in the course of the first day in order to allow the account holder to access the account.

Diversion of incoming e-mails

- (9) On the third day of the inspection, the Commission inspectors discovered that one of the employees had requested the IT department on the second day of the inspection to divert all incoming e-mails to the accounts of several key persons away from these accounts to a computer server. The company admitted that it had implemented the instruction for at least one of the e-mail accounts. As a result, the incoming e-mails did not become visible in the inboxes concerned and could not be searched by the inspectors.

4. LEGAL ASSESSMENT

- (10) First, the Decision notes that the case law in *Orkem*⁽¹⁾ and *Société Générale*⁽²⁾ and the Commission's decision-making practice⁽³⁾ confirm that full submission to an inspection includes the obligation to actively cooperate with the Commission in all respects. This entails that e-mail accounts of the undertaking are blocked upon request of the inspectors by resetting the password and providing them with a new password exclusively known to the inspectors. The exclusive access to the account by the inspectors must be ensured until the inspectors explicitly allow for it to be unblocked so as to ensure the integrity of the content of the mailbox.
- (11) Second, the Decision notes that submission to an inspection requires that Commission inspectors must have access to all e-mails in the account, including e-mails entering the account during the entire inspection until such point as the inspection ends.
- (12) Third, the Decision determines that the unblocking of the e-mail account was committed by negligence and that the diversion of incoming e-mails was committed intentionally.
- (13) Fourth, the Decision determines that while each of the two incidents could constitute an infringement within the
- meaning of Article 23(1)(c) of Regulation (EC) No 1/2003 in itself, having regard to the common elements, it would not be appropriate to view each conduct in isolation. Therefore, it is concluded that EPIA and EPH engaged in a single overall infringement within the meaning of Article 23(1)(c) of Regulation (EC) No 1/2003.
- (14) Fifth, given that EPH controls EPIA as its 100 % owner in a common management structure as well as the fact that the incidents involved persons who represented both entities during the inspection and also related to e-mail accounts of persons working for each of them, the Decision determines that EPIA and EPH should be held jointly and severally liable for the infringement.

5. FINES

- (15) Since the infringement referred to in Article 23(1)(c) of Regulation (EC) No 1/2003 has been established, the Commission may impose on the undertakings fines not exceeding 1 % of their turnover.
- (16) For determining the amount of the fines, the Decision has regard both to the gravity and the duration of the infringement according to Article 23(3) of Regulation (EC) No 1/2003.
- (17) Concerning the gravity, the Decision notes that the infringement is of a serious nature. It is particularly noted that the power to conduct inspections is one of the most important of the Commission's investigative powers in the competition field permitting to detect infringements of Articles 101 and 102 of the TFEU. It is also noted that over the last decade paper-based evidence has become less important and most of the documents collected nowadays during inspections are extracted from e-mail accounts and electronic files and that data stored in electronic format are much easier and quicker to destroy than paper files. Finally, it is taken into account that there are two incidents in which EPIA and EPH obstructed the inspection: the failure to block an e-mail account and the diversion of e-mails.
- (18) In terms of duration, the Decision takes into account that the infringement continued for a significant period of time during the inspection at the premises of EPIA and EPH.
- (19) Finally, the Decision takes into account that the parties have cooperated in a way which helped the Commission to ascertain the circumstances of the refusal to submit to the inspection with regard to e-mails. It is nevertheless noted that while the parties did not contest certain facts, they have generally sought to put in doubt the existence of any procedural violation.

⁽¹⁾ Case 374/87 *Orkem v European Commission* [1989] ECR 3283, paragraph 27 which related to a request for information after an inspection had been carried out under Article 14 of Regulation No 17.

⁽²⁾ Case T-34/93 *Société Générale v Commission* [1995] ECR II-545, paragraph 72.

⁽³⁾ Commission Decision 94/735/EC of 14 October 1994 imposing a fine pursuant to Article 15(1) (c) of Council Regulation No 17 on Akzo Chemicals BV (OJ L 294, 15.11.1994, p. 31).

6. CONCLUSION

- (20) On the basis of the above, the Decision concludes that EPH and EPIA refused to submit to the inspection carried out at their premises on 24-26 November 2009 pursuant to Article 20(4) of Regulation (EC) No 1/2003 by negligently allowing access to a blocked e-mail account and intentionally diverting e-mails to a server, thereby committing an infringement within the meaning of Article 23(1)(c) of that Regulation. The Decision imposes a fine of EUR 2 500 000 jointly and severally on EPH and EPIA.
-

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