JUDGMENT OF THE COURT (Grand Chamber)

24 May 2011 *

In Case C-83/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 23 February 2009,

European Commission, represented by K. Gross and V. Kreuschitz, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the proceedings being:

Kronoply GmbH & Co. KG, established in Heiligengrabe (Germany),

Kronotex GmbH & Co. KG, established in Heiligengrabe (Germany),

* Language of the case: German.

represented by R. Nierer and L. Gordalla, Rechtsanwälte,

applicants at first instance,

Zellstoff Stendal GmbH, established in Arneburg (Germany), represented by T. Müller-Ibold and K. Karl, Rechtsanwälte,

Federal Republic of Germany,

Land Sachsen-Anhalt,

interveners at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts and J.-C. Bonichot, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, J. Malenovský, U. Lõhmus, E. Levits (Rapporteur), A. Ó Caoimh, M. Safjan and M. Berger, Judges,

Advocate General: N. Jääskinen,
Registrar: A. Calot Escobar,

Having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 25 November 2010,

gives the following

Judgment

1 By its appeal, the Commission of the European Communities seeks to have set aside the judgment of 10 December 2008 in Case T-388/02 *Kronoply and Kronotex* v *Commission* ('the judgment under appeal'), by which the Court of First Instance of the European Communities (now 'the General Court') declared admissible the action brought by Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG (collectively, 'Kronoply and Kronotex') for the annulment of Commission Decision C(2002) 2018 final of 19 June 2002 to raise no objections to the State aid granted by the German authorities to Zellstoff Stendal GmbH ('ZSG') ('the contested decision').

Legal context

2 According to Recital 2 in the preamble to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1), that regulation seeks to codify and reinforce the consistent practice developed and established by the Commission, in accordance with the case-law of the Court, for the application of Article 88 EC.

3 Article 1 of Regulation No 659/1999 provides:

'For the purpose of this Regulation:

…

(h) "interested party" shall mean any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.'

4 Under paragraphs 2, 3 and 4 of Article 4 of Regulation No 659/1999, which is entitled 'Preliminary examination of the notification and decisions of the Commission':

'2. Where the Commission, after a preliminary examination, finds that the notified measure does not constitute aid, it shall record that finding by way of a decision.

3. Where the Commission, after a preliminary examination, finds that no doubts are raised as to the compatibility with the common market of a notified measure, in so far as it falls within the scope of Article [87(1)] of the [EC] Treaty, it shall decide that the measure is compatible with the common market (hereinafter referred to as a "decision not to raise objections"). The decision shall specify which exception under the Treaty has been applied.

4. Where the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the common market of a notified measure, it shall decide to initiate proceedings pursuant to Article [88(2)] of the [EC] Treaty (hereinafter referred to as a "decision to initiate the formal investigation procedure").....'

5 Under Article 6(1) of Regulation No 659/1999:

'The decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the common market. The decision shall call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed one month. In duly justified cases, the Commission may extend the prescribed period.'

6 The multisectoral framework on regional aid for large investment projects (OJ 1998 C 107, p. 7; 'the 1998 multisectoral framework'), which was in force at the material time, lays down the rules for assessing aid which falls within its scope, for the purposes of the application of Article 87(3) EC.

7 Under the 1998 multisectoral framework, the Commission decides on a case-by-case basis the maximum allowable aid intensity for projects in relation to which the notification obligation laid down in Article 2 of Regulation No 659/1999 arises.

Background to the dispute

8 On 9 April 2002, a plan to grant State aid to Zellstoff Stendal GmbH ('ZSG') was notified to the Commission by the German authorities.

9 The planned aid, which consists of a non-refundable loan, a tax incentive for investment and a guarantee covering 80 % of a loan and which, according to the Commission, is worth EUR 250.899 million overall, was intended to finance the construction of a production plant for high-quality pulp and to set up a wood supply company and a logistics company in Arneburg, in the *Land* of Saxony-Anhalt (Germany).

10 Kronoply and Kronotex are companies governed by German law which manufacture fibreboards (MDF, HDF or LDF) and oriented strand boards at their production sites at Heiligengrabe in the *Land* of Brandenburg (Germany). As in the case of ZSG, the main raw material needed for their activity is wood.

11 By the contested decision, the Commission decided, following a preliminary examination, not to raise any objections to the planned aid, given the number of direct and indirect jobs created and the fact that there was no overcapacity in that sector. Accordingly, without opening a formal investigation under Article 88(2) EC, the Commission found that the planned aid was compatible with the internal market.

The proceedings at first instance and the judgment under appeal

12 By application lodged at the Registry of the General Court on 23 December 2002, Kronoply and Kronotex brought an action for annulment of the contested decision, relying on three pleas in law.

13 First, Kronoply and Kronotex submitted that, by finding the planned aid in favour of ZSG to be compatible with the internal market, the Commission had made a manifest error in its assessment of the facts.

14 Secondly, they submitted that, by not opening a formal investigation, the Commission had acted in disregard of the procedural guarantees available to Kronoply and Kronotex under Article 88(2) EC.

15 Thirdly, according to Kronoply and Kronotex, the Commission had infringed, inter alia, Article 87(1) and (3)(c) EC, as well as the Guidelines on regional aid and the 1998 multi-sectoral framework.

16 By separate document lodged at the Registry of the General Court on 25 February 2003, the Commission raised two preliminary pleas of inadmissibility, by one of which it alleged that Kronoply and Kronotex had no standing to bring proceedings. According to the Commission, Kronoply and Kronotex could not be regarded as competitors of the aid beneficiary and, in consequence, neither company could claim the status of 'interested party' for the purposes of Regulation No 659/1999. For that reason, Kronoply and Kronotex had no right of action in respect of the contested decision.

17 By order of 14 June 2005, the General Court decided to reserve its decision on the pleas of inadmissibility for the final judgment.

18 As regards the question of the standing of Kronoply and Kronotex to bring proceedings, the General Court stated in paragraph 55 of the judgment under appeal that, under the fourth paragraph of Article 230 EC, a natural or legal person may institute proceedings against a decision addressed to another only if the decision is of direct and individual concern to that natural or legal person. The General Court also referred to the line of authority flowing from Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, according to which persons other than those to whom a decision is addressed may claim to be individually concerned by that decision only if it affects them by reason of certain attributes which are peculiar 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.

19 After emphasising, in paragraphs 57 to 59 of the judgment under appeal, the distinction — between the preliminary examination of suspected State aid and the formal investigation procedure for the purposes of Article 88(2) and (3) EC — which characterises the review undertaken by the Commission to determine whether such aid is compatible with the internal market, the General Court went on to recall, in paragraphs 60 and 61 of that judgment, the case-law according to which an action for the annulment of a Commission decision not to open the formal investigation procedure, brought by one of 'the parties concerned' for the purposes of Article 88(2) EC, must be held admissible where that party seeks thereby to safeguard the procedural rights available to him under that provision (see, to that effect, Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487, paragraph 23, and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 17). In that connection, the General Court stated that the term 'parties concerned' must be understood as covering any person, undertaking or association whose interests might be affected by the granting of aid.

20 After noting in paragraph 62 of the judgment under appeal that, under the case-law, the status of party concerned could provide the basis of standing to bring proceedings, however, only in the context of an action for annulment which is intended to safeguard procedural rights, since the admissibility of an action by means of which the applicant contests the merits of a decision must comply with the conditions set out in the case-law deriving from *Plaumann* v *Commission,* the General Court stated

in paragraph 63 of the judgment under appeal that, by their pleas in law, Kronoply and Kronotex were calling in question in Case T-388/02 both the Commission's refusal to initiate the formal investigation procedure and the merits of the contested decision.

21 On that basis, the General Court considered, by reference to the pleas put forward by Kronoply and Kronotex, their standing in relation to the bringing of proceedings.

22 As regards the question whether Kronoply and Kronotex had standing to challenge the merits of the contested decision, the General Court found in paragraph 69 of the judgment under appeal that Kronoply and Kronotex had not shown that they were individually concerned by that decision. The General Court accordingly dismissed as inadmissible the part of their action challenging the merits of the contested decision.

23 As regards the question whether Kronoply and Kronotex had standing to ensure the respect of their procedural rights, the General Court noted, in paragraphs 71 and 72 of the judgment under appeal, that the status of 'party concerned' for the purposes of Article 88(2) EC derives from the legitimate interest that a natural or legal person may have in the implementation, or the non-implementation, of the aid measures. Thus, a rival undertaking is regarded as having such an interest if it can show that its competitive situation is affected, or likely to be affected, by the grant of the aid.

24 After pointing out in paragraphs 73 and 74 of the judgment under appeal that the aid was likely to have an impact not only in the market on which the aid recipient is active, but also on other markets, upstream or downstream, the General Court held, inter alia, in paragraph 76 of that judgment that 'Kronoply and Kronotex have shown that there has been at least a temporary increase in the price of wood. Although they have not shown that that increase can be attributed to the start of operations at ZSG's factory, it cannot be ruled out that there have been negative effects, of at least temporary duration, for Kronoply and Kronotex subsequent to, and probably as a result of,

ZSG's installation. An increase in the price of raw materials — the existence of which is not contested in relation to the year 2003 — is likely to have repercussions for the price of the finished goods and, as a consequence, to weaken the competitiveness of undertakings affected by it as compared with their competitors, who are not faced with the same situation'.

25 The General Court deduced from this, in paragraph 77 of that judgment, that 'it must therefore be held that Kronoply and Kronotex have established to the requisite legal standard the existence of a relationship of rivalry, as well as the potential adverse effects on their market position attributable to the grant of the aid at issue. In consequence, they must be regarded as parties concerned for the purposes of Article 88(2) EC'.

26 This led the General Court to find, in paragraph 78 of the judgment under appeal, that '[t]he present action is therefore admissible in so far as Kronoply and Kronotex have standing to bring proceedings in order to ensure the respect of their procedural rights. In those circumstances, it is for this Court to determine whether, by the pleas relied upon in support of their action, Kronoply and Kronotex are genuinely seeking to ensure that their procedural rights under Article 88(2) EC are respected'.

27 On that basis, the General Court ruled on the admissibility of the three pleas relied upon by Kronoply and Kronotex in support of their action for annulment, respectively alleging: (i) manifest error of assessment; (ii) disregard for procedural safeguards; and (iii) infringement of Article 87(1) and (3)(c) EC, of the Guidelines on regional aid and of the 1998 multi-sectoral framework.

28 In so doing, after noting in paragraph 80 of the judgment under appeal that, by their second plea, Kronoply and Kronotex submitted expressly that the Commission should have opened the investigation procedure under Article 88(2) EC, the General Court explained in paragraphs 81 and 82 of that judgment that, even though it was not for it, the General Court, to construe the pleas exclusively intended to call in question

the merits of a decision as seeking, in reality, to ensure that the applicants' procedural rights were respected, it could determine whether strands of the substantive arguments on the merits also supported a plea seeking expressly to safeguard procedural rights.

29 It was on the basis of such strands of argument that the General Court found that the first plea — by contrast with the third — included arguments, going to the merits, which, while intended to contest the Commission's decision not to open the formal investigation procedure, substantiated the second plea put forward, by which it was sought to ensure that the applicants' procedural rights were respected.

30 The General Court concluded in paragraph 86 of the judgment under appeal that the arguments put forward in the context of the first plea had to be taken into account in the examination of the second plea — the third plea being, for its part, inadmissible.

31 As to the substance, the General Court rejected the arguments put forward by Kronoply and Kronotex.

32 It thus found, in paragraph 115 of the judgment under appeal, that the Commission had adopted the contested decision on the basis of complete and reliable evidence, and went on to conclude in paragraphs 117, 128, 146 and 152 of the judgment under appeal that Kronoply and Kronotex had failed to show that, during the preliminary examination of the contested aid measure, the Commission had encountered serious difficulties necessitating the initiation of the formal investigation procedure.

33 The General Court consequently dismissed the action for annulment in its entirety.

Forms of order sought by the parties

34 By its appeal, the Commission claims that the Court should:

— set aside the judgment under appeal in so far as it declares the action brought by Kronoply and Kronotex for annulment of the contested decision to be admissible;

— dismiss as inadmissible the action brought by Kronoply and Kronotex for annulment of the contested decision;

— order Kronoply and Kronotex to pay the costs of the appeal.

35 ZSG contends that the Court should:

— set aside the judgment under appeal in so far as it declares the action brought by Kronoply and Kronotex for annulment of the contested decision to be admissible;

— dismiss as inadmissible the action brought by Kronoply and Kronotex for annulment of the contested decision;

— order Kronoply et Kronotex jointly and severally to pay the costs.

The appeal

36 The Commission, supported by ZSG, relies on three grounds of appeal on the basis of which it challenges the judgment under appeal in so far as it declared the action brought by Kronoply and Kronotex to be admissible.

The first and second grounds of appeal

Arguments of the parties

37 First, the Commission submits, in essence, that the General Court erred in holding the action brought by Kronoply and Kronotex to be admissible on the basis of conditions other than those laid down in the fourth paragraph of Article 230 EC. In that regard, according to the Commission, the case-law on which the General Court relied lays down, drawing on Article 108 TFEU, alternative conditions for admissibility.

38 Since, however, in the fourth paragraph of Article 230 EC, the authors of the Treaty set out in express terms the conditions for the admissibility of actions contesting acts of the institutions, it cannot be maintained — the Commission argues — that the same authors intended to derogate from those conditions by means of an inference to be drawn by implication from Article 108 TFEU.

39 ZSG adds that the conditions for the admissibility of an action seeking annulment of a Commission decision cannot vary depending on the pleas relied upon in support of that action.

40 Secondly, the Commission — supported on this point by ZSG — submits that, after stating in paragraph 81 of the judgment under appeal that it was not for it, the General Court, to construe 'an action by which the applicant contests exclusively the merits of a decision assessing aid as such as an action which is seeking, in reality, to ensure the respect of the applicant's procedural rights under Article 88(2) EC, where the applicant has not expressly raised a plea to that effect', the General Court went on to adopt precisely such an interpretation in paragraph 82 of that judgment.

41 However, according to the Commission, in so doing, the General Court exceeded its jurisdiction, since it must remain within the terms of the action as delimited by the pleadings lodged before it. Furthermore, such an approach would ultimately dismantle the equality of the parties before the Court of the European Union, favouring the position of the applicants to the detriment of that of the Commission.

42 ZSG argues that, by proceeding in that manner, the General Court anticipated, wrongly, the assessment that the Commission is required to make of the file during the formal investigation procedure, despite the fact that, at the preliminary stage, the planned aid did not undergo a detailed examination.

Findings of the Court

43 In the first place, as regards the plea alleging breach of the conditions laid down in the fourth paragraph of Article 230 EC, it should be made clear at the outset that Article 4 of Regulation No 659/1999 provides for a stage at which the aid measures notified undergo a preliminary examination, the purpose of which is to enable the Commission to form an initial view as to whether the aid notified is compatible with the common market. On completion of that stage, the Commission is to make a finding either that the measure does not constitute aid or that it falls within the scope of Article 87(1) EC. In the latter case, it may be that the measure does not raise doubts as to its compatibility with the common market; on the other hand, it is also possible that the measure may raise such doubts.

44 If, following the preliminary examination, the Commission finds that, notwithstanding the fact that the measure notified falls within the scope of Article 87(1) EC, it does not raise any doubts as to its compatibility with the common market, the Commission is to adopt a decision not to raise objections under Article 4(3) of Regulation No 659/1999.

45 Where the Commission adopts a decision not to raise objections, it declares not only that the measure is compatible with the common market, but also — by implication — that it refuses to initiate the formal investigation procedure laid down in Article 88(2) EC and Article 6(1) of Regulation No 659/1999.

46 If, following the preliminary examination, it finds that the measure notified raises doubts as to its compatibility with the common market, the Commission is required to adopt, on the basis of Article 4(4) of Regulation No 659/1999, a decision initiating the formal investigation procedure under Article 88(2) EC and Article 6(1) of that regulation. Under the latter provision, such a decision is to call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which must not as a rule exceed one month.

47 In the present case, the contested decision is a decision not to raise objections, adopted under Article 4(3) of Regulation No 659/1999, the lawfulness of which depends on whether there are doubts as to the compatibility of the aid with the common market. Since such doubts must trigger the initiation of a formal investigation procedure in which the interested parties referred to in Article 1(h) of Regulation No 659/1999 can participate, it must be held that any interested party within the meaning of the latter provision is directly and individually concerned by such a decision. If the beneficiaries of the procedural guarantees provided for in Article 88(2) EC and Article 6(1) of Regulation No 659/1999 are to be able to ensure that those guarantees are respected, it must be possible for them to challenge before the European Union judicature the decision not to raise objections (see, to that effect, Case C-78/03 P *Commission*

v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 35 and the case-law cited; Case C-487/06 P *British Aggregates* v *Commission* [2008] ECR I-10515, paragraph 28; and Case C-319/07 P *3F* v *Commission* [2009] ECR I-5963, paragraph 31 and the case-law cited).

48 Accordingly, the specific status of 'interested party' within the meaning of Article 1(h) of Regulation No 659/1999, in conjunction with the specific subject-matter of the action, is sufficient to distinguish individually, for the purposes of the fourth paragraph of Article 230 EC, the applicant contesting a decision not to raise objections.

49 In the present case, first, it emerges from the judgment under appeal and, in particular, from paragraph 16 of that judgment that, by their action, Kronoply and Kronotex sought the annulment of a decision not to raise objections, adopted under Article 4(3) of Regulation No 659/1999. Secondly, in paragraph 77 of the judgment under appeal, the General Court found, in essence, that Kronoply and Kronotex had to be regarded as interested parties within the meaning of Article 1(h) of Regulation No 659/1999.

50 In the second place, the Commission and ZSG claim that the General Court altered the subject-matter of the action in so far as it examined, in the context of the second plea alleging disregard for the interested parties' procedural guarantees, the arguments raised in the context of the first plea, contesting the merits of the decision not to raise objections.

51 In that regard, although an applicant who contests a Commission decision not to initiate the formal investigation procedure must, in accordance with Article 44(1)(c) of the Rules of Procedure of the General Court, define the subject-matter of its action in the application initiating proceedings, that requirement is satisfied to the requisite legal standard where the applicant identifies the decision which he seeks to have annulled.

52 It matters little whether the application initiating proceedings states that it is seeking the annulment of 'a decision not to raise objections' — the term used in Article 4(3) of Regulation No 659/1999 — or of a decision not to initiate the formal investigation procedure, since the Commission takes a position on both aspects of the question by means of a single decision.

53 In the present case, it should be noted that, at first instance, Kronoply and Kronotex requested annulment of the Commission decision 'not to raise an objection to the grant of aid by the Federal Republic of Germany' to ZSG, invoking three pleas in law in support of their action.

54 In that regard, the General Court found in paragraph 80 of the judgment under appeal that it was solely by their second plea that Kronoply and Kronotex expressly submitted that the Commission should have opened the formal investigation procedure.

55 With regard to the first and third pleas, the General Court thus rightly pointed out in paragraph 81 of the judgment under appeal that, according to settled case-law, it was not for it, the General Court, to interpret an action challenging exclusively the merits of an aid assessment decision as such as seeking, in reality, to ensure the respect of the procedural rights available to the applicant under Article 88(2) EC, where the applicant has not expressly raised a plea to that effect. In such circumstances, the interpretation of the plea would be tantamount to re-defining the subject-matter of the action (see, to that effect, the judgment of 29 November 2007 in Case C-176/06 P *Stadtwerke Schwäbisch Hall and Others* v *Commission*, paragraph 25).

56 In paragraph 82 of the judgment under appeal, the General Court nevertheless held that that limit on its jurisdiction to construe pleas in law does not have the effect of preventing it from examining arguments which the applicant has put forward regarding the substance, in order to ascertain whether strands of those arguments additionally

support a plea, also raised by the applicant, which expressly alleges the existence of serious difficulties justifying initiation of the procedure under Article 88(2) EC.

57 Consequently, the General Court held in paragraph 83 of the judgment under appeal that it was entitled to examine the first and third pleas, in order to ascertain whether the arguments put forward in the context of those pleas could be linked to the plea alleging disregard for procedural guarantees. In that context, the General Court held in paragraph 86 of that judgment that the arguments relied upon in support of the first plea, in so far as they were intended to challenge the Commission's decision not to initiate the formal investigation procedure, had to be examined at the same time as the arguments put forward in support of the second plea.

58 In so doing, however, the General Court did not err in law.

59 Where an applicant seeks the annulment of a decision not to raise objections, it essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, alleging that the Commission thereby acted in breach of the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to the compatibility of that measure with the common market. The use of such arguments does nothing, however, to bring about a change in the subject-matter of the action or in the conditions for its admissibility (see, to that effect, *3F* v *Commission*, paragraph 35). On the contrary, the existence of doubts concerning that compatibility is precisely the evidence which must be adduced in order to show that the Commission was required to initiate the formal investigation procedure under Article 88(2) EC and Article 6(1) of Regulation No 659/1999.

60 In those circumstances, the first and second grounds of appeal must be rejected in their entirety.

The third ground of appeal

Arguments of the parties

61 According to the Commission, by considering it possible for undertakings which are not competitors of the aid recipient on the market for the product which they manufacture to have the status of 'parties concerned' for the purposes of Article 88(2) EC, the General Court erred in law. In so doing, the General Court is opening the way for actions to be brought by members of the general public against Commission decisions in the field of State aid. Accordingly, the Commission argues, in the circumstances of the present case, the General Court wrongly attributed to Kronoply and Kronotex an interest in having the contested decision annulled.

62 In that regard, ZSG claims also that the effect of the reasoning followed by the General Court is to widen disproportionately the circle of undertakings likely to challenge a decision in the field of State aid. Although ZSG uses mainly wood pulp in its business, it also uses other materials and energy sources for its manufacturing process. Accordingly, the effect of the judgment under appeal is that an unlimited number of potential applicants are recognised as interested parties.

Findings of the Court

63 Under Article 1(h) of Regulation No 659/1999, 'interested party' means inter alia any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, in particular competing undertakings of the

beneficiary of that aid. In other words, that term covers an indeterminate group of persons (see, to that effect, Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 16).

64 As a consequence, that provision does not rule out the possibility that an undertaking which is not a direct competitor of the beneficiary of the aid, but which requires the same raw material for its production process, can be categorised as an interested party, provided that that undertaking demonstrates that its interests could be adversely affected by the grant of the aid.

65 For that purpose, it is necessary for that undertaking to establish, to the requisite legal standard, that the aid is likely to have a specific effect on its situation (see, to that effect, *3F* v *Commission*, paragraph 33).

66 In the present case, after noting in paragraph 71 of the judgment under appeal that, for a natural or legal person to be recognised as an interested party, that person must be able to show a legitimate interest in the implementation or non-implementation of the aid measures at issue or, if those measures have already been granted, in their maintenance, the General Court stated that, in the case of an undertaking, such a legitimate interest may consist, inter alia, in the protection of its competitive position, in so far as that position would be adversely affected by the aid measures.

67 After finding in paragraphs 74 and 75 of the judgment under appeal that Kronoply and Kronotex are not competitors on the same product markets, but use the same raw materials — namely, industrial wood — in their production process, the General Court inferred from this that Kronoply and Kronotex are, in relation to ZSG, rival purchasers of wood.

68 Subsequently, the General Court found in paragraph 76 of the judgment under appeal that Kronoply and Kronotex had demonstrated that there had been at least a temporary increase in the price of wood and that, despite the fact that they had not demonstrated that that increase was the result of the entry into operation of the ZSG factory, it could not be ruled out that there had been negative effects for Kronoply and Kronotex, probably as a result of ZSG's installation.

69 On that basis, the General Court held in paragraph 77 of that judgment that Kronoply and Kronotex had 'established to the requisite legal standard the existence of a relationship of rivalry, as well as the potential adverse effects on their market position, attributable to the grant of the aid at issue'.

70 In those circumstances, an error of law cannot be imputed to the General Court for holding, in essence, that undertakings which are not competitors of the aid recipient on the market for the goods which they manufacture can be covered by the notion of 'interested parties' within the meaning of Article 1(h) of Regulation No 659/1999.

71 It follows from those considerations that the General Court was correct in holding that Kronoply and Kronotex were interested parties within the meaning of that provision.

72 Consequently, the third ground of appeal must be rejected.

73 It follows from all of the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

74 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(3) of those Rules, where each of the parties succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

75 In the present case, the Commission, supported by ZSG, has been unsuccessful. Since the applicants at first instance did not take part in the appeal and consequently did not apply for costs, the Commission and ZSG must be ordered to bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders the European Commission and Zellstoff Stendal GmbH to bear their own costs.**

[Signatures]