Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

11 December 2019*

(Appeal — State aid — Production of aluminium — Preferential electricity supply tariff granted by a contract — Decision declaring the aid compatible with the internal market — Termination of the contract — Judicial suspension, as an interim measure, of the effects of termination — Decision declaring the aid unlawful)

In Case C-332/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 21 May 2018,

Mytilinaios Anonymos Etairia — Omilos Epicheiriseon, established in Maroussi (Greece), formerly Alouminion tis Ellados VEAE, represented by N. Korogiannakis, N. Keramidas, E. Chrysafis, D. Diakopoulos and A Komninos, dikigoroi, and by K. Struckmann, Rechtsanwalt,

appellant,

The other parties to the proceedings being:

European Commission, represented by A. Bouchagiar and E. Gippini Fournier, acting as Agents,

defendant at first instance,

Dimosia Epicheirisi Ilektrismou AE (DEI), established in Athens (Greece), represented by E. Bourtzalas and D. Waelbroeck, avocats, and by C. Synodinos, H. Tagaras and E. Salaka, dikigoroi,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský and F. Biltgen (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: Calot Escobar,

having regard to the written procedure and further to the hearing on 5 September 2019,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Greek.

Judgment

1 By its appeal, Mytilinaios Anonymos Etairia — Omilos Epicheiriseon seeks to have set aside the judgment of the General Court of the European Union of 13 March 2018, *Alouminion* v *Commission* (T-542/11 RENV, not published, 'the judgment under appeal', EU:T:2018:132), by which that court annulled Commission Decision 2012/339/EU of 13 July 2011 on the State aid No SA.26117 — C 2/2010 (ex NN 62/2009) implemented by Greece in favour of Aluminium of Greece SA (OJ 2012 L 166, p. 83, 'the contested decision').

Background to the dispute

2 Alouminion tis Ellados AE, which was successively succeeded by Alouminion AE, Alouminion tis Ellados VEAE and Mytilinaios Anonymos Etairia — Omilos Epicheiriseon (both hereinafter referred to as 'the appellant'), produces aluminium in Greece.

3 In 1960, the appellant concluded a contract ('the 1960 contract') with the public electricity company Dimosia Epicheirisi Ilektrismou AE ('DEI'), under which it was granted a preferential electricity supply tariff ('the preferential tariff').

4 Article 2(3) of the 1960 contract made provision for that contract to be renewed automatically every 5 years, unless terminated by one of the parties, giving 2 years' notice to the other party by registered letter with acknowledgement of receipt.

5 Under an agreement between the appellant and the Greek State, formalised by a legislative decree of 1969 ('the legislative decree of 1969') the 1960 contract was due to end on 31 March 2006, unless it was extended in accordance with its provisions.

6 By Decision SG (92) D/867 of 23 January 1992, Contested aid for Alouminion tis Ellados AE, aid NN 83/91 ('the 1992 Decision), the European Commission considered that the preferential tariff granted to that company constituted State aid compatible with the internal market.

7 By the decision of 16 October 2002, entitled 'Authorisation for State aid pursuant to Articles 107 and 108 of the [TFEU] — Cases where the Commission raises no objections' (OJ 2003 C 9, p. 6), the Commission approved a grant awarded by the Hellenic Republic in the electricity sector ('the 2002 decision').

8 In February 2004, DEI informed the appellant of its intention to terminate the 1960 contract and, in accordance with the contractual provisions, ceased to charge it the preferential tariff as of 1 April 2006.

9 The appellant challenged that termination before the competent national courts.

10 By an order of 5 January 2007 ('the first order for interim measures'), the Monomeles Protodikeio Athinon (Single judge Court of First Instance, Athens, Greece), in interlocutory proceedings, suspended, as an interim measure and *ex nunc*, the effects of that termination. That court held that that termination was not valid, on the basis of the provisions of the 1960 contract and the applicable national legal framework.

11 DEI challenged the first order for interim measures before the Polymeles Protodikeio Athinon (Multi-member Court of First Instance, Athens), which, also in interlocutory proceedings, granted, *ex nunc*, DEI's application for the termination of the 1960 contract and for the cessation of the preferential tariff, by order of 6 March 2008.

12 Accordingly, during the period from 5 January 2007 to 6 March 2008 ('the period at issue'), the appellant continued to benefit from the preferential tariff.

13 In July 2008, the Commission received several complaints, relating in particular to the preferential tariff. By letter dated 27 January 2010, it notified the Hellenic Republic of its decision to initiate the procedure laid down in Article 108(2) TFEU and invited the interested parties to submit their comments within 1 month of the date of publication of that letter.

14 That decision was published in the *Official Journal of the European Union* on 16 April 2010 (OJ 2010 C 96, p. 7).

15 In that decision, the Commission expressed doubts as to whether the preferential tariff which DEI charged the appellant during the period at issue, was at the same rate as the tariff charged to other large industrial consumers of high voltage electricity established in Greece, since the preferential tariff, which was due to end on 31 March 2006, had been extended by the first order for interim measures.

16 The Hellenic Republic, the appellant and DEI sent their respective observations to the Commission.

17 By the contested decision, the Commission considered that the Hellenic Republic had unlawfully granted the appellant State aid of an amount of EUR 17.4 million by charging the preferential tariff during the period in question. Given that that aid had been granted in contravention of Article 108(3) TFEU and was, accordingly, incompatible with the internal market, the Commission ordered the Hellenic Republic to recover the aid from the appellant.

The proceedings before the General Court and the judgment of 8 October 2014, Alouminion v Commission (T-542/11, EU:T:2014:859)

18 By application lodged at the Registry of the General Court on 6 October 2011, the appellant brought an action for the annulment of the contested decision. In support of its application at first instance, the appellant raised 10 pleas in law.

19 By judgment of 8 October 2014, *Alouminion* v *Commission* (T-542/11, EU:T:2014:859), the General Court allowed the first plea in law in that action and annulled the contested decision, without ruling on the other pleas in law.

The procedure before the Court and the judgment under appeal

20 By an application lodged at the Registry of the Court of Justice on 18 December 2014, DEI lodged an appeal against that judgment.

21 By judgment of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados* (C-590/14 P, EU:C:2016:797), the Court annulled the judgment of 8 October 2014, *Alouminion* v *Commission* (T-542/11, EU:T:2014:859), referred the case back to the General Court and reserved costs.

22 Following that judgment of the Court, the General Court examined the 2nd to 10th pleas in law raised by the appellant in its application, which it had not ruled on in its judgment of 8 October 2014, *Alouminion* v *Commission* (T-542/11, EU:T:2014:859).

23 With regard, in particular, to the fifth and seventh pleas in law, these can be summarised as follows.

24 By its fifth plea in law, which consisted of three parts, the appellant alleged that the Commission had infringed Article 107(1) TFEU.

25 By the first part, the appellant argued that the preferential tariff did not constitute an advantage within the meaning of Article 107(1) TFEU. In the second part of that plea, the appellant contested, in substance, the selective nature of that tariff. By the third part of that plea, the appellant claimed that the Commission had erred in its assessment of the effects of the preferential tariff, which, in its view, did not affect trade between Member States or distort competition.

26 The seventh plea alleged infringement of the rights of the defence.

27 By the judgment under appeal, the General Court rejected all the pleas in law raised by the appellant in support of its action and, consequently, dismissed the action in its entirety.

Forms of order sought by the parties before the Court of Justice

28 By its appeal, the appellant requests the Court to set aside the judgment under appeal, to rule on the dispute, to annul the contested decision and to order the Commission to pay the costs.

29 The Commission asks the Court to dismiss this appeal as unfounded and order the appellant to pay the costs.

30 DEI asks the Court to dismiss the appeal in its entirety and order the appellant to pay the costs.

The request to have the oral procedure reopened

31 By letter lodged with the Registry of the Court on 9 September 2019, the appellant requested the regularisation of the filing of a document which it had already produced before the General Court or, failing that, the reopening of the oral proceedings, pursuant to Article 83 of the Rules of Procedure of the Court, for the purpose of filing that document by way of regularisation.

32 In support of its application, the appellant submits that, at the hearing before the Court, the Commission noted that the table showing, for the period in question, the amounts resulting from the charging, respectively, of the preferential tariff and the tariff charged to other large industrial consumers of high voltage electricity, which it had produced as Annex 12 to its application before the Court, was illegible.

33 The appellant acknowledges that the reading of that document could be made difficult due to the colours used and the numerous successive photocopies and scans made of it and therefore requested authorisation to produce that document again, in a version whose previous shading had been removed, in order to improve its readability and its consideration by the Court.

34 It is important to note that, since the Court rejected the request for regularisation of the filing of the document in question on the ground that it was out of time, the appellant's letter must be regarded as constituting a request for the reopening of the oral procedure.

35 In that regard, it should be recalled that the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the parties (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 28 and the case-law cited).

36 In the present case, the appellant requests the reopening of the oral proceedings only for the purpose of being authorised to file, by way of regularisation, the document in question in a version which, in its view, is legible, in order to ensure that it is taken into account by the Court.

37 It should be noted, however, that the table in that document was, as regards the data relevant to the settlement of the dispute before the Court, sufficiently legible in the version set out in Annex 12 to the application submitted to the General Court. Consequently, the Court was able to take that document into consideration.

38 It follows that the Court is sufficiently well informed and has all the necessary elements at its disposal to rule on the present appeal.

39 It is therefore appropriate, after hearing the Advocate General, to reject the request for the reopening of the oral phase of the proceedings.

The appeal

40 The appellant relies on three grounds of appeal in support of its appeal, by which it criticises, in substance, the reasoning by which the General Court rejected the fifth and seventh pleas in law which the appellant had raised before it.

41 The first ground of appeal, alleging an infringement of Article 107(1) TFEU, is divided into three parts, as follows: (i) the General Court's assessment of the existence of an advantage, (ii) the selectivity of the advantage claimed, and (iii) the impact of the measure in question on trade between Member States and on competition.

42 The second ground alleges infringement, by the General Court, of its obligation to state reasons in the judgment under appeal.

43 The third ground alleges an error of law by the General Court in so far as it dismissed the seventh plea raised before it, alleging an infringement of the rights of the defence.

44 In order to facilitate the analysis of the merits of the present appeal, it is necessary to examine, first, the third ground of appeal, then the second and third branches of the first ground of appeal and, finally, the first part of the first ground of appeal and the second ground of the appeal jointly.

The third ground of appeal

Arguments of the parties

45 By its third plea, the appellant alleges that the General Court erred in law by rejecting, in paragraphs 179 to 200 of the judgment under appeal, its argument based on an infringement of the rights of the defence.

46 The appellant claims that the General Court considered, inter alia, first, that the rights of defence available to the beneficiary of the aid are limited to the right to participate in the administrative procedure and, second, that it did not invoke evidence establishing that, in the absence of the alleged irregularity, the procedure could have led to a different result.

47 In that regard it points out that, in general, the lack of procedural guarantees for the beneficiary, in the State aid review procedure, is compensated by the fact that Member States have interests coinciding with those of the aid beneficiary, so that they prepare the files jointly, provide evidence and, if necessary, present a common defence against any objections by the Commission.

48 However, the appellant has already pointed out before the General Court that this was not the case here. Its interests, it is claimed, as beneficiary of the aid in question, do not coincide with those of the Greek State and it is for that reason that, unlike DEI, it had neither participated in the procedure followed before the Commission nor been asked to provide information, nor was it kept informed of the investigation carried out. Accordingly, it only became aware of the existence of that investigation when the communication on the in-depth investigation was published.

49 The appellant adds that, since the Commission did not refer, in that communication, to the 2002 decision, which, it is claimed, constitutes the main pillar of the contested decision, it was only given the opportunity to present its arguments in that respect in the context of its action before the General Court. Contrary to what the General Court held in paragraph 197 of the judgment under appeal, since it rejected the appellant's arguments on the ground that they had been invoked out of time, the appellant was not heard and the rights of the defence were therefore infringed.

50 Furthermore, the appellant submits that the General Court wrongly considered that it had not put forward arguments based on the fact that the result would have been different if it had had the opportunity to present its arguments on the 2002 decision. It argued before the General Court, it is claimed, that if the rights of the defence had been respected, that decision could not have been part of the statement of reasons for the contested decision, since it did not mention, in its view, that the preferential tariff constituted State aid. In any event, the 2002 decision was not enforceable against it.

51 The Commission and DEI contend that this ground of appeal must be rejected as unfounded.

Findings of the Court

52 It is important to recall at the outset that it is clear from the case-law of the Court of Justice, which is cited by the General Court in paragraph 194 of the judgment under appeal, that, in the procedure for reviewing State aid, the beneficiary of the aid does not exercise a particular role among the parties concerned and cannot rely on the rights of the defence (see, to that effect, judgment of 24 September 2002, *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, EU:C:2002:524, paragraph 83)

53 However, as a beneficiary of the aid in question, the appellant could, as the Court held in paragraph 196 of the judgment under appeal, submit observations in the proceedings leading to the adoption of the contested decision, that right being enshrined, inter alia, in Article 108(2) TFEU

54 It is apparent from the file submitted to the Court, as confirmed at the hearing before the Court, in the context of those proceedings, that the appellant was able to submit observations.

55 Consequently, the General Court correctly held, in paragraph 197 of the judgment under appeal, that the appellant was not entitled to invoke an infringement of the rights of the defence in the context of those proceedings.

56 As regards the 2002 decision, it should be noted, as the General Court did in paragraph 187 of the judgment under appeal, that the Commission was not required to present, in its notice initiating the formal investigation procedure, a completed analysis of the aid in question.

57 In any event, as the 2002 decision was published in the *Official Journal of the European Communities* and the appellant could therefore have access to it, the appellant cannot validly argue that the absence of a reference to that decision in that communication prevented it from becoming aware of that decision, nor that that decision was not enforceable against it.

58 As for the allegation that the General Court wrongly considered that the appellant had not argued, before it, that the result would have been different if it had had the opportunity to present its arguments with regard to the 2002 decision, that allegation is based on an incorrect reading of the judgment under appeal.

59 In paragraph 199 of that judgment, the General Court did not find that the appellant had not adduced any evidence to that effect, but that the appellant had not put forward any evidence to show that, in the absence of the alleged irregularity, the proceedings could have led to a different result.

60 Accordingly, the third ground of appeal must be rejected as unfounded.

Second part of the first ground of appeal

Arguments of the parties

61 By the second part of its first ground of appeal, the appellant alleges that the General Court, in paragraphs 146 to 148 of the judgment under appeal, committed errors of law in its assessment of the selectivity of the advantage in question.

62 According to the appellant, the General Court wrongly focused on the fact that, during the period in question, it was the only company to have benefited from the preferential tariff and failed to take into account the legal nature of the measure in question and the reasons which led to its adoption.

63 The appellant recalls that, in its judgment of 4 June 2015, *Commission* v *MOL* (C-15/14 P, EU:C:2015:362, paragraph 60), the Court specified that the selectivity of a specific measure must be assessed in the context of the procedural framework within which that measure was taken. Accordingly, the Court held that the selectivity requirement differs depending on whether the measure in question is envisaged as a scheme of aid or as individual aid. In the latter case, identification of the economic advantage would, in principle, be sufficient to support the presumption that it is selective. By contrast, when examining a general scheme of aid, it is necessary to determine whether the measure in question, notwithstanding the fact that it confers an advantage of general application, does so to the exclusive benefit of certain undertakings or certain sectors of activity.

64 The appellant infers from this that the General Court was required to examine whether, when the national court issued the first order for interim measures, it differentiated between undertakings which, in the light of the objective pursued, were in a comparable situation and, therefore, selectively conferred on it an advantage which might favour it over other undertakings in a comparable situation.

65 In so far as the national court, ruling in interlocutory proceedings and granting interim protection measures, has simply applied the general provisions of Greek law which protect any party claiming deprivation of its contractual rights, there is nothing to indicate that, in a comparable situation, measures similar to those granted to the appellant by the first interim order were not granted to any other company, in particular Larko, which is the second largest consumer of high-voltage electricity established in Greece and which, like the appellant, enjoyed a preferential tariff, except during the period in question.
Consequently, the adoption of the measure in question does not, it is claimed, involve any element of selectivity.

66 The Commission and DEI consider that the second part of the first ground of appeal must be rejected as unfounded.

Findings of the Court

67 It is important to recall that it is apparent from the judgment of 4 June 2015, *Commission* v *MOL* (C-15/14 P, EU:C:2015:362, paragraph 60) that the selectivity requirement differs depending on whether the measure in question is envisaged as a general aid scheme or as individual aid. In the latter case, the identification of the economic advantage is, in principle, sufficient to support the presumption that it is selective.

68 In the present case, it must be noted that, contrary to what the appellant claims, the measure in question, namely that resulting from the first order for interim measures, constitutes, not a general scheme of aid, but individual aid.

69 As the General Court noted in paragraph 147 of the judgment under appeal, the first interim order produced its effects *ex nunc* so that they were confined solely to the parties to the dispute in question, namely the appellant and DEI. That measure cannot therefore be regarded as constituting a general scheme of aid.

70 That conclusion cannot be challenged by the appellant's argument that Larko, which is another major industrial consumer, a customer of DEI which has benefited from a preferential tariff, could have obtained, from the national court ruling in interlocutory proceedings, measures analogous to those granted to the appellant by the first order for interim measures.

71 The judge hearing the application for interim measures has discretion to grant or not measures intended to protect the interests of the parties to the dispute submitted to him, which varies according to the particular circumstances of the dispute. In that context, it cannot be assumed that an undertaking other than the appellant could, if it had so requested, have obtained measures analogous to those granted to the latter under the first order for interim measures.

72 Since the argument relied on by the appellant in the second part of the first ground of appeal is based on the erroneous premiss that the measure in question constitutes a general scheme of aid, it must be rejected as unfounded.

Third part of the first ground of appeal

Arguments of the parties

73 By the third part of its first ground of appeal, the appellant alleges that the General Court made several errors of law and distorted the evidence in its assessment of the effects of the measure in question on trade and competition.

74 The appellant claims to have relied, before the General Court, on the case-law of the Court of Justice resulting from the judgment of 17 September 1980, *Philip Morris Holland* v *Commission* (730/79, EU:C:1980:209, paragraph 11), according to which the Commission has the obligation to prove that the measure in question strengthened or could strengthen its position in relation to that of other industries in the aluminium sector in trade between Member States.

75 The appellant submits that the measure in question could not have that effect, since treated aluminium is a uniform product, the price of which is determined, in essence, by international markets, so that any cost reduction resulting from the preferential tariff applied to it could not be reflected in the selling price of its goods. Furthermore, it would appear, in particular, from the 1992 decision that, during the period in question, the preferential tariff had been significantly higher than the electricity price paid by its international competitors.

76 The appellant submits that the General Court wrongly examined in paragraphs 159 to 164 of the judgment under appeal whether the measure in question could strengthen its economic position by reason of the charging of the preferential tariff. The Court should have examined whether the advantage it enjoyed could have an impact on its competitive position in relation to other aluminium producers operating on the European and world markets.

77 The General Court confined itself to considering that the aid in question could not affect competition by the effect of selling prices lower than those of the appellant's competitors, since those prices had been fixed by the market, independently of the will of the appellant. The General Court, like the Commission, thus found a distortion of competition and an effect on trade, relying solely on the fact that the reduction in production costs should have led the appellant to achieve either higher profits or lower losses during the period in question, without however determining whether it was in a position to use the economic advantage provided to improve its competitive position on the aluminium market.

78 The appellant adds that, in paragraphs 165 and 166 of the judgment under appeal, the General Court wrongly and without reason rejected its arguments relating to the 1992 decision and the other economic data produced before it, and that, for that reason, it erred in law.

79 According to the appellant, the 1992 decision is relevant since it indirectly recognises that its competitive position on the market could only be affected if DEI was able to supply it with electricity at a price lower than that paid by its main competitors. The economic data rejected by the General Court on the ground that it concerned periods other than the period in question was also relevant, since it concerned a sector in which investments were made and contracts concluded for several decades.

80 The appellant adds that the General Court wrongly ignored that it had provided evidence before it relating to the period in question, in particular a report on the prices paid by its main competitors for their electricity consumption and the prices charged at global level during 2006. It is the economic data recorded at the date of adoption of the first order for interim measures, namely that relating to 2006, that would, it is claimed, be relevant to determine the potential effects of the measure in question on trade and competition.

81 The Commission and DEI consider that the third part of the first ground of appeal must be rejected as unfounded.

Findings of the Court

82 It is important to recall, as is clear from the settled case-law of the Court to which the General Court referred in paragraph 157 of the judgment under appeal, that the Commission is not required to establish that aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition (judgments of 29 April 2004 in *Italy* v *Commission*, C-372/97, EU:C:2004:234, paragraph 44, and of 15 December 2005, *Italy* v *Commission*, C-66/02, EU:C:2005:768, paragraph 111).

83 Where aid strengthens the position of an undertaking compared with other undertakings competing in the Union's internal trade, the latter must be regarded as being affected by that aid (judgments of 17 September 1980, *Philip Morris Holland* v *Commission*, 730/79, EU:C:1980:209, paragraph 11, and of 20 November 2003, *GEMO*, C-126/01, EU:C:2003:622, paragraph 41).

84 In the present case, it should be noted that, after finding, in paragraphs 159 and 160 of the judgment under appeal, that it was apparent from the contested decision that the appellant was present in a sector whose products are intensively traded between the Member States, aluminium being produced in nine Member States other than the Hellenic Republic, and that the measure in question strengthened the appellant's position in relation to other competing undertakings in trade between Member States, the General Court upheld the Commission's finding that the undertakings in question were adversely affected by the measure in question and that, therefore, the criterion relating to the distortion of competition and the effect on trade between Member States was met.

85 In that regard, the General Court dismissed the arguments raised by the appellant by considering, in paragraphs 161 to 164 of the judgment under appeal, that it cannot be seriously disputed that the preferential tariff had reduced the appellant's production costs, irrespective of the production costs of competing undertakings established in Member States other than the Hellenic Republic and, second, that even if the selling prices of the goods in question were fixed by the stock exchange, at international level, thus preventing the appellant from passing on the savings achieved on its production costs to the selling price of those goods, the appellant was nevertheless able to make a profit because of the preferential tariff granted by DEI, unlike the competing undertakings established in those other Member States.

86 It must therefore be held that the reasoning followed by the General Court, in so far as it sought to establish that the measure in question was likely to affect trade between Member States and distort competition, is in accordance with the established case-law of the Court, recalled in paragraphs 82 and 83 of this judgment.

87 The appellant's argument, based on the fact that the General Court should have verified whether the appellant was actually able to use the economic advantage conferred by charging the preferential tariff to improve its competitive position on the aluminium market, cannot therefore succeed.

88 With respect to the arguments relating to the 1992 decision and the economic data provided by the appellant, in particular the report containing statistical data relating to the year 2006, it is sufficient to note that they relate to periods other than the period in question, which is between 5 January 2007 and 6 March 2008, and that they are therefore not relevant. Consequently, the General Court was right to dismiss them in paragraph 165 of the judgment under appeal.

89 It follows from the foregoing that the General Court's assessment of the effects of the measure in question on trade and competition is not affected by any distortion of the evidence or errors of law.

90 Consequently, the third part of the first ground of appeal must be rejected as unfounded.

First part of the first ground of appeal and second ground of appeal

91 By the first part of its first ground of appeal and the second ground of appeal, the appellant alleges that the General Court, in paragraphs 117 to 138 of the judgment under appeal, committed several errors of law and distorted the facts in its assessment of the existence of an advantage and infringed its duty to state reasons.

92 It is necessary to examine, in the first place, the arguments based on alleged errors of law made by the General Court and, in the second place, those based on a distortion of the facts and an infringement of the duty to state reasons.

The alleged errors of law committed by the General Court

– *Arguments of the parties*

93 In the first place, the appellant claims that the General Court, in paragraphs 115 to 138 of the judgment under appeal, examined separately and successively the issue of whether it had benefited from lower production costs resulting from charging the preferential tariff, the issue of the justification of the advantage conferred on economic grounds and that of the application of the private investor test. In so doing, the General Court failed to determine whether the preferential tariff could be considered compatible with normal market conditions.

94 That approach is, it is alleged, contrary to the Court's case-law, in particular the judgment of 20 September 2017, *Commission* v *Frucona Košice* (C-300/16 P, EU:C:2017:706, paragraphs 21, 23, and 66), in which the Court held that those elements must be examined simultaneously and jointly in order to establish that an undertaking has received an advantage. In that judgment, the Court also stated, first, that the conditions which a measure must fulfil in order to fall within the concept of 'aid', within the meaning of Article 107 TFEU, are not satisfied if the recipient company could obtain the same advantage in circumstances corresponding to normal market conditions and, second, that the examination of the private investor test does not constitute an exception that applies only when it is ascertained that there is aid, but is one of the elements that the Commission is required to take into account when establishing the existence of aid.

95 In the second place, the appellant claims that the General Court refused to examine the economic justification of the advantage in question and misapplied the rules relating to the burden of proof of such justification.

96 In that regard, the appellant submits that the General Court wrongly held, in paragraphs 125 to 127 of the judgment under appeal, that (i) once the existence of an advantage has been established, it is not for the Commission to ascertain, of its own motion, whether there are economic justifications, the burden of proof of which lies with the Member State in question, if it seeks to contest the Commission's assessment, and (ii) that the Commission was entitled to limit itself, in that context, to the evidence presented by the Member State during the administrative procedure and that, as the Hellenic Republic had not relied on any arguments to that effect, the contested decision could not be criticised on that point.

97 According to the appellant, the reasoning of the General Court is vitiated by an error of law in that it reverses the burden of proving that there is aid and wrongly limits the Commission's obligation to the assessment of the arguments put forward by the Member State concerned in the course of the administrative procedure.

98 That reasoning is, it is claimed, contrary to what the Court held in its judgment of 20 September 2017, *Commission* v *Frucona Košice* (C-300/16 P, EU:C:2017:706, paragraphs 23 to 26), and the Commission's obligation to carry out a diligent and impartial investigation, as is apparent from paragraph 90 of the judgment of 2 September 2010, *Commission* v *Scott* (C-290/07 P, EU:C:2010:480). Assuming that the Commission is not obliged to ascertain of its own motion whether there are economic justifications, it is required to examine the arguments put before it by the beneficiary of the aid in question during the pre-litigation phase.

99 The appellant adds that the General Court erred in law in stating, in paragraph 128 of the judgment under appeal, that DEI, as the appellant's electricity supplier, had unambiguously argued that the preferential tariff was below its production costs during the period in question and was not otherwise

offset. This statement, it is claimed, constitutes an invalid substitution of the statement of reasons, since, in the contested decision, the Commission did not examine whether, during the period in question, the preferential tariff actually fell below DEI's production costs.

100 In addition, the General Court did not ascertain the veracity of that material evidence or take into account the evidence adduced by the appellant in that respect. That evidence demonstrates that the preferential tariff covered DEI's production costs and ensured that it had a reasonable profit, in particular through DEI's participation in the appellant's profits.

101 In the third place, the appellant alleges that the General Court committed several errors of law in its assessment of the private investor test.

102 The appellant, which refers to the judgment of 20 September 2017, *Commission* v *Frucona Košice* (C-300/16 P, EU:C:2017:706, paragraphs 43 and 48), submits that, in the present case, the Court was required to take account of that test and that it erred in expressing doubts as to its applicability and failed to take into account the importance of that test when assessing whether the measure in question reflected normal market conditions.

103 According to the appellant, the General Court did not take into detailed consideration the very specific circumstances of the case, which it had raised before it, in particular the fact that, as the Greek and EU authorities responsible for the protection of competition have acknowledged, DEI is a dominant undertaking, systematically abusing its market position for several decades through its pricing policy. The General Court also failed to take into account the fact that the appellant did not have an alternative source of electricity supply, so that it would have to cease its activities if it no longer obtained its supply from DEI.

104 Furthermore, the General Court wrongly relied on the premiss that the appellant must fall within the scope of the A-150 regulated tariff, which in Greece is reserved for large industrial consumers, without there being any legal possibility of derogating from that obligation. Since such a premiss is not apparent from the contested decision, the General Court carried out an invalid substitution of the statement of reasons.

105 In any event, the A-150 regulated tariff does not constitute the appropriate reference framework for assessing whether there is an advantage in the present case. Therefore, according to the appellant, which refers to the order of 21 January 2016, *Alcoa Trasformazioni* v *Commission* (C-604/14 P, not published, EU:C:2016:54, paragraphs 38 and 39), and to the judgment of 20 September 2017, *Commission* v *Frucona Košice* (C-300/16 P, EU:C:2017:706), the Commission was required, in that regard, to carry out an analysis on the basis of the hypothetical market price.

106 The appellant adds, on the basis of the judgment of 5 June 2012, *Commission* v *EDF* (C-124/10 P, EU:C:2012:318, paragraph 78), that the outcome of the procedure to assess whether a measure provides an advantage depends on whether that advantage could exist in circumstances corresponding to normal market conditions. The circumstances of the case in the main proceedings, it argues, are not comparable.

107 With regard to paragraphs 132 and 133 of the judgment under appeal, by which the General Court (i) ruled out the possibility that a private investor might have sought to charge a tariff such as the preferential tariff, rather than comply with the standard tariff, of a higher amount, unless compensation was envisaged, and (ii) held that the appellant had not referred to any such compensation, the appellant maintains that, in so doing, the General Court distorted the facts.

108 The General Court ignored the fact that the appellant had presented detailed arguments in that regard, and, in particular, demonstrated that the pricing method provided for in the 1960 contract allowed DEI to participate indirectly in the appellant's profits from the sale of aluminium, by charging higher prices for the supply of electricity when prices on the metals market were higher.

109 Furthermore, the General Court's assertion ignores the fact that, for 5 months during the period in question, including when the first order for interim measures was adopted, the preferential tariff was higher than the standard A-150 tariff, so that charging the preferential tariff did not confer any advantage on the appellant.

110 As regards the relevant period for assessing the existence of an advantage, the appellant submits that the General Court should have taken into account not the 14-month period during which the first order for interim measures produced effects, but the entire period during which that order was likely to produce effects, which lasted until there was an intervention of a judgment ruling on the validity of the termination of the 1960 contract, in the ordinary court proceedings.

111 Furthermore, according to the judgments of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294, paragraph 71), and of 21 March 2013, *Magdeburger Mühlenwerke* (C-129/12, EU:C:2013:200, paragraph 40), the decisive moment for assessing whether or not the Member State concerned had adopted the conduct of a prudent investor operating in a market economy and, therefore, whether the application of the pricing method provided for in the 1960 contract constituted an advantage which would not exist under normal market conditions, was not the month of February 2004, during which notice was served of the termination of that contract by DEI, but January 2007, during which the first order for interim measures was issued, since, in accordance with this case-law of the Court, the decisive moment is the moment when the right to receive the aid was conferred on the beneficiary under the applicable national legislation.

112 As regards the General Court's assertion that the termination of the 1960 contract by DEI shows that, in January 2007, a private body would not accept the application of the pricing method provided for in the 1960 contract, linking it to the price of aluminium on the market, the appellant claims that it is incorrect.

113 In January 2007, the application of that method would have resulted in a higher electricity price than that resulting from the A-150 regulated tariff. Furthermore, before and after the period in question, DEI charged the appellant a tariff which also linked the price of the supply of electricity to that of aluminium on the international market and gave rise to a price significantly lower than that resulting from application of the preferential tariff. The latter tariff was thus considered by the Commission not to constitute State aid.

114 The appellant adds that DEI did not immediately request the withdrawal of the first order for interim measures, which demonstrated that, during 2007, the preferential tariff was commercially attractive. The Commission also found, in its 1992 decision, that DEI had made significant profits for significant periods and could therefore supply electricity at a reduced price to certain important consumers, such as the appellant.

115 According to the latter, the General Court also erred in law in holding, in paragraph 134 of the judgment under appeal, that invoking secondary legislation in the field of electricity, decisions of the Rythmistiki Archi Energeias (Energy Regulatory Authority, Greece) and an infringement of Article 102 TFEU cannot affect the assessment that a private investor would not wish to charge a tariff such as the preferential tariff.

116 In its reply, the appellant adds, with reference to the judgments of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission* (C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 99), and of 5 June 2012, *Commission* v *EDF* (C-124/10 P, EU:C:2012:318), that, assuming

that the measure in question does not consist of the preferential tariff but of the first order for interim measures, the fact that a court does not rely on commercial parameters does not, it is claimed, prevent the application of the private investor test, since Article 107 TFEU does not make a distinction according to the causes or objectives of State interventions, but defines them according to their effects.

117 The Commission and DEI consider that the first part of the first ground of appeal and the second ground of appeal must be rejected as unfounded.

– *Findings of the Court*

118 As regards, first, the argument that the General Court erred in law by examining separately and successively the question of whether the appellant had benefited from lower production costs resulting from the charging of the preferential tariff, the question of the justification of the advantage on economic grounds and the question of the application of the private investor test, it is sufficient to note that that argument is based on an incorrect reading of the judgment of 20 September 2017, *Commission* v *Frucona Košice* (C-300/16 P, EU:C:2017:706).

119 Contrary to what the appellant claims, it is not apparent from that judgment that the General Court is required to examine those elements jointly.

120 Consequently, the General Court cannot therefore be said to have erred in law in that respect.

121 In the second place, as regards the argument that the General Court refused to examine the economic justification of the advantage in question, it must be noted that that is based on an incorrect reading of the judgment under appeal, since it is clear from paragraphs 124 to 130 of that judgment that the General Court examined the question whether, in the present case, the preferential tariff could be justified on economic grounds.

122 As regards, in the third place, the argument based on an incorrect application of the rules on the burden of proof of the economic justification of that advantage, in particular, the argument that the General Court erred in law in holding that, in the course of the administrative procedure, the Commission had only to take into account the arguments relating to the economic justification put forward by the Member State concerned, it is admittedly important to recall that, as the General Court held in paragraph 125 of the judgment under appeal, it is not for the Commission to ascertain of its own motion whether there is economic justification.

123 However, it is apparent from the settled case-law of the Court that the Commission is required, in the interest of sound administration of the fundamental rules of the TFEU relating to State aid, to conduct a diligent and impartial examination of the contested measures, so that it has at its disposal, when adopting the final decision, the most complete and reliable information possible (judgment of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 90 and the case-law cited). Thus, it follows from the principle of sound administration that the Commission is, in principle, required to take into account the economic justifications put forward, where appropriate, by the aid beneficiary during the examination procedure.

124 It follows that, in paragraph 126 of the judgment under appeal, the General Court erred in holding that the Commission was entitled to limit itself to the evidence submitted by the Member State in the course of the administrative procedure.

125 It should, however, be noted that that error does not mean that the judgment under appeal must be set aside.

126 At the hearing before the Court of Justice, the Commission confirmed that, as it had argued before the General Court, the arguments put forward by the appellant concerning the economic justification of the advantage in question were submitted out of time and were therefore inadmissible.

127 In view of those circumstances, the Commission was not required, in the present case, to take into account the arguments relating to the economic justification of that advantage put forward by the appellant during the administrative procedure.

128 As regards the argument based on an invalid substitution of the statement of reasons by the General Court, the latter having stated, in paragraph 128 of the judgment under appeal, that, even if it were to consider that the Commission was required to ascertain whether there are justifications, DEI, as the appellant's electricity supplier, maintained, without any ambiguity, that the preferential tariff was, during the period in question, below its corresponding production costs and that it was not offset elsewhere, it is important to note that it follows from the considerations in paragraph 129 of the judgment under appeal, according to which the Commission was able to conclude that it was apparent from the termination of the 1960 contract by DEI that the preferential tariff could not be justified on economic grounds concerning it, that the finding made by the General Court in paragraph 128 of that judgment was in fact intended to confirm the validity of the conclusion reached by the Commission in the contested decision, as regards the economic justification of the advantage granted by the measure in question.

129 In the contested decision, the Commission found, first, that the preferential tariff had enabled the appellant to reduce its current expenditure and that DEI's conduct, in particular the fact that the latter had decided to terminate the 1960 contract as soon as possible, clearly demonstrated that the preferential tariff did not correspond to the market price and, second, that the Greek authorities had not provided any evidence that the application of the preferential tariff was justified.

130 In addition, the Commission referred to the 2002 decision, which, in its view, showed that DEI should have granted the appellant a preferential tariff, whereas it should not have done so under normal market conditions. The Commission recalled, in that regard, that that decision relates to a subsidy to be granted by the Hellenic Republic to DEI for the purpose of allowing DEI to be compensated for the stranded costs it had incurred as a result of the application of the preferential tariff to the appellant, and that it had approved that subsidy, since it constituted compensation for the disadvantage suffered by DEI.

131 In paragraphs 128 and 129 of the judgment under appeal, the General Court held that the conclusion reached by the Commission in the contested decision that it was apparent from the termination, by DEI, of the 1960 contract that the preferential tariff could not be justified on economic grounds, was supported by the arguments raised before it by DEI. In so doing, therefore, the General Court cannot be accused of having carried out an invalid substitution of grounds.

132 As for the appellant's argument, based on the fact that the General Court did not ascertain the veracity of the material evidence put forward by DEI, nor did it take into account the contrary evidence relied on by the appellant before it, it is sufficient to recall that it is settled case-law that, since it is for the General Court alone to assess the evidence produced before it, it cannot be required to give express reasons for its assessment of the value of each piece of evidence presented to it (see, to that effect, judgments of 15 June 2000, *Dorsch Consult* v *Council and Commission*, C-237/98 P, EU:C:2000:321, paragraphs 50 and 51, and of 20 December 2017, *Comunidad Autónoma del País Vasco and Others* v *Commission*, C-66/16 P to C-69/16 P, EU:C:2017:999, paragraph110). That argument must therefore be rejected as ineffective.

133 As regards, in the fourth place, the appellant's argument concerning the application by the General Court of the private investor test, it is important to recall that it follows from the case-law of the Court that the applicability of that test depends on the Member State concerned having conferred, in

its capacity as shareholder and not in its capacity as public authority, an economic advantage on an undertaking belonging to it. Accordingly, to determine whether that criterion is applicable, it is for the Commission to carry out a global assessment, taking into account any evidence enabling it to determine whether it took the measure in question in its capacity as shareholder or as a public authority of the Member State concerned. The nature and subject matter of that measure may be relevant in that regard, as is its context, the objective pursued and the rules to which the measure is subject (see, to that effect, judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraphs 79 to 81 and 86).

134 In the present case, it must be noted that the measure in question, namely an order made by a national court ruling in interlocutory proceedings, granting the appellant interim measures to protect its financial interests arising from the 1960 contract, presents, in view of its nature, the context in which it is set, its objective and the rules to which it is subject, the characteristics of a judicial act falling within the prerogatives of public authority of the Member State concerned. Consequently, the private investor test cannot be applied to it.

135 It follows that, in paragraph 132 of the judgment under appeal, the General Court implicitly held that the private investor test was not applicable in the present case.

136 Consequently, the argument raised by the appellant in that respect must be rejected as unfounded.

137 In any event, it should be noted that it follows from the phrase 'even to consider the private investor test applicable in the very particular circumstances of the case', in paragraph 132 of the judgment under appeal, that it was only for the sake of completeness that the General Court applied that test in paragraphs 132 to 136 of that judgment. Consequently, the argument raised by the appellant is not likely, in any event, to lead to the annulment of the judgment under appeal and must therefore be dismissed as ineffective (judgment of 2 April 2009, *Bouygues and Bouygues Télécom* v *Commission*, C-431/07 P, EU:C:2009:223, paragraph 148 and the case-law cited).

On the alleged distortion and infringement of the duty to state reasons by the General Court

– Arguments of the parties

138 The appellant claims that, in paragraphs 117 to 120 of the judgment under appeal, the General Court distorted several factual elements by characterising them as 'undisputed', in the sense of 'uncontested' by the appellant, on the ground that (i) the preferential tariff applied to the appellant by DEI pursuant to a legislative decree derogated from the common law tariff rules providing for a mandatory standard tariff, (ii) the appellant fell into the category of large industrial electricity consumers, customers of DEI, and (iii) at least during the period concerned, the preferential tariff was lower than the standard tariff applied to those large industrial consumers, whereas that standard tariff, regulated at national level, was required for DEI and for those large industrial consumers.

139 In so doing, the General Court also infringed its obligation to state reasons, in that it did not carry out a detailed analysis in that regard. The General Court does not mention either the contrary positions of the parties, in particular the arguments put forward by the appellant to contest those facts before it, or the evidence which led it to characterise those facts as 'uncontested'.

140 As regards, in the first place, the General Court's assertion in paragraph 117 of the judgment under appeal that it is undisputed that, prior to 2006, the preferential tariff charged by virtue of a legislative decree derogated from the common law tariff rules providing for a mandatory standard tariff, the appellant claims that it repeatedly invoked, in its application before the General Court, the fact that the 1960 contract, concluded between itself and DEI, had not introduced a derogation from the mandatory standard tariff, namely the A-150 regulated tariff.

141 That tariff which, it is claimed, applies to other industrial consumers, was drawn up and introduced by the National Energy Council (Greece) in 1977, without taking into account the consumption profile of the appellant and Larko, since those two companies had already concluded contracts with DEI providing for the application of a preferential tariff. Therefore, the A-150 regulated tariff was drawn up for consumers with a consumption profile that differs from those of the appellant and Larko.

142 As regards, in the second place, the statement in paragraph 119 of the judgment under appeal, that it is undisputed that, at least during the period in question, the appellant fell within the category of large industrial consumers, the latter claims that it had invoked, before the General Court, the fact that it was different from all other industrial consumers because of its unique consumption profile.

143 In that respect, the appellant referred to several Commission decisions recognising that the aluminium industries cannot be compared to any other consumer of electrical energy, decisions of the Energy Regulatory Authority and a decision of the Competition Commission (Greece) that the fact that a customer is directly connected to the high-voltage grid does not automatically mean that the customer consumes a large volume of energy, equivalent to that consumed by it or by Larko, since companies consuming a much lower volume of energy also connect to the grid.

144 The appellant also argued before the General Court that the Greek legislation applicable to the period in question provided that DEI could propose individualised terms for the commercial part of electricity supply tariffs for high-voltage network customers, in so far as the differentiation of the characteristics of the load curve or other terms of the contract justified such differentiation, which, moreover, it is claimed, the Energy Regulatory Authority recognised in the course of 2010.

145 In addition, the appellant claims that the General Court erred in failing to analyse whether, in the light of the definition of the concept of 'large industrial consumer' in the relevant national provisions, the appellant did in fact fall within that concept.

146 As regards, in the third place, the General Court's assertion in paragraph 118 of the judgment under appeal that it is undisputed that the appellant enjoyed an advantage in the form of a lower electricity supply tariff than the standard tariff applied to large industrial consumers, customers of DEI, since, during the period in question, the preferential tariff was lower than that standard tariff which was regulated at national level, the appellant claims that it strongly contested that evidence before the General Court. The latter claims to have produced, in that regard, documents and evidence demonstrating that the pricing method provided for in the 1960 contract actually led to a tariff that was higher than the A-150 regulated tariff for at least 5 of the 14 months during the period in question.

147 The appellant submits that the significant variation in the preferential tariff during that period is explained by the fact that the pricing method was closely linked to the international price of aluminium on the London Metal Exchange (United Kingdom), which itself varied and decreased significantly during that period, which the Commission allegedly mentioned, moreover, in the 2002 decision.

148 The Commission and DEI consider that the arguments raised by the appellant should be rejected.

– Findings of the Court

149 It should be noted, first of all, that it has been consistently held that where the General Court has established or assessed the facts, the Court of Justice has jurisdiction, under Article 256 TFEU, solely to review the legal characterisation of those facts and the conclusions in law drawn from them. The appraisal of the facts by the General Court does not therefore constitute, save where the clear sense of

the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 78 and the case-law cited).

150 Nevertheless, it should be noted in that regard that a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 80 and the case-law cited).

151 In the present case, it suffices to note that, independently of whether the General Court wrongly considered, in paragraphs 117 to 120 of the judgment under appeal, that several factual elements relating to the preferential tariff were not contested by the appellant, it follows from the argument relied on by the appellant in its appeal, as summarised in paragraphs 140 to 147 of the present judgment, that the appellant is in fact seeking to obtain a new assessment of those facts, which is beyond the competence of the Court.

152 Consequently, the argument based on a distortion of the facts must be rejected as inadmissible.

153 As regards the argument based on a breach by the General Court of its duty to state reasons in paragraphs 117 to 120 of the judgment under appeal, in so far as the General Court did not mention either the arguments relied on by the appellant before it to contest the factual elements relating to the preferential tariff, or the evidence which led it to characterise those factual elements as 'undisputed', in the sense of 'uncontested', it must be noted that it is apparent from paragraphs 120, 121 and 123 of the judgment under appeal, in particular from the use of the words 'the appellant itself admits that' or 'the [appellant's] arguments cannot call into question that assessment', that the Court referred to the arguments raised by the appellant in that respect and therefore took them into consideration.

154 Furthermore, it is apparent from the case-law of the Court that it is for the General Court alone to assess the evidence adduced before it. Although it must observe the general principles and the rules of procedure relating to the burden of proof and the taking of evidence and not distort the clear sense of the evidence, the General Court cannot be required to give express reasons for its assessment of the value of each piece of evidence presented to it, in particular where it considers that that evidence is unimportant or irrelevant to the outcome of the dispute (judgment of 26 April 2018, *Cellnex Telecom and Telecom Castilla-La Mancha* v *Commission*, C-91/17 P and C-92/17 P, not published, EU:C:2018:284, paragraph 76 and the case-law cited).

155 Consequently, the argument raised by the appellant in this regard must be dismissed as unfounded.

156 In any event, it must be held that, even if, as the appellant claims, the reasoning adopted by the General Court and set out in paragraphs 117 to 120 of the judgment under appeal were to be considered insufficient, that insufficient reasoning cannot lead to the setting aside of the judgment under appeal.

157 With regard, first, to the Court's assertion in paragraph 119 of the judgment under appeal that, during the period in question, the appellant fell within the category of large industrial consumers, it should be stressed that the appellant submits that it and Larko have characteristics which distinguish them from other industrial consumers, because of their unique consumption profile.

158 At the hearing before the Court, the Commission and DEI confirmed that, during the period in question, Larko had been charged the A-150 tariff, which is the standard mandatory tariff provided for by the common law tariff rules applicable to large industrial consumers, which the appellant did not contest.

159 In view of that circumstance, Larko must be considered as belonging to the category of large industrial consumers.

160 Since the appellant acknowledges, both in its application before the General Court and in its written observations submitted to the Court, that it has characteristics similar to those of Larko, it must be held that the General Court was correct to hold that, during the period in question, the appellant fell within the category of large industrial consumers, and who are customers of DEI.

161 With regard, in the second place, to the General Court's statement in paragraph 117 of the judgment under appeal that, prior to that period, the preferential tariff charged pursuant to a legislative decree derogated from the common law tariff rules providing for a mandatory standard tariff, since that standard tariff had been drawn up for consumers with consumption profiles that differed from those of the appellant and Larko, it should be noted that, in so far as the 1960 contract granted the appellant a preferential tariff for the supply of electricity, which, in accordance with the 1969 legislative decree, was to end on 31 March 2006, that contract introduced a tariff regime for the appellant that was distinct from that applicable to other large industrial consumers who are customers of DEI. Thus, when the common law tariff rules providing for a mandatory standard tariff were introduced in 1977, the appellant was not charged that tariff, since it benefited from the preferential tariff, in accordance with the 1960 contract and the 1969 legislative decree.

162 Consequently, in paragraph 117 of the judgment under appeal, the General Court rightly held that, prior to the period in question, the 1960 contract and the 1969 legislative decree had established a tariff regime in favour of the appellant, derogating from the common law tariff rules providing for a mandatory standard tariff.

163 That finding cannot be called into question by the appellant's argument that the mandatory standard tariff provided for by the common law tariff rules was drawn up for consumers with consumption profiles that differed from its own and Larko's.

164 As found in paragraphs 159 and 160 of the present judgment, the appellant and Larko must be regarded as falling within the category of large industrial consumers, who are customers of DEI and, consequently, subject to the common law tariff rules providing for a mandatory standard tariff, a fortiori since it was confirmed, at the hearing before the Court, that that standard tariff had been applied to Larko during the period in question.

165 As regards, in the third place, the General Court's assertion in paragraph 118 of the judgment under appeal that, during the period in question, the preferential tariff had been lower than the standard tariff applied to large industrial consumers, who are DEI's customers, it should be noted that the appellant accepts that, during 9 of the 14 months of the period in question, the preferential tariff was lower than the standard mandatory tariff.

166 It is important to note, in this respect, that, at the hearing before the Court, the Commission argued that during those 9 months, the difference between the preferential tariff and the mandatory standard tariff was particularly high, corresponding to several million euros, whereas when the preferential tariff was higher than the mandatory standard tariff, the difference between those two tariffs was significantly lower, corresponding to only a few hundred euros. The appellant did not contest that data at that hearing.

167 In any event, that data is not contradicted by the table in Annex 12 to the application before the General Court, which indicates the amounts resulting from the application of the preferential tariff and the mandatory standard tariff respectively during the period in question. While it is apparent from that table that, when the preferential tariff was higher than the standard mandatory tariff, the difference between those two tariffs corresponded not to several hundred euros, but to several thousand euros, the fact remains that, during the 9 months of the period in question when the

preferential tariff was lower than the standard mandatory tariff, the difference between those two tariffs was particularly high and corresponded, for 2 months, to several tens of thousands of euros, for another 2 months, to several hundred thousand euros, and for 5 months, to several million euros.

168 It should be added that the appellant did not contest, either before the General Court or the Court of Justice, the amount of EUR 17.4 million, which, according to the Commission, corresponds to the total amount of the difference between the preferential tariff and the mandatory standard tariff during the period in question, and which constitutes the economic advantage conferred on the appellant during that period by reason of the charging, by DEI, of the preferential tariff in its favour.

169 In view of those elements, it should be noted that, for a substantial part of the period in question, the appellant benefited from a tariff significantly lower than the standard tariff, which enabled it to considerably reduce its production costs.

170 It follows that the fact that the General Court held, in paragraph 118 of the judgment under appeal, that, during the period in question, the preferential tariff had been lower than the standard tariff, whereas that was actually the case only during a substantial part of that period, is not such as to call into question the finding made by the General Court in paragraph 122 of the judgment under appeal that, during that period, the appellant had its production costs reduced on account of the application of the preferential tariff.

171 It follows from these elements that the appellant's arguments based on a breach by the General Court of its obligation to state reasons must, in any event, be rejected as ineffective.

172 Consequently, the first part of the first ground of appeal and the second ground of the appeal must be rejected as being in part inadmissible and in part unfounded or, in any event, as being ineffective.

173 In the light of all of the foregoing, the appeal must be dismissed in its entirety.

Costs

174 In accordance with the Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, 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 Commission and DEI have applied for costs against the appellant, and as the latter has been unsuccessful, the appellant must be ordered to pay the costs of these proceedings.

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

1. Dismisses the appeal;

2. Orders Mytilinaios Anonymos Etairia — Omilos Epicheiriseon to pay the costs.

[Signatures]