



Reports of Cases

Judgment of the General Court (Sixth Chamber) of 9 June 2016 —

Magic Mountain Kletterhallen and Others v Commission

(Case T-162/13)

(State aid — Aid for the construction and operation of climbing centres of Deutscher Alpenverein eV — Decision declaring the aid compatible with the internal market — Aid scheme — More detailed economic analysis — Market failure — Legitimate objective in the public interest — Article 108(2) and (3) TFEU — Serious difficulties)

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision finding State aid compatible with the internal market without opening the formal investigation procedure — Action challenging the justification of that decision — Action of a rival undertaking claiming that its market position significantly affected — Admissibility (Arts 108(2) and (3) TFEU and 263, fourth para., TFEU) (see paras 31-36, 39, 40)*
2. *Judicial proceedings — Intervention — Objection of inadmissibility not raised by the defendant — Inadmissibility — Absolute bar to proceeding — To be considered of the Court's own motion (Statute of the Court of Justice, Art. 40, fourth para.; Rules of Procedure of the General Court, Art. 116(3)) (see para. 38)*
3. *Actions for annulment — Admissibility criteria — Natural or legal persons — Action brought by several applicants against the same decision — Capacity to act of one of them — Admissibility of the action as a whole (Art. 263, fourth para., TFEU) (see para. 41)*
4. *State aid — Prohibition — Exceptions — Aid capable of being regarded as compatible with the internal market — Discretion of the Commission — Complex evaluation of economic matters — Judicial review — Limits (Art. 107(3) TFEU) (see paras 50-52)*
5. *State aid — Prohibition — Exceptions — Discretion of the Commission — Possibility of adopting guidelines — Binding effect — Distribution of a working document stating certain principles — No binding effect (Arts 107(3) TFEU and 108 TFEU) (see paras 53-57, 90)*
6. *State aid — Prohibition — Exceptions — Aid capable of being regarded as compatible with the internal market — Assessment in relation to Article 107(3)(c) TFEU — Taking into account previous practice — Not included (Art. 107(3)(c) TFEU) (see para. 59)*

7. *State aid — Examination by the Commission — Examination of an aid scheme as a whole — Lawfulness — Examination of a sectoral aid scheme — Examination to be based on concrete evidence (Arts 107(3) TFEU and 108 TFEU) (see paras 62-68, 94, 95, 112, 123, 140)*
8. *State aid — Prohibition — Exceptions — Aid capable of being regarded as compatible with the internal market — Aid pursuing an objective in the public interest (Art. 107(3)(c) TFEU) (see paras 77-80)*
9. *State aid — Prohibition — Exceptions — Aid capable of benefiting from the derogation under Article 107(3)(c) TFEU — Operating aid — Not included — Exceptions (Art. 107(3)(c) TFEU) (see paras 116, 117)*
10. *EU law — Principles — Equal treatment — Concept (see para. 119)*
11. *State aid — Examination of complaints — Obligations of the Commission — Examination of matters not expressly raised by the complainant of the Commission's own motion (Art. 108 TFEU) (see paras 121, 122)*
12. *State aid — Planned aid — Examination by the Commission — Preliminary review and main review — Compatibility of aid with the internal market — Difficulties of assessment — Commission's duty to initiate the main review procedure — Serious difficulties — Definition — Objective nature — Circumstances allowing such difficulties to be established (Art. 108(2) and (3) TFEU; Council Regulation No 659/1999, Art. 4(4)) (see paras 130-151)*

Re:

APPLICATION on the basis of Article 263 TFEU and seeking the annulment of Commission Decision C(2012) 8761 of 5 December 2012 on State aid SA.33952 (2012/NN) — Germany — Climbing centres of Deutscher Alpenverein.

Operative part

The Court:

1. Dismisses the action;

2. Orders Magic Mountain Kletterhallen GmbH, Kletterhallenverband Klever eV, Neoliet Beheer BV and Pedriza BV jointly and severally to bear the costs incurred by the European Commission and their own costs;
3. Orders Deutscher Alpenverein eV and Deutscher Alpenverein, Sektion Berlin eV to bear their own costs.