General Court of the European Union
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Press and Information

Judgments in Cases T-163/05 and T-36/06
Bundesverband deutscher Banken eV v Commission

The General Court upholds the Commission's decisions on the transfer of two special investment funds to Landesbank Hessen-Thüringen

The assets made available to the German bank which are used to underpin its competitive business do not constitute State aid

Landesbank Hessen-Thüringen Girozentrale (Helaba) is one of Germany's largest banks. It is the principal banker to the *Länder* of Hessen and Thuringia and the central institution of the Hessen and Thuringia savings banks. It also operates as a commercial bank both on the national and on the international markets.

Case T-163/05

The *Land* of Hessen established a special fund called 'Wohnungswesen und Zukunftsinvestition' (Housing and Future Investment) comprising debts owing to the *Land* from low-interest loans granted between 1948 and 1998 for the purpose of promoting social housing construction.

In 1998 this fund was transferred to Helaba as a silent partnership contribution of capital of unlimited duration. In consideration for that contribution, Helaba would pay the *Land* a fixed remuneration which, in the first four years following the transfer, would not be payable on the full value of the assets transferred but on tranches rising in annual increments.

The Bundesverband deutscher Banken eV (Association of German Banks) informed the Commission that that contribution constituted State aid. The Commission took the view that, although certain elements of the contribution did indeed amount to State aid, the assets made available to Helaba to underpin its competitive business could not be classified as State aid.

The Association of German Banks took the view that the entire contribution should have been classified as State aid and challenged the Commission's decision before the General Court.

In today's judgment, the Court finds, first of all, that the contribution at issue served neither to ensure Helaba's economic survival nor to maintain its volume of business, since Helaba's core capital ratio at the time of the transaction in question was sufficiently high. The Court notes in that regard that the bank did not need a public contribution at all costs but, on the contrary, that it could have increased its core capital by calling on private investors.

With regard to the phased model of remuneration, the Court observes that it enabled Helaba's limited capacity to absorb a significant increase in its capital in the short term to be reconciled with the *Land*'s need to invest a non-liquid asset which it did not want to divide.

Next, the Court notes that, although the contribution at issue is a special instrument which does not correspond precisely either to normal silent partnership contributions or to share capital, the Commission did not make a manifest error of assessment in finding that **it is nevertheless comparable to silent partnership contributions**, owing to certain common features. The Court observes that the specific features of the contribution at issue which distinguish it from normal silent partnership contributions were duly taken into account by means of the requisite premiums.

The Court also notes that the amount of the remuneration payable to the *Land* was determined in such a way as to reflect the reality of the market and the special features of the transaction as compared with silent partnership contributions issued on the market. Therefore, additional risks, such as the volume of the transaction or the involvement of a single investor, did not necessarily justify a remuneration premium, since the *Land* had accepted those risks for its own reasons, without being influenced by the wishes or needs of the bank.

The Court adds that the reduction granted to Helaba on account of its trade tax burden cannot be regarded as unlawful either since, in reality, the bank was obliged to pay that tax in place of the *Land*. Similarly, owing to the lack of liquidity of the contribution at issue, Helaba had to lay itself open to additional costs in order to procure a level of liquidity on the market equivalent to the value of the investment, which justifies a reduction of the remuneration to take account of that additional financial burden.

In those circumstances, upholding the Commission's decision, the Court holds that the assets made available to Helaba to underpin its competitive business do not constitute State aid. **The Court therefore dismisses the application in its entirety.**

Case T-36/06

The Hessischer Investitionsfonds was established as a special asset of the *Land* of Hessen in order to offer interest-free loans or loans at a reduced rate of interest for local investment projects. The *Land* wished to transfer that fund to Helaba in the form of a silent partnership contribution of unlimited duration in return for a fixed remuneration.

To satisfy itself that the proposed transaction was compatible with Community law, Germany had asked the Commission to consider whether the investment amounted to State aid. The Commission decided that the transaction did not constitute State aid. The Bundesverband deutscher Banken eV brought an action before the General Court against the Commission's decision.

In its judgment of today's date, the Court **dismisses this application on grounds similar to those of the judgment in Case T-163/05.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

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