



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-115/09 and T-116/09
Electrolux v European Commission and Whirlpool Europe v European Commission

The General Court annuls the Commission decision according to which the grant of restructuring aid of €31 million by France to FagorBrandt subject to conditions is compatible with the common market

The Commission wrongly held that the accumulation of compensatory measures it accepted in its decision reduced in a satisfactory manner the negative effects on competition generated by the grant of the aid concerned

The French company FagorBrandt SA is owned indirectly by Fagor Electrodomésticos S. Coop, a cooperative incorporated under Spanish law which itself forms part of a grouping of cooperatives called Mondragón Corporación Cooperativa. FagorBrandt is present in the three large product families of the electrical household appliance market, namely, cooking appliances, refrigeration appliances and washing appliances. Electrolux AB (Sweden) and Whirlpool Europe BV (Netherlands) both operate in the same sector.

On 21 October 2008, the Commission adopted a decision¹ in which it held that the planned grant of €31 million of aid for FagorBrandt, notified to it by France, constituted restructuring aid which was compatible with the common market on condition that certain compensatory measures were adopted. In that context, the Commission held, in particular, that the sale in March 2004 of FagorBrandt's subsidiary, Brandt Components, which manufactured washing machine components, and the cessation of marketing for five years of refrigeration, cooking and dishwashing appliances under the Vedette brand could be regarded cumulatively as compensatory measures limited proportionately the negative effects on competition generated by the grant of that aid.

By their actions brought in March 2009, Electrolux and Whirlpool Europe, which challenge the grant of that aid, requested the General Court to annul the Commission's decision.

In its judgment today, the General Court recalls that, in accordance with the Commission's guidelines², in the context of the grant of restructuring aid, compensatory measures must be adopted. Those measures must be 'appropriate' in that they must not lead to a deterioration in the structure of the market and they must be 'in proportion' to the distortive effects of the aid. In that connection, the General Court states that, even if the sale of Brandt Components had the effect of reducing FagorBrandt's presence on the market for washing machine components, the Commission itself ruled out the claim that that measure had a 'real effect' on the washing machine market. According to the Commission, that market was the 'main market' in which FagorBrandt was active. For that reason, the General Court considers that the Commission's analysis, according to which the cumulative effect of that measure with the measure consisting in the cessation by FagorBrandt of the marketing of certain products for five years under the Vedette brand limited proportionately the negative effects on competition, is manifestly erroneous.

For the sake of completeness, the General Court also points out that, in the context of the examination of the effect on competition of the advantage conferred by the aid at issue, the

¹ Commission Decision 2009/485/EC of 21 October 2008 on State aid C 44/07 (ex N 460/07) which France is planning to implement for FagorBrandt (OJ 2009 L 160, p. 11).

² Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2).

Commission failed to take into consideration the fact that FagorBrandt's Italian subsidiary had also received unlawful and incompatible aid granted by Italy. Furthermore, the recovery of that aid, which had already been ordered by the Commission, had not been fully implemented³. In those circumstances, the General Court considers that the Commission has committed a second manifest error of assessment in failing to examine the cumulative effect on competition of the advantage conferred from the grant of that Italian aid which had not been fully reimbursed with the advantage conferred by the grant of the aid at issue by France.

Therefore, the General Court annuls the Commission's decision.

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.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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³ Commission Decision 2004/343/EC of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty (OJ 2004 L 108, p. 38).