



Press and Information

General Court of the European Union

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Judgment in Case T-499/10

MOL Magyar Olaj- és Gázipari Nyrt. v Commission

The Court annuls the Commission's decision on the State aid granted by Hungary to the oil company MOL

There is nothing to show that that company benefited from favourable treatment in relation to its competitors regarding the payment of mining fees

MOL is a Hungarian oil and gas company which extracts hydrocarbons, inter alia in Hungary.

Under the Hungarian Mining Act, mining companies in possession of authorisation must pay to the State a mining fee for the extraction of hydrocarbons, crude oil and natural gas. Until 2008, the rate of the fee was set, in principle, at 12% of the value of the quantity of the minerals exploited.

In September 2005, MOL sought extension of the mining rights for twelve of its hydrocarbon fields for which authorisation had been obtained but where extraction had not yet started. By an agreement signed in December 2005, MOL and the Hungarian State extended by five years the deadline to start exploiting those 12 fields and set the extension fee, the amount of which had to be higher under the Mining Act than the basic fee, for each of the five years at rates of between 12.24% and 12.6%. Moreover, the parties extended, for a period of fifteen years, the application of that fee to all MOL's fields already exploited under authorisation, i.e. 44 hydrocarbon fields and 93 gas fields, that fee constituting an increased mining fee in respect of those fields. In addition, the agreement provided for a one-off payment of 20 000 million Hungarian forints (approximately €68 million).

In 2007, the Mining Act was amended and the rate of the mining fee was increased, in principle, to 30% with effect from 8 January 2008. However, that increase did not apply to MOL's fields, which remained subject to the rates set in the 2005 agreement.

In June 2010, the Commission adopted a decision¹ by which it established that the setting in the 2005 agreement of the mining fee with respect to MOL, in combination with the increase of the mining fee applicable to its competitors, constituted State aid that was incompatible with the common market. Consequently, the Commission requested Hungary to recover that aid, which amounted to 28 444.7 million forints (approximately €96.6 million) for 2008 and 1 942.1 million forints (approximately €6.6 million) for 2009, from MOL.

MOL brought an action before the General Court for annulment of the Commission's decision.

By its judgment, the Court notes, first of all, that the Mining Act allows any undertaking to apply for the extension of its mining rights on one or more fields on which it has not started extraction within five years of issuance of the authorisation. In that context, the Court states that the fact that MOL was the only undertaking in practice to have concluded an extension agreement in the hydrocarbons sector does not undermine that conclusion. That fact may be explained by an absence of interest on the part of other operators, and thus by an absence of any extension application, or by an absence of any agreement between the parties on the rates of the extension fee. Since the criteria laid down by the Mining Act for the conclusion of an extension agreement are objective and applicable to any potentially interested operator which fulfils those criteria, **the**

¹ Decision 2011/88/EU on State aid C 1/09 (ex NN 69/08) granted by Hungary to MOL Nyrt. (OJ 2011 L 34, p. 55).

conclusion of the 2005 agreement on the basis of that act did not favour MOL in relation to its competitors.

Similarly, the fact that the Hungarian authorities have a margin of assessment in determining the rate of the extension fee does not mean that certain undertakings might derive a competitive advantage from this. Such a margin of assessment may be justified by various factors, such as the number of fields which have been the subject of extension and their estimated importance in relation to the fields already in production. The margin of assessment conferred by the Mining Act therefore enables the authorities to preserve equal treatment between operators according to whether they are in comparable or different situations, by adjusting the proposed fees to the characteristics of each extension application submitted.

Thus, it is not illogical that the rate of the extension fee and, where applicable, the rate of the increased mining fee - which apply to fields where the date on which production starts is delayed and to fields already put into production respectively - are higher where the number of fields extended is significant in relation to the number of fields already in production. Similarly, the rate may be lower where, as in the present case, the number of fields extended accounts for a small proportion of fields in production. In that connection, however, the Court observes that **the Commission failed to examine that relevant aspect of the 2005 agreement.**

The Court also notes that there are other extension agreements concluded in Hungary in the solid minerals sector of which account should have been taken in the assessment of the 2005 agreement. However, the Commission failed to take those agreements into consideration.

Moreover, the Court notes that the increase in fees under the amended Mining Act occurred in a context of an increase in international crude oil prices, that is to say independently of the conclusion of the 2005 agreement.

Accordingly, the Court holds that the Commission's analysis has not made it possible to establish that **the 2005 agreement conferred economic advantages on MOL to the detriment of its competitors and therefore 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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