



Press and Information

Court of Justice of the European Union

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Judgment in Case C-15/14 P
Commission v MOL Magyar Olaj- és Gázipari Nyrt

The Court of Justice, like the General Court, confirms that the agreement between the Hungarian State and the oil company MOL relating to the exploitation of hydrocarbon fields does not constitute State aid

The combination of that agreement and the increase in the rate of mining fees resulting from the amendment of the Mining Act did not confer a selective advantage on MOL

MOL is a Hungarian oil and gas company that extracts hydrocarbons, notably 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 it owned, by virtue of an authorisation, in 12 hydrocarbon fields where extraction had not yet started. By an agreement signed in December 2005, MOL and the Hungarian State extended the deadline by five years for starting to exploit those 12 fields and fixed the fee payable for that extension. Under the Mining Act, the amount of the fee had to be higher than the basic fee for each of the five years; the mining fee was then set at rates of between 12.24% and 12.6%. In addition, the parties extended, for a period of 15 years, the application of that fee to all MOL's fields already exploited under authorisation, that is to say, 44 hydrocarbon fields and 93 natural 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). The agreement also stipulated that the rates thus defined would remain unchanged for its entire duration.

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 was not applied to MOL's fields, which, in accordance with the provisions of the 2005 agreement, continued to be subject to the rates fixed in that agreement.

By a decision of June 2010,¹ the Commission considered that the combination of the 2005 agreement (fixing the rate of the mining fee with respect to MOL) and the increase of the mining fee resulting from the amendment of the Mining Act had the effect of favouring MOL over its competitors and therefore constituted State aid incompatible with the common market. Consequently, the Commission requested Hungary to recover from MOL that aid amounting to 28 444.7 million forints (approximately €96.6 million) for 2008 and 1 942.1 million forints (approximately €6.6 million) for 2009.

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

By its judgment of 12 November 2013,² the General Court annulled the Commission's decision on the ground that there was nothing to show that MOL had benefited from favourable treatment in relation to its competitors regarding the payment of the mining fees and that, therefore, the combination of the 2005 agreement and the Mining Act could not be categorised as State aid. The

¹ Commission Decision 2011/88/EU of 9 June 2010 on State aid C 1/09 (ex NN 69/08) granted by Hungary to MOL Nyrt. (OJ 2011 L 34, p. 55).

² [T-499/10](#) MOL Magyar Olaj- és Gázipari Nyrt. v Commission see also Press Release No [146/13](#).

Commission lodged an appeal before the Court of Justice against the judgment of the General Court.

In today's judgment, the Court of Justice points out that for a national measure to be classified as State aid for the purposes of Article 107(1) TFEU, it must fulfil four cumulative conditions: there must be an intervention by the State or through State resources; it must be liable to affect trade between Member States; it must confer a selective advantage on the recipient and, finally, it must distort or threaten to distort competition.

In its appeal, the Commission called into question the way in which the General Court interpreted and applied the third condition (that is to say, granting the beneficiary of the measure a selective advantage).

In that regard, the Court of Justice makes it clear that the requirement of selectivity under Article 107(1) TFEU must be distinguished from the detection of an economic advantage. Thus, when a general scheme of aid is examined, it is necessary to determine whether the measure in question, while conferring a prima facie advantage of general application, does not in fact do so to the exclusive benefit of certain undertakings.

The Court of Justice finds that the General Court was right to hold that **the mere fact that the Hungarian authorities enjoy limited discretion, defined by law, to determine the rate of the extension fee is not sufficient to establish that certain undertakings might gain a selective advantage therefrom.** That latitude allows the fixing of an additional charge imposed on economic operators in order to take account of the imperatives arising from the principle of equal treatment, and can therefore be distinguished from cases in which the exercise of such discretion is connected with the grant of an advantage in favour of a specific economic operator.

Likewise, the General Court did not err in law in finding that **the fact that the rates set by the 2005 agreement were the result of negotiation between MOL and the Hungarian authorities did not suffice to confer on that agreement a selective character,** on the grounds that those authorities exercised their discretion to set the rate of the mining fee objectively and without discrimination and did not, therefore, favour MOL over its competitors.

Furthermore, the Court states that that the General Court could validly conclude that **the discretion enjoyed by the Hungarian authorities with regard to the choice of whether or not to conclude an extension agreement did not enable MOL to gain any selective advantage.** The criteria laid down by the Mining Act for the conclusion of an extension agreement are objective and applicable to any potentially interested operator fulfilling those criteria, so that the conclusion of the 2005 agreement on the basis of that act did not favour MOL over its competitors.

In addition, the Court of Justice observes that, bearing in mind the fact that State interventions take various forms and have to be assessed in relation to their effects, it is not inconceivable that several consecutive measures of State intervention should have, for the purposes of Article 107(1) TFEU, to be regarded as a single intervention, in particular when those measures, having regard to their chronology, their purpose and the circumstances of the undertaking at the time of the interventions, are so closely related to each other that they are inseparable from one another.

In that regard, the Court of Justice, like the General Court, finds **that there are no such links between the 2005 agreement and the amendment of the Mining Act.** The increase in the level of the mining fees, resulting from the amendment of the Mining Act, occurred in a context of an increase in international crude oil prices. The Commission did not argue that the 2005 agreement had been concluded in anticipation of such an increase. Those two elements therefore do not constitute a single aid measure and thus do not constitute State aid.

In those circumstances, **the Court of Justice dismisses the Commission's appeal in its entirety.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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