

Case T-55/99

Confederación Española de Transporte de Mercancías (CETM)

v

Commission of the European Communities

(State aid — Aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) — Statement of reasons — Obligation to recover aid — Legitimate expectations of recipients — Principle of proportionality)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 29 September 2000 II - 3213

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision on State aid — Action brought by an association representing the collective interests of undertakings in the sector concerned — Admissibility — Conditions*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC))
2. *State aid — Concept — Selective nature of the measure — Objective criteria for grant — No effect*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))

3. *State aid — Effect on trade between Member States — Adverse effect on competition — Criteria for assessment — Operating aid*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))
 4. *State aid — Concept — Measure not placing recipients in a position as favourable as that of their competitors from other Member States — Inclusion*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))
 5. *State aid — Effect on trade between Member States — Criteria — Adverse effect on competition — Undertaking in receipt of the aid not participating in cross-border activities*
(EC Treaty, Art. 92 (now, after amendment, Art. 87 EC))
 6. *State aid — Effect on trade between Member States — Adverse effect on competition — Aid relatively small in amount*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))
 7. *State aid — Commission decision finding aid which has not been notified incompatible with the common market — Obligation to state reasons — Scope*
(EC Treaty, Art. 92 (now, after amendment, Art. 87 EC), Arts 93(3) and 190 (now Arts 88(3) EC and 253 EC))
 8. *State aid — Recovery of illegal aid — Aid granted in breach of Article 93 of the Treaty (now Article 88 EC) — Possible legitimate expectation on the part of the recipient — Protection — Conditions and limits*
(EC Treaty, Art. 93 (now Art. 88 EC))
 9. *State aid — Recovery of illegal aid — Discretion of the Commission — Infringement of the principle of proportionality — Absence*
(EC Treaty, Art. 93(2), first subpara. (now Art. 88(2) EC, first subpara.))
 10. *State aid — Proposed aid — Implementation before the final decision of the Commission — Commission decision ordering repayment of the aid — Obligation to state reasons — Scope*
(EC Treaty, Art. 93(3) (now Art. 88(3) EC))
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1. An association responsible for protecting the collective interests of undertakings is as a matter of principle entitled to bring an action for annulment of a final decision of the Commission on State aid only where the undertakings in question are also entitled to do so individually or where it is able to rely on a particular interest in acting, especially because its negotiat-

ing position is affected by the measure which it seeks to have annulled.

(see para. 23)

public bodies and bodies providing local public services, other users of vehicles of that type, namely large undertakings, not being eligible, must be regarded as selective, and therefore specific, for the purposes of Article 92(1) of the Treaty.

2. The specific nature of a State measure, namely its selective application, constitutes one of the characteristics of State aid within the meaning of Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC). In that regard, it is necessary to determine whether or not the measure in question entails advantages accruing exclusively to certain undertakings or certain sectors of activity.

The fact that aid is not aimed at one or more specific recipients defined in advance, but that it is subject to a series of objective criteria pursuant to which it may be granted, within the framework of a predetermined overall budget allocation, to an indefinite number of beneficiaries who are not initially individually identified, cannot suffice to call in question the selective nature of the measure and, accordingly, its classification as State aid within the meaning of Article 92(1) of the Treaty. In particular, a measure which was intended to, and did in fact, benefit, among users of commercial vehicles, only natural persons, small and medium undertakings, local and regional

Furthermore, it is not sufficient for the public authorities to invoke the legitimacy of the objectives which the adoption of an aid measure sought to attain for that measure to be regarded as a general measure outside the scope of Article 92(1) of the Treaty. That provision does not distinguish between measures by reference to their causes or aims but defines them in relation to their effects. Accordingly, the sole circumstance that the measure was aimed at modernising the commercial vehicles on the road in a Member State in the interest of environmental protection and improving road safety cannot suffice for that measure to be regarded as constituting a system or a general measure.

(see paras 39-40, 47, 53)

3. Operating aid, which is intended to relieve the recipient undertakings of all or part of the expenses which they would normally have had to bear in their day-to-day management or their

usual activities, in principle distorts competition.

(see para. 83)

other Member States, does not itself participate in crossborder activities. Where a Member State grants aid to an undertaking, internal supply may be maintained or increased, with the consequence that the opportunities for undertakings established in other Member States to offer their services to the market of that Member State are reduced.

4. A public scheme cannot escape classification as aid for the purposes of Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC) on the ground that, notwithstanding the advantage conferred on its beneficiaries, they would not, even so, be placed in a position as favourable as that of their competitors from other Member States.

(see para. 86)

(see para. 85)

6. The prohibition in Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC) applies to any aid which distorts or threatens to distort competition, irrespective of the amount, in so far as it affects trade between Member States. In that regard, the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Community trade might be affected. Thus, aid of a relatively small amount is liable to affect trade between Member States where there is strong competition in the sector in question.

Furthermore, an aid may be of such a kind as to affect trade between Member States and distort competition even if the recipient undertaking, which is in competition with undertakings from

In that regard, there is no requirement in case-law that the distortion of competition, or the threat of such distortion, and the effect on intra-Communi-

nity trade, must be significant or substantial.

(see paras 92, 94)

7. While in certain cases the very circumstances in which the aid has been granted may show that it is liable to affect trade between Member States and to distort or threaten to distort competition, the Commission must at least set out those circumstances in the statement of the reasons for its decision.

However, the Commission is not required to carry out an economic analysis of the actual situation on the relevant market, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings and of trade flows of the services in question between Member States, provided that it has explained how the aid in question distorted competition and affected trade between Member States.

Furthermore, in the case of aid granted illegally, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade between Member States. Such an obligation would ultimately favour Member States which pay aid without comply-

ing with the duty to notify the aid laid down in Article 93(3) of the Treaty (now Article 88(3) EC), to the detriment of those which notify the aid at the proposal stage. Last, in giving its reasons for the decisions it is required to take in order to ensure compliance with the rules on competition, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned. It is sufficient if it sets out the facts and legal considerations having decisive importance in the context of the decision.

(see paras 100, 102-105)

8. In view of the mandatory nature of the supervision of State aid by the Commission under Article 93 of the Treaty (now Article 88 EC), an undertaking cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article. A diligent operator should normally be able to determine whether that procedure has been followed.

The possibility cannot be precluded that the recipient of illegal aid may, in order to challenge its repayment, plead

exceptional circumstances which give rise to a legitimate expectation that the aid was lawful.

(see paras 121-122)

Similarly, provided that the aim is to restore the previous situation, the recovery of unlawful aid cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aid. Even if such a measure is implemented long after the aid in question was granted, it cannot constitute a penalty not provided for by Community law.

9. When the Commission finds that State aid is incompatible with the common market it may order the Member State concerned to order the recipients to repay it, since abolishing unlawful aid by means of recovery is the logical consequence of that finding, in so far as it allows the previously existing situation to be restored.

(see paras 160-161, 164)

Save in exceptional circumstances, the Commission will not exceed the bounds of its discretion if it asks the Member State to recover the sums granted by way of unlawful aid since it is only restoring the previous situation.

10. In the matter of State aid, where, contrary to the provisions of Article 93(3) of the Treaty (now Article 88(3) EC), the proposed aid has already been granted, the Commission, which has the power to require the national authorities to order its repayment, is not obliged to provide specific reasons in order to justify the exercise of that power.

(see para. 172)