

Case T-86/96 R

**Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and
Hapag-Lloyd Fluggesellschaft mbH**

v

Commission of the European Communities

(State aid — Commission decision classifying a national measure
as aid incompatible with the common market —
Interim measures — Order requiring authorisation for the aid to
be granted on a provisional basis — Urgency — Balance of interests)

Order of the President of the Fourth Chamber (Extended Composition) of the
Court of First Instance, 2 April 1998 II - 644

Summary of the Order

1. *Applications for interim measures — Interim measures — Conditions for granting — Urgency — Serious and irreparable harm — Alleged manifest illegality of the contested measure — Submissions not precluding the possibility that the measure was materially justified — Not to be taken into account*

(EC Treaty, Art. 186; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Interim measures — Conditions for granting — Serious and irreparable harm — Burden of proof*
(EC Treaty, Art. 186)
3. *Applications for interim measures — Interim measures — Application for the Commission to be ordered to authorise State aid on a provisional basis — Dismissed*
(EC Treaty, Arts 92, 93 and 186)

1. The urgency of an application for interim relief must be assessed in relation to the necessity for an interlocutory order to prevent serious and irreparable damage to the party applying for the interim measure.

In that regard, the risk must affect interests which are peculiar to the applicant or, in the case of an association of undertakings, at the very least interests which it is called upon to protect.

The judge dealing with the matter cannot amend the requirements relating to that criterion on the ground that the contested measure — for instance, a Commission decision finding State aid to be incompatible with the common market — is manifestly illegal, where all the submissions put forward in the application for interim relief in order to show that there is a *prima facie* case in the main proceedings allege 'defects in the statement of reasons' which do not by their nature preclude the possibility that the contested decision is materially justified under Article 92 of the Treaty.

In order to be able to determine whether the harm which the applicant fears is serious and irreparable, the judge hearing the application must have hard evidence allowing him to determine the precise consequences which the absence of the measures applied for would in all probability entail.

2. It is for the party seeking interim relief to prove that it cannot await the outcome of the main proceedings without suffering serious and irreparable harm.
3. In the framework of the system for monitoring State aid set up by Articles 92 and 93 of the Treaty, the final sentence of Article 93(3) protects competition by preventing payment of the aid before the Commission has been able to satisfy itself that it is compatible with the common market. That procedure implies the exercise of a wide discretion on the part of the Commission, whose role the judge

hearing the application for interim measures therefore cannot assume. Consequently, when the Commission has in the exercise of that power found aid to be incompatible with the common market, the judge hearing the application for interim measures cannot, in the

absence of sufficient evidence to establish a danger of serious and irreparable harm, disapply the rules on the protection of competition laid down in Articles 92 and 93 of the Treaty by ordering the Commission to authorise the aid on a provisional basis.