

## Case T-214/95

### Vlaams Gewest (Flemish Region) v Commission of the European Communities

(Application for annulment — Air transport — State aid —  
Small amount — Distortion of competition — Effect  
on trade between Member States — Statement of reasons)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 30 April 1998 ..... II - 722

#### Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision declaring certain aid to be incompatible with the common market — Action brought by the regional authority which granted that aid — Whether admissible*  
(EC Treaty, Art. 173, paras 2 and 4)
2. *State aid — Adverse effect on competition — Operating aid — Interest-free loan granted by a regional authority to a private airline to facilitate the development and operation of several European air routes characterised by intense competition*  
(EC Treaty, Art. 92(1))

3. *State aid — Effect on trade between Member States — Assessment criteria — Aid in favour of an airline geared to international trade*  
(EC Treaty, Art. 92(1))
4. *Member States — Obligations — Breach — Failure by other Member States to fulfil obligations — Justification — None*
5. *State aid — Commission decision declaring unnotified aid to be incompatible with the common market — Obligation to state reasons — Scope*  
(EC Treaty, Arts 92, 93(3) and 190)
6. *State aid — Prohibition — Derogations — Commission's discretion — Aid granted to airlines — Assessment criteria — Amount — Excluded*  
(EC Treaty, Arts 3(g) and 92(3)(c))
7. *State aid — Prohibition — Derogations — Commission's discretion — Aid granted to airlines — Examination of proposed aid on a case-by-case basis*  
(EC Treaty, Arts 92(3)(c) and 93)

1. When the Commission finds, in a decision, that a loan granted to an undertaking by a regional authority of a Member State involves aid incompatible with the common market, that authority has standing to challenge the Commission's decision, notwithstanding the fact that it is addressed to the Member State concerned.

fourth paragraph of Article 173 of the Treaty.

Furthermore, the contested decision has a direct and individual effect on the legal position of such a regional authority since it directly prevents it from exercising its own powers, consisting, *inter alia*, of granting aid to undertakings, and requires it to modify the loan contract entered into with the recipient of the aid.

Although regional authorities are not covered by the term Member State for the purposes of the second paragraph of Article 173 of the Treaty, they must nonetheless — since they have legal personality under national law — be treated as legal persons within the meaning of the

The regional authority has an interest of its own in challenging such a decision,

distinct from that of the Member State, since it does not appear that the latter is able to determine the manner in which the regional authority exercises its own powers.

2. The grant of an interest-free loan by a regional authority to a private airline, which is intended to facilitate the development and operation of several European air routes, on which the recipient competes with other airlines, including companies established in other Member States, and which is not required to be used to finance specific expenditure, distorts or threatens to distort competition within the meaning of Article 92 of the Treaty in so far as it relieves the undertaking of normal costs which form an integral part of its day-to-day activities.

Operating aid, that is to say aid which is intended to relieve an undertaking of the expenses which it would normally have had to bear in its day-to-day management or its usual activities, in principle distorts competition.

Furthermore, where a public authority favours an undertaking operating in a sector characterised by intense competition by granting it a benefit, there is a distortion of competition or a risk of such distortion. Where the benefit is limited, competition is distorted to a lesser extent, but it is still distorted. The prohibition in

Article 92(1) of the Treaty 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.

3. The relatively small amount of State 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. Even aid of a relatively small amount is liable to affect trade between Member States where there is strong competition in the sector in which the recipient operates.

When State financial aid or aid from State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. That is particularly so where the aid benefits an airline which is geared to international trade, since it provides air transport between towns situated in different Member States and competes with airlines established in other Member States, and the aid is designed to facilitate the development and operation of European routes so that its potential to affect trade between Member States is increased.

4. No breach by a Member State of an obligation under the Treaty can be justified by the fact that other Member States are also failing to fulfil this obligation.
  
5. The statement of reasons required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question, in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Community judicature to exercise its power of review. It is not, however, necessary for the reasoning to go into all the relevant facts and points of law since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

In giving its reasons for the decisions it takes 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.

When applied to the classification of aid, that principle requires the Commission to indicate the reasons why it considers that the aid in question falls within the scope of Article 92(1) of the Treaty. In that respect, even in cases where it is clear from the circumstances in which the aid has been granted 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 reasons for its decision.

By contrast, provided the Commission explains the respects in which the effect on trade between Member States is obvious, it is not required to carry out an extremely detailed economic analysis of the figures.

Furthermore, in the case of aid which has not been notified to the Commission, the decision declaring that aid to be incompatible with the common market need not demonstrate the real effect of that aid on competition or trade between Member States. To hold otherwise would ultimately favour those Member States which grant aid in breach of the duty to notify laid down in Article 93(3) of the Treaty, to the detriment of those which do notify aid at the planning stage.

6. When assessing aid granted to an airline, the Commission is under no obligation specifically to consider whether, in view of its amount, the aid could benefit from an exemption under Article 92(3)(c) of the Treaty, since the amount of the aid does not constitute a criterion for assessment laid down by that provision or by the guidelines applicable to aid in the air transport sector.

In the context of the broad discretion enjoyed in applying Article 92(3)(c) of the Treaty, the Commission is justified in relying on the criteria it considers to be most appropriate in order to determine whether an aid can be considered compatible with the common market, provided that those criteria are relevant having regard to Articles 3(g) and 92 of the Treaty. In that respect, it can specify the criteria it intends to apply in guidelines which are consistent with the Treaty. The adoption of such guidelines by the Commission is an instance of the exercise of its discretion and requires only a self-imposed limitation of that power when considering the aids to which the guidelines apply, in accordance with the principle of equal treatment. By assessing specific aid in the light of such guidelines, the Commission cannot be considered to

exceed the limits of its discretion or to waive that discretion.

7. The authorisation of State aid granted to certain airlines does not automatically mean that other airlines are entitled to a derogation from the principle that aid is prohibited. It is for the Commission, within the framework of its discretion concerning State aid, to consider each proposal for aid individually. It must do so in the light, first, of the specific circumstances surrounding the aid and, second, of general principles of Community law and the guidelines. Even if companies established in other Member States have received illegal aid, that is irrelevant for the purposes of assessing the aid in question.

The Commission's discretion cannot, in any event, be overridden by the sole fact that it authorised aid intended for a competitor of the recipient of the aid since, if that were so, it would deprive the provisions of the Treaty granting it that power of all useful effect.