

Case T-95/03

Asociación de Empresarios de Estaciones de Servicio de la Comunidad Autónoma de Madrid and Federación Catalana de Estaciones de Servicio

v

Commission of the European Communities

(State aid — Legislation providing for urgent measures to promote competition in the sector for the retail supply of petroleum products — Decision not to raise any objections — Admissibility — Legal persons — Measure of individual concern to them — Manifest error of assessment — Duty to state reasons — Duty to initiate the formal investigation procedure — Reasonable period of time)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 12 December 2006 II - 4744

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them*
(Arts 88(2) and (3) EC, and 230, fourth para., EC)

2. *State aid — Definition*
(Art. 87(1) EC)
3. *Acts of the institutions — Statement of reasons — Obligation — Scope*
(Art. 253 EC)
4. *State aid — Examination by the Commission*
(Art. 88(3) EC)
5. *State aid — Examination by the Commission — Preliminary review and main review*
(Arts 87(1) EC and 88(2) and (3) EC; Council Regulation No 659/1999, Art. 4(4))

1. Where, without initiating the formal investigation procedure laid down under Article 88(2) EC, the Commission finds, by a decision taken on the basis of Article 88(3) EC, that an aid is compatible with the common market, the persons intended to benefit from the procedural guarantees provided under Article 88(2) EC may secure compliance with them only if they are able to challenge that decision based on Article 88(3) EC before the Community judicature.

where he seeks, by instituting proceedings, to safeguard the procedural rights available to him under the latter provision.

By contrast, if the applicant calls into question the merits of the decision appraising the aid as such, the mere fact that it may be regarded as concerned within the meaning of Article 88(2) EC cannot suffice to render the action admissible. It must then demonstrate that it has a particular status within the meaning of Case 25/62 *Plaumann v Commission*. That applies in particular where the applicant's market position is substantially affected by the aid to which the decision at issue relates.

For those reasons, the Community judicature will declare to be admissible an action for the annulment of a decision based on Article 88(3) EC, brought by a person who is concerned within the meaning of Article 88(2) EC,

(see paras 45, 46, 48)

2. National legislation designed to facilitate the entry of hypermarkets into the market for the retail supply of petroleum products by removing certain restrictions in relation to town-planning and by simplifying the administrative procedures linked to the construction of a service station, without, however, thereby exempting hypermarket owners from any obligation to make a transfer to the State, either as laid down in the relevant legislation or as resulting from a general administrative practice of the local authorities, does not entail a direct or indirect transfer of public resources and, consequently, cannot be regarded as State aid.

A State measure which does not involve a direct or indirect transfer of State resources cannot be regarded as State aid for the purposes of Article 87(1) EC, even if it satisfies the other conditions laid down in that provision.

(see paras 87, 91, 104)

are correct, which goes to the substantive legality of the contested measure.

The statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirement to state reasons must be appraised by reference to the circumstances of each case. The question whether the statement of reasons meets the requirements of Article 253 EC 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. As regards, more particularly, a Commission decision in which it is found that the State aid objected to by a complainant does not exist, the Commission must provide the complainant with an adequate explanation of the reasons why the factual and legal material relied on in the complaint has failed to demonstrate the existence of State aid. The Commission is not required, however, to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance.

3. The duty to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given

(see paras 107, 108)

4. Where measures alleged to constitute State aid are not notified by the Member State concerned, the Commission is not required to carry out an initial investigation of those measures within a specified period. However, where interested third parties submit complaints to the Commission relating to State measures which have not been notified the Commission is bound, in the context of the preliminary stage laid down in Article 88(3) EC, to conduct a diligent and impartial examination of the complaints in the interests of sound administration of the fundamental rules of the EC Treaty relating to State aid. It follows, in particular, that where the Commission has initiated a preliminary investigation into State measures in relation to which there has been a complaint, it cannot prolong that investigation indefinitely. The purpose of that examination is simply to allow the Commission to form an initial opinion on the classification of the measures submitted for its assessment and their compatibility with the common market.

However, although the need to conduct administrative procedures within a reasonable period is a general principle of Community law, applicable in the context of an investigation procedure of State aid, and compliance with which is enforced by the Community judicature, the mere adoption of a decision after the expiry of such a period is not in itself sufficient to render unlawful a decision taken by the Commission at the conclusion of an initial examination conducted under Article 88(3) EC.

(see paras 121, 122, 130)

Whether or not the duration of an initial investigation procedure is reasonable must be determined in relation to the particular circumstances of each case and, especially, its context, the various procedural stages to be followed by the Commission, the complexity of the case and its importance for the various parties involved.

5. It is apparent from Article 4(4) of Regulation No 659/1999 and the case-law that the Commission is required to open the procedure provided for in Article 88(2) EC if an initial examination does not enable it to overcome all the difficulties raised by the question whether the State measure under scrutiny constitutes aid for the purposes of Article 87(1) EC, unless, in the course of that initial examination, the Commission is able to satisfy itself that the measure at issue would in any event be compatible with the common market, even if it were aid.

The fact that the time spent considerably exceeds the time usually required for a preliminary examination under Article 88(3) EC may, with other factors, justify the conclusion that the Commission encountered serious difficulties of assessment necessitating initiation of the procedure under Article 88(2) EC.

However, the fact that the Commission expresses doubts, on the basis of the information at its disposal, as to whether a State measure constitutes State aid, and no longer expresses such doubts after receiving supplementary information from the complainants, does not lead to the conclusion that the Commission encountered serious difficulties. Although it has no discretion in relation to the decision to initiate the formal investigation procedure, where it finds that such difficulties exist, the Commission nevertheless enjoys a certain margin of discretion in identifying and evaluating the circumstances of the case in order to determine whether or not they present serious difficulties. In accordance with the objective of Article 88(3)

EC and its duty of sound administration, the Commission may, amongst other things, engage in talks with the complainants in an endeavour to overcome, during the preliminary procedure, any difficulties encountered. That power presupposes that the Commission may bring its position in line with the results of the talks it engaged in, without that alignment having to be interpreted, *a priori*, as establishing the existence of serious difficulties.

Moreover, since the Commission is not under an obligation to conduct an exchange of views and arguments with the complainants and is thus not required to indicate to them the legal basis, under national law, on which it intends to base its decision, the mere absence of such an indication does not imply that the Commission encountered such difficulties.

(see paras 134, 135, 139, 140)