

Case T-95/94

**Chambre Syndicale Nationale des Entreprises de Transport de Fonds
et Valeurs (Sytraval) and Brink's France SARL**

v

Commission of the European Communities

(State aid — Complaint by a competitor — Failure to initiate the investigation
procedure — Right to a fair hearing — Action for annulment)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composi-
tion), 28 September 1995 II - 2654

Summary of the Judgment

- 1. Acts of the institutions — Statement of reasons — Obligation — Scope — Decision of the Commission rejecting a complaint alleging infringement of Article 92 of the Treaty on the ground that the measures complained of cannot be regarded as constituting State aid (EC Treaty, Arts 92, 93 and 190)*
- 2. State aid — Examination of complaints — Obligations of the Commission — Possible exchange of views and arguments with the complainant at the preliminary stage (EC Treaty, Arts 93 and 190)*

1. A decision of the Commission rejecting a complaint alleging the grant of aid by a Member State to an undertaking on the ground that the measures objected to by the complainant do not constitute aid within the meaning of Article 92 of the Treaty must contain a statement of reasons disclosing in a clear and unequivocal fashion the reasoning which led the Commission to conclude that those measures did not constitute aid, in such a way as to make the complainant aware of the reasons for the rejection of its complaint and thus enable it to defend its rights and the Court to review the interpretation and application of the concept of State aid referred to in Article 92, as undertaken, in the present case, by the Commission.

That obligation to provide a statement of reasons for the decision is not satisfied. The decision was adopted after a particularly lengthy inquiry into a complaint initially acknowledged as credible; it makes no mention, even with reference to the *de minimis* rule, to one of the points raised in the complaint, acknowledges a divergence from the system of social security costs applying to the competitors of the undertaking allegedly in receipt of aid, but without explaining why that divergence did not constitute aid, omits to analyse the advantages which that undertaking may have received from the public authorities as regards the rent charged for the premises made available to it, despite the objections raised in that regard in the complaint, fails to examine whether, as contested in the complaint, the services provided by the undertaking and the public authorities to each other are invoiced at the market rate and, finally, denying that a loan granted by the public authorities constitutes aid, merely observes that interest is payable on that loan, without verifying whether or not the rate of inter-

est payable constitutes an advantage for the undertaking concerned.

Such defective reasoning cannot be justified by the alleged flimsiness of the evidence put forward by the complainant in its complaint. It is very much more difficult for a complainant than it is for the Commission to gather the information and evidence needed in order to verify the validity of an apparently credible complaint, since the complainant is generally faced with obstacles raised by the administrative authorities whose acts it seeks to challenge, whereas the Commission has at its disposal more effective and appropriate means of gathering the information necessary for a detailed and impartial investigation of the complaint, in the course of which, where it decides to reject the complaint, without giving the complainant an opportunity to comment, prior to the adoption of the definitive decision, on the information obtained, it is under an automatic obligation to examine the objections which the complainant would certainly have raised had it been able to take cognizance of that information.

2. The Commission's obligation to state reasons for its decision rejecting a complaint against a grant of aid to an undertaking by a Member State on the ground that the measures objected to by the complainant do not constitute aid within the meaning of Article 92 of the Treaty may in certain circumstances require an exchange of views and arguments with the complainant, since, in order to justify to the requisite legal standard its assessment of the nature of the measures complained of, the

Commission needs to ascertain what view the complainant takes of the information gathered by it in the course of its inquiry. In those circumstances, that obligation constitutes a necessary extension of the Commission's obligation to deal dili-

gently and impartially with its inquiry into the matter by eliciting all such views as may be necessary, without thereby prejudging in any way whether it is necessary to initiate the procedure provided for by Article 93(2) of the Treaty.