

Case T-324/00

CDA Datenträger Albrechts GmbH

v

Commission of the European Communities

(State aid — Misuse of aid — Risk of evasion of the recovery order — Recovery of aid from companies which acquired the current assets from the initial recipient)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 19 October 2005 II - 4312

Summary of the Judgment

1. *State aid — Recovery of unlawful aid — Aid diverted — Diversion known to the Commission — Recovery from the recipient of the aid — Not permitted*
(Art. 88(2) EC)

2. *State aid — Recovery of unlawful aid — Scope — Aid granted to a group of undertakings with a practice of making internal transfers of assets — Recovery from an undertaking in the group which did not receive the aid and which did not derive any benefit from the transfers — Not permitted*
(Art. 88(2) EC)
3. *State aid — Recovery of unlawful aid — Recovery from an undertaking which did not receive the aid but which acquired the recipient's assets and carries on its business — Condition — Evasion of the decision ordering recovery — Assessment on a case-by-case basis*
(Art. 88(2) EC)

1. The Commission is not entitled to require the recovery of unlawful State aid from the recipient where, at the time of adopting a decision to that effect, the Commission knew — or could not but have known — that the aid had not benefited that undertaking.

Member State concerned did not provide it with precise information in respect of the part of the aid that was diverted where it failed to make use of the powers at its disposal to require that information to be passed to it.

(see paras 90-92)

In that regard, a decision ordering the recovery of unlawful State aid from the undertaking addressed does not comply with the principles governing the recovery of unlawful State aid where the Commission had at its disposal, at least when adopting that decision, a body of valid and consistent evidence showing that the addressee undertaking did not actually benefit from a large proportion of that aid, owing to its diversion, and making it possible to determine, at least approximately, the scale of the diversion. The Commission cannot, in order to justify its decision, take refuge behind the fact that the authorities of the

2. An undertaking belonging to a group of linked undertakings within which there are internal mechanisms for transferring assets cannot be required to repay unlawful State aid, even though it was not the recipient, on the ground that by virtue of its membership of that group it must actually have benefited from the

aid, where it is common ground that those internal transfer mechanisms were used only to the detriment of that undertaking and not for its benefit.

(see paras 83, 93)

was intended to evade the consequences of a Commission decision ordering recovery of the aid. It is necessary, in order to determine whether or not the facts actually constitute evasion, to take into account factors such as the details of the purchase and, in particular, the price actually paid, the fact that the recipient has maintained ownership of a certain number of its assets, and the economic logic of the transaction.

3. The fact that an undertaking has purchased part of the assets of the recipient of unlawful State aid and continues its business is not necessarily sufficient to support a finding that that transaction

(see paras 95-111)