

Case T-358/02

Deutsche Post AG and DHL International Srl

v

Commission of the European Communities

(State aid — Approval by the Commission of aid granted by the Italian authorities to Poste Italiane — Action for annulment brought by competitors — Inadmissible)

Order of the Court of First Instance (Second Chamber, Extended Composition), 27 May 2004 II - 1567

Summary of the Order

Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision that a national measure did not constitute State aid — Right of a competitor undertaking to bring an action — Condition — Market position

significantly affected — Not essential to participate as complainant in the procedure before the Commission

(Arts 87(1) EC, 88(2) EC and 230, fourth para., EC)

A Commission decision holding a national measure not to constitute State aid within the meaning of Article 87(1) EC, adopted at the end of the formal investigation procedure laid down by Article 88(2) EC, is of individual concern to undertakings if they are at the origin of the complaint which leads to the opening of the investigation procedure, if their views are heard during that procedure and if the conduct of the procedure is determined by their observations, provided, however, that their position on the market is significantly affected by the measure which is the subject of the contested decision.

the Commission, it may demonstrate by other means that it is also individually concerned, but it must in any case show that the measure approved by the decision is capable of significantly affecting its position on the market in question. The mere fact that the decision in question may exercise an influence on the competitive relationships existing on the relevant market and that the undertaking concerned was in a competitive relationship with the addressee of that decision does not constitute that significant effect. An undertaking cannot therefore rely solely on its status as a competitor of the undertaking to which the measure in question applies but must additionally show the magnitude of the prejudice to its position on the market.

If an undertaking has not played an active role in the administrative procedure before

(see paras 34, 36, 37)