

Case T-274/01

Valmont Nederland BV

v

Commission of the European Communities

(State aid — Concept — Benefit — Land sale price —
Financing for a car park)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 16 September 2004 II - 3150

Summary of the Judgment

1. *State aid — Definition — Legal nature — Interpretation on the basis of objective factors — Judicial review — Scope*
(Art. 87(1) EC)

2. *State aid — Definition — Sale of land by a public authority on preferential terms — Included — Criterion for appraisal — Market price — Method of assessment*
(Art. 87(1) EC)

3. *State aid — Administrative procedure — National measures implemented without having been notified — Commission's power to issue an order against the Member State concerned in order to obtain information it considers necessary — Decision adopted by the Commission, without recourse to an order on the basis of information it considered to be fragmentary — Not permissible*
(Council Regulation No 659/1999)
4. *State aid — Examination by the Commission — Possibility for the Commission to have recourse to outside experts — Transfer to the experts of responsibility for examining the existence of aid — Not permissible*
(Art. 87(1) EC)
5. *Actions for annulment — Pleas in law — Pleas that may be raised against a Commission decision on State aid — Pleas not raised in the investigation procedure in respect of the aid concerned — Distinction between admissible pleas in law and inadmissible pleas of fact*
(Arts. 88(2) EC and 230 EC)
6. *State aid — Definition — Measures to compensate for the cost of public-service tasks by an undertaking — Not included — Conditions — Public service obligations clearly defined — Parameters on the basis of which the compensation is calculated to be established in an objective and transparent manner — Compensation limited to costs — Determination of the compensation, where the undertaking is not chosen pursuant to a public procurement procedure, on the basis of an analysis of the costs of a typical undertaking in the relevant sector*
(Art. 87(1) EC)

1. In view of the fact that aid is a legal concept which must be interpreted on the basis of objective factors, the Community judicature must in principle, having regard both to the specific features of the case before them and to the technical or complex nature of the Commission's assessments, carry out a comprehensive review as to whether a measure falls within the scope of Article 87(1) EC. The exception to that principle is where a complex economic appraisal is involved, in which case review by the Court is restricted
(see para. 37)
2. Measures which, in various forms, mitigate the burdens which are normally

included in the budget of an undertaking and which are thereby similar to subsidies, such as, for example, the supply of goods or services on preferential terms, constitute benefits for the purposes of Article 87(1) EC. When applied to the sale of land to an undertaking by a public authority, the consequence of that principle is that it must be determined whether the sale price could not have been obtained by the purchaser under normal market conditions. Where the Commission carries out an examination for that purpose of the experts' reports drawn up after the transaction in question, it is bound to compare the sale price actually paid to the price suggested in those various reports and to determine whether it deviates sufficiently to justify a finding that there is a benefit. That method makes it possible to take into account the uncertainty of such a determination, which is by nature retrospective, of such market prices.

information necessary in order to take a decision on the matter, may approach the Member State concerned, including by way of an order to obtain it.

If, although it considers that it does not have all the necessary information, it does not make use of those powers it cannot rely on the incomplete nature of the information in its possession in order to justify the decision.

(see paras 55-60)

(see paras 44, 45)

3. Regulation No 659/1999, which applies in principle to any administrative procedure pending before the Commission at the time of its entry into force, confirms that when it examines national provisions which have not been notified which are capable of constituting unlawful State aid, the Commission, if it takes the view that it does not have all the
4. Although, whilst not being obliged to do so, the Commission may commission outside consultants to examine the existence of aid, it is not thereby exempted from assessing the report arising from their work, which is in any event of value only as regards its objective content and not for any unsubstantiated statements it may contain. Subject to judicial review, ensuring that Article 87 EC is observed and Article 88 EC is implemented is the central and exclusive responsibility of

the Commission and not of those experts.

have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 87(1) EC.

(see paras 71, 72)

5. The legality of a Commission decision concerning State aid must be assessed in the light of the information available to the Commission when the decision was adopted. The consequence of that principle is that, whereas there is nothing to prevent an applicant from developing, in support of an action for annulment of such a decision, a legal plea which it did not raise, as an interested party, during the formal investigation procedure, it is not permissible for it to rely on factual arguments which were unknown to the Commission and which it had not notified to the latter during that procedure.

(see paras 38, 102)

6. Where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial benefit and the measure thus does not

For such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic benefit which may favour the recipient undertaking over competing undertakings. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run

and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

It follows that, where an undertaking bears a burden in allowing others to use its car park in various ways regularly and free of charge, under an agreement concluded, in the public interest as much as in that of the third parties concerned, with a territorial authority

and where a portion of the financing granted by the territorial authority for the construction of that car park effectively benefits that undertaking, the Commission cannot automatically consider that that portion of the financing necessarily benefits that undertaking but should first examine, in the light of the information available, whether or not that portion of the financing could be regarded as being in fact compensation for the burden borne by that undertaking.

(see paras 129-133)