

Case T-117/04

**Vereniging Werkgroep Commerciële Jachthavens Zuidelijke
Randmeren and Others**

v

Commission of the European Communities

(State aid — Aid awarded by the Netherlands authorities to non-profit-making
marinas — Action for annulment — Admissibility)

Judgment of the Court of First Instance (First Chamber), 27 September 2006 II - 3864

Summary of the Judgment

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

1. Persons other than those to whom a decision is addressed may claim to be individually concerned only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of those factors distinguishes them individually just as in the case of the person addressed.

A decision adopted at the end of the formal investigation procedure provided for in Article 88(2) EC is of individual concern to any undertaking which was at the origin of the complaint which led to the opening of that procedure, and whose views were heard during that procedure and determined the conduct of that procedure, provided, however, that its position on the market was significantly affected by the measure which is the subject of the decision.

The mere fact that the decision at issue may have some influence on competitive relationships on the relevant market and that the undertaking concerned is in some sort of competitive relationship with the beneficiary of the decision does not satisfy that test of significant effect.

Therefore, an undertaking cannot rely solely on its status as a competitor of the undertaking which benefits from the measure in question, but must additionally demonstrate the magnitude of the prejudice to its position on the market.

As regards the extent to which the applicant's position on the market was affected, it is not for the Community Court, when considering whether an application is admissible, to make a definitive finding on the competitive relationship between the applicant and the undertaking in receipt of the aid. In that context, it is for the applicant alone to adduce pertinent evidence to show that the Commission's decision may adversely affect its legitimate interests by seriously jeopardising its position on the market in question.

(see paras 51-53, 56)

2. An action for annulment brought by an association of undertakings which is not the addressee of the contested measure is admissible only in two cases. The first is where the association, in bringing its action, has substituted itself for one or more of the members whom it represents, on condition that those members

were themselves in a position to bring an admissible action. The second is where there are special circumstances, such as the role which it might have played in the procedure leading to the adoption of the measure of which annulment is requested.

The mere fact that the applicant made a complaint to the Commission and in that connection corresponded and had meetings with the Commission, cannot constitute circumstances peculiar to the applicant sufficient to distinguish it individually from all other persons, and thus give it standing to bring proceedings challenging a general aid scheme.

In this respect, the fact that an association intervenes with the Commission during the procedure under the State aid provisions of the Treaty for the purpose of defending the collective interests of its members, where its role does not go beyond the exercise of the procedural rights granted to interested parties under Article 88(2) EC, is not sufficient in itself to establish *locus standi*.

(see paras 65-69, 73)