

Highlights from the case law of the EU Courts

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1. Commission v Braesch and Others (C-284/21 P) – Grand Chamber

- State aid – Art. 108!
- Precautionary recapitalisation of an Italian bank, the Italian authorities notified the European Commission for the recapitalisation of BMPS in the amount of EUR 5.4 billion, plus EUR 15 billion of individual liquidity aid to BMPS, Commission had approved in 2017
- ‘parties concerned’ under Article 108(2) TFEU and ‘*interested parties*’ within the meaning of Article 1(h) of Regulation 2015/1589,
- Admissibility

1. Commission v Braesch and Others (C-284/21 P) – Grand Chamber

General Court: T-161/18

ECJ: C-284/21 P

Even non-direct competitors may be considered interested parties, if they comply with the requisite legal standards. The applicants showed that the aid measures had a specific effect on their situations. Thus, they had standing. Lastly, they relied on procedural safeguards.

The GC was wrong to hold that the applicants had to be viewed as interested parties. They did not claim to be affected by the concerned decision, but rather the purely national burden-sharing measures.

2. Commission v CK Telecoms UK Investments (C-376/20 P), 13 July 2023 – Grand Chamber

- Control of concentration of undertakings
- General Court: annulment
- Court of Justice:

GC seems to be more progressive regarding the evaluation of the proof and methods of the Commission for the merger

3. Spain v Commission (C-649/20 P & C-658/20 P & C-662/20 P)

The Spanish Tax Lease (STL) system as a whole constituted an aid scheme. The tax authorities had a wide margin of discretion, the conditions were vague. A system like this must be regarded as selective, it is not necessary to establish whether there was a selective application.

- Recent cases started on 25/30 December 2013 before GC
- GC decision – 17 December 2015 – annulment
- 25 July 2018 – ECJ annulled the GC judgement
- Restart – GC 23 September 2020, 2nd judgement of ECJ: 2 febr. 2023

Selectivity – the applicable national rules are selective – applicable only for Spanish ship-builders and maritime companies

4. Fiat Chrysler Finance Europe v Commission (C-885/19 P & C-898/19 P) – Grand Chamber

The Commission did not correctly determine the reference system which should be examined for the purposes of establishing a selective advantage.

The Comm. used the arm's length principle; however, as it is not harmonized in EU law, it is for the MS to decide on its content.

The Comm. failed to take into consideration the specificities of the Luxembourgish laws.

5. Luxembourg v Commission (C-451/21 P & C-454/21 P) – Grand Chamber

- Reference system in tax law – the starting point!
- Based on case *Fiat Chrysler Finance Europe v Commission*.
- The Commission must rely on the MS's interpretation of a national law in case of no harmonization, except if it can show that another interpretation prevails.
- To establish a selective measure, it needs to be examined in conjunction with the MS's case-law and administrative practice.

6. Heureka Group a.s. C-605/21 (18 April 2024)

- The importance of the preliminary ruling for the private enforcement
- EU and national law for limitation period regarding action for damages
- Its starting date, its suspension and interruption

Thank you for your
attention!

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