

SUMMARIES OF STATE AID JUDGMENTS AT NATIONAL LEVEL

JUDGMENTS SELECTED FROM THE 2009 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL

I- Information on the judgment

High Court of Ireland, 30.06.2006, Kingdom of Belgium v. Ryanair Limited

II- Brief description of the facts and legal issues

The High Court refused an application for a stay in proceedings seeking recovery of State aid as Ryanair had failed to demonstrate that it would suffer irreparable harm if the stay was not granted.

Parties:

The plaintiff: Kingdom of Belgium;

The defendant: Ryanair Limited.

Factual background:

By a decision published on 12 February 2004, the European Commission ("the Commission") decided that certain arrangements or transactions that had been concluded between the Walloon region and the defendants and implemented by the plaintiff were unlawful State aid and therefore incompatible with Article 87(1) EC. The Commission found that the reductions in landing charges and discounts on ground handling services accorded to Ryanair by the Kingdom of Belgium, which went beyond levels laid down in relevant legislation, constituted incompatible State aid. Certain other types of aid, such as marketing contributions and one-shot incentives, were found to be compatible provided certain conditions were complied with.

Following this decision there ensued correspondence between the plaintiff and the defendant with a view to recovery of the various payments made to the defendants. An agreement was reached whereby EUR 4 million was placed in an escrow account pending the outcome of the defendant's appeal against the Commission decision. However the parties failed to reach agreement relating to certain other payments, and the plaintiff issued proceedings to recover EUR 2,288,000 together with interest. Ryanair then lodged an application for a stay in the proceedings pending the outcome of its appeal against the Commission decision.

III- Summary of the Court's findings

Legal issues:

The High Court of Ireland ("the Court") examined the following issues:

the correct approach to be taken to ascertain whether or not a stay of national State aid recovery proceedings should be granted; and

applicability of the *Zuckerfabrik* and/or *Masterfoods* cases.

The first issue that the Court considered was whether or not the judgment of the ECJ in the *Zuckerfabrik* case (Cases C-413/88 and C-92/89, *Zuckerfabrik* [1991] ECR 415) should be applied or whether it should be distinguished as applying only where a stay or suspension is sought in relation to a national measure based on Community regulation. That case established that national courts can grant relief from the enforcement of an administrative measure based upon a Community regulation on the basis of a three part test: the existence of serious doubts as to the validity of the Community measure, the likelihood that serious and irreparable harm would ensue from compliance with the measure which would materialise before the decision of the Community courts and the Community measure in question would be deprived of effectiveness if not immediately implemented.

The Court held that if *Zuckerfabrik* were distinguished on the basis suggested by the defendant it would have the effect of excluding from that test all decisions of the Commission on the grant of unlawful State aid or condemning anti-competitive practices on the part of particular parties. In particular the provisions of Article 87 EC can only be given effect through decisions of the Commission. Given the importance of these kinds of decisions for the fulfilment of one of the key policy objectives of the Treaty, namely the establishment of a common market free from distortion, the Court held that the *Zuckerfabrik* test should apply where suspension of such a decision or a stay of enforcement proceedings is sought pending the outcome of annulment proceedings. The Court referred to the obligation of sincere cooperation in Article 10 EC which, in its view, implies that national courts must apply the jurisprudence of the Community courts on an application for stay of enforcement of a decision of the Commission.

The Court then proceeded to apply the test to the facts of the case. For the first part of the test, the standard applied was whether there are arguable grounds for contending that the decision is invalid. The Court found that there was sufficient material to establish serious doubts as to the validity of the Commission decision. However, the Court found that the defendant had put forward no evidence to satisfy the second limb of the test, i.e. to establish that they would suffer serious and irreparable harm from complying with the decision. In fact there was a letter before the Court in which the defendant stated that the only harm that would be apprehended from complying with the Commission decision would be pure financial loss within their capacity to bear. As regards the third limb of the test, the Court held that, although the theoretical effect on the market was clear there was no evidence enabling them to form a view as to the actual effect of the non-recovery of the sums claimed in the current proceedings on the market in question.

However, as the defendant failed to satisfy the second stage of the test the Court held that they were not entitled to a stay of the proceedings.

Notwithstanding the non-compliance with the three stage test in *Zuckerfabrik* the Court considered whether a stay should be granted following the rule in *Masterfoods* (C-344/98, *Masterfoods Limited v. HB Ice-Cream Limited* [2000] ECR I-11369) on the basis of the risk of a conflict in judgment.

In the opinion of O'Neill J there was no risk of the proceedings leading to a judgment which could conflict with the judgments of the CFI or ECJ given that the High Court of Ireland cannot question the validity of the Commission decision which had to be regarded by the Irish Courts as having force of law unless annulled by the CFI or the ECJ. He also stated that:

"It could be said that if these proceedings continued to the ultimate stage of judgment for the plaintiff and all of this is accomplished before the community courts reach a final judgment and if the final judgment of the community courts is that the decision is to be annulled, that there is a risk of the defendants being exposed to a judgment which would be legally enforceable but in respect of which the legal basis ultimately is found to be wanting.

Should that situation emerge I will be inclined to the view that the risk of any loss to the defendants by the enforcement of that judgment is so remote as to be negligible."

In that case, the Court could not justify granting the application for a stay of the proceedings.

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