Judgment of the Court (Sixth Chamber) of 21 December 2011 — A2A, formerly ASM Brescia v Commission

(Case C-318/09 P)

(Appeal — State aid — Aid granted to public utilities — Tax exemptions — Decision declaring the aid scheme incompatible with the common market — Action for annulment — Admissibility — Locus standi — Legal interest in bringing proceedings — Article 87 EC — Concept of 'aid' — Article 88 EC — Concept of 'new aid' — Article 10 EC — Duty to cooperate in good faith — Regulation (EC) No 659/1999 — Articles 1 and 14 — Lawfulness of a recovery order — Principle of legal certainty — Duty to state reasons)

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision prohibiting a sectoral aid scheme — Action brought by an undertaking having received individual aid granted under that scheme and that must be recovered — Admissibility (Art. 230, fourth para., EC) (see paras 55-60)*

2. *Actions for annulment — Legal interest in bringing proceedings — Condition — Action capable of procuring an advantage for the party bringing it — Commission decision on the recovery of State aid (see paras 68-70)*

3. *Appeals — Pleas in law — Inadequate statement of reasons — Reliance by the Court of First Instance on implied reasoning — Whether permissible — Conditions (Art. 225 EC; Statute of the Court of Justice, Arts 36 and 53, first para.) (see para. 97)*

4. *Appeals — Pleas in law — Mistaken assessment of the facts — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted (Art. 225 EC; Statute of the Court of Justice, Art. 58, first para.) (see paras 103-105)*

5. *Appeals — Pleas in law — Plea directed against a ground of the judgment not necessary in order to support the operative part — Plea in law ineffective (see para. 109)*

6. *Appeals — Pleas in law — Distortion of national law relied on as evidence — Admissibility (Art. 225 EC; Statute of the Court of Justice, Art. 51, first para.) (see para. 125)*

7. *Appeals — Pleas in law — Plea submitted for the first time in the context of the appeal — Inadmissibility (Rules of Procedure of the Court of Justice, Arts 42(2) and 118) (see para. 131)*

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber, Extended Composition) of 11 June 2009 in Case T-189/03 *ASM Brescia* v *Commission* by which that court dismissed the action brought for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part

The Court:

1. Dismisses the main appeal and the cross-appeal;

2. Orders A2A SpA to pay the costs of the main appeal;

3. Orders the European Commission to pay the costs of the cross-appeal.