JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

14 April 2005 *

In Case T-141/03,

Sniace SA, established in Madrid (Spain), represented by J. Baró Fuentes, lawyer,

applicant,

supported by

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

intervener,

* Language of the case: Spanish.

Commission of the European Communities, represented by F. Santaolalla Gadea and J. Buendía Sierra, with an address for service in Luxembourg,

defendant,

APPLICATION for partial annulment of Commission Decision 2003/284/EC of 11 December 2002 on the State aid implemented by Spain for Sniace SA (OJ 2003 L 108, p. 35),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber, Extended Composition),

composed of J. Azizi, President, M. Jaeger, F. Dehousse, E. Cremona and O. Czúcz, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 September 2004,

gives the following

Judgment

Facts, procedure and forms of order sought by the parties

1 Sniace SA is a company with its registered office in Madrid (Spain) and its industrial installations and administrative offices in Torrelavega in Cantabria (Spain). It is active in the areas of forestry management and the production of paper, synthetic fibres and chemical by-products. From 1992 to 1996, it was subject to a moratorium. As part of a viability plan approved by the parties concerned in 1996, the company renegotiated its debts with its creditors.

2 In that context, the Caja de Ahorros de Santander y Cantabria (Santander and Cantabria Savings Bank, hereinafter 'the Caja Cantabria'), a non-profit-making credit institution with the legal status of a private foundation, decided, in January 1998, to grant Sniace a loan of EUR 12 020 242 for a term of eight years.

3 It is a subordinated equity loan with participation in profits which is not repayable until maturity and which, if the company is compulsorily wound up, will rank after ordinary debts but prior to shareholders' rights. The interest rate is made up of a fixed component of 2% on the outstanding principal, payable at three-monthly intervals, and a variable component depending on the company's profits and calculated at the end of each financial year. The loan may, if the parties so decide, be converted into shares or bonds.

4 Following a complaint from a competitor of Sniace, the Commission, by letter of 13 March 1998, invited the Spanish authorities to provide it with information on the loan. Since it considered the information it received insufficient, the Commission decided to initiate the procedure laid down by Article 88(2) EC and requested interested parties to submit their comments on the aid in question (OJ 2000 C 162, p. 15). At the conclusion of that procedure, the Commission adopted Decision 2003/284/EC of 11 December 2002 on the State aid implemented by Spain for Sniace SA (OJ 2003 L 108, p. 35, hereinafter 'the contested decision').

5 Article 1 of the contested decision, which was addressed to the Kingdom of Spain and notified to Sniace on 14 February 2003, provides:

'The State aid which Spain has implemented for Sniace SA, amounting to a maximum of EUR 7 388 258, is compatible with the common market pursuant to Article 87(3)(c) of the Treaty.'

6 On 14 April 2003, Sniace brought this action claiming that the Court should:

— declare the action admissible;

— annul Article 1 of the contested decision in so far as it states that Spain has granted it State aid amounting to a maximum of EUR 7 388 258;

— in the alternative, uphold Article 1 of the contested decision in so far as it finds that the State aid is compatible with the common market;

— order the Commission to put on the Court file the preparatory administrative documents on which the contested decision is based and the other administrative documents relating to the Commission's policy towards the Spanish savings banks;

— order the Commission to pay the costs.

7 For its part, the Commission contends that the Court should:

— declare the action inadmissible;

— in the alternative, dismiss it as unfounded;

— order the applicant to pay the costs.

8 By document lodged at the Court Registry on 7 August 2003, the Kingdom of Spain applied for leave to intervene in the case in support of the form of order sought by the applicant. By order of 15 September 2003 the President of the Court's Third Chamber granted that application.

9 In its statement in intervention, lodged on 28 October 2003, the Kingdom of Spain claims that the Court should:

— uphold the action;

— order the Commission to pay the costs.

Law

Arguments of the parties

10 In its defence, the Commission, without formally raising an objection of inadmissibility, expresses grave doubt whether the applicant has a direct interest in bringing this action.

11 The Commission argues that the action referred to in Article 230 EC may be brought only against a measure which has adverse effects. A decision unconditionally approving aid cannot be regarded as such. In any event, the applicant has absolutely failed to show that the decision has affected, practically and effectively, its legal position.

12 The applicant submits that the Commission has made, albeit informally, a preliminary application objecting to the admissibility of the action, within the meaning of Article 114(1) of the Rules of Procedure of the Court of First Instance. It leaves it to the Court to decide whether that application is inadmissible on the ground of procedural defect.

13 The applicant asserts that the Commission erred by classifying the loan in question as State aid. That classification is likely to affect, practically and effectively, its legal position.

14 The assimilation of the measure to State aid, the declaration of its unlawful implementation and the recognition of its ability to distort competition expose the applicant to the risk that third parties concerned by the aid will seek the review by the Community Courts of the contested decision's legality, which could in the end lead to a decision that it is not compatible with the common market and even to the repayment of the illegally received aid.

15 In the applicant's submission, a third party concerned by the aid could even bring an action before the Spanish courts in order to establish that the advance of the loan was automatically void on the ground that the loan was granted in breach of Article 88(3) EC.

16 In addition, the fact that the Commission classified the Caja Cantabria as a public undertaking changes the applicant's position vis-à-vis the latter institution and will affect the nature of its future commercial relations with that credit institution.

17 The applicant also alleges that it has suffered particular actual loss, yet to be quantified, since the administrative procedure lasted several years and obliged it to engage human, financial and technical resources, both internal and external, which are not as a rule required in the course of the company's usual activities.

18 Furthermore, the company has suffered non-material damage flowing from its associates', shareholders', suppliers' and customers' loss of confidence caused by the conduct of the administrative procedure.

19 The Kingdom of Spain made no submissions on the question of the action's admissibility.

Findings of the Court

20 As a preliminary point, it must be observed that the Commission has not raised an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure. Article 114(1) provides that, '[a] party applying to the Court of First Instance for a decision on admissibility ... not going to the substance of the case shall make the application by a separate document'. It does not therefore oblige the party concerned to challenge admissibility by separate document.

21 The Commission could therefore confine itself, in its defence, to expressing, before examination of the substance of the case, grave doubt as to its admissibility and to submitting to the Court's decision the possibility of declaring it inadmissible. There is, as a result, no need to rule on the admissibility or on the validity of a preliminary application under Article 114 of the Rules of Procedure, in accordance with the procedure laid down by that article.

22 In any event, under Article 113 of the Rules of Procedure, the Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action, such as the lack of a legal interest in bringing proceedings.

23 It must be observed that, by this action, the applicant, without challenging either the declaration of compatibility in the operative part of the contested decision or the declaration of initiation of the formal investigation procedure, submits that the decision affects it adversely in that it finds that the measure in question is State aid within the meaning of Article 87(1) EC.

24 In that regard, the Court has already held, in respect of concentrations, that the mere fact that a decision declares the concentration compatible with the common market and thus, in principle, does not have an adverse effect on the parties to the concentration does not dispense the Court from examining whether the contested findings set out in the statement of reasons have binding legal effects such as to affect their interests (Joined Cases T-125/97 and T-127/97 *Coca-Cola* v *Commission* [2000] ECR II-1733, paragraph 79).

25 For the purposes of considering the admissibility of this action, it must be pointed out that, according to settled case-law, an action for annulment brought by a natural or legal person is not admissible unless the applicant has an interest in seeing the contested measure annulled (Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 59; Case T-102/96 *Gencor* v *Commission* [1999] ECR II-753, paragraph 40, and Case T-212/00 *Nuove Industrie Molisane* v *Commission* [2002] ECR II-347, paragraph 33). That interest must be vested and present (Case T-138/89 *NBV and NVB* v *Commission* [1992] ECR II-2181, paragraph 33) and is evaluated as at the date on which the action is brought (Case 14/63 *Forges de Clabecq* v *High Authority* [1963] ECR 357 and Case T-159/98 *Torre and Others* v *Commission* [2001] ECR-SC I-A-83 and II-395, paragraph 28).

26 It must be added that, if the interest upon which an applicant relies concerns a future legal situation, he must demonstrate that the prejudice to that situation is already certain. Therefore, an applicant cannot rely upon future uncertain circumstances to establish his interest in applying for annulment of the contested act (*NBV and NVB* v *Commission*, cited in paragraph 25 above, paragraph 33).

27 However, the applicant has not demonstrated that it had, on the day it brought its action, a vested and present interest in seeing the contested decision annulled, since that decision approves, unconditionally and without limit of time, the measure in question for its benefit.

28 First, the applicant has not shown at all that the risk of legal proceedings was, in this case, vested and present within the meaning of the case-law.

29 Admittedly, the Commission's investigation procedure was triggered by a complaint from one of the applicant's competitors in circumstances where there had been no notification by the Spanish Government. Third parties, like Sniace's competitor which brought the complaint before the Commission, could therefore have relied upon the direct effect of the last sentence of Article 88(3) EC before the national courts in order to require the Member State concerned to recover the illegally-paid aid (see Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires and Others* [1991] ECR I-5505, paragraphs 14 to 17).

30 However, the applicant has not alleged that actions based on the last sentence of Article 88(3) EC were pending before the Spanish courts. In its pleadings, it confined itself to claiming, purely hypothetically, that such actions could be brought.

31 It must be pointed out that, according to the case-law, it is the applicant itself which must prove that it has an interest in making its application, which is an essential and fundamental prerequisite for any legal proceedings (Case C-206/89 R *S.* v *Commission* [1989] ECR 2841, paragraph 8).

32 Secondly, the alleged effects of the classification as State aid on the applicant's relations with the credit institution in question must be regarded as future, hypothetical and uncertain.

33 Contrary to the applicant's allegation, the fact that the Commission, in this case, classified the Caja Cantabria as a public undertaking could not entail the obligation to notify the Commission in future of any measure adopted by that credit institution in favour of the applicant.

34 All benefits granted by a public undertaking do not necessarily amount to State aid within the meaning of Article 87(1) EC.

35 Moreover, in order to evaluate the lawfulness of measures that may be granted in future by the Caja Cantabria, the Commission could not in any case base itself only on the reasons in the contested decision. It would have to carry out a new assessment in relation to the circumstances prevailing at the time of such later investigation.

36 In addition, the notification requirement on the Member States covers State aid. It follows that it is for them to determine in each case whether a measure amounts to State aid or not and to take action as a result. The conditions which might have made it mandatory to notify such a measure granted by such a public undertaking

may alter. Thus, any alteration which subsequently occurs in the status of the public undertaking concerned by which it loses that status can alter the classification of the measures adopted, thus dispensing with the obligation to notify the Commission of such measures.

37 The applicant is therefore wrong in asserting that the classification of the Caja Cantabria as a public undertaking changes its position vis-à-vis that institution and defines for the future the nature of its commercial relations with it.

38 Last, neither the economic loss nor the non-material damage, which, according to the applicant, result from the conduct of the administrative procedure, can be linked to the classification as State aid in the contested decision.

39 Finally, it must be observed that the applicant rightly refers to its right to effective judicial protection. The European Community is a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the Treaty and with the general principles of law which include fundamental rights. Individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18; Case C-424/99 *Commission* v *Austria* [2001] ECR I-9285, paragraph 45, and Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraphs 38 and 39).

40 However, even if, in spite of the time elapsed since the contested decision and its declaration of compatibility, judicial proceedings could still be brought before the national courts, the applicant would not in the least be deprived of any effective

judicial protection. First, it could rely on all the defences available under national law to oppose the repayment of the aid. Second, the present action being declared inadmissible, nothing would prevent the applicant requesting the national court, in the course of any proceedings before it, to make a reference for a preliminary ruling under Article 234 EC putting in issue the validity of the contested decision in so far as it finds that the measure in question is State aid (Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 17 and 18; see, in respect of measures of general application, *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 39 above, paragraph 40, and Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraphs 30 to 35).

41 It follows from all the foregoing considerations that the applicant has failed to demonstrate that it has a vested and present interest in bringing the proceedings. The action must therefore be declared inadmissible.

Costs

42 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs of the proceedings, as applied for by the Commission.

43 Under Article 87(4) of the Rules of Procedure, Member States and institutions which intervened in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

hereby:

1. **Dismisses the action as inadmissible;**

2. **Orders the applicant to pay the costs;**

3. **Orders the Kingdom of Spain to bear its own costs.**

Azizi Jaeger Dehousse

Cremona Czúcz

Delivered in open court in Luxembourg on 14 April 2005.

H. Jung
Registrar

J. Azizi
President