INFORMATION ON UNPUBLISHED DECISIONS

Reports of Cases

Judgment of the General Court (Sixth Chamber) of 13 February 2012 — Budapesti Erőmű v Commission

(Joined Cases T-80/06 and T-182/09)

(State aid — Wholesale electricity market — Favourable terms granted by a Hungarian public undertaking to certain power generators under power purchase agreements — Decision to initiate the procedure laid down in Article 88(2) EC — Decision declaring the aid incompatible with the common market and ordering its recovery — New aid — Private investor test)

1. *Actions for annulment — Actionable measures — Measures producing legal effects — Commission decision to open a formal investigation procedure into a State measure in the course of implementation and to classify it provisionally as new aid — Admissibility (Arts 87(1) EC, 88(2) and (3) EC and 230 EC) (see paras 37-39, 41)*

2. *State aid — Existing aid and new aid — Accession of a new Member State to the European Union — Distinction by reference to the specific rules established in Annex IV of the Act of Accession — Possibility of classifying as new aid a measure not initially constituting State aid — Advantageous conditions granted to certain Hungarian electricity producers — Classification as new aid (Arts 87(1) EC and 88(1) and (3) EC; Act of Accession of 2003, Annex IV; Council Regulation No 659/1999, Art. 1) (see paras 50, 51, 54-56, 59)*

3. *State aid — Concept — Assessment according to the private investor test — Purchasing agreements for electricity guaranteeing to electricity producers a minimum purchase quantity and the remuneration of fixed costs and capital — Included (Art. 87(1) EC) (see paras 65, 66, 69, 71, 77-79, 82)*

4. *State aid — Effect on trade between Member States — Adverse effect on competition — Criteria for assessment — Liberalised sector (Art. 87(1) EC) (see paras 95-97)*

5. *State aid — Commission decision finding aid incompatible with the common market and ordering its recovery — Possible for the Commission to leave to national authorities the task of calculating the exact amount to be recovered — Indication of a repayment methodology in the final decision — State aid in the electricity market (Art. 88 EC; Council Regulation No 659/1999, Art. 14(1)) (see paras 106-110, 113-115)*

6. *State aid — Examination by the Commission — Purchasing agreements for electricity guaranteeing to electricity producers a minimum purchase quantity and the remuneration of fixed costs and capital — Adoption of a single decision for all the purchasing agreements after examining the similarities of all the agreements and their specific elements — Lawfulness (Art. 87(1) EC) (see paras 129-131)*

7. *Actions for annulment — Grounds — Misuse of powers — Meaning (Art. 230 EC) (see para. 140)*

8. *State aid — Commission decision to open a formal investigation procedure in respect of aid — Duty to state reasons — Scope (Arts 88(2) and (3) EC and 253 EC; Council Regulation No 659/1999, Art. 6) (see para. 143)*

Re:

APPLICATION, in Case T-80/06, for annulment of the Commission's decision, notified to Hungary by letter of 9 November 2005, to initiate the procedure laid down in Article 88(2) EC in relation to State aid C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs, and, in Case T-182/09, for annulment of Commission Decision 2009/609/EC of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (OJ 2009 L 225, p. 53).

Operative part

The Court:

1. Dismisses the actions;

2. Orders Budapesti Erőmű Zrt to pay the costs.