Judgment of the Court (Third Chamber) of 9 June 2011 — Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya and Others v Commission

(Joined Cases C-465/09 P to C-470/09 P)

(Appeal — State aid — Action for annulment — Decision initiating the formal investigation procedure under Article 88(2)o EC — Subsequent final decisions finding State aid schemes implemented by Spain in 1993 for certain newly established firms in the provinces of Álava, Vizcaya and Guipúzcoa incompatible with the common market — Exemption from corporation tax — Lis pendens — Concept of 'authorised aid' — Legitimate expectations — Observance of a reasonable time-limit — Not notified)

1. *Appeals — Grounds — Challenge, repeating the pleas in law and arguments raised before the General Court, to the latter's interpretation or application of Union law — Admissibility (Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the General Court, Art. 112(1)(c)) (see paras 78-79, 82)*

2. *Procedure — Introduction of new pleas during the proceedings — Conditions — New plea — Definition (Rules of Procedure of the General Court, Art. 48(2)) (see para. 84)*

3. *State aid — Existing aid and new aid — Classification as existing aid — Criteria — Unnotified aid measures — Authorisation by reason solely of the Commission's silence — Not included (Art. 88(3) EC; Council Regulation No 659/1999, Art. 1(b)(ii)) (see paras 90-91, 94-97)*

4. *Appeals — Grounds — Review by the Court of the General Court's refusal to order measures of inquiry — Scope (Rules of Procedure of the General Court, Art. 66(1)) (see paras 108-110)*

5. *State aid — Examination by the Commission — Compatibility of the aid with the common market — Assessment of the compatibility of unnotified aid with regard to guidelines adopted after the aid had been paid — No breach of the principle of legal certainty — No breach of the principle of non-retroactivity (Arts 87 EC and 88 EC; Commission Communication 98/C 74/06) (see paras 120-128)*

6. *State aid — Recovery of unlawful aid — Aid granted in breach of the procedural rules under Article 88 EC — Legitimate expectations possibly entertained by the recipients — Protection — Conditions and limits — No action taken by the Commission for a relatively long period — National authorities in breach of their duty to cooperate with the Commission — No legitimate expectations (Arts 87 EC and 88 EC) (see paras 150-156, 162-163)*

7. *Appeals — Grounds — Grounds of a judgment marred by infringement of Union law — Operative part well founded for other legal reasons — Rejection (see para. 171)*

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 9 September 2009 in Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 *Diputación Foral de Álava and Others* v *Commission*, by which that court held, in Cases T-30/01 to T-32/01, that there was no longer any need to adjudicate on an application for annulment of the Commission Decision of 28 November 2000 to initiate the procedure under Article 88(2) EC in relation to the tax advantages in the form of corporation tax exemption for certain newly established firms granted by provisions adopted by the Diputación Foral de Álava, the Diputación Foral de Guipúzcoa and the Diputación Foral de Vizcaya, in the form of corporation tax exemption for certain newly established firms and, in Cases T-86/02 to T-88/02, dismissed an application

for annulment of Commission Decisions 2003/28/EC, 2003/86/EC and 2003/192/EC of 20 December 2001 on a State aid scheme in the form of corporation tax exemption implemented by Spain in 1993 for certain newly established firms in Álava (T-86/02), Vizcaya (T-87/02) and Guipúzcoa (T-88/02) (OJ 2003 L 17, p. 20, OJ 2003 L 40, p. 11, and OJ 2003 L 77, p. 1, respectively).

Operative part

The Court:

1. Dismisses the appeals;

2. Orders the Territorio Histórico de Vizcaya – Diputación Foral de Vizcaya, the Territorio Histórico de Álava – Diputación Foral de Álava and the Territorio Histórico de Guipúzcoa – Diputación Foral de Guipúzcoa to pay in equal shares the costs relating to the present appeals;

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

Order of the Court (Sixth Chamber) of 9 June 2011 — TF1 v Commission

(Case C-451/10 P)

(Appeal — State aid — Article 86(2) EC — Public service broadcasting — Decision not to raise objections — Proof — Economic efficiency of the undertaking)

1. State aid — Planned aid — Examination by the Commission — Preliminary stage and stage involving the exchange of views and arguments — Compatibility of aid