Fining Policy

General Court Judgments

The Goldman Sachs Group v. Commission (Case T-419/14)

On July 12, 2018, the General Court dismissed the appeal brought by the Goldman Sachs Group ("Goldman Sachs")[1] against the Commission decision in the high voltage underground and submarine power cables cartel.[2]

In 2014, the Commission found that European, Japanese, and Korean power cables producers shared markets and allocated customers for nearly 10 years, starting in February 1999. More specifically, the companies coordinated their behavior and exchanged information to rig the outcome of bids. The Commission fined 26 companies €302 million in total.[3] Interestingly, Goldman Sachs—which held a minority investment in one of the cartel participants, Prysmian—was held jointly and severally liable for Prysmian's participation in the infringement.

Goldman Sachs and 14 other addressees appealed to the General Court.[4] Goldman Sachs's appeal principally disputed the Commission's findings with respect to the duration of its participation in the infringement and its joint and several liability for Prysmian's conduct between 2005–2009. This was notably because during 2005–2007 (the "first period"), Goldman Sachs's shareholding in Prysmian mostly ranged between 84.4–91.1%.[5] After a significant divestiture of shares in 2007, Goldman Sachs remained a minority shareholder with only 31.69% of Prysmian's shares until 2009 (the "second period").

First, Goldman Sachs challenged the Commission's application of the presumption of its exercise of decisive influence over Prysmian between 2005–2007. The General Court dismissed the pleas and upheld the Commission's finding that Goldman Sachs's ownership of 100% of Prysmian's voting rights throughout the first period sufficed to put it in a position similar to that of a sole owner. The General Court confirmed that a majority shareholder holding 100% of its subsidiary's voting rights can be presumed to be able to determine its economic and commercial strategy independently from other shareholders, in spite of not holding the entirety of its share capital.

Regarding the period between 2007–2009, Goldman Sachs challenged the Commission's assessment of its economic, organizational, and legal links with Prysmian and claimed that its status as a minority shareholder

[1] *The Goldman Sachs Group v. Commission* (Case T-419/14) EU:T:2018:445.

[2] *Power Cables* (Case AT.39610), Commission decision of April 2, 2014.

[3] Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ 2006 C 298/17 ("Leniency Notice"). ABB received full immunity as the leniency applicant.

[4] The other appeals included: *Sumitomo Electric Industries and J-Power Systems v. Commission* (Case T-450/14) EU:T:2018:455; *Prysmian and Prysmian Cavi e Sistemi v. Commission* (Case T-475/14) EU:T:2018:448; *Pirelli & C. v. Commission* (Case T-455/14) EU:T:2018:450; *Fujikura v. Commission* (Case T-451/14) EU:T:2018:452; *Nexans France and Nexans v. Commission* (Case T-449/14) EU:T:2018:456; *Hitachi Metals v. Commission* (Case T-448/14) EU:T:2018:442; *NKT Verwaltungs and NKT v. Commission* (Case T-447/14) EU:T:2018:443; *Taihan Electric Wire v. Commission* (Case T-446/14) EU:T:2018:444; *ABB v. Commission* (Case T-445/14) EU:T:2018:449; *Furukawa Electric v. Commission* (Case T-444/14) EU:T:2018:454; *Brugg Kabel and Kabelwerke Brugg v. Commission* (Case T-441/14) EU:T:2018:453; *LS Cable & System v. Commission* (Case T-439/14) EU:T:2018:451; *Silec Cable and General Cable v. Commission* (Case T-438/14) EU:T:2018:447; and *Viscas v. Commission* (Case T-422/14) EU:T:2018:446.

[5] Goldman Sachs indirectly held 100% shareholding in Prysmian for 41 days.

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prevented it from being in a position to exercise decisive influence over Prysmian. More precisely, the Commission found that Goldman Sachs could exercise decisive influence over Prysmian's commercial policy because of several objective factors, including the power to appoint and revoke the members of Prysmian's boards of directors (which had wide decisional powers), the power to call shareholder meetings, and its prominent role on various board committees.

The General Court dismissed Goldman Sachs's pleas in this regard. It emphasized that the factors corroborating the economics, organizational, and legal links depend on the concrete circumstances of each case, and concluded that the factors singled out by the Commission, taken together, demonstrated Goldman Sachs's ability to exercise decisive influence over Prysmian. The General Court noted that the members of Prysmian's board of directors, nominated by Goldman Sachs before it lost its majority shareholding in 2007, remained on the board until the end of the infringement. The General Court also upheld the Commission's finding that Goldman Sachs actually exercised its decisive influence over Prysmian, including because it made use of its powers to revoke the board of directors and nominate the new members. Goldman Sachs could therefore not claim to have acted as a pure financial investor without sufficient expertise and interest to exercise decisive influence over Prysmian.

Goldman Sachs has appealed to the Court of Justice. The appeal is currently pending.[6]

Abuse

Commission Decisions

Google Android (Case AT.40099)

On July 18, 2018, just over a year after its prohibition decision in the Google Shopping case,[7] the Commission adopted a prohibition decision in the Google Android case.[8]

The decision concerns Google's Android mobile operating system and its contractual arrangements with original equipment manufacturers ("OEMs") and mobile network operators ("MNOs").

Google has owned and developed the Android mobile operating system since 2005. Android is a free open-source platform that Google licenses to third parties, which can modify and implement the source code on their smart mobile devices. Android is installed on an estimated 80% of smart mobile devices in Europe and worldwide.

The decision found Google to be dominant in the worldwide (excluding China) market for licensable smart mobile operating systems, in the worldwide (excluding China) market for Android application ("app") stores, and in each national market for general search services in the EEA. It found that Google had abused its dominance by committing a single and continuous infringement from January 1, 2011 to the time of the decision, *i.e.*, July 18, 2018, with the aim of protecting and strengthening Google's dominance in general search services.

The Commission found three separate breaches of Article 102. First, under the mobile application distribution agreements ("MADAs"), Google tied the Google Search and Google Chrome apps with the Google Play app store. Second, under the anti-fragmentation agreements ("AFAs"), Google conditioned its licensing of the Play Store and Google Search app on hardware manufacturers committing not to develop or sell devices running a non-compatible version of Android (a so-called "fork"). Third, Google entered into revenue share agreements ("RSAs") with OEMs and MNOs on the condition that they did not preinstall competing general search applications on any device within an agreed portfolio. The main elements

[6] *The Goldman Sachs Group v. Commission* (Case C-595/18 P).

[7] *Google Search (Shopping)* (Case AT.39740), Commission decision of June 27, 2017.

[8] *Google Android* (Case AT.40099), Commission decision of July 18, 2018 ("*Android*"). A separate Commission investigation into Google's AdSense advertising service is ongoing (*Google Search (AdSense)* (Case AT.40411)).

of the three infringements are discussed in more detail below:

- **MADAs**. Google's contracts with manufacturers bundled together its mobile apps and services, including the Google Play store, Google Search app, and Google Chrome browser app. The decision found that Google's requirement that manufacturers preinstall the Google search and Chrome browser apps as a condition for licensing Google Play was abusive. The Commission found that pre-installation created a "status quo" bias among users and conferred on Google Search and Chrome a significant competitive advantage. The Commission required Google to cease the ties between Google Play, Search, and Chrome.

- **AFAs**. In its licensing agreements with hardware manufacturers, Google required manufacturers to commit not to develop or sell devices running on a version of Android that failed to meet Google's compatibility standards for Android (for example, the Amazon Fire operating system). The Commission found this practice abusive because it closed off an important channel for manufacturers to develop and sell devices running on Android forks, which could come with rival search services preinstalled. As a remedy, Google is required to cease the challenged practices.

- **RSAs**. Google entered into RSAs with OEMs and MNOs that conditioned revenue share payments on sole pre-installation of the Google Search app on an agreed portfolio of Android devices. The Commission found that these "exclusivity" payments were capable of restricting competition and were an abuse of Google's dominant position in various national search markets. The decision found that this specific infringement lasted from 2011 until 2014, when Google ceased the practice.

The Commission fined Google €4.3 billion and required it to bring the infringements to an end within 90 days of notification of the decision. Google must also provide the Commission with periodic reports on measures taken to ensure compliance with the decision every six months for five years.

Google has contested the allegations. On October 9, 2018, it submitted its appeal to the General Court, seeking annulment of the decision.[9]

Mergers and Acquisitions

Commission Decisions

***Altice/PT Portugal* (Case COMP/M.7993)**

On April 24, 2018, the Commission fined Altice €124.5 million for acquiring control over PT Portugal before the transaction had received merger control clearance—an infringement known as "gun-jumping." The decision follows a spate of gun-jumping decisions and judgments at the EU level.[10]

Altice and PT Portugal are telecommunications operators. Altice notified its proposed acquisition of PT Portugal to the Commission in February 2015, and the transaction was cleared three months later. However, following press reports on contact that occurred between the two companies' executives before the clearance decision, the Commission launched an investigation to ascertain the existence of a gun-jumping infringement.

The Commission closely scrutinized the provisions of the sale agreement granting Altice certain veto rights on PT Portugal's activities before closing. Although these types of clauses are acceptable when aimed at protecting the value of the target, in this case the covenants went far beyond what was necessary for that purpose. In particular, Altice enjoyed extremely broad veto rights on the appointment of an undefined class of PT Portugal's managers, irrespective of their relevance to the value of the business. Moreover, Altice's prior

[9] *Google and Alphabet v. Commission* (Case T-604/18).

[10] *See Marine Harvest/Morpol* (Case COMP/M.7184), Commission decision of July 23, 2014; *Marine Harvest v. Commission* (Case T-704/14) EU:T:2017:753; and *Ernst & Young* (Case C-633/16) EU:C:2018:371. The Commission is also investigating Canon for suspected gun-jumping (*See* Commission Press Release IP/17/1924 of July 6, 2017).

consent was required in relation to a large proportion of PT Portugal's pricing decisions, which are particularly sensitive from a competitive perspective. Finally, Altice could restrict PT Portugal's ability to enter into, terminate, or modify a broad range of contracts, defined by reference to particularly low monetary thresholds. Many of these contracts fell within the target's ordinary course of business and were not relevant to the preservation of its value. The Commission noted that the simple existence of these veto rights amounted to a gun-jumping infringement, irrespective of whether Altice actually exercised them (as, in fact, it did).

The Commission found that Altice exercised early control over PT Portugal outside the sale agreement framework. PT Portugal sought and implemented Altice's instructions on several commercial matters, even when it was not explicitly required by the pre-closing covenants. The parties also exchanged recent and granular financial data without the necessary confidentiality measures—such as non-disclosure agreements or clean team arrangements.

The Commission fined Altice for the infringement of two distinct provisions of the Merger Regulation. By exercising control over PT Portugal before submitting a merger control filing to the Commission, Altice infringed the positive obligation to notify the acquisition prior to its implementation (Article 4(1)). By exercising control over PT Portugal between the notification and the Commission's final decision, Altice infringed the negative obligation not to implement the acquisition before clearance (Article 7(1)).

The Commission emphasised that these infringements were all the more serious in light of the competition concerns raised by the acquisition. Altice and PT Portugal were direct and close competitors, with high combined shares in the markets affected by the transaction.

State Aid

ECJ Judgments

Commission v. Spain and Others (Case C-128/16 P)

On July 25, 2018, the Court of Justice[11] set aside a General Court judgment, which had annulled a 2013 Commission decision.[12] The Court of Justice found that the General Court erred in law by holding that the Spanish tax lease system ("STLS") was not selective and did not constitute state aid.[13] As the General Court did not assess all the applicant's pleas, the Court of Justice referred the case back to the General Court.

Background. The STLS was applied in Spain from 2002 until 2013 to finance the purchase of ships built by Spanish shipyards at a 20–30% discount. It was composed of five measures, which enabled the accelerated depreciation of leased ships, and was based on a complex and *ad hoc* legal and financial structure organized by a bank, which acted as an intermediary between a shipping company (buyer) and shipyard (seller). A bank would form an Economic Interest Grouping ("EIG") with investors. At the start of a ship's construction, the EIG would lease the ship from a ship leasing company, and then the EIG would lease it in turn to a shipping company.

In 2013, the Commission concluded that certain tax measures in the STLS constituted illegal state aid and were partially incompatible with the internal market. The Commission found that the STLS tax mechanism allowed the accelerated and early amortization of the ships from the start of their construction, resulting in losses being generated at the EIG level. As EIGs benefit from a tax transparency regime, the losses being attributed to investors allowed them to reduce their tax base. Moreover, two other measures prevented the capital gains from the sale of ships by an EIG to a maritime shipping company from being subject to tax

[11] *Commission v. Spain and Others* (Case C-128/16 P) EU:C:2018:591.

[12] Commission Decision 2014/200/EU of July 27, 2013 (State Aid SA.21233 C/11 (ex NN/11, ex CP 137/06)), OJ 2014 L 114/1.

[13] *Spain and Others v. Commission.* (Cases T-515/13 and T-719/13) EU:T:2015:1004.

payment. That allowed the investors to retain the benefit of tax losses.

Following an appeal by Spain and a number of undertakings that participated in the STLS, the General Court annulled the Commission's decision on the basis that the measures did not constitute state aid as they were not selective.

Beneficiaries. The Court of Justice found that the General Court erred in law by holding that the EIGs could not be aid beneficiaries because of their legal status and tax regime. According to the General Court, EIGs could not be aid beneficiaries because, as they are subject to tax transparency, only EIGs' investors (not the EIGs themselves) benefited from the measures' fiscal and economic benefits. In turn, the Court of Justice recalled the well-established case law that the classification of a measure as state aid does not depend on the undertakings' legal status or the techniques used. The EIGs remained the aid beneficiaries although the economic advantages were eventually fully transferred to EIGs' investors. This was because the EIGs: (i) are undertakings under Article 107(1) TFEU (active in the economic activity of ship acquisition through leasing contracts); (ii) were the recipients of the tax measures; and (iii) were the direct beneficiaries of the advantages arising from those measures (as recognized by the General Court). Moreover, it was the EIGs that ensured the tax benefit by: (i) applying to the tax authority for the measures' benefit of early depreciation of leased assets; and (ii) opting for the tonnage tax system (rather than the normal corporate tax system).

Selectivity. The Court of Justice also found that the General Court incorrectly assessed the selectivity condition. The Court of Justice concluded that the General Court erred in law by holding that the measures at issue were not selective because they were open to *all* undertakings, regardless of the discretionary power of the administration in grating the measures. First, the Court of Justice recalled that the discretional power to grant the benefit of a measure may enable national authorities to favor certain undertakings to the detriment of others, and therefore to establish the existence of aid within the meaning of Article 107(1) TFEU. Second, the Court of Justice held that the General Courts' findings were based on the wrong premise that the EIGs' members, rather than the EIGs, were the beneficiaries. Moreover, the General Court relied on two precedents[14] that were subsequently set aside by the Court of Justice.[15] In sum, the General Court committed an error of law by holding that the advantages obtained by the EIGs' members could not be regarded as selective without assessing whether the tax measures at issue, by their practical effects, treated undertakings in a comparable factual and legal situation differently.

Duty to state reasons. Contrary to the General Court's findings, the Court of Justice found that the Commission's decision was not vitiated by a failure to state reasons or by contradictory reasoning. In the Court of Justice's view, the Commission provided information that made it possible to understand the reasons why it considered that the advantages at issue were of a selective nature and were liable to affect trade between Member States and distort competition. The General Court therefore committed an error of law by infringing Article 296 TFEU.

This judgment is important because it acknowledges that the condition of selectivity should be assessed at the level of both the final and intermediate beneficiary of an advantage. Moreover, it clearly indicates that advantages being passed on from intermediate to final aid recipients is irrelevant for the analysis of selectivity.

***Commission v. France and IFP Energies Nouvelles* (Case C-438/16 P)**

On September 19, 2018, the Court of Justice set aside a 2016 General Court judgment, which had annulled a 2011 Commission decision declaring French aid to IFP

[14] *Autogrill España v. Commission* (Case T-219/10) EU:T:2014:939; and *Banco Santander and Santusa v. Commission* (Case T-399/11) EU:T:2014:938.

[15] *Commission v. World Duty Free Group, Banco Santander, and Santusa* (Joined Cases C-20/15 P and C-21/15 P) EU:C:2016:981.

Energies Nouvelles ("IFPEN") compatible with the internal market.[16]

IFPEN is a French publicly-owned industrial and commercial establishment ("EPIC") that carries out research and development in the energy sector. The Commission found that IFPEN's EPIC status confers on it the benefit of an implied and unlimited state guarantee, as the state is the guarantor of last resort for the reimbursement of IFPEN's debts.[17] The Commission concluded that, to the extent that this guarantee covers IFPEN's economic activities, it constitutes state aid. IFPEN derives a selective economic advantage in its dealings with suppliers and customers, as IFPEN's competitors do not benefit from comparable state guarantees. The Commission, however, found the aid to be compatible with the internal market, as it complied with both the 1996 and 2006 research and development frameworks.[18]

The General Court annulled the Commission decision, following an appeal from IFPEN and the French Republic, in so far as it classified the guarantee as state aid. The Commission appealed to the Court of Justice, which found that the General Court had erred in law and referred the case back to the General Court.

No demonstration of actual effects is required to prove EPICs' advantage resulting from an unlimited guarantee. The Commission has previously considered the legal status of EPICs in its *La Poste* decision.[19] It found that EPICs benefit from an implied and unlimited state guarantee, which constitutes state aid when it allows for more favorable borrowing terms than the EPIC would have otherwise obtained on its own merits. In the present case, the Commission applied this principle and the presumption established by the Court of Justice's *France v. Commission* judgment to prove the existence of a selective advantage.[20] According to this presumption, it is sufficient for the Commission to establish the existence of an implied and unlimited state guarantee, without having to show actual effects, to prove the EPIC's advantage. The Commission found that IFPEN enjoys reduced prices from suppliers in the form of cheaper credit and advantageous terms in its dealings with customers, as the state guarantee has a favorable influence on suppliers and customers' assessment of EPICs' risk of default. The General Court rejected the Commission's conclusion on the basis of insufficient evidence and restricted the scope of application of the presumption to IFPEN's dealings with banks and financial institutions. The Commission complained that, in doing so, the General Court had erred in law.

The Court of Justice held that following its *France v. Commission* judgment, to establish an advantage, the Commission could not be required to demonstrate the guarantee's actual effects—merely establishing the guarantee itself was adequate. Hence, the General Court had erred in law. The Court of Justice concluded that the fact that IFPEN had previously derived no real economic advantage from its EPIC status was insufficient to rebut the presumption of an advantage. The General Court had erred in law by stating that the Commission had rebutted the presumption in the context of IFPEN's dealings with banks and other financial institutions.[21]

The presumption of EPICs' advantage is not restricted to dealings with banks and financial institutions. The Commission complained that the General Court wrongly concluded that it could not rely on the presumption of an advantage in favor of IFPEN

[16] *Commission v. France and IFP Energies Nouvelles* (Case C-438/16 P) EU:C:2018:737 ("*Commission v. France and IFP Energies Nouvelles*"), setting aside *France and IFP Energies Nouvelles v. Commission* (Joined Cases T-479/11 and T-157/12) EU:T:2016:320 ("*France and IFP Energies Nouvelles v. Commission*").
[17] Commission Decision C (2011) 4483 of June 29, 2011 (State Aid C 35/088 (ex NN 11/08)), OJ 2012 L 14/1.
[18] Communications from the Commission, Community framework for State aid for research and development, OJ 1996 C 45/5 and Community framework for state aid for research and development and innovation, OJ 2006 C 323/1.
[19] Commission Decision C (2010) 133 of January 26, 2010 (State Aid C 56/07 (ex E 15/05)), OJ 2010 L 274/1.
[20] *France v. Commission* (Case C-559/12 P) EU:C:2014:217, paras. 98–99.
[21] *Commission v. France and IFP Energies Nouvelles*, paras. 115–120, setting aside *France and IFP Energies Nouvelles v. Commission*, paras 134–137 and 188–190.

in the context of its dealings with suppliers and customers. The General Court had found that the presumption of an advantage following the Court of Justice's *France v. Commission* judgment is restricted to dealings with banks and financial institutions. The Court of Justice ruled that the General Court had erred in law.[22] The Court of Justice also provided an interesting additional clarification: the presumption could not be automatically extended to dealings with suppliers and customers without examining whether the derived advantage would be similar to that derived in dealings with banks and financial institutions (*i.e.*, better financial conditions than those normally granted on financial markets).[23]

This judgment is noteworthy for two main reasons. First, it clarifies the scope and evidential burden of the presumption established by *France v. Commission*, which is not limited to an EPIC's dealings with banks and financial institutions. Second, it spells out the Commission's obligations when applying this presumption (*i.e.*, the Commission must examine the economic and legal context of the relevant market, and notably the conduct of participants in the market, such as suppliers and customers).

General Court Judgments

***Austria v. Commission* (Case T-356/1)**

On July 12, 2018, the General Court dismissed as unfounded Austria's appeal against a Commission decision authorizing state aid granted by the UK in support of unit C of the Hinkley Point nuclear power station ("Hinkley Point C") to the future operator of the plant, NNB Generation Company Limited ("NNBG").[24]

The UK state aid in support of Hinkley Point C consisted of three measures. First, NNBG concluded a contract for difference with the Low Carbon Contracts Company Ltd ("LCCC"), an entity funded through mandatory fees paid by all licensed electricity suppliers collectively. The purpose of the contract was to ensure price stability for electricity sales during the operational phase of Hinkley Point C. Essentially, the contract stipulated that when the average wholesale price set by the UK government is not sufficient to cover operational costs and provide reasonable profit for NNBG, NNBG would receive the price difference from LCCC. Second, the UK government undertook a contractual obligation to compensate NNBG's investors if NNBG's contracting partners were to default on compensatory payments in the event of an early shutdown of Hinkely Point C due to political reasons. Third, the UK provided a credit guarantee on bonds to be issued by NNBG. In 2014, the Commission declared the state aid compatible with the EU internal market on the basis of Article 107(3)(c) TFEU (aid that facilitates the achievement of a common interest objective).[25] Austria, supported by Luxembourg, appealed the decision to the General Court.

The notion of "common interest" under state aid rules. Austria argued that the aid served to support the interest of a single Member State and therefore cannot be considered aid granted to support an objective of common interest. Moreover, Austria submitted more generally that aid given in support of nuclear energy cannot constitute an objective of European common interest. The General Court disagreed. It recalled that, for aid to be authorized under Article 107(3)(c) TFEU, it must pursue an objective in the common interest and must be appropriate, necessary, and proportionate. However, the common interest notion does not mean that the objective has to be pursued in the interest of all or a majority of Member States. Further, the General Court ruled that the objective of promoting nuclear power is enshrined in the Euratom Treaty and that each Member State has the right to choose between the different energy sources at its disposal.

Market failure is a relevant but not a necessary condition for state intervention. Austria argued that the UK's intervention was not necessary and that the Commission could not have declared the aid compatible

[22] *Commission v. France and IFP Energies Nouvelles*, paras. 138–139 and 146–147.
[23] *Commission v. France and IFP Energies Nouvelles*, paras. 149–151.
[24] *Austria v. Commission* (Case T-356/15) EU:T:2018:439.
[25] Commission Decision C (2014) 7142 of October 8, 2014 (State Aid SA.34947 (2013/C) (ex 2013/N)), OJ 2015 L 109/44.

with the internal market because the reasons for the failure of the market for the generation and supply of electrical power were insufficiently explained. The General Court disagreed. It stressed that market failure is only one of the criteria used for assessing the necessity of state intervention in the market. For example, even where the market is not failing, state intervention may be necessary where market forces are not capable of ensuring that the public interest objective is achieved in sufficient time. The General Court confirmed the Commission's finding that the absence of market-based financial instruments that could hedge against the substantial risks involved in investments in nuclear energy indicated that the UK's intervention was necessary.

The UK's measures were proportionate. Austria argued that the measures in question were not proportionate to the objective pursued because they would incentivize overproduction of nuclear energy that would eventually drive alternative electricity suppliers out of the market. To avoid that outcome, Austria submitted that the UK should have granted aid to wind power plants or smaller nuclear plants. The General Court dismissed this argument and confirmed the Commission's finding that, given the intermittent nature of renewable sources, it was not realistic to expect that a comparable amount of wind generating capacity could be built over the same timeframe as that envisaged for the construction of Hinkley Point C.

Tender procedure was not required. Austria submitted that, to grant aid for the Hinkley Point C project, the UK was obliged to launch a call for tender. The General Court disagreed. The contracts at hand were not public contracts or concessions, but a subsidy to which EU public procurement rules did not apply. The UK moreover did not breach the principles of equal treatment, transparency, and non-discrimination because it was free to choose whether to launch a tender procedure or grant a subsidy.

The UK's aid was not an operating aid. Austria argued that the aid granted to NNBG constituted operating aid, and therefore was incompatible with the EU internal market. The General Court, however, ruled that the characterization of the measure as operating or investment aid is not determinative. Moreover, the UK's measures were not intended to maintain the *status quo* and release NNBG from day-to-day costs. Rather, their purpose was to incentivize NNBG to invest in constructing Hinkley Point C.

In the current political climate of promoting alternative sources of energy, the General Court's judgment serves as a reminder that Member States are still in control of determining their energy mix—including nuclear—and are entitled to subsidize potential investors to the extent that their actions are appropriate, necessary, and proportionate.

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