

Background of the case

MB is a member of the Biria Group. MB manufactured bicycles until the end of 2005 when bicycle production ceased, and the physical assets used for that purpose were sold. The principal object of MB has since become the management of immovable property.

TBG is a wholly owned subsidiary of the K, a public law body controlled by the state. The K finances small- and medium-sized companies in the technology sector through equity participations. As a result of restructuring, B's assets were transferred, in 2003, to TBG. In 2001, Bike succeeded by MB, received financing from B in the form of a silent participation in the capital of that company. That participation had not been notified to the Commission as State aid. The parties agree on the fact that it amounted to State aid in that the repayment interest rate agreed upon was below market rate.

The participation contract was governed by private law.

On October 2005, following several complaints made by competitors, the Commission opened a formal investigation procedure under Article 108(2) TFEU.

By a decision issued in January 2007 the Commission found that the participation amounted to aid incompatible with the internal market and ordered the Member State concerned to take all necessary measures to recover the aid.

Following the Commission decision, TBG addressed a claim to MB, on February 2007, seeking recovery of the amount of State aid corresponding to the benefit of a preferential interest rate below market rate. MB refused to make payment.

The final amount to be recovered had been jointly agreed upon by the parties in October 2007 and was fixed at EUR 697 456.

On April 2008, following MB's refusal to comply with a new claim seeking repayment, TBG brought an action before the Regional Court for recovery of the amount in question. That action was based on the decision and the alleged

infringement of Article 108(3) TFEU and the Civil Code for failure to notify the aid in question.

According to the established case-law of the national courts, a contract granting State aid concluded in breach of Article 108(3) TFEU is void pursuant to the Civil Code.

The hearing before the Regional Court was held on November 2008 in the absence of the authorized representative of MB. For that reason, the Court delivered a provisionally enforceable judgment by default ('the judgment by default') enabling TBG to enforce recovery of the sum owed against MB's assets. On December 2008, MB brought an appeal against that judgment.

By order of January 2009, the Regional Court suspended the enforcement of the judgment by default on the condition that MB provided security in the amount of EUR 840 000 in the form of a deposit to the Court or a guarantee.

In the light of the proceedings then pending before the General Court, the Regional Court suspended, on March 2009, the national proceedings before it.

On April 2009, TBG brought an appeal against that decision to suspend before the Higher Regional Court. On January 2010, that appeal was dismissed and, on February 2010, TBG brought an appeal on a point of law before the Supreme Court. By order of September 2010, the Supreme Court found that the order of March 2009 of the Regional Court suspending proceedings and the order of January 2010 of the Higher Regional Court upholding that suspension order, had become devoid of purpose following the annulment of the first decision by the General Court.

Following the annulment of the first decision by the General Court, the Commission adopted a second Decision in December 2010, the operative part of which is worded as follows:

Article 1

The State aid granted by Member State to Bike (now MB) is incompatible with the internal market. The aid consists of a silent participation amounting to EUR 2 070 732 contributed to Bike (now MB).

Article 2

1. Member State shall recover the aid referred to in Article 1 from the recipient.
2. Recovery shall be made without delay and in accordance with the procedures of national law, provided these allow the immediate and effective enforcement of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. Member State shall ensure that this Decision is implemented within 4 months of the date of notification of the Decision.

By judgment of July 2013 in case *MB v Commission*, the General Court dismissed the appeal brought by MB against the decision at issue.

On March 2011, TBG lodged an application before the District Court for the registration of judicial hypothecs in execution of the judgment by default. On June 2011, the judicial hypothecs were registered. TBG filed an application for MB's immovable property to be auctioned before the District Court which, on July 2011, ordered an expert's report to be drawn up regarding the market value of the properties in question.

In proceedings relating to the enforcement of the decision at issue, by order of March 2011 and at the request of MB, the Regional Court suspended proceedings for a second time. On April 2011, TBG again brought an appeal before the Higher Regional Court which was dismissed by order of December 2011. On January 2012, TBG brought an appeal on a point of law before the Supreme Court which, by order of September 2012, set aside the decisions of the lower courts. Accordingly, the proceedings pending before the Regional Court resumed on March 2013.

On July 2012, the District Court, based on the expert's report of May 2012, found the market value of MB's property to be EUR 1 893 700. MB's property was to be sold by public auction on April 2013.

At the date of the hearing before the Court of Justice, December 2013, no bid had been submitted with the result that the aid in question had not been recovered.

Since the decision at issue had not yet been enforced nearly two years after it was adopted, the Commission brought an action against the Member State under Article 108(2) TFEU for failure to fulfil obligations.

Questions:

- 1. How will the Commission argue its position?**
- 2. What will the arguments of the Member State be?**
- 3. What will the Court decide and on what grounds will its decision be based?**