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Press and Information

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Judgment of the Court of First Instance in Case T-68/03

Olympiaki Aeroporia Ypiresies AE vCommission

**THE COURT OF FIRST INSTANCE PARTIALLY ANNULS THE COMMISSION
DECISION ON STATE AID TO OLYMPIC AIRWAYS**

The Commission decision of 2002 does not contain an adequate statement of reasons in regard to tolerance of non-payment of charges due to Athens Airport and VAT on fuel and spare parts.

In 1994, the Commission declared that restructuring aid granted to Olympic Airways (OA) was compatible with the common market, provided the Greek government complied with a series of commitments. In 1996, since the Commission considered that Greece was in breach of some of those commitments, and entertained doubts as to the compatibility of new and non-notified aids, it opened a new procedure.

In July 1998, Greece sent a revised restructuring plan to the Commission, which accepted it. It reduced the capital injection from the GRD 54 billion provided for in 1994 to GRD 40.8 billion, to be paid in three instalments of GRD 19, 14 and 7.8 billion in 1995, 1998 et 1999 respectively. In September 1998, Greece paid OA the second instalment of capital (GRD 14 billion, or approximately EUR 41 million).

In May 1999, Greece submitted a report to the Commission concerning the implementation of the restructuring plan. After submitting that report to an independent consultant, the Commission called upon Greece to submit an updated restructuring plan to it. Greece accepted that the 1998 restructuring plan would have to be revised so as to allow the Commission to adopt a decision in favour of granting the last instalment.

Implementation of the first revised restructuring plan was begun without awaiting the outcome of the Commission's consideration thereof. That plan (Speedwing) was abandoned in mid-2000, following two reports from an independent consultant expressing concerns as to whether the revised plan could re-establish OA's viability.

In 2000, Greece notified the Commission of its intention to use the remaining aid for new loan guarantees and for investment in relation to the relocation of Olympic from Elliniko airport to Spata. Since the Commission did not raise any objection to that plan, new loan guarantees totalling USD 378 million could be issued by 31 March 2001.

In December 2002, following a complaint from the Hellenic Air Carriers Association, the Commission adopted a decision¹ in which it found that most of the objectives of the 1998 restructuring plan had not been attained, that the conditions imposed had not been met and that the restructuring aid had therefore been wrongly implemented. It also referred to the existence of new non-notified aid, consisting, in essence, of the tolerance by the Greek State of the non-payment, or deferment of the payment dates, of social security contributions, value added tax (VAT) on fuel and spare parts, airport charges due to Athens Airport, airport charges and rent payable to other airports, and a tax on airline tickets from Greek airports ("spatosimo"). It required Greece to take the necessary measures to recover from the company, with interest, GRD 14 billion (EUR 41 million) corresponding to the restructuring aid and the value of the debts tolerated.

In 2003, the Commission brought an action against Greece before the Court of Justice for failure to fulfil obligations². Examining the implementation of the Commission's decision, the Court ruled against Greece on the ground that the latter had not taken all the necessary measures to recover the aid granted to OA.

In the present action, OA has asked the Court of First Instance of the European Communities to review the **validity of the decision** in question in regard both to the restructuring aid and to the new, non-notified, aid.

With regard to **restructuring aid**, the Court has rejected all of OA's claims concerning the allegedly wrongful nature of the Commission's decision. It finds that, notwithstanding the consensus between Greece and the Commission on the need to revise the 1998 plan substantially so as to ensure OA's viability, Greece did not submit a revised plan to the Commission in mid-2000 after the abandonment of the Speedwing plan. In that connection, having regard in particular to the scale of the debts and the fact that OA had no funds of its own, the Commission was right to conclude that neither the company's short term nor long term viability had been restored. The Court therefore confirms the Commission's decision on that point.

However, the Court has partially annulled the Commission decision in regard to certain **new, non-notified, aid**.

The new, non-notified aid

With regard, first, to the **prolonged non-payment of airport charges due to Athens International Airport**, the Court considers that the Commission's decision lacks an adequate statement of reasons in so far as it merely states the conclusion that it was the State itself which tolerated the continued delays in payment.

With regard to the **prolonged non-payment of VAT on fuel**, the Court also finds that the Commission's decision lacks a statement of reasons.

Finally, with regard to **non-payment by Olympic Aviation, an OA subsidiary, of VAT on spare parts**, the Court finds that the Commission failed to consider whether the non-payment of VAT conferred a real economic advantage permitting it to be regarded as State aid.

The Court has therefore annulled the parts of the decision concerning that aid and dismissed all of OA's other claims

¹ Decision 2003/372/EC of 11 December 2002 (OJ 2003 L 132, p. 1)

² Case C-415/03, decided by judgment on 12 May 2005 (see also press release)

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: EN FR EL

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-68/03>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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