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General Court of the European Union
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Judgments in Cases T-342/07 and T-411/07
Ryanair Holdings plc and Aer Lingus Group plc v Commission

The prohibition of Ryanair's takeover of Aer Lingus is valid

The General Court also upholds the Commission's refusal to order Ryanair to divest its minority shareholding in Aer Lingus

Following the privatisation of Aer Lingus by the Irish Government in 2006, Ryanair acquired a shareholding of 19.16 % in the share capital of that company. On 23 October 2006, Ryanair launched a public bid for the entire share capital of Aer Lingus and notified the Commission a week later of its planned takeover, in accordance with the Merger Regulation¹. During the public bid, Ryanair bought further shares and on 26 November 2006 it held 25.17 % of Aer Lingus's share capital.

On 27 June 2007 the Commission adopted a decision² declaring that Ryanair's planned takeover of Aer Lingus was incompatible with the common market. Ryanair brought an action against that decision before the General Court (Case T-342/07). Following the Commission's decision Ryanair bought further shares bringing its shareholding in Aer Lingus's capital to 29.3 %.

Both during the procedure which led to the prohibition decision and following that decision, Aer Lingus requested the Commission to order Ryanair to divest all of its shares in Aer Lingus. In its decision dated 11 October 2007, the Commission refused to grant that request, stating that it was not in its power under the Merger Regulation to order Ryanair to divest its shareholding since the planned takeover had not been implemented and Ryanair only held a minority shareholding which did not enable it to exercise either *de jure* or *de facto* control over Aer Lingus. Aer Lingus brought an action against that decision before the General Court (Case T-411/07). By order of 18 March 2008, the President of the General Court rejected the parallel application made by Aer Lingus for interim measures to prevent Ryanair from exercising its voting rights.

In today's judgments, **the General Court confirms the two Commission decisions.**

As regards the prohibition decision, the General Court notes that none of the arguments put forward by Ryanair is capable of calling into question the findings made by the Commission in that decision, according to which the implementation of the merger would significantly impede effective competition as a result of the creation of a dominant position on a number of routes from or to Dublin, Cork and Shannon. Those dominant positions are monopolistic or very significant and are sufficient, in themselves, to validate the Commission's finding that the implementation of the merger must be declared incompatible with the common market.

In addition, Ryanair did not submit any arguments which were capable of calling into question the Commission's assessment that the commitments proposed during the administrative procedure, some of which very late, would not be capable of remedying in a viable and durable manner the barriers to competition which would result from the merger.

As regards the decision refusing to order Ryanair to divest its shareholding, the General Court notes that, according to the Merger Regulation, the acquisition of a shareholding which does not, as such, confer control of a company – that is to say the possibility of exercising decisive influence

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

² Decision C(2007) 3104 of 27 June 2007 (Case COMP/M.4439 – *Ryanair/Aer Lingus*).

over the activity of the undertaking – does not constitute a merger which is deemed to have arisen for the purposes of that regulation. In the absence of effective control by Ryanair over Aer Lingus, Ryanair's shareholding cannot be likened to a merger which has already arisen, which would give the Commission the right to act. Accordingly, the General Court concludes that the Commission justified to the required legal and factual standard its decision not to order Ryanair to divest its shareholding in Aer Lingus.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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