



Press and Information

General Court of the European Union

**PRESS RELEASE No 85/10**

Luxembourg, 13 September 2010

Judgment in Joined Cases T-415/05, T-416/05 and T-423/05  
Hellenic Republic, Olympiakes Aerogrammes AE (Olympic Airways) and  
Olympiaki Aeroporia Ypiresies AE (Olympic Airlines) v Commission

## **The General Court annuls, in part, the Commission's decision relating to State aid granted to Olympic Airways and Olympic Airlines**

*The Commission did not examine the relationship between the rents paid by Olympic Airlines for the sub-leasing of aircraft and market rents and failed to examine individually the value of various intangible assets transferred to that company as part of the restructuring of Olympic Airways*

The financial situation of Olympic Airways and the unlawful State aid it received have already been the subject of several judgments<sup>1</sup> of the Court of Justice and the General Court.

In December 2003 Olympic Airways ceased all flying activities. Those activities were thenceforth taken over by Olympic Airlines, a new airline formed by the Greek State. The Greek authorities transferred Olympic Airways' most profitable assets, free of the greater part of its debts, to Olympic Airlines, which received, in addition, special protection from creditors. Olympic Airways retained significant liabilities and the activities of ground assistance, maintenance and training. That restructuring made it finally impossible to recover the State aid unlawfully granted to Olympic Airways.

By a decision of 14 September 2005<sup>2</sup>, the Commission found the receipt by Olympic Airways and Olympic Airlines of various forms of subsidy to be State aid. They were the payment by Olympic Airlines of low rents for the sub-leasing of aircraft (about €40 million), the payment to Olympic Airways of an over-valuation of the assets transferred to the new airline on its creation (about €91.5 million), the payment by the Greek State instead of Olympic Airways of certain bank loans and asset leasing payments (about €37 million) as well as the direct payment of an advance (about €8 million) to that company, and, finally, the continued forbearance of the Greek State towards Olympic Airways' non-payment of taxes and social security contributions (about €354 million). By the terms of the decision, Greece was required to recover the various aid without delay.

Since it failed to recover the aid in question, the Court declared, in its judgment of 14 February 2008<sup>3</sup>, that Greece had failed to fulfil that obligation.

Meanwhile, in November 2005, Greece, Olympic Airways and Olympic Airlines brought proceedings against the Commission's decision before the General Court.

In its judgment today, the General Court holds, first of all, that the unlawful aid granted to Olympic Airways **after** Olympic Airlines took over its flying activities, cannot be recovered from the latter solely on the ground that it derived an indirect benefit from it. Indeed, such a circumstance cannot, by itself, lead to the conclusion that Olympic Airlines was the effective recipient of that aid.

On the other hand, aid paid to Olympic Airways **before** the creation of Olympic Airlines can be recovered from the latter, since financial continuity exists between the two companies. In that regard, the General Court notes that, since the assets attached to Olympic Airways' flying activities

<sup>1</sup> Case [C-415/03](#) *Commission v Greece*, see also Press Release [43/05](#); Case [C-369/07](#) *Commission v Greece*, see also Press Release [59/09](#); and Case [T-68/03](#) *Olympiaki Aeroporia (Olympic Airways) Ypiresies v Commission*, see also Press Release [56/07](#).

<sup>2</sup> C(2005)2706.

<sup>3</sup> Case [C-419/06](#) *Commission v Greece*, see also Press Release [09/08](#).

were subsidised by the Greek State and transferred to Olympic Airlines, it is therefore an effective recipient of that aid. Also, those assets are necessary to repay the unlawful State aid and thus to re-establish a sound competitive situation in the aviation sector, which was distorted by the payment of that aid.

As regards the specific aid measures, the General Court notes that the Commission classified as State aid to Olympic Airlines differences (about €40 million) between, on the one hand, the low rents paid by it to Olympic Airways and to Greece for the sub-leasing of aircraft and, on the other, the rents which the latter two parties had paid under contracts concluded with private lessors. In that context, the General Court holds that the Commission confined itself to taking into account only those differences in rents to establish that there was State aid **without having examined the relationship between the rents paid by Olympic Airlines and those available in normal competitive conditions on the market**. For that reason, the General Court rules that the Commission did not adequately examine the alleged anti-competitive nature of the amount of the rents in question and annuls the relevant provisions of the Commission's decision.

Next, as regards the alleged over-valuation (about €91.5 million) of the assets transferred to Olympic Airlines, the General Court concludes that **the Commission erred by failing to examine individually**, as part of its review of the amount of State compensation paid to Olympic Airways for the loss of those assets, **whether various intangible assets**, such as slots, represented proper market value. In addition, the Commission failed to state the reasons why it had not taken into account revenue expected from the sale of two aircraft and to set out the reasons for which it had taken account only of the net book value of the aircraft transferred, rather than their current market value. The General Court therefore annuls the contested decision in so far as it is vitiated by those irregularities.

On the other hand, as regards the payment by the Greek State instead of Olympic Airways of certain bank loans and rents under asset leases (about €37 million), and the direct payment of an advance (about €8 million) on the sums paid by Olympic Airways to a blocked account, the General Court notes that the Commission established, correctly, having regard in particular to the unlikelihood of those payments being repaid, that they constituted unlawful State aid. The General Court confirms, also, the Commission's conclusion that the continued forbearance of the Greek State towards Olympic Airways in respect of taxes and social security contributions (about €354 million) must be classified as State aid.

Finally, the General Court rules that the two companies are not liable to repay the sums which the Commission wrongly classified as anti-competitive State aid.

---

**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.

---

*Unofficial document for media use, not binding on the General Court.*

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355