



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 72/13
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Judgment in Case C-287/12 P
Ryanair Ltd v Commission, Italy and Alitalia

The Court of Justice confirms the General Court's judgment upholding the Commission decisions holding the Italian State's loan to Alitalia to be unlawful, but permitting the sale of its assets

In 2008, the Italian State granted a loan of €300 million to the air transport company Alitalia¹ and gave it also the option of counting that amount as part of its own capital. Alitalia, then in a situation of insolvency, was placed under extraordinary administration² and a bank was appointed as independent expert, responsible for verifying that its assets would be sold at a price in line with the market price. The bid tendered by the Compagnia Aerea Italiana ('CAI') for the purchase of certain Alitalia assets, in response to the call for declarations of interest published for that purpose, was sent by the Italian authorities to the Commission.

The Commission initiated a formal investigation procedure in connection with the loan and the option of counting the amount thereof as part of Alitalia's own capital. By a **first decision**, the Commission declared that the **loan** constituted unlawful State aid incompatible with the common market, and ordered its recovery from Alitalia³.

By a **second decision**, the Commission found that the measure concerning the **sale of Alitalia assets** did not involve the grant of State aid to the purchasers, subject to full compliance with the undertakings given by the Italian authorities that the sale would be made at market price. Moreover, the Commission confirmed that the extraordinary administration procedure to which Alitalia had been subjected also did not result in the grant of State aid in favour of the purchasers⁴. It concluded that the procedure implemented by Italy entailed no economic continuity between Alitalia and the buyers of its assets and that the sale did not have the effect of circumventing the obligation to recover aid.

By its judgment of 2012⁵, the General Court dismissed Ryanair's action and thereby upheld the Commission decisions **holding the loan granted by Italy to Alitalia to be unlawful and permitting the sale of its assets**.

By its judgment delivered today, the Court of Justice **rejects all the arguments raised by Ryanair against the judgment of the General Court**.

¹ The General Court has previously ruled on Alitalia's situation on several occasions: in 2000, by its judgment in Case [T-296/97](#), it annulled the Commission's decision of 1997 on the recapitalisation of Alitalia (97/789/EC). In 2008, by its judgment in Case [T-301/01](#) (see also Press Release No [48/2008](#)), it confirmed a Commission decision of 2001 on the restructuring of Alitalia (2001/723/EC).

² This procedure applies in Italy to undertakings in difficulty, which carry out their activity in the essential public services sector, before those undertakings have been declared insolvent and enables financial restructuring of the undertaking by the disposal of its assets. That option is however coupled with the requirement that an independent expert verify that the assets are sold at a price which is in line with the market price.

³ Decision 2009/155/EC of 12 November 2008 on the loan of €300 million granted by Italy to Alitalia No C 26/08 (ex NN 31/08) (OJ 2008 L 52, p. 3). See also Press Release No [34/12](#).

⁴ Decision C(2008) 6745 final, of 12 November 2008, concerning State aid N 510/2008 – Italy – Sale of assets of the airline Alitalia (not published in the OJ).

⁵ Case [T-123/09](#) Ryanair v Commission, see also Press Release No [34/12](#).

The Court states, first, with regard to the action for annulment of the second decision, that the General Court was correct to hold that **the Commission** had the power lawfully to adopt a decision, whereby, **while finding the absence of State aid**, it **took note of commitments entered into by Italy**. According to the Court, that decision was a 'decision taking account of undertakings as to behaviour voluntarily entered into by the State during the phase of notification of the contested measure in order to clarify certain points' and, therefore, the commitments form an integral part of the notified measure.

Second, the Court holds that the General Court was correct not to find that the Commission had carried out an incomplete examination of the reductions in burdens and other advantages allegedly granted by Italian legislation to CAI, since those measures were not relevant to the question whether an advantage might have been granted to the purchaser of the Alitalia group assets.

Third, the Court states that Ryanair did not dispute either the findings of the General Court that, in the context of the assessment of bids by the independent expert, **the determinant criterion was that of price** (that of continuity of service being secondary), or its findings that the **continuity of service obligation did not necessarily imply the imposition of a public service obligation on the operator whose bid was accepted**. In any event, Ryanair did not adduce evidence, before the General Court, that the need to ensure continuity of air transport service in the medium term resulted in a reduction of the price of Alitalia group assets below the market price.

Finally, concerning **the identification of the undertaking obliged to repay the aid**, the Court states that the General Court did not distort the evidence which was submitted to it by finding that **CAI was not the economic successor of Alitalia**: CAI's bid covered only certain Alitalia assets and concerned only the passenger air transport business and certain assets relating thereto. Furthermore, the bid covered all the timetable slots corresponding to the assets purchased in the procedure. It does not therefore follow that CAI's bid covered 100% use of Alitalia's timetable slots for passenger transport. Moreover, CAI's bid concerned only one half of the 180 Alitalia aircraft.

Consequently, the Court dismisses Ryanair's appeal.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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