



Press and Information

General Court of the European Union  
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Judgment in Case T-355/13  
easyJet Airline Co. Ltd v Commission

## **The General Court provides clarification as to the functioning of the European Network of Competition Authorities**

*The European Commission was justified in law in rejecting the complaint lodged by easyJet against Schiphol airport's pricing on the basis that that complaint had already been dealt with by a national competition authority*

easyJet Airline Co. Ltd is a British air carrier that is highly active within the EU, operating, inter alia, to and from Schiphol Airport, Amsterdam (Netherlands).

In 2008, easyJet lodged complaints with the Netherlands competition authority which were based on provisions of the national legislation governing aviation and the law on competition. Those complaints were brought against Luchthaven Schiphol NV, the operator of Amsterdam-Schiphol airport and related to the passenger and security service charges.

In its decisions, the Netherlands competition authority rejected those complaints by relying on the Netherlands law governing aviation and by resorting to its priority policy, which allows it to give different degrees of priority to the individual cases with which it deals. Those decisions have become final at national level.

On 14 January 2011, easyJet lodged a complaint with the Commission. It submitted that the charges set by Schiphol were discriminatory and excessive and amounted to an abuse of a dominant position in the internal market.<sup>1</sup> It referred to the complaints lodged with the Netherlands competition authority and maintained that that authority had not taken any final decision on the merits of easyJet's complaint under competition law.

On 3 May 2013, the Commission rejected the complaint on the basis, inter alia, that a national competition authority had already dealt with it.<sup>2</sup> Article 13(2) of Regulation No 1/2003<sup>3</sup> provides that the Commission may reject a complaint relating to anti-competitive conduct in the case where that complaint has already been dealt with by a competition authority of a Member State.<sup>4</sup> EasyJet has challenged the rejection of its complaint before the General Court of the European Union.

In today's judgment, the Court states, first, that the Commission has a broad discretion when applying Article 13 of Regulation No 1/2003 and that, consequently, the purpose of judicial review in the circumstances is to verify that the Commission decision is not based on materially inaccurate facts and that the Commission has not erred in law, made a manifest error of assessment or misused its powers in finding that a competition authority of a Member State has already dealt with a complaint. Review of decisions of the competition authorities of Member States is, by contrast, a

<sup>1</sup> Article 102 TFEU.

<sup>2</sup> Decision C (2013) 2727 final.

<sup>3</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1). This regulation introduced a system of parallel powers allowing the Commission and the competition authorities of the Member States to apply those articles. The national competition authorities and the Commission form the 'European Network of Competition Authorities' and cooperate closely in order to safeguard competition.

<sup>4</sup> With respect to the implementation of Article 13(1) of Regulation No 1/2003, which allows the Commission to reject a complaint where a competition authority of a Member State is dealing with the case, see Case [T-201/11 Si.mobil v Commission](#), and Press Release No [179/14](#).

matter for national courts alone, which perform an essential function in the application of EU competition rules.

According to the Court, the Commission may reject a complaint which has previously been rejected by a competition authority of a Member State on priority grounds. This may be inferred from a literal interpretation of the provision concerned, which is capable of including all cases of complaints which have been examined by another competition authority, whatever may have been the outcome. This interpretation is also consistent with the general scheme of Regulation No 1/2003. Indeed, the Commission may reject a complaint where another competition authority of a Member State is dealing with it. It therefore appears that what is important is not the outcome of the review of the complaint by that competition authority, but the fact that the complaint has been reviewed by that authority. Finally, the interpretation chosen is in keeping with one of the main objectives of Regulation No 1/2003, which is to establish an effective decentralised scheme for the application of EU competition law rules.

The Court also states that the Commission may, in order to reject a complaint, rely on the fact that a competition authority of a Member State has previously rejected that complaint following a review based on conclusions reached by it in the course of an investigation conducted under separate provisions of national law, on condition that that review was conducted in the light of EU competition law.

In the present case, without appraising the merits of the national competition authority's decision or the procedure or methodology used by that authority, the Court takes the view that the Commission acted correctly in finding that the national authority had dealt with the complaint on the basis of EU competition law. The national authority had in particular indicated the extent to which the findings of the investigation conducted under Netherlands air navigation law were relevant to its review based on competition law: it thus described the similarities between the two sets of rules, compared the equivalence of the services concerned and assessed the competitive disadvantage caused by Schiphol's pricing. In the view of the Court, the Commission therefore correctly found that the national authority had examined whether the charges were proportionate to the costs, had compared those charges with those of other international airports and had assessed them in the light of the quality of the service received by easyJet.

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**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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