General Court of the European Union
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Press and Information

Judgments in Case T-473/12
Aer Lingus Ltd v Commission and Case T-500/12 Ryanair Ltd v Commission

The General Court partially annuls the Commission decision ordering Ireland to recover the sum of €8 per passenger from the beneficiary airlines

The Commission could not consider that the advantage enjoyed by the airlines automatically amounted, in all cases, to €8 per passenger

Since 30 Mach 2009, airlines must pay an 'air travel tax' (ATT) in Ireland in respect of 'every departure of a passenger on an aircraft from an airport' situated in Ireland. That tax is not applicable to transit and transfer passengers.

When it was introduced, the ATT was levied on the basis of the distance between the airport of departure and the airport of arrival, at the rate of €2 in the case of a flight from an airport to a destination no more than 300 km from Dublin airport (Ireland) and €10 in all other cases. Following a Commission investigation, the Irish authorities changed the tax rates, so that, from 1 March 2011, a single tax rate of €3 was applied to all departures regardless of the distance travelled.

In July 2009, Ryanair[1] filed a complaint with the Commission, criticising several aspects of the ATT implemented by Ireland. Ryanair claimed, inter alia, that the non-application of the ATT to transit and transfer passengers constituted unlawful State aid to the advantage of the airlines Aer Lingus[2] and Aer Arann, because those companies had a relatively high proportion of passengers and flights in those categories. Ryanair also stated that the flat-rate amount of the tax represented a significantly higher proportion of the ticket price for low-fares airlines than for traditional airlines. Lastly, Ryanair argued that the lower tax rate which applied depending on the distance travelled favoured Aer Arann, since 50% of its passengers travelled to destinations no more than 300 km from Dublin airport.

By decision of 25 July 2012,[3] the Commission considered that the application of a lower rate for short-distance flights between 30 March 2009 and 1 March 2011 constituted State aid incompatible with the internal market.[4] The application of that rate was liable to unlawfully benefit domestic flights as opposed to cross-border flights. The Commission therefore ordered the recovery of that aid from the beneficiaries, indicating that the amount of the aid corresponded to the difference between the lower rate of the ATT (€2) and the standard rate of €10 — that is to say, €8 — levied on each passenger.

Aer Lingus and Ryanair were listed among the beneficiaries of that State aid. They brought an action before the General Court against that decision. They claimed, in essence, that the

[1] Ryanair Ltd is a low-fares airline established in Ireland. It operates more than 1300 direct routes between some 170 airports across 28 countries in Europe and North Africa. Ryanair operates predominantly 'short-haul' flights, of less than 3 200 km or of less than 3 hours in duration.
[2] Aer Lingus Ltd is an airline established in Ireland. It has bases in Ireland (Dublin, Cork and Shannon airports) and in the United Kingdom (London Gatwick, London Heathrow and Belfast airports). It operates domestic flights within Ireland and international flights from Ireland and the United Kingdom to 70 destinations in Ireland, the United Kingdom, Continental Europe and the United States.
[3] See the Commission press release.
[4] However, by decision of 13 July 2011, the Commission found, inter alia, that the non-application of the ATT to transfer and transit passengers did not constitute State aid, as that measure was not selective (see the Commission press release). That decision was partially annulled by a judgment of the General Court of 25 November 2014 (Case T-512/11 *Ryanair Ltd* v *Commission*, see also Press release 159/14.

Commission (i) erred in finding that the €10 rate of the ATT was the 'normal' rate in order to establish the existence of a selective advantage in favour of the airlines subject to the lower rate of €2 and (ii) made errors in the recovery decision.

By today's judgment, the General Court annuls the Commission decision in so far as it orders the recovery of the aid from the beneficiaries for an amount set at €8 per passenger.

The General Court finds that the Commission did not err in characterising the higher rate of €10 as the reference rate, and in concluding that the application of the different rates in the present case constituted State aid in favour of airlines whose flights were subject to the lower rate of €2 during the period concerned.

However, the General Court finds that the Commission erred in quantifying the amount of aid to be recovered at €8 per passenger. Inasmuch as the economic advantage resulting from the application of that reduced rate could have been, even only partially, passed on to the passengers, the Commission was not entitled to consider that the advantage enjoyed by the airlines amounted automatically, in all cases, to €8 per passenger. The General Court indicates that such could be the case only if the airlines which paid the ATT at the lower rate had systematically increased the price of their tickets excluding tax by €8 per ticket. The General Court notes that the Commission did not explain why that situation would be the normal one, rather than a situation in which the airlines passed on the advantage to their passengers. The General Court adds that **the Commission has not established how, in those circumstances, the airlines whose flights were subject to the ATT at the reduced rate enjoyed an advantage corresponding to the difference between the two rates of ATT.** The General Court notes, moreover, that **the Commission could not presume that the economic advantage resulting from the application of the reduced rate of ATT had not been passed on to the passengers at all.**

In order to be able to quantify precisely the advantage actually enjoyed by the airlines that paid the ATT at the lower rate, the Commission should have determined the extent to which they had actually passed on to their passengers the economic benefit resulting from the application of the ATT at the lower rate. It should also have ordered the recovery of only the amounts actually corresponding to that advantage. If it proved impossible to determine those amounts accurately, the Commission could have conferred that task to the national authorities, providing them with the necessary information in that respect.

Lastly, the General Court notes that the Commission has not established that the recovery of €8 per passenger was necessary in order to ensure the restoration of the situation which would have prevailed if the flights subject to the rate of €2 per passenger had been subject to the rate of €10 per passenger. It considers that is not possible, for the airlines, to recover retroactively from their customers the €8 per passenger which should have been collected. In addition, the recovery of such an amount would be liable to create additional distortions of competition since it could lead to the recovery of more from the airlines than the advantage they actually enjoyed.

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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