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Press and Information

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Judgment of the Court of First Instance in Case T-268/06

Olympiaki Aeroporia Ypiresies v Commission

THE COURT OF FIRST INSTANCE ANNULS, IN PART, THE COMMISSION'S DECISION DECLARING CERTAIN AID PAID TO OLYMPIAKI AEROPORIA YPIRESIES FOR LOSSES CONNECTED WITH THE EVENTS OF 11 SEPTEMBER 2001 INCOMPATIBLE WITH THE COMMON MARKET

The exceptional occurrence and the loss caused may be directly connected even if they do not occur at the same time

Following the terrorist attacks of 11 September 2001, the Commission adopted a Communication¹ on their repercussions on the air transport industry. In that communication, the Commission considered that, having regard to the exceptional nature of the events of 11 September, the State aid provisions could authorise, under certain conditions, compensation for costs caused by the closure of American airspace for four days (from 11 to 14 September 2001) and for the extra cost of insurance.

In 2002, the Greek authorities sent the Commission the detailed calculations of the compensation in favour of Olympiaki Aeroporia Ypiresies. It related to revenue lost in respect of the carriage of passengers and goods, the costs of destruction of sensitive goods, the additional costs of security checks, the costs of recalling an Athens to New York flight on 11 September 2001 and of cancelling the return flight, the costs of the landing and stay at Halifax (from 11 to 15 September 2001) of a flight the original destination of which was Toronto, the costs of extra repatriation flights ('ferry flights') on 18, 20 and 26 September 2001 and, finally, the costs connected with the additional hours worked by staff and the costs of additional security.

The amount of EUR 4 827 586.21 was paid to Olympiaki in July 2002.

In 2006, at the conclusion of a formal investigation procedure, the Commission decided² that the State aid was compatible with the common market as regards the compensation paid for the period from 11 to 14 September 2000 up to a maximum amount of EUR 1 962 680. That amount was in respect of the cancellation of seven return flights to New York, to Tel Aviv, to Toronto

¹ COM (2001) 574 final of 10 October 2001.

² Decision C (2006) 1580 final of 26 April 2006.

via Montréal and to Boston, the landing and stay at Halifax of the flight, the original destination of which was Toronto, and the recall of the flight of 11 September 2001. On the other hand, the Commission considered that the cancellation of the flights of 15 and 16 September 2001 and the 'ferry flights' were but indirect repercussions of the terrorist attacks. It also ordered the recovery of any amount of aid paid in excess of EUR 1 962 680.

Olympiaki applied to the Court of First Instance for the annulment of the Commission's decision in so far as it fixed the maximum amount of compensation compatible with the common market at EUR 1 962 680. It challenged the determination that no loss which arose after 14 September 2001 had a causal connection with the terrorist attacks of 11 September.

The Court of First Instance notes that the Commission's decision itself states that not only the terrorist attacks but also the closure of American airspace (11-14 September 2001) was an exceptional occurrence. Consequently, aid compensating loss which arose after 14 September 2001 but had a direct causal connection with the exceptional occurrence and was exactly calculated should be held to be compatible with the common market. Furthermore, the existence of a direct connection between the exceptional occurrence and the damage caused does not presuppose that they occurred at the same time.

The Court of First Instance **annuls** the Commission's decision in so far as it concerns the compensation for the cancellation, on 15 September 2001, of the flight to Toronto, on the ground that the evidence on which the Community institution relied in order to substantiate the lack of a causal connection did not justify its determination.

Further, the Court of First Instance **annuls for failure to state reasons**, the Commission's decision in so far as it concerns the losses suffered by Olympiaki, first, on its network apart from the North Atlantic and Israel (about EUR 1 212 000) and, second, lost revenue amounting to about EUR 500 000 in respect of the carriage of goods and other costs incurred.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR DE EN ES EL IT RO

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-268/06>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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