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Press and Information

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Judgment of the Court of First Instance in Case T-301/01

Alitalia – Linee Aeree Italiane SpA v Commission

THE COURT OF FIRST INSTANCE CONFIRMS THE COMMISSION'S DECISION ON AID FOR THE RESTRUCTURING OF ALITALIA

Alitalia has failed to demonstrate the existence of either procedural defects or substantive errors in the criteria and conditions for granting the aid

In 1996, Alitalia adopted a restructuring plan for the period 1996 to 2000, consisting of a restructuring phase and a development phase and providing for a capital injection to be provided by its majority shareholder (the Istituto per la Ricostruzione Industriale or IRI, the Italian State finance company) totalling ITL 2 750 billion, to be paid in three instalments.

After initiating a review procedure in 1996, the Commission adopted a decision¹ declaring the State aid compatible with the common market, subject to the requirement that the Italian authorities fulfilled ten conditions.

Following an action brought by Alitalia, the Court of First Instance annulled² the 1997 decision because, first, the Commission had failed to state reasons as to why it had used the same minimum rate of return (which would be required by a private investor operating on market principles) as that used in the recapitalisation of the company Iberia. Secondly, the Commission had made manifest errors of assessment by excluding the insolvency costs which the IRI might have to bear in the event of Alitalia going into liquidation from the calculation of the internal rate of return of the operation. Moreover, the Commission had failed to take account of the adjustments made to the restructuring plan in June 1997.

Without repeating the entire procedure, the Commission then adopted a new decision³ declaring the aid granted in the form of a capital injection of ITL 2 750 billion for the restructuring of

¹ Decision 97/789/EC of 15 July 1997 concerning the recapitalisation of the company Alitalia (OJ 1997 L 322, p. 44).

² Case T-296/97 *Alitalia v Commission*, in which judgment was delivered on 12 December 2000 ('the Alitalia I judgment').

³ Decision 2001/1723/EC of 18 July 2001 concerning the recapitalisation of the company Alitalia (OJ 2001 L 271, p. 28).

Alitalia, in accordance with the plan notified in 1996 and adjusted in 1997, compatible with the common market, subject to compliance with a number of obligations and conditions.

In November 2001, Alitalia brought the present action for annulment of the new decision, pleading breach of the obligation to state reasons, a number of procedural defects, infringement of the rights of the defence, breach of the obligation to comply with the Alitalia I judgment, misapplication of the criterion of private investor and defects in laying down the conditions for granting the aid.

By its judgment today, the Court of First Instance dismisses Alitalia's action and confirms that the Commission's decision of 2001 is valid.

In particular, with regard to the admissibility of the action, the Court considers that Alitalia still had a legal interest in pursuing its action, even though its recapitalisation has been fully authorised and achieved – since the Commission did not raise any objections to the payment of the third and final instalment of the aid⁴ – and in spite of the fact that Alitalia received all of the aid and is no longer subject to the obligations and conditions that were to be complied with during the period in which the plan was being implemented.

As regards the substance, the Court finds that the decision contains sufficient reasoning, in particular as regards the determination of the minimum rate and the internal rate (for the purpose of applying the criterion of the private investor operating on market principles). It considers that the Commission complied with the Alitalia I judgment correctly. The Court goes on to consider Alitalia's criticisms of the determination of the minimum rate and the internal rate and, in concluding its examination, does not find any manifest error of assessment on the part of the Commission.

Moreover, the Court finds that the Commission's decision is not vitiated by any *procedural defect* and – after a detailed analysis – *confirms the validity of each of the conditions* imposed on Alitalia.

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: DE EL EN FR IT

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-301/01>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications, L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249 or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956

⁴ In its decision of 9 June 2002, published in the OJ of 4 October 2002 (OJ 2002 C 239, p. 2).