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Press and Information

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Judgment of the Court of First Instance in Case T-196/04

Ryanair Ltd v Commission

**THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION'S DECISION ON
ADVANTAGES GRANTED BY THE WALLOON REGION AND BY CHARLEROI
AIRPORT TO RYANAIR**

The Commission's refusal to examine together the advantages granted by the Walloon Region and by Charleroi Airport, and to determine whether, taken together, those two entities acted as rational operators in a market economy, is vitiated by an error in law

Ryanair is Europe's original and largest low fares airline. In 2000 negotiations took place regarding the establishment of its first continental base at Charleroi, following which the airline entered into two agreements, one with the Walloon Region, the owner of Charleroi Airport, the other with Brussels South Charleroi Airport (BSCA), a public sector company, controlled by the Walloon Region, which manages and operates that airport as a concession holder.

Under the first agreement the Walloon Region granted Ryanair a reduction of some 50% on landing charges as compared with the regulatory level and undertook to compensate Ryanair for any loss of profit arising from any subsequent change in airport charges.

Under the second agreement Ryanair undertook to base between two and four aircraft at Charleroi Airport and to operate, over a fifteen-year period, at least three rotations a day per aircraft. In return BSCA undertook to contribute to the costs incurred by Ryanair in establishing its base and to invoice Ryanair one euro per passenger for the provision of ground handling services, rather than ten euros collected for those services from other users.

Having received complaints and following press reports, the Commission examined the two agreements separately. The Commission declared that they constituted State aid in favour of Ryanair, which was incompatible with the common market, and requested Belgium to recover it. The Commission held, in particular, that the Walloon Region had entered into the first agreement with Ryanair in its capacity as a public authority. The Commission concluded therefore that the Region's role in that agreement could not be examined by applying the

principle of the private investor in a market economy. That principle makes it possible to assess whether a State measure constitutes State aid, in other words whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions. On the other hand, that principle cannot be applied if the State acts in its capacity as a public authority, when its conduct can never be compared to that of a private operator in a market economy.

Ryanair brought an action before the Court of First Instance against the Commission's decision.

The Court of First Instance states, first, that since BSCA is an entity which is economically dependent on the Walloon Region, the Commission ought to have considered them to be **one and the same entity** for the purposes of determining whether, taken together, they had acted as rational operators in a market economy.

Next, the Court of First Instance holds that by entering into the first agreement with Ryanair the Walloon Region carried out activities of an economic nature. The Court holds that the fixing of the amount of landing charges and the accompanying indemnity is an activity directly connected with the management of airport infrastructure **which constitutes, by reason of its nature, its purpose and the rules to which it is subject, an economic activity**. The Court adds on this point that the airport charges fixed by the Walloon Region must be regarded as **consideration for services rendered at Charleroi Airport**.

Consequently, the Court of First Instance declares that **the mere fact that that activity is carried out in the public sector does not mean that it can be categorised as the exercise of public authority powers**.

Equally, the mere fact that the Walloon Region has regulatory powers in relation to the fixing of airport charges does not mean that a scheme reducing those charges ought not to be examined by reference to the private investor in a market economy principle, since such a scheme could have been put in place also by a private operator, such as the airport concession holder.

In light of all of the foregoing, the Court of First Instance concludes that the Commission's refusal to examine together the advantages granted by the Walloon Region and by BSCA and to apply the principle of the private investor in a market economy to the measures adopted by the Walloon Region, in spite of the economic links binding those two entities, **is vitiated by an error in law. Consequently, the Court of First Instance annuls the Commission's decision**.

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.

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Languages available: ES CS DE EL EN FR HU IT NL PL RO SK

*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-196/04>
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",
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Communications,*

*L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249
or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956*