



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 142/16**

Luxembourg, 21 December 2016

Judgment in Joined Cases C-164/15 P and C-165/15 P  
Commission v Aer Lingus Ltd, Ryanair Designated Activity Company and  
Ireland

## **The Court confirms that Ireland must recover the sum of €8 per passenger from airlines benefiting from unlawful State aid**

*The difference between the lower and normal rates of the Irish air travel tax constitutes unlawful aid which must be recovered regardless of the benefit the airlines actually derived from the aid*

In July 2009 Ryanair requested the Commission to examine whether the ‘air travel tax’ imposed by Ireland on airlines did not constitute unlawful State aid in favour of some of its competitors. According to Ryanair, those competitors had inter alia derived a financial advantage from the fact that they operated a significant number of flights to destinations located less than 300 km from Dublin airport for which the tax amounted to €2 per passenger, whereas other flights departing from Ireland were subject to a rate of €10.<sup>1</sup>

In July 2012 the Commission found<sup>2</sup> that the application of a lower rate for short-haul flights constituted State aid incompatible with the internal market.<sup>3</sup> It therefore ordered the recovery of that aid from the beneficiaries, stipulating that the amount of the aid corresponded to the difference between the lower rate of €2 and the standard rate of €10, that being €8.

Aer Lingus and Ryanair, both of which were among the beneficiaries of the aid, brought actions before the General Court against the Commission decision ordering the recovery of the aid unlawfully received. By its judgments delivered on 5 February 2015,<sup>4</sup> the General Court partially annulled that decision on the ground that the Commission had failed to show that the advantage enjoyed by the airlines concerned was, in all cases, €8 per passenger.

The Commission lodged an appeal before the Court of Justice against the judgment of the General Court.

By today’s judgment, the Court finds that the airlines that were able to benefit from the reduced rate enjoyed a competitive advantage of €8 by comparison with airlines that paid the standard rate. Thus, restitution of **that advantage required**, just as the Commission indicated in its decision, **Ireland to recover a sum of €8 per passenger for each of the flights concerned**.

In that context, the Court notes that the recovery of aid entails the restitution of the advantage the airlines were able to procure from the application of the reduced rate, not the restitution of the economic benefit that may have been conferred on those companies by the aid as a result of the exploitation of the advantage. The advantage in question did not consist in the fact that those airlines were able to offer more competitive prices than their competitors. It resulted quite simply from the fact that those companies had to pay a lower amount than they would have had to pay if their flights had been subject to the standard rate.

<sup>1</sup> With effect from 1 March 2011, Ireland amended the rules on the air travel tax, creating a single rate of €3 applicable to all departures, regardless of the distance travelled.

<sup>2</sup> See Commission press release (IP/12/833 of 25 July 2012).

<sup>3</sup> However, by decision of 13 July 2011, the Commission inter alia found that the non-application of ATT to transfer and transit passengers did not constitute State aid, since that measure was not selective (see Commission press release No IP/11/874 of 13 July 2011). 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 No [159/14](#).

<sup>4</sup> [T-473/12](#) Aer Lingus Ltd v Commission and [T-500/12](#) Ryanair Ltd v Commission see Press Release No [14/15](#).

In addition, the Court notes that there was nothing to prevent the beneficiaries of the aid from increasing by €8 the price of their tickets that were subject to the lower rate so as to enjoy economic benefits corresponding to the difference between the lower and standard rates. In that regard, the Court rejects the argument of Aer Lingus and Ryanair that, since they were effectively no longer in a position to recover the amount of €8 from their own customers, their obligation to repay that sum would be equivalent to the imposition of an additional tax or a discriminatory penalty.

Accordingly, contrary to what the General Court decided, the Court of Justice considers that **the Commission was not required to examine whether** and to what extent **the beneficiaries of the aid actually utilised the economic advantage arising from the application of the lower rate**. Thus, the General Court's decision was vitiated by an error of law to the extent that it criticised the Commission for having set the amount of aid to be recovered at €8 per passenger.

In those circumstances, **the Court sets aside** the part of the **General Court's judgment** vitiated by that error and **dismisses**, in their entirety, **the actions brought by Aer Lingus and Ryanair against the Commission's decision**.

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**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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