

**Case T-140/95**

**Ryanair Ltd**

**v**

**Commission of the European Communities**

(State aid — Formal investigation under Article 93(2)  
of the Treaty — Conditional decision approving aid in the form  
of a capital injection to be carried out in tranches — Precondition  
of payment of the second tranche not satisfied — Subsequent decision  
authorising payment of the second tranche — Action for annulment)

Judgment of the Court of First Instance (Second Chamber, Extended Composi-  
tion), 15 September 1998 ..... II - 3330

**Summary of the Judgment**

- 1. Actions for annulment — Time-limits — Point from which time starts to run — Date on which the decision came to the applicant's knowledge — Subsidiary criterion — Date of publication*  
(*EC Treaty, Art. 173, fifth para.*)
- 2. State aid — Commission decision making authorisation of payment of aid to an undertaking, to be awarded in tranches, subject to conditions — Failure to comply with the conditions — Investigation by the Commission — Preliminary stage and adversarial stage — Commission's obligation to initiate inter partes procedure — Minor deviations from the initial conditions — Commission's power to manage and monitor aid*  
(*EC Treaty, Arts 92(3)(c) and 93(2)*)

3. *State aid — Prohibition — Derogations — Commission's discretion — Review by the Court — Limits*  
 (EC Treaty, Arts 92(3)(c), 93(2) and 173)

1. It is clear from the wording of the fifth paragraph of Article 173 of the Treaty, concerning the time-limit for bringing actions for annulment, that the criterion of the day on which a measure came to the knowledge of an applicant, as the starting point of the period prescribed, is subsidiary to the criteria of publication or notification of the measures.

Where it is reasonable for the applicant to anticipate that the decision it intends to challenge will be published — because it allows a derogation from an earlier decision which was itself published — and it has received assurances to that effect from the author of the decision, the time-limit for instituting proceedings starts to run on the date of publication of the decision.

2. Failure to comply with a condition imposed in a decision approving aid to be paid in successive tranches under Article 92(3)(c) of the Treaty raises a presumption that subsequent tranches of the aid are incompatible with the common market. It follows that the subsequent tranches cannot be released without a new Commission decision granting a formal derogation from the condition which was not complied with.

In those circumstances, the Commission must consider whether such a derogation can be granted, whilst ensuring that the subsequent tranches of the aid are still compatible with the common market under the conditions laid down in Article 92(3)(c) of the Treaty. If this leads the Commission to conclude that the subsequent tranches of the aid are no longer compatible with the common market, or if it does not enable it to overcome all the difficulties involved in determining whether the subsequent tranches of the aid are compatible with the common market, the Commission is under a duty to carry out all the requisite consultations and, for that purpose, to re-open the procedure under Article 93(2) of the Treaty. The same is true if, when carrying out its examination with regard to that derogation, the Commission intends to depart from the scope of its initial decision.

However, if the failure to comply with one of the conditions to which approval of the aid was subject is of relatively minor importance, so that the Commission has no doubt that the aid at issue is still compatible with the common market, it may adopt the necessary decision derogating from that condition, without re-opening the procedure under Article 93(2).

In the context of aid already approved in principle, paid in successive tranches over a relatively long period in association with a restructuring plan, the results of which are achieved only after a number of years, the Commission enjoys a power to manage and monitor the implementation of such aid in order, in particular, to enable it to deal with developments which could not have been foreseen when the initial decision was adopted. It is therefore possible that, in the light of a change in external circumstances which occurs after the initial decision, the Commission may vary the conditions governing the implementation or monitoring of the restructuring plan, without re-opening the procedure under Article 93(2) of the Treaty, provided none the less that such variations do not give rise to doubts as to the compatibility of the aid at issue with the common market.

3. As regards the application of Articles 92(3)(c) and 93(2) of the Treaty, the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made in a Community context.

Therefore, when reviewing the legality of a decision in accordance with Article 173 of the Treaty, the Community courts must confine themselves to determining whether the Commission has exceeded the limits of its discretion by distorting the facts, or has committed a manifest error of assessment, a misuse of powers or abuse of process.