

The applicants claim that their rights of defence were violated,

- (i) because of the failure to provide timely disclosure of essential facts, as required by Article 20(4) of Council Regulation (EC) 384/96 ⁽²⁾, as well as the failure to provide adequate explanations as to inconsistencies in the Community industry's sales volumes, with the effect that the applicants could not effectively make their views known or defend their interest in a meaningful way.
- (ii) in the context of the determination of injury where the Commission failed:
 - (a) to answer the applicants' questions surrounding data inconsistencies in the Community industry's sales volumes in time for the applicants' to make known their views before the Council adopted the Definitive Regulation;
 - (b) to provide the applicants with the requested explanations in relation to the refusal to take due account of the impact of the prices of raw materials;
 - (c) to explain how the Commission had calculated the 2 % uplift for import costs and importer's margin, and
- (iii) by a manifest error of assessment in failing to take into account significant inconsistencies in relation to the Community industry's sales data in determining injury.

The applicants submit that the Definitive Regulation also violates Article 253 EC by failing to state the reasons on which it was based regarding an essential element of fact, namely the 2 % uplift for import costs and importer's margin, which is relevant to the findings made in the Definitive Regulation that led to the imposition of the definitive anti-dumping duties applicable to the applicants.

Finally, the applicants contend that, in view of the representations made by the applicants throughout the procedure, pointing to the various failures of the Commission to properly explain the factual basis on which the Commission was proposing to adopt definitive anti-dumping measures and to properly safeguard the applicants' rights of defence, the Council breached the principle of sound administration when adopting the Definitive Regulation as proposed by the Commission.

⁽¹⁾ OJ 2008 L 350, p. 35

⁽²⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 28 March 2009 — Ryanair v Commission

(Case T-123/09)

(2009/C 141/96)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida and I-G. Metaxas-Maragkidis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- To declare in accordance with Articles 230 and 231 EC that part of the European Commission's decision of 12 November 2008 in State aid case C26/2008 (Loan of EUR 300 million to Alitalia S.p.A.) is void insofar as it does not order the recovery of the aid from the successors of Alitalia and grants Italy additional time to implement its decision;
- to declare in accordance with Articles 230 and 231 EC that the entire decision of 12 November 2008 in State aid case N510/2008 (Sale of assets of Alitalia S.p.A.) is void;
- to order the Commission to bear its own costs and to pay those incurred by the applicant; and
- to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

The applicant contests the legality of two Commission decisions of 12 November 2008 in State aid Cases C 26/2008 (ex NN 31/08) on the loan of EUR 300 million granted to Alitalia notified under document number C(2008) 6743 ⁽¹⁾ and N510/2008 No C(2008) 6745 final regarding the procedure for the sale of the assets of Alitalia insofar as it found that the said procedure did not give rise to the grant of a State aid, provided that the Italian authorities complied with certain commitments.

In support of its application, the applicant puts forward the following pleas in law:

In respect to the first contested decision, the applicant submits that it is partially void because it does not order recovery from Alitalia's successors and it grants Italy additional time to recover the loan.

In respect to the second contested decision, the applicant claims that by not initiating a formal investigation procedure despite the existence of serious difficulties the Commission issued an incomplete and insufficient decision and violated the applicant's procedural rights available under Article 88(2) EC. In addition, the applicant contends that the Commission lacked competence for the adoption of a conditional decision of absence of aid after a simple preliminary examination. Moreover, the applicant submits that the Commission failed to examine all the relevant features of the measures and their context.

In particular, according to the applicant the Commission failed to review whether the Italian extraordinary administration procedure in itself gave rise to the grant of aid and whether the Italian government had manipulated legislation to favour Compagnia Aerea Italiana's plan.

Further, the applicant claims that the Commission committed a manifest error of assessment by disregarding the possible alternatives to the sale of Alitalia's assets, such as a judicial liquidation or a share deal. The applicant also submits that the Commission failed to apply the market economy investor principle to the sale of Alitalia's assets, in particular, by not assessing the effect on price of the express condition of continuity of service and the implied condition of Italian origin of the buyer of Alitalia's passenger transport business, by not finding that the procedure for the sale of Alitalia's assets was obviously inadequate, and by failing to assess the true price offered by CAI and to define criteria for the determination of the market price of Alitalia's assets.

In addition, the applicant claims that the Commission committed an error in the identification of the party who must reimburse the loan, which should be CAI given the continuity between Alitalia and Compagnia Aerea Italiana. The applicant submits finally, that the Commission breached the obligation to state reasons.

(¹) OJ 2009 L 52, p. 3

Action brought on 31 March 2009 — Meridiana and Eurofly v Commission

(Case T-128/09)

(2009/C 141/97)

Language of the case: English

Parties

Applicants: Meridiana SpA (Olbia, Italy) and Eurofly SpA (Milan, Italy) (represented by: N. Green, QC, K. Bacon, Barrister, C. Osti and A. Prastaro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission decision C(2008) 6745 final of 12 November 2008;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2008) 6745 final of 12 November 2008 declaring that the procedure for selling off the assets of the Alitalia airline company, as notified by the Italian authorities, do not represent the granting of the State aid in favour of the purchaser (N 510/2008) (¹). The applicants are the competitors on the air transport market and they lodged with the Commission the complaints regarding the measures notified by Italian authorities.

The applicants put forward following pleas in law in support of their claims.

First, they claim that the contested decision is vitiated by errors of law, manifest errors of facts and deficiencies of reasoning as the Commission concluded that the assets of Alitalia would be sold at market prices. In particular, the applicants submit that the features of the procedure set out by the Commission do not demonstrate the existence of an independent expert valuation of Alitalia's assets prior to the negotiations for the sale of those assets. In the applicants' opinion, the Commission also erred in law by failing to attach sufficient weight to the absence of an open and transparent procedure for the sale of Alitalia's assets.

Second, the applicants contend that the Commission's conclusion stating that the arrangements of the transfer of the assets were not designed with the purpose of avoiding the obligation to repay State aid is based on errors in law, manifest errors of fact and deficiencies of reasoning.

Third, the applicants submit that the Commission erred in law and breached its duty to state reasons by failing to consider whether the 2008 legislation introduced in Italy regarding the special insolvency procedure in itself constituted State aid to Alitalia and to the purchaser, as submitted in the applicants' complaint as, in their opinion, it was aimed to enable the transfer of Alitalia's assets.

Fourth, in the applicants' view, the Commission erred in law and breached its duty of reasoning by failing to consider whether a number of elements of the applicants' complaint demonstrated the existence of State aid, namely the separation of Alitalia's assets in circumstances where a normal private investor would not have done so, the breach of the principle of non-discrimination, the inclusion of the assets of another company in the sale and the acquisition of another company by the purchaser of the Alitalia's assets.

Finally, the applicants claim that the Commission erred in law by failing to initiate the formal investigation procedure under Article 88(2) EC and instead deciding the case following a preliminary investigation.

(¹) OJ 2009 C 46, p. 6