

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.

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(<sup>1</sup>) OJ 2009 L 52, p. 3

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**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) (<sup>1</sup>). 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.

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(<sup>1</sup>) OJ 2009 C 46, p. 6