

**Action brought on 05 February 2016 — Ryanair and Airport Marketing Services v Commission****(Case T-53/16)**

(2016/C 145/37)

*Language of the case: English***Parties**

*Applicants:* Ryanair Ltd (Dublin, Ireland) and Airport Marketing Services Ltd (Dublin) (represented by: G. Berrisch, E. Vahida, I. Metaxas-Maragkidis, lawyers and B. Byrne, Solicitor)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- annul Articles 1, 4, 5 and 6 of the Commission Decision of 23 July 2014 in State aid case SA.33961 (2012/C) (ex 2012/NN) which found that Ryanair and Airport Marketing Services received unlawful State aid, incompatible with the internal market, through a number of agreements relating to the Nîmes-Garons airport; and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging that the decision violates Article 41 of the Charter of fundamental rights of the European Union, the principle of good administration and the applicants' rights of defence, as the Commission failed to allow the applicants to access the file of the investigation and to put the applicants in a position where they could effectively make known their views.
2. Second plea in law, alleging a breach of Article 107(1) TFUE because the Commission wrongly imputed the measures at issue to the State.
3. Third plea in law, alleging a breach of Article 107(1) TFUE because the Commission erroneously considered that the resources of Veolia Transport Aéroport de Nîmes (VTAN), one of the airport's managers, were State resources.
4. Fourth plea in law, alleging a breach of Article 107(1) TFUE because the Commission failed to properly apply the market economy operator test. The Commission erroneously refused to rely on a comparator analysis, which would have led to the finding of absence of aid to the applicants. In the alternative, the Commission failed to attribute appropriate value to marketing services, wrongly dismissed the rationale behind the airport's decision to purchase such services, erroneously dismissed the possibility that part of the marketing services may have been purchased for general interest purposes, erroneously considered the airport manager, le Syndicat Mixte pour l'aménagement et le développement de l'aéroport de Nîmes — Alès — Camargue — Cévennes (SMAN), and its privately held contractor VTAN as a single entity, based its conclusions on incomplete and inappropriate data for its calculation of the airport's profitability, disregarded the network externalities that the airport could expect to gain from its relationship with Ryanair, and neglected to compare the data submitted by the airport to those typically related to a well-run airport. In any event, even if there was an advantage to the applicants, the Commission failed to establish that the advantage was selective.

5. Fifth plea in law, alleging, on a subsidiary basis, a breach of Articles 107(1) and 108(2) TFUE, because the Commission committed a manifest error of assessment and an error of law by finding that the aid to Ryanair and Airport Marketing Services was equal to the cumulated marginal losses of the airport (as calculated by the Commission) instead of the actual benefit to Ryanair and Airport Marketing Services. The Commission should have examined the extent to which the alleged benefit had actually been passed on to Ryanair's passengers. Further, it failed to quantify any competitive advantage that Ryanair enjoyed through the alleged aid and it failed to explain properly why the recovery of the amount of aid specified in the decision was necessary to ensure the re-establishment of the situation prior to the grant of the aid.

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**Action brought on 17 February 2016 — POA/Commission**

**(Case T-74/16)**

(2016/C 145/38)

*Language of the case: English*

**Parties**

*Applicant:* Pagkyprios organismos ageladotrofon (POA) Dimosia Ltd (Latsia, Cyprus) (represented by: N. Korogiannakis, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the decision Ares(2015)5632670, of 7 December 2015, of the Secretariat General, rejecting the confirmatory application submitted by the applicant by its letter dated 15 September 2015, in which the applicant, pursuant to (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), requested access to documents concerning the application of a Cypriot producer's organization for the registration of the denomination 'Halloumi' under Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1), and
- order the Commission to pay the legal fees of the applicant.

**Pleas in law and main arguments**

In support of the action, the applicant relies on fourth pleas in law.

1. First plea in law, alleging that the Commission, relying on Article 4(3), first subparagraph, of Regulation No 1049/2001, has failed to give proper explanations why a decision-making process could be seriously undermined by the disclosure of the non-disclosed parts.
  2. Second plea in law, alleging an error in law as the reasons provided by the Republic of Cyprus to refuse disclosure on the basis of Article 4(2), second indent, of Regulation No 1049/2001 are inadequate.
  3. Third plea in law, alleging a breach of the right to an effective remedy and the principle of transparency as the refusal of the Republic of Cyprus to disclose some of the documents at stake implies that the applicant is not in the position to understand the subject-matter of each non disclosed document.
  4. Fourth plea in law, alleging an error in law as a Member state cannot use article 4(3), first subparagraph, of Regulation No 1049/2001 to refuse the disclosure of documents if the decision which could be undermined is that of an institution of the European Union.
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