

COMMISSION DECISION**of 23 July 2014****on State aid SA 15395 (C 11/04) granted by Greece to Olympic Airways (Privatisation)***(notified under document C(2014) 5017)***(Only the Greek text is authentic)****(Text with EEA relevance)**

(2014/902/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

I. PROCEDURE

- (1) By Decision C(2004) 772 of 16 March 2004 ⁽¹⁾, the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of a number of financial flows and transfers to and from Olympic Airlines (OAL) and Olympic Airways Services (OAS).
- (2) On 14 September 2005, by negative Commission Decision C(2005) 2706 ⁽²⁾, the Commission closed case C11/2004 involving illegal and incompatible State aid granted to OAL and OAS.
- (3) By Decision C(2008) 5074 of 17 September 2008 ⁽³⁾ and by Decision C(2009) 1824 of 10 March 2009 ⁽⁴⁾, the Commission authorised the sale of certain key assets of OAL and OAS, concluding that the sale did not entail State aid, provided it was conducted in line with the requirements set out in those decisions.
- (4) Subsequently, OAL and OAS were put into liquidation. Their remaining assets were to be sold by the liquidator through a liquidation procedure, and a Monitoring Trustee was appointed to oversee this process.
- (5) On 13 September 2010, the General Court partially annulled the negative Commission State aid Decision C(2005) 2706 of 14 September 2005 ⁽⁵⁾. The General Court found that the Commission had not sufficiently established that some of the contested measures in respect of OAS amounted to illegal State aid incompatible with the internal market and that as regards some of the measures in respect of OAL the Commission had failed to state reasons.
- (6) The General Court partially annulled Decision C(2005) 2706 which had ordered the recovery of aid granted a) to Olympic Airlines by way of an overvaluation by EUR 91,5 million of Olympic Airways' assets transferred to Olympic Airlines, for failing to establish/demonstrate that this measure amounted to illegal State aid incompatible with the internal market, and b) to Olympic Airlines by way of accepting discounted aircraft sub-lease payments amounting to EUR 39,75 million, for failing to state reasons.
- (7) The Commission did not appeal the partial annulment.

⁽¹⁾ OJ C 192, 28.7.2004, p. 2.

⁽²⁾ OJ L 45, 18.2.2011, p. 1.

⁽³⁾ OJ C 18, 23.1.2010, p. 9.

⁽⁴⁾ OJ C 25, 2.2.2010, p. 15.

⁽⁵⁾ Judgment in Joined Cases T-415/05, T-416/05 and T-423/05 *Hellenic Republic, Olympiakes Aerogrammes AE (Olympic Airlines) and Olympiaki Aeroporia Ypiresies AE (Olympic Airways-Services) v Commission*.

- (8) By letters of 8 October 2010, 26 July 2011, 12 October 2011, 7 March 2012, 16 November 2012, 7 February 2013, 25 June 2013 and 19 December 2013 the Commission enquired as to the details and progress of the liquidation process.
- (9) The Greek authorities replied by letters of 8 November 2010, 11 August 2011, 15 December 2011, 10 July 2012, 4 February 2013, 22 April 2013 and 5 August 2013.

II. DESCRIPTION OF THE MEASURES

- (10) As regards the overvaluation of Olympic Airways' assets, the Commission had concluded in its Decision C(2005) 2706 that by overvaluing the assets transferred to Olympic Airlines at the time of its creation, Greece had granted to Olympic Airways State aid amounting to EUR 91,5 million, which was illegal and incompatible with the internal market.
- (11) As regards the sub-lease payments, the Commission found in its Decision C(2005) 2706 that Greece had unlawfully granted State aid to Olympic Airlines by means of the discounted sub-leases concluded with Olympic Airlines.
- (12) By letter dated 8 November 2010, the Greek authorities confirmed that as of 2 October 2009, the Athens Court of Appeal had entered both companies into special liquidation in line with Article 14A of Law 3429/2005 as supplemented by Article 40 of Law 3710/2008.
- (13) The Greek authorities also confirmed that all commercial activities and operations of the two companies ceased during 2009 and that 'Ethniki Kefalaïou', a wholly-owned subsidiary of the National Bank of Greece, had been appointed as liquidator.
- (14) In line with Commission Decision C(2008) 5074 of 17 September 2008, the Monitoring Trustee submitted its final report with regard to the sale of certain key assets of OAL and OAS.
- (15) According to the information provided by the Greek authorities and the Monitoring Trustee, all essential parts of the sale process, including the setting-up of the new companies and their sale to an investor at market price and the cessation of operations of the old companies were in compliance with Decision C(2008) 5074 of 17 September 2008.
- (16) According to the information provided by the Greek authorities, the liquidation of OAL and OAS is ongoing. There are still some assets left which are unlikely to be easily sold. Once the sale has been completed the registration of the recovery claims will take effect.

III. CONCLUSION

- (17) OAL AND OAS have been put into liquidation procedure and certain key assets have been transferred to different purchasers at market price by way of an open, unconditional and non-discriminatory tender procedure, in compliance with Commission Decision C(2008) 5074 of 17 September 2008. Furthermore, most of OAL and OAS assets have been sold and the few remaining are in the process of being sold. As the entities in liquidation are no longer carrying out an economic activity, it is highly improbable that they will ever resume such activity in the future.
- (18) Consequently, a formal investigation into the remaining matters is unnecessary. The investigation procedure initiated by Decision C(2004) 772 of 16 March 2004 can, therefore, be closed on the grounds that it lacks useful purpose.
- (19) The major part of the recovery obligation imposed by Commission Decision C(2005) 2706 of 14 September 2005 has already taken place. The recovery of an outstanding amount of approximately EUR 70 000 is still pending. According to the Greek authorities, the recovery of this amount is ongoing and the Commission is monitoring the process.
- (20) In the light of the above, the procedure initiated by Decision C(2004) 772 of 16 March 2004 which led to Commission recovery Decision C(2005) 2706 of 14 September 2005 as partially annulled by the General Court on 13 September 2010, can be closed.

- (21) The Commission underlines the ongoing obligation of the Greek authorities to register any outstanding associated recovery claims in due course and inform the Commission accordingly.

HAS ADOPTED THIS DECISION:

Article 1

The procedure laid down in Article 108(2) TFEU initiated by Commission Decision C(2004) 772 of 16 March 2004 is closed insofar as it concerns aid granted to Olympic Airlines by way of an overvaluation by EUR 91,5 million of Olympic Airways' assets and aid by way of accepting discounted aircraft sub-lease payments of EUR 39,75 million.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 23 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-president
