

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

10 December 2010 *

In Cases T-494/08 to T-500/08 and T-509/08,

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

applicant,

v

European Commission, represented by C. O'Reilly and P. Costa de Oliveira, acting as Agents,

defendant,

* Language of the cases: English.

APPLICATIONS for annulment of the Commission's implied decisions refusing to grant the applicant access to certain documents relating to procedures for reviewing State aid allegedly granted to the applicant by the operators of the airports of Aarhus (Denmark) (Case T-494/08), Alghero (Italy) (Case T-495/08), Berlin-Schönefeld (Germany) (Case T-496/08), Frankfurt-Hahn (Germany) (Case T-497/08), Lübeck-Blankensee (Germany) (Case T-498/08), Pau-Béarn (France) (Case T-499/08), Tampere-Pirkkala (Finland) (Case T-500/08) and Bratislava (Slovakia) (Case T-509/08), and, in the alternative, applications for annulment of the subsequent express decisions refusing access to those documents,

THE GENERAL COURT (Eighth Chamber),

composed of S. Papasavvas (Rapporteur), acting as President, N. Wahl and A. Dittrich, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 7 July 2010,

gives the following

Judgment

Background to the dispute

- ¹ Between 2002 and 2006, the Commission of the European Communities received several complaints concerning alleged State aid granted to the applicant, Ryanair Ltd, by the operators of the airports of Aarhus (Denmark), Alghero (Italy), Berlin-Schönefeld (Germany), Frankfurt-Hahn (Germany), Lübeck-Blankensee (Germany), Tampere-Pirkkala (Finland) and Bratislava (Slovakia).
- ² In addition, on 26 January 2007, the Commission received a notification from the French authorities concerning contracts concluded by the *Chambre de commerce et d'industrie de Pau-Béarn* (France) (*Pau-Béarn Chamber of Commerce and Industry*) with the applicant and one of its subsidiaries.
- ³ In each case, the Commission initiated formal investigation procedures in respect of the aid allegedly granted to the applicant. Summaries of those decisions, informing

parties concerned of the possibility of submitting their comments, were published in the *Official Journal of the European Union*.

- 4 By letter of 20 June 2008 (Case T-509/08) and by letters of 25 June 2008 (Cases T-494/08 to T-500/08), the applicant requested the Commission to grant it access, under Regulation (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), to the files concerning the State aid allegedly granted to it by the operators of Aarhus, Alghero, Berlin-Schönefeld, Frankfurt-Hahn, Lübeck-Blankensee, Pau-Béarn, Tampere-Pirkkala and Bratislava airports.
- 5 The applicant requested access, in particular, to the complaints and notification received by the Commission, to comments submitted by third parties, to letters and other messages exchanged between the Commission, the Member States concerned and the operators of the airports concerned, to documents provided to the Commission by the Member States and the operators of the airports concerned and to any other documents in the Commission's files, including analyses made by the Commission of documents received, studies, reports, surveys, and interim conclusions leading to the Commission's decisions to initiate the formal investigation procedures. The applicant stated that, where parts of documents listed in its request were covered by exceptions to the right of access, it requested access to the parts of those documents which were not covered by those exceptions.
- 6 By letters of 10 July 2008 (Case T-509/08), 15 July 2008 (Case T-499/08), 17 July 2008 (Cases T-496/08, T-498/08 and T-500/08), 22 July 2008 (Cases T-494/08 and

T-497/08) and 24 July 2008 (Case T-495/08), the Commission refused to grant access to the documents listed in the applications, with the exception of the decisions to initiate a formal investigation procedure, as published in the *Official Journal of the European Union*.

- 7 By confirmatory applications registered on 11 August 2008 (Case T-509/08) and 25 August 2008 (Cases T-494/08 to T-500/08), the applicant requested the Commission to reconsider its refusals and to grant the applicant access to the documents listed in the initial requests.
- 8 By letters of 2 September 2008 (Case T-509/08) and 15 September 2008 (Cases T-494/08 to T-500/08) ('the first letters extending the time-limit'), the Commission informed the applicant that it had not been able to gather all the elements necessary to carry out a proper analysis of the requests for access and that it was not in a position to take final decisions. Consequently, the Commission, in each case, extended the time-limit for replying by 15 working days.
- 9 By letters of 23 September 2008 (Case T-509/08) and 6 October 2008 (Cases T-494/08 to T-500/08) ('the second letters extending the time-limit'), the Commission informed the applicant that it was not in a position to take final decisions despite the extension of the time-limit and that it was doing its utmost to provide the applicant with final replies as soon as possible.
- 10 By letters of 26 September 2008 (Case T-509/08), 8 October 2008 (Case T-495/08), 9 October 2008 (Case T-494/08), 23 October 2008 (Case T-499/08), 31 October

2008 (Case T-500/08), 20 November 2008 (Case T-496/08), 6 January 2009 (Case T-498/08) and 18 February 2009 (Case T-497/08) ('the express decisions'), the Commission informed the applicant that it was refusing to grant it access to the documents requested, with the exception of (a) three requests from the Danish authorities for extension of a time-limit (Case T-494/08); (b) two e-mails from the Italian authorities requesting an extension of a time-limit and two letters from the Commission granting an extension (Case T-495/08); (c) three requests for extension of a time-limit lodged by the German authorities and four positive replies from the Commission (Case T-496/08); (d) a positive reply from the Commission to a request from the German authorities for extension of a time-limit (Case T-497/08); (e) two requests for extension of a time-limit lodged by the German authorities and three positive replies from the Commission (Case T-498/08); (f) a request for extension of a time-limit from the French authorities and a letter from the Commission granting that extension (Case T-499/08); (g) two requests for extension of a time-limit by the Finnish authorities and two letters from the Commission granting the extensions sought (Case T-500/08); and (h) two requests for extension of a time-limit lodged by the Slovak authorities (Case T-509/08).

- 11 In essence, the Commission took the view that the other documents covered by the applicant's requests were wholly covered by the exceptions laid down in the third indent of Article 4(2) of Regulation No 1049/2001 (exception relating to the protection of the purpose of inspections, investigations and audits) and in the first subparagraph of Article 4(3) of Regulation No 1049/2001 (exception relating to the protection of the decision-making process prior to the adoption of a decision). The Commission further took the view that certain documents were also covered by the exceptions laid down in the first indent of Article 4(2) (exception relating to the protection of commercial interests), in the second subparagraph of Article 4(3) (exception relating to the protection of the decision-making process after the adoption of a decision), and, in Cases T-494/08, T-496/08, T-497/08, T-499/08 and T-500/08, in the second indent of Article 4(2) (exception relating to the protection of legal advice) of Regulation No 1049/2001. The Commission also decided that no overriding public interest justified disclosure of the documents and that it was impossible to grant partial access because the documents were wholly covered by at least two exceptions.

Procedure and forms of order sought by the parties

- ¹² The applicant brought the present actions by applications lodged at the Registry of the General Court on 7 November 2008 (Case T-509/08) and 14 November 2008 (Cases T-494/08 to T-500/08).
- ¹³ By letters of 22 December 2008, 9 January and 20 February 2009, the applicant sought leave to amend its claims and pleas in law in Cases T-496/08, T-498/08 and T-497/08 respectively following the notification of the express decisions adopted by the Commission. The Court granted that leave on 29 January and 26 March 2009.
- ¹⁴ By letter of 14 August 2009, the applicant requested that Cases T-494/08, T-495/08, T-496/08, T-497/08, T-498/08, T-499/08, T-500/08 and T-509/08 be joined and that measures of organisation of procedure be ordered.
- ¹⁵ By order of 14 October 2009, the President of the Eighth Chamber of the Court ordered that the cases be joined for the purposes of the oral procedure.

- 16 By order of 25 November 2009, pursuant to Articles 65(b) and 66(1) and the third subparagraph of Article 67(3) of the Court's Rules of Procedure, the President of the Eighth Chamber of the Court ordered the Commission to produce copies of all of the documents to which it had refused access. The Commission complied with that order.
- 17 By letter of 12 March 2010, the Court, by way of measures of organisation of procedure as provided for in Article 64 of the Rules of Procedure, put to the parties a number of written questions, to which the parties replied within the period laid down.
- 18 Since the cases at issue were considered to raise a question of interpretation identical to that raised in Case C-139/07 P *Commission v Technische Glaswerke Ilmenau*, which was pending before the Court of Justice, the President of the Eighth Chamber of the General Court, by order of 12 April 2010, pursuant to the third paragraph of Article 54 of the Statute of the Court of Justice and Article 77(a) of the Rules of Procedure, after hearing the parties, stayed the proceedings in the present cases until delivery of the Court of Justice's judgment.
- 19 On 29 June 2010, the Court of Justice delivered its judgment in Case C-139/07 P *Commission v Technische Glaswerke Ilmenau* [2010] ECR I-5885.
- 20 The parties' oral arguments and answers to the questions put by the Court were heard at the hearing on 7 July 2010. In particular, the parties submitted their observations on the judgment in *Commission v Technische Glaswerke Ilmenau* and on its consequences for the present cases.

21 The Court takes the view that Cases T-494/05 to T-500/08 and T-509/08 should be joined for the purposes of the final judgment, having heard the parties in that regard, pursuant to Article 50 of the Rules of Procedure, at the hearing.

22 The applicant claims that the General Court should:

- first, annul the implied decisions and, second, declare the express decisions in Cases T-494/08, T-495/08, T-496/08, T-498/08, T-499/08, T-500/08 and T-509/08 non-existent and that the express decision in Case T-497/08 does not produce any legal effects;
- in the alternative, annul the express decisions;
- order the Commission to pay the costs.

23 The Commission contends that the General Court should:

- dismiss the actions as inadmissible inasmuch as they seek the annulment of the alleged implied decisions;
- dismiss the actions as unfounded;
- order the applicant to pay the costs.

Law

1. The first head of claim, seeking, first, annulment of the implied decisions and, second, a declaration that the express decisions in Cases T-494/08, T-495/08, T-496/08, T-498/08, T-499/08, T-500/08 and T-509/08 are non-existent and that the express decision in Case T-497/08 does not produce any legal effects

Arguments of the parties

²⁴ The applicant submits that the first letters extending the time-limit infringe Article 8(2) of Regulation No 1049/2001 since, first, they came about on the last day of the time-limit laid down by Article 8(1) of Regulation No 1049/2001 ('the initial time-limit') and, second, they do not provide detailed reasons. It submits therefore that the Commission's implied refusal to grant access to the documents arose on the expiry of the initial time-limit.

²⁵ The applicant adds that, in any event, even if the first letters extending the time-limit had to be regarded as sufficient for the purpose of extending the initial time-limit, no express decision was adopted before the expiry of the extended period. The applicant concludes therefore that the Commission's failures to give express replies within the

time-limits laid down by Article 8 of Regulation No 1049/2001 amount to implied decisions to refuse to grant access to the documents.

- ²⁶ The applicant submits that it has an interest in obtaining the annulment of the implied decisions. It submits that the express decisions are non-existent or, at the most, mere confirmations of the implied decisions and therefore produce no additional legal effect. For the express decisions not to constitute purely confirmatory decisions, their content, according to the applicant, would have had to be substantially different from that of a negative reply. That, however, was not the case here.
- ²⁷ The applicant states that it has a legal interest in bringing proceedings against the implied decisions in order to prevent the Commission from repeating, in future, the infringement of its duty to reply within the prescribed periods and in order to protect the legal certainty of persons applying for access to documents.
- ²⁸ The Commission contends that the explanation contained in the first letters extending the time-limit more than enabled the applicant to understand the reason for which the Commission was not in a position to reply by the expiry of the period initially set. It did not therefore infringe Article 8(2) of Regulation No 1049/2001 by extending the initial time-limit.
- ²⁹ The Commission admits that it was not subsequently able to give a final reply within the extended time-limit. Nevertheless, it submits that, because of the eight requests for access to documents lodged simultaneously by the applicant, and in order to reconcile the interests of the applicant with the principle of sound administration, it

should be permitted to extend the strict time-limits laid down in Articles 7 and 8 of Regulation No 1049/2001 and to carry out the examination of the requests within a reasonable period of time.

³⁰ In the present cases, the Commission contends that it did take due account of the applicant's interest by adopting eight express decisions between 8 October 2008 and 18 February 2009. Consequently, it submits that, at the time when the present actions were brought, there were no actionable implied decisions.

³¹ Even supposing implied decisions existed, the Commission submits that the actions brought against those acts are inadmissible since the implied decisions were replaced by the express decisions. The applicant therefore no longer has any legal interest in continuing proceedings against the implied decisions since their annulment cannot confer on it any advantage. In fact, the annulment of the implied decisions could only have the effect of obliging the Commission to adopt express decisions relating to the same documents, which has already happened in the present cases.

³² The Commission argues that the express decisions are not decisions confirming implied decisions inasmuch as they include a re-examination of the applicant's situation, provide a reasoned justification for the refusal of access to certain documents requested and grant access to certain other documents.

Findings of the Court

33 At the outset, it is appropriate to note that Article 8 of Regulation No 1049/2001 provides as follows:

‘1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 [EC] and 195 [EC] respectively.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.’

- ³⁴ As regards, first of all, the validity of the first extension of the time-limit for reply by the Commission, first, eight applications for access to documents were made to the Commission almost simultaneously, representing a total of 377 documents, from the same applicant and covering cases which were connected. The applications related therefore to a large number of documents.
- ³⁵ Secondly, the Commission sent the first letters extending the time-limit by fax to the applicant on the last day of the initial period.
- ³⁶ Thirdly, in the first letters extending the time-limit, the Commission explained that the applications were currently being handled, but that it had not been able to gather all the documents necessary to take a final decision. It also noted, in Cases T-494/08 to T-500/08, that the applicant had submitted simultaneously seven confirmatory applications for access to the documents. In those circumstances, the applicant was in a position to understand the particular reasons for the extension in each case. The reasoning is therefore sufficiently detailed.
- ³⁷ Having regard to all of the foregoing, the Court concludes that the first letters extending the time-limit meet the requirements laid down by Article 8(2) of Regulation No 1049/2001 and validly extended the initial period of 15 working days, with the result that no implied decision arose on the expiry of the initial period.

- 38 As regards the second letters extending the time-limit, it should be noted that, under Article 8 of Regulation No 1049/2001, the Commission could extend the initial time-limit only once and that, on the expiry of the extended period, an implied decision to refuse access was deemed to have been adopted.
- 39 In that regard, the time-limit laid down by Article 8(1) of Regulation No 1049/2001 is mandatory (see, to that effect, Joined Cases T-355/04 and T-446/04 *Co-Frutta v Commission* [2010] ECR II-1, paragraphs 60 and 70) and cannot be extended save in the circumstances provided for in Article 8(2) of Regulation No 1049/2001, without depriving that article of all practical effect, since the applicant could not know precisely the date from which he could bring the action or complaint provided for in Article 8(3) of that regulation (see, by analogy, Case C-186/04 *Housieaux* [2005] ECR I-3299, paragraph 26).
- 40 Therefore, the second letters extending the time-limit could not validly extend the time-limits. In each case, the Commission's failure to reply by the expiry of the extended period must therefore be held to constitute an implied decision to refuse access.
- 41 However, according to settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure (see *Co-Frutta v Commission*, paragraph 40 and the case-law cited).
- 42 An applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible (*Co-Frutta v Commission*, paragraph 41).

- 43 Furthermore, the interest in bringing proceedings must continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be likely, if successful, to procure an advantage for the party bringing it (see *Co-Frutta v Commission*, paragraph 43 and the case-law cited).
- 44 If the applicant's interest in bringing proceedings disappears in the course of proceedings, a decision of the Court on the merits cannot bring him any benefit (see *Co-Frutta v Commission*, paragraph 44 and the case-law cited).
- 45 In the present cases, as regards, first, the applications for annulment of the implied decisions which arose on the expiry of the extended period, it must be noted that, by adopting the express decisions, the Commission, in fact, withdrew those implied decisions (see, to that effect, *Co-Frutta v Commission*, paragraph 45).
- 46 However, any annulment of the implied decisions on grounds of a procedural defect could do no more than give rise to new decisions, identical in substance to the express decisions. Moreover, consideration of the actions against the implied decisions cannot be justified either by the objective of preventing the alleged unlawfulness from recurring, within the meaning of paragraph 50 of the judgment in Case C-362/05 P *Wunenburger v Commission* [2007] ECR I-4333, or by that of facilitating potential actions for damages, since it is possible to attain both those objectives through consideration of the actions brought against the express decisions (see, to that effect, *Co-Frutta v Commission*, paragraph 46 and the case-law cited).

- 47 It follows that the actions in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08 are inadmissible in so far as they are directed against the relevant implied decisions referred to in paragraph 40 above, since the applicant had no interest in bringing proceedings against those decisions by reason of the adoption, before those actions were commenced, of the express decisions, annulment of which it seeks in the alternative.
- 48 Likewise, there is no longer any need to adjudicate on the actions in Cases T-496/08, T-497/08 and T-498/08 in so far as they are directed against the relevant implied decisions, since the applicant no longer has any interest in continuing the proceedings against those decisions by reason of the adoption, after the actions were commenced, of the express decisions, annulment of which it seeks in the alternative.
- 49 As regards, secondly, the alleged non-existence of the express decisions, it must be noted that a finding that a measure is non-existent should be reserved for measures which exhibit particularly serious and manifest defects (Case 15/85 *Consortio Co-operative d'Abruzzo v Commission* [1987] ECR 1005, paragraph 10). The gravity of the consequences attaching to a finding that a measure of an institution is non-existent requires that, for reasons of legal certainty, such a finding be reserved for quite extreme situations (Case C-137/92 P *Commission v BASF and Others* [1994] ECR I-2555, paragraph 50, and Case C-199/92 P *Hüls v Commission* [1999] ECR I-4287, paragraph 86).
- 50 However, in the present cases, the mere fact that the contested express decisions were adopted after the expiry of the period laid down in Article 8 of Regulation No 1049/2001 does not have the effect of depriving the Commission of the power to adopt a decision (see, to that effect, *Co-Frutta v Commission*, paragraphs 56 to 59). In addition, it follows from paragraphs 53 to 103 of the present judgment that the express decisions are not vitiated by any defect.

51 The claim seeking a declaration that the express decisions are non-existent must therefore be rejected. Likewise, it follows from paragraphs 45 to 50 of the present judgment that the claim seeking a declaration that the express decision in Case T-497/08 does not produce any legal effects must also be rejected.

52 It follows from all of the foregoing that the first head of claim must be dismissed.

2. The second head of claim, seeking annulment of the express decisions

53 In the alternative, the applicant seeks the annulment of the express decisions, raising two pleas in law, the first alleging breach of Article 4 of Regulation No 1049/2001 and the second, breach of the obligation to state reasons.

The first plea in law, alleging breach of Article 4 of Regulation No 1049/2001

54 In support of this plea in law, the applicant claims that, for the purposes of applying the exceptions relied upon, the Commission did not carry out a concrete, individual examination of the documents, that it did not demonstrate that their disclosure would in fact undermine the interest protected by those exceptions, and that it did not take account of the overriding public interest which justified their disclosure. In addition,

the applicant takes issue with the Commission for not having granted partial access to those documents.

- 55 In that regard, the Court considers it appropriate to rule at the outset on the application, by the Commission, of the exception concerning protection of the purpose of investigations.

The exception concerning protection of the purpose of investigations, provided for in the third indent of Article 4(2) of Regulation No 1049/2001

— Arguments of the parties

- 56 The applicant submits that the right of access provided for by Regulation No 1049/2001 constitutes the principle and that exceptions to that principle must be interpreted strictly. It submits that that right of access must permit the disclosure of the file of an investigation in respect of State aid even if the applicant is the recipient of the alleged aid.
- 57 The applicant claims that the handling of a request for access, and, particularly, any application of the exceptions under Article 4 of Regulation No 1049/2001, must be the subject of a concrete, individual examination, save where, due to the particular circumstances of the individual case, it is obvious that access to the documents must be refused or, on the contrary, granted. Such could be the case, *inter alia*, if certain documents were manifestly covered in their entirety by an exception to the right

of access or, conversely, were manifestly accessible in their entirety, or had already been the subject of a concrete, individual assessment by the Commission in similar circumstances.

58 In the applicant's submission, the Commission erred in law by not carrying out a concrete, individual examination of the documents covered by its applications, even though there were no particular circumstances justifying the lack of such an examination. In fact, neither the application of the competition rules nor the existence of a current investigation could, in the applicant's submission, be regarded as particular circumstances allowing an overall examination.

59 The applicant submits that the Commission confined itself to an overall abstract examination of the administrative files without referring to particular documents or their content to justify the application of the exceptions to the right of access.

60 As regards, in particular, the exception concerning protection of the purpose of investigations, set out in the third indent of Article 4(2) of Regulation No 1049/2001, the applicant submits that the Commission's explanations justifying the application of that exception to almost all the documents requested are vague, repetitive and general and could be applied to any investigation file whether in respect of State aid or in other areas.

61 In addition, the Commission's arguments are based on an erroneous interpretation of the purpose of investigations within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001. The disclosure of requested documents serves that

purpose by enabling third parties to take account of the information available to the Commission in order to submit their comments.

⁶² Furthermore, the applicant submits that, in the light of the Commission's arguments, the risk that access to the documents could undermine the purpose of the investigation is purely hypothetical and does not appear to be reasonably foreseeable.

⁶³ In particular, the applicant submits that certain documents could be disclosed to it without shattering the trust of Member States or airport operators in their cooperation with the Commission.

⁶⁴ Thus, the applicant submits that the following documents could be disclosed to it in their entirety: in Case T-494/08, the three letters from the Commission in reply to the letters annexed to the express decision; in Case T-495/08, the request for extension of the time-limit from the Italian authorities of 30 July 2004 and the documents exchanged between the complainant and the Commission which have already been referred to in the judgment in Case T-395/04 *Air One v Commission* [2006] ECR II-1343; in Case T-496/08, the German authorities' request corresponding to the letter of 22 April 2008 extending the time-limit; in Case T-497/08, the request for extension of the time-limit from the German authorities and corresponding to the letter annexed to the express decision of 18 February 2009; in Case T-498/08, the German authorities' request corresponding to the letter of 21 November 2007 extending the time-limit; in Case T-499/08, the correspondence concerning the holding of a meeting between the director of the Chambre de commerce et d'industrie de Pau-Béarn and the Commission; in Case T-500/08, the letter sent by [A.] on 24 March 2003 to a number of airlines; and, in Case T-509/08, the correspondence relating to the

deletion of confidential information from the decision to initiate the formal investigation procedure. The applicant suspects that there are other similar documents in the administrative files to which it should be granted access.

- ⁶⁵ The applicant adds that, in each case, it should be possible to disclose to it, at least partially, the comments of the airport operators and other third parties without adversely affecting the investigation.
- ⁶⁶ At the hearing, the applicant stated that, in the light of the evidence which it provided concerning the documents enumerated in paragraph 64 above, it had shown that the documents requested were not covered by a general presumption that their disclosure would, in principle, undermine the purpose of the investigation. It also stated that it took the view that such a presumption was not applicable to the Commission's internal documents.
- ⁶⁷ It added that it was difficult to show that a document was not covered by the presumption referred to in paragraph 63 above since, by definition, an applicant did not have access to the contents of the Commission's administrative files. Consequently, it requested the Court to review whether there were other documents similar to those referred to in paragraph 64 above in the administrative files to which it had requested access.
- ⁶⁸ Finally, the applicant submits that there were two grounds of overriding public interest for granting it access to the documents. It relies, first, on the fundamental rights of the defence and, more generally, access to fair administrative procedures, and, second, on the principles of openness and transparency enshrined in the Treaty as well as the stated purpose of Regulation No 1049/2001, which is 'to give the fullest possible effect to the right of public access to documents.' It adds that its action serves

the interests of air transport consumers, which is a public interest. The applicant also observes that nowhere in the case-law is it stated that the principles of openness and transparency are inapplicable outside procedures in which the institutions act in their legislative capacity.

⁶⁹ The Commission contends that all of those complaints should be rejected.

— Findings of the Court

⁷⁰ For the purposes of interpreting the exception laid down in the third indent of Article 4(2) of Regulation No 1049/2001, it is appropriate to take account of the fact that interested parties other than the Member State concerned in the procedures for reviewing State aid do not have the right to consult the documents in the Commission's administrative file, and, therefore, to acknowledge the existence of a general presumption that disclosure of documents in the administrative file in principle undermines protection of the objectives of investigation activities (*Commission v Technische Glaswerke Ilmenau*, paragraph 61).

⁷¹ Thus, the Commission may, pursuant to the third indent of Article 4(2) of Regulation No 1049/2001, refuse access to all the documents relating to the procedure for the review of State aid, and may do so without first making a concrete, individual examination of those documents (*Commission v Technische Glaswerke Ilmenau*, paragraph 67).

- ⁷² The general presumption referred to in paragraph 70 above ('the general presumption') does not exclude the right of those interested parties to demonstrate that a given document disclosure of which has been requested is not covered by that presumption, or that there is a higher public interest justifying the disclosure of the document concerned by virtue of Article 4(2) of Regulation No 1049/2001 (*Commission v Technische Glaswerke Ilmenau*, paragraph 62).
- ⁷³ In the present cases, first, although certain documents are identified or classified in categories, the applications submitted by the applicant concern, in fact, all the administrative files concerning the procedures for the review of alleged State aid granted by several airport operators. The documents requested are therefore covered, in principle, by the general presumption.
- ⁷⁴ As regards the applicant's argument that the Commission's internal documents are not covered by the general presumption, it is appropriate to note that, in *Commission v Technische Glaswerke Ilmenau*, the Court of Justice applied the general presumption to administrative files which contained internal Commission documents. The applicant's argument must therefore be rejected.
- ⁷⁵ Secondly, as regards documents identified expressly and individually in the confirmatory applications, that is to say, the complaints and the notification from the French authorities (Case T-499/08), the applicant does not put forward any argument to the effect that they are not covered by the general presumption.
- ⁷⁶ Moreover, as regards the general references, made by the applicant in its confirmatory applications, to the documents referred to in the decisions to initiate the formal investigation procedures published in the *Official Journal of the European Union*,

those documents are referred to overall, by way of example, in order to support the applicant's argument that it is inconceivable that the exception relating to protection of the purpose of investigations is applicable to all the documents in the file in their entirety.

- 77 Thus, even if the reference to those documents could be regarded as a request for disclosure of a given document or documents within the terms of paragraph 72 above, the applicant's assertions are too vague and general to show that those documents are not covered by the general presumption.
- 78 Accordingly, it must be held that the applicant adduced no evidence in its confirmatory applications capable of rebutting the general presumption.
- 79 The fact that the applicant identified, in the application or in the amendment to its heads of claim, documents which it claims should be disclosed because of their purely administrative content cannot cast any doubt on that finding.
- 80 Those documents were not identified expressly and individually in the confirmatory applications, but only after the adoption of the express decisions. In the absence of requests specifically for those documents in the confirmatory applications, it must be held that the Commission was not bound to carry out a concrete, individual examination of them in the express decisions and could apply to them the general presumption that their disclosure would undermine the purpose of the investigation.

- 81 Thirdly, the applicant's argument that the rights of the defence justify the disclosure of the documents must be rejected. It is clear from the case-law that a procedure in respect of State aid is opened against a Member State and that the recipient of the aid cannot therefore invoke the rights of the defence during the investigation (see, to that effect, Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano v Commission* [2002] ECR I-7869, paragraphs 81 and 82, and Joined Cases T-195/01 and T-207/01 *Government of Gibraltar v Commission* [2002] ECR II-2309, paragraph 144).
- 82 Furthermore, the applicant has not shown how the principles of openness and transparency and the interests of air transport consumers take preference over the public interest in the protection of the purpose of investigations under the third indent of Article 4(2) of Regulation No 1049/2001.
- 83 Accordingly, the Commission was entitled in law to conclude that there was no overriding public interest justifying disclosure of the documents.
- 84 It follows from all of the foregoing that the Commission did not err in law in invoking the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001 to refuse to grant access to the documents covered by the applicant's applications, since the applicant has not shown either that the general presumption did not cover certain specific documents or that there was an overriding public interest justifying disclosure of the documents covered by its applications. Since the exception relied upon covers all of the documents to which access was refused, there is no need to examine the applicant's arguments concerning the other exceptions referred to in the express decisions.

The refusal of partial access to the documents referred to in the applicant's applications

— Arguments of the parties

⁸⁵ The applicant submits that the Commission's explanation for refusing to grant it partial access to the documents, to the effect that 'no partial access is possible since the refused documents are entirely covered by at least two of the exceptions invoked', is tautological and general. That claim does not satisfy the requirements of a concrete, individual examination, since it does not state, for each document, the reasons precisely applicable to it. The applicant submits, also, that the refusal to grant partial access to the documents infringes the principle of proportionality.

⁸⁶ The Commission contends that this complaint should be rejected.

— Findings of the Court

⁸⁷ As already noted in paragraph 70 above, there is a general presumption that disclosure of the documents in the Commission's administrative file concerning a procedure for reviewing State aid would, in principle, undermine protection of the purpose of investigations.

- 88 However, in its confirmatory applications, the applicant confined itself to stating, for categories of documents, that they necessarily contained passages which it would be possible to disclose without harming the protection of the purpose of investigations.
- 89 The applicant has not therefore shown, for given documents, that parts of those documents were not covered by the general presumption (see, to that effect, *Commission v Technische Glaswerke Ilmenau*, paragraph 70).
- 90 It follows that the documents are covered in their entirety by the general presumption and that, consequently, the argument alleging infringement of the principle of proportionality is immaterial.
- 91 It follows from all of the foregoing that the Commission was entitled in law to refuse to grant partial access to the documents requested.

The second plea in law, alleging breach of the obligation to state reasons

Arguments of the parties

- 92 The applicant submits that the Commission's explanations to justify its refusal of access to the documents do not constitute an adequate statement of reasons because of their contradictory and insufficient nature. Indeed, the applicant submits that the

overall abstract analysis carried out by the Commission in the express decisions is incapable of demonstrating that each document comes within the exception relied upon or that the need for protection is genuine.

- ⁹³ In addition, the applicant maintains that the Commission has not shown that there were particular circumstances which permitted it to dispense with a concrete examination of the documents requested.
- ⁹⁴ Finally, the applicant argues that the statement of reasons provided by the Commission is incomplete in so far as it appears to have refused to grant access to documents which presented no plausible risk of undermining the interests protected by the exceptions to the right of access to documents.
- ⁹⁵ The Commission does not expressly take any position on that point.

Findings of the Court

- ⁹⁶ According to settled case-law, the statement of reasons required under Article 253 EC must disclose in a clear and unequivocal fashion the reasoning followed by the institution responsible for authorship of the measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure adopted and to uphold their rights and to enable the court to exercise its power of review. It cannot, however, be necessary for the reasoning to go into all the various relevant facts and points of law. The question whether the statement of reasons for a decision meets those

requirements must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Co-Frutta v Commission*, paragraphs 99 and 100 and the case-law cited).

- ⁹⁷ In addition, it should be noted that the infringement of the duty to state reasons constitutes a plea of infringement of an essential procedural requirement, which, as such, is different from a plea that the grounds of the decision are inaccurate, the latter plea being a matter to be reviewed by the Court when it examines the validity of that decision (Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67; see also, to that effect, Case T-48/04 *Qualcomm v Commission* [2009] ECR II-2029, paragraph 179).
- ⁹⁸ In this case, the Commission, in the express decisions, identified the number of documents covered by the applicant's applications and divided them into categories.
- ⁹⁹ The Commission granted the applicant access to certain documents and, in order to justify the refusal of access to other documents, claimed, in particular, that, since they dealt with procedures for reviewing State aid, they were covered by the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001. The Commission stated that disclosure of the documents might harm the climate of mutual confidence between Member States and third parties, thereby jeopardising ongoing investigations.
- ¹⁰⁰ It is clear therefore from the express decisions that the Commission, first, placed the applicant in a position to understand which were the documents covered by the exception and the reason for which that exception was being applied in the particular case and, second, enabled the General Court to exercise its power of review.

- 101 In addition, the applicant's arguments concerning the absence of a concrete, individual examination of the documents relate to the soundness of the express decisions and were therefore examined in the context of the first plea in law seeking the annulment of those decisions.
- 102 The plea in law alleging breach of the obligation to state reasons must therefore be rejected, without it being necessary to adjudicate on the applicant's arguments relating to the statement of reasons concerning the other exceptions relied upon, since the exception under the third indent of Article 4(2) of Regulation No 1049/2001 covers all of the documents disclosure of which was refused and is sufficient to justify the refusal.
- 103 Having regard to all of the foregoing considerations, the actions must be dismissed in so far as they seek annulment of the express decisions.

Costs

- 104 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Furthermore, under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment the costs are in the discretion of the Court.

105 Since the applicant has been unsuccessful in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08, it must be ordered to bear its own costs and pay those incurred by the Commission, in accordance with the forms of order sought by the latter.

106 By contrast, the lack of need to adjudicate on Cases T-496/08, T-497/08 and T-498/08, in so far as they are directed against the implied decisions, arises from the fact that the Commission adopted express decisions after the expiry of the periods under Article 8 of Regulation No 1049/2001 and after the actions in those cases had been brought. For that reason, and although the applicant has been unsuccessful in its actions against the relevant express decisions, the Commission must bear its own costs in Cases T-496/08, T-497/08 and T-498/08 and pay those incurred by the applicant in those cases.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Orders Cases T-494/08, T-495/08, T-496/08, T-497/08, T-498/08, T-499/08, T-500/08 and T-509/08 to be joined for the purposes of the present judgment;**
2. **Declares the actions inadmissible in so far as they have been brought against the implied decisions to refuse access in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08;**

- 3. Declares that there is no longer any need to adjudicate on the actions in Cases T-496/08, T-497/08 and T-498/08 in so far as they have been brought against the implied decisions to refuse access;**
- 4. Dismisses the remainder of the actions;**
- 5. Orders Ryanair Ltd to pay the costs in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08;**
- 6. Orders the European Commission to bear its own costs in Cases T-496/08, T-497/08 and T-498/08 and to pay those incurred by Ryanair Ltd in those cases.**

Papasavvas

Wahl

Dittrich

Delivered in open court in Luxembourg on 10 December 2010.

[Signatures]