



Press and Information

General Court of the European Union
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Judgment in Case T-123/09
Ryanair v Commission

The General Court confirms the decisions of the Commission, classifying the loan by the Italian State to Alitalia as illegal, but authorising the sale of its assets

Alitalia SpA is an air transport company 49.9% held by the Italian State.¹ In 2006, after several failed attempts to redress its financial situation, the Italian authorities decided to sell their stake. In 2008, the State granted Alitalia a loan of EUR 300 million and also gave it the possibility of counting that amount as own capital. Alitalia, which was at that point no longer able to pay its debts, was placed in extraordinary administration² and a bank was appointed as an independent expert in order to verify that the sale price for its assets was in accordance with the market price. The bid by Compagnia Aerea Italiana ('CAI') submitted for the purchase of certain Alitalia assets, in response to the call for declarations of interest issued for that purpose, was sent by the Italian authorities to the Commission.

The Commission then initiated a formal investigation procedure on the measures concerning the loan and the possibility of counting the amount as own capital. By a **first decision**, it held that the **loan** constituted unlawful State aid incompatible with the common market, as it conferred an economic advantage by means of State resources which would not have been granted by a prudent private investor. The Commission therefore ordered the recovery of that aid from Alitalia.³

By a **second decision**, the Commission took the view that the measure concerning the **sale of Alitalia assets** did not involve the granting of State aid to Alitalia's buyers, provided the undertakings given by the Italian authorities that the sale would be at market price were fully complied with. The Commission further confirmed that the extraordinary administration procedure into which Alitalia had been placed did not lead to the granting of aid in favour of the buyers either.⁴ It concluded that the procedure implemented by Italy did not involve economic continuity between Alitalia and the buyers of its assets – given the extent of the sale of those assets and the parcelling of bids submitted by the buyers – and that that sale did not have the effect of circumventing the obligation to recover the aid or of granting aid to the buyers of Alitalia.

After lodging various complaints with the Commission in common with other airlines and the European Low Fares Airline Association (ELFAA), Ryanair applied to the General Court for the annulment of those two Commission decisions.

¹ The General Court has already considered the position of Alitalia on a number of occasions: In 2000, by its judgment of 12 December 2000 ([T-296/97](#), 'Alitalia I' judgment), it annulled the Commission's decision of 1997 on the recapitalisation of Alitalia ([97/789/EC](#)). In 2008, by its judgment of 9 July 2008 ([T-301/01](#), 'Alitalia II judgment', see [press release](#)) it confirmed a Commission decision of 2001 concerning the restructuring of Alitalia ([2001/723/EC](#)).

² That procedure applies in Italy to undertakings in difficulty carrying on business in the essential public services sector, before the latter become insolvent, and allows financial redressment of the undertaking by the sale of its assets. That possibility is, however, coupled with the obligation of verification, by an independent expert, that the sale price of the assets concerned is in accordance with the market price.

³ Decision 2009/155/EC of 12 November 2008 on the loan of EUR 300 million granted by Italy to Alitalia No C 26/08 (ex NN 31/08) (OJ 2009 L 52, p. 3).

⁴ Decision [C \(2008\) 6745](#), of 12 November 2008, concerning State aid N 510/2008 – Italy – Sale of assets of the airline Alitalia (not published in the OJ).

The General Court first examines **the decision concerning the sale of the assets**. In its judgment today, it states that the Commission had the power to adopt such a decision, which, while finding that there was no State aid, took notice of the undertakings entered into by the Italian State, the latter forming an integral part of the measure notified.

The Court finds that the Commission had convinced itself that the sale would take place at the market price. It therefore rejects Ryanair's arguments that the Commission had carried out an insufficient or incomplete examination at the preliminary examination phase and should have initiated a formal investigation procedure on the sale of the assets, in order to verify the possible existence of options other than the sale of assets.

The Court also rejects Ryanair's argument that the sale, in so far as it had been impliedly made subject to the condition that the buyer be of Italian nationality, had implied a lowering of its price. It considers, on the contrary, that the Commission verified that the call for declarations of interest did not contain any discriminatory clause based on the nationality of the bidders and that it had received wide publicity on a national and international scale.

The Court emphasises that the Commission took the view that the procedure for the sale of assets complemented by the call for declarations of interest did not offer a degree of transparency sufficient, in itself, to guarantee that the assets would be sold at market price. Consequently, the Commission verified that the bid had been subject to an independent assessment, in order to ensure that the price proposed was not below the market price. In addition, the Commission did verify that the procedure offered the necessary guarantees enabling it to be ensured that the sale would be at market price.

Finally, the Court confirms that the Commission correctly took the view that there was no economic continuity between Alitalia and CAI and that the latter did not benefit from any advantage, since all measures had been taken to ensure that the sale took place at a price not lower than the market price.

Secondly, at the conclusion of the examination of **the loan decision**, the Court considers that – although Ryanair has played an active role in the procedure for the adoption of that decision – it has not demonstrated that the fact of ordering recovery of the aid from Alitalia (and not from CAI) substantially affected its competitive position. It follows that Ryanair has not demonstrated that it is individually concerned by that decision.

Consequently, the Court dismisses Ryanair's action and thus confirms the Commission's decisions.

REMINDER: An appeal, limited to questions of law, may be brought before the Court of Justice against the decision of the General Court, within two months from the date of its notification.

REMINDER: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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