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The Commission's decision on Charleroi airport promotes the activities of low-cost airlines and regional development

The European Commission today took a major decision of significance for the future of air transport by ensuring full competition between carriers operating out of regional airports. It authorises certain forms of aid which permit genuine development of new routes under clearly defined conditions. However, other direct aid granted by the Walloon Region and partly by BSCA is incompatible with the proper functioning of the internal market and will have to be repaid. The Commission is thus committing itself firmly to promoting increased competition which will enable low-cost carriers to establish themselves throughout the European Union, subject to compliance with uniform rules on competition between carriers, and for the maximum benefit of consumers. "This legal decision is well balanced: it brings greater transparency into contractual relations between airlines and airports, especially regional airports", stressed Loyola De Palacio, Vice-President of the Commission with responsibility for energy and transport. "It will also help the development of 'low-cost' operations, which are very clearly what consumers want, whilst also ensuring equitable conditions of competition for all airlines. All players in the same arena must be able to play by the same ground rules. All airlines must be aware of the possibilities offered and only genuine competition is truly capable of safeguarding consumers' rights", she explained.

Today's decision is good for regional development and will result in increased development of low-cost airlines throughout the European Union, for the maximum benefit of consumers. Thus, there will be a level-playing field for all air transport sector operators, in order to ensure fair competition.

The case of Charleroi:

The Commission was required to deliver its opinion on a complaint lodged in 2001 concerning the advantages granted to Ryanair at Charleroi airport by ***Brussels South Charleroi Airport*** **(BSCA), the airport's managing body, and the Walloon Region (Belgium).** When considering this case, the Commission took full account of the main thrusts of European policy and law in the context of the single market for air transport.

The Commission had to determine whether the **measures taken in favour of Ryanair** by the Walloon Region and BSCA, a public undertaking controlled by the Walloon Region, **were compatible or not with the private market investor principle**.

In the case of Charleroi, the Commission concluded that no private operator in the same circumstances as BSCA would have granted the same advantages. Since the **private market investor principle had not been adhered to in this case, the advantages granted to Ryanair constitute State aid**[1] which could distort competition in favour of Ryanair.

Compatibility of the aid granted:

The Commission, however, took the view that the aid granted to Ryanair at Charleroi could be compatible with the common market in the context of transport policy[2]**,** insofar as they permit the development and improved use of secondary airport infrastructure which is currently underused and represents a cost to the community as a whole[3].

Today's decision should allow Ryanair to keep some of the aid already granted to it. This is the aid intended for the launch of new air routes (marketing and publicity), to which may be added one-shot incentives, provided that the Belgian authorities meet the conditions imposed by the Commission.

However, **certain forms of aid cannot be authorised**, in particular the discounts on airport charges such as were granted at Charleroi, which go beyond the discounts already foreseen in the Belgian legislation, which are non-discriminatory and fully transparent, the reduced ground handling fees, which are not offset by possible surpluses from other, purely commercial activities (parking, shops, etc.), one-shot incentives paid when new routes were launched, where no account was taken of the actual costs of launching such routes, and the aid provided in respect of the Dublin-Charleroi route, which is not new, because it was launched in 1997.

In general terms, the European Commission aims to guarantee that the advantages granted at a particular airport are not discriminatory and benefit from a greater transparency.

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1 Within the meaning of Article 87(1) of the EC Treaty.

2 By reference to Article 87(3)(c) of the EC Treaty: '*The following shall be compatible with the common market: … aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*.

3 Such development benefits the regions by ensuring a better return from existing public goods and facilitating regional economic development, in particular through job-creation and tourism; it benefits the Member State concerned by encouraging spatial planning and better use of existing airports as opposed to the construction of new infrastructure or extensions; and it benefits the European Union whose need to develop airport capacity was pointed out in the White Paper on Transport and which provides part of the financing for airports through its regional policy, the TENs and the EIB.

Annex:

Content and impact of the Commission's decision on Charleroi airport

1. Why did the Commission need to take a decision?

The Commission received a complaint in January 2002 concerning advantages granted at Charleroi airport. As guardian of the Treaties, it had to verify the legality of the agreements that had been entered into and their compatibility with European law. A formal investigation[4] into the advantages granted to Ryanair by the Walloon Region and by the airport management body BSCA (*Brussels South Charleroi Airport*) was launched on 11 December 2002. The Commission is today announcing the conclusions of the formal investigation, during which it received twelve contributions from airlines, including Ryanair, airport management bodies and other parties.

2. What advantages were granted at Charleroi airport?

The advantages granted to Ryanair in 2001 may be summarised as follows:

- The Walloon Region granted Ryanair, under a private-law contract, a preferential rate for landing charges at Charleroi of EUR 1 per boarding passenger, which is about 50% of the standard rate set in a decree which had been published in the Official Journal. No other airline benefits from this.
- BSCA granted various types of advantages to Ryanair:
  - a contribution towards promotional activities of EUR 4 per boarding passenger, over 15 years and for up to 26 flights daily. No other airline benefits from this.
  - initial incentives amounting essentially to EUR 160 000 per new route opened, for 12 routes, or EUR 1 920 000 in total; EUR 768 000 in reimbursements for pilot training; EUR 250 000 for hotel accommodation costs. No other airline benefits from this.
  - a preferential rate of EUR 1 per passenger for ground handling services, whereas the rates normally charged to other airlines is EUR 8-13. .No other airline benefits from this.

3. What is the prudent private investor criterion?

The Commission had to determine whether the **measures taken in favour of Ryanair** by the Walloon Region and BSCA, a public undertaking controlled by the Walloon Region, **were or were not in keeping with the private investor principle**.

According to this principle, which has been repeatedly endorsed by the Court of Justice, aid is not considered to include investments or advantages which are granted if, at the time when an investment or a commercial contract is being considered, the public undertaking is in the same situation as a comparable private firm, guided by the same objectives of long-term profitability. This principle helps ensure equal treatment between public-sector operators, such as BSCA, and private firms.

[4] See OJ C18, 25.01.2003.

It is thus necessary to verify:

- whether the level of profit expected when the advantage was granted is in line with what a private firm would expect. In order to do this, it is necessary to analyse the risk associated with the market concerned, the cost of the capital, the information which the undertaking possessed when it took its decision and risks inherent in the operation;
- the undertaking cannot exploit certain advantages deriving from its public status, such as easier access to financing or the absence of the risk of bankruptcy;
- the public undertaking cannot also decide to take account of indirect positive effects, such as regional economic development or job creation, to underpin its analysis, for they would not have been used by a private investor as criteria for taking a decision.

4. Did BSCA take the prudent private investor approach?

In the Charleroi case, the Commission concluded that no private operator in the same circumstances as BSCA would have granted the same advantages.

The investigation showed that when the contract was signed with Ryanair, BSCA was exposed to the risk of losses exceeding the company's aggregate current result over a ten-year period, which is estimated to be about EUR 35 million, and this would have wiped out any hope of a fair return on the investment over the reference period.

Moreover, BSCA signed the agreements with Ryanair on the basis of a business plan which, in the Commission's view, does not conform to the private investor criterion, for it had factored in substantial future revenue, amounting to almost EUR 27 million, not arising from the contract signed with Ryanair but received from hypothetical carriers which were assumed to be regular users. It also omitted to take into account its contribution to the marketing of all 26 potential flights agreed with Ryanair, amounting to more than EUR 6 million. These two factors were sufficient to reduce almost to zero the result expected for the period in question.

Lastly, BSCA also used its special connections with the Walloon Region and the advantages stemming therefrom in order to improve the profit forecast. This is particularly true with regard to the subsidy to cover maintenance costs and fire, for which there was no longer any legal basis when the contract was signed. BSCA had allowed not only for its continued existence but also for a future increase, amounting to a benefit of nearly EUR 14 million over the ten years of the business plan. The same is true of the transfer of 35% of the aviation charges into the environment fund, because the maximum level of this charge was assumed to have been fixed, when in fact the legal act formally setting the amount was not adopted by the Walloon authorities until six months after the contract was signed, resulting in a risk to the value of EUR 9 million. The Commission takes the view that these last two assumptions, which were subject to the political discretion of the region, would not have been made by a private investor in the absence of formal clarification of the legal situation.

Since, therefore, the private market investor principle was not adhered to in this case, the advantages granted to Ryanair constitute State aid[5] which could distort competition in favour of Ryanair. It should be noted that this aid does not correspond, either, to investment in airport infrastructure and cannot therefore be deemed compatible with classic instruments of Community law such as regional development aid. In fact, it takes the form of operational aid.

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[5] Within the meaning of Article 87(1) of the EC Treaty.

5. What aid at Charleroi is compatible with the common market?

The **Commission considered that some of the aid granted to Ryanair may be compatible with the common market in the context of transport policy**[6], insofar as it fosters the development and improved use of secondary airport infrastructure which is currently underused and represents a cost to the community as whole[7].

Today's decision should therefore mean that Ryanair can keep part of the aid already granted, net of the money to be recovered. This includes BSCA's contribution to the financing of a joint promotion and publicity company with Ryanair, which could be considered to be aid to the start-up of new air routes. It encourages better use of regional airports, in keeping with the Community's objective for air transport. To the sums received by Ryanair in 2001-2003, could be added part of one-shot incentives referred to above provided that the Belgian authorities comply with the conditions imposed by the Commission.

In order for such aid to be authorised, the Belgian authorities must ensure that it meets the following conditions:

- It must be **necessary for the opening of new routes**, serve as an incentive, be proportional to the objective pursued, be granted with due regard for the principles of transparency, equal treatment and non-discrimination between operators, be accompanied by a mechanism for imposing penalties should the carrier fail to comply with his commitments, and it must not be aggregated with aid which serves a social objective or with public service compensation payments.
- It must be **of limited duration** (five years in the case of point-to-point European routes, and not 15 years) and correspond to a maximum intensity of 50% of the net start-up costs incurred, and the airport must have control over such costs and the aid must be available in the future to any airline which is established at Charleroi. This being the case, Ryanair could also be granted similar aid in the future, albeit limited to five years in each case, for the opening of new routes excluding routes which replace previously operated routes.

6. Which aid is incompatible?

However, the Commission has no alternative but to request the **recovery** of other aid which distorts competition in the common market, namely:

- **Reduced airport charges**. Reductions are possible only if they are granted in a manner which does not discriminate against any user, and if they are granted for a limited period. If these conditions were met, the discounts would not count as State aid (cf. the 'Manchester' case). They are not met in this case, as Ryanair is the sole beneficiary and is to receive such treatment for a period of 15 years.

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6 By reference to Article 87(3)(c) of the EC Treaty: '*The following shall be compatible with the common market: … aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.*

7 Such development benefits the regions by ensuring a better return from existing public goods and facilitating regional economic development, in particular through job-creation and tourism; it benefits the Member State concerned by encouraging spatial planning and better use of existing airports as opposed to the construction of new infrastructure or extensions; and it benefits the European Union whose need to develop airport capacity was pointed out in the White Paper on Transport and which provides part of the financing for airports through its regional policy, the TENs and the EIB.

When granting advantages exclusively to Ryanair through a bilateral deal which received no publicity, in particular landing charges below the standard rate, the Walloon Region acted in a regulatory capacity and not as an undertaking. This aid must be recovered from the recipient, except for the part of the official rebate already foreseen in the Walloon legislation. The guarantees given to Ryanair in this connection for the future must be withdrawn.

In future, the Walloon Region will obviously still be able to introduce a new standard rate which acts as an incentive, but it must be applied transparently to all airlines.

- **Reduced ground handling fees**. Reductions are possible if an airport can demonstrate that any losses made on this service, provided in a competitive environment, are not offset by revenue from airport authority tasks or airport services of general economic interest, for which separation of accounts is required.

  The reductions granted to Ryanair by BSCA, which take the form of a preferential tariff for ground handling services and would not enable the airport to cover its costs in respect of this activity, must therefore be recovered. The amount concerned could be at least EUR 4 million for the 2001-2003 period. However, as long as the two million passengers per annum threshold laid down in Directive 96/67 liberalising the ground handling sector is not reached, BSCA could also use any surpluses there may be from its other, purely commercial activities (parking, shops, etc.) to cover its deficit on the ground handling side..
- **One-shot incentives provided for the opening of new routes**. Such incentives which do not take account of the actual costs of opening the routes concerned are not justified. Contributions of this kind were paid to Ryanair in respect of staff recruitment, training and accommodation costs, the opening of new routes and the provision of premises. In principle, there is nothing about them which would prevent them from being treated like start-up aid, as described below. However, since in this case they have been provided on a flat-rate basis and are not tied to any objective, it might be necessary to recover them.
- **Aid provided for the Dublin-Charleroi route**. This route is not “new” within the meaning of start-up aid (it opened in 1997); the aid granted in respect of this route must therefore be recovered.

7. What is the impact on low-cost airlines?

With this decision, the Commission gives a clear signal in favour of the extension of the model of low-cost airlines. Since 1992, using all the political, legal and legislative means at its disposal, t**he Commission has always encouraged the opening-up of the air transport market to competition.** In fact, it is thanks to liberalisation in that competition has increased in the European Union, allowing new low-cost airlines to develop and Ryanair to expand. The wider and more affordable range of services on offer benefits Europe’s consumers: **the existence of low-cost airlines is proof that this Commission policy has succeeded**. The **Commission** intends to proceed further along this path and **will therefore continue to ensure fair competition for everyone** in the single market for air transport.

8. Will the decision be good for regional development?

The Commission's decision does not prevent agreements between regional airports and low-cost airlines. Quite the contrary, for the **Commission encourages any initiative which enables better use to be made of airport infrastructure** which is under-used and welcomes any arrangement which would help to solve the problems of air transport congestion and give Europe's citizens greater choice when it comes to flying: in this connection, secondary airports are extremely well-placed to play a key role. They are also a very significant factor in regional economic development. **Today's decision** by the Commission **helps to clarify the framework** within which the two parties may collaborate, which should **facilitate the conclusion of many more agreements throughout the European Union.**

9. Will this decision impact on fares?

No. A low-cost airline which is in good financial health must be able to offer cheap fares without using State aid. The Commission is convinced that Ryanair is, and will continue to be, following this decision, quite capable of offering its service at low cost, just as other low-cost carriers do and will continue to do. Today's decision does not have an impact on market offerings or prospects for lower fares. By authorising start-up aid under certain conditions, the Commission is paving the way for agreements which make new routes serving regional airports viable. It will help in particular in the long term to introduce **increased competition which should result in the development of low-cost carriers throughout the European Union, especially at regional airports, for the maximum benefit of consumers**.