



PRESS RELEASE No 185/22

Luxembourg, 17 November 2022

Judgment of the Court of Justice in Joined Cases C-331/20 P | Volotea v Commission and C-343/20 P | easyJet Airline v Commission

The Court of Justice sets aside the two judgments of the General Court which dismissed the actions of Volotea and easyJet against the decision of the Commission concerning State aid granted by Italy to Sardinian airports

That decision is also annulled, to the extent that it concerns Volotea and easyJet, since the Commission did not establish the existence of an advantage conferred on those two airlines

Following a formal investigation procedure with respect to an Italian regional law and its implementing measures, under which the operators of airports in Sardinia could be granted financing for the development of air routes serving the island, the Commission decided that those various measures constituted State aid that was unlawful and incompatible with the internal market ('the decision at issue'). Among other airlines, Volotea and easyJet were regarded as having benefited from such aid in connection with their activities concerning the airports of Cagliari-Elmas and Olbia.

Those two airlines then brought actions for annulment of the decision at issue. By its judgments of 13 May 2020,¹ the General Court dismissed those actions. Volotea and easyJet each subsequently brought an appeal before the Court of Justice in order to have the judgments of the General Court set aside.

In its judgment delivered today in Joined Cases C-331/20 P and C-343/20 P, the Court of Justice sets aside the judgments of the General Court and annuls the decision at issue to the extent that it concerns Volotea and easyJet.

The Court of Justice observes, first of all, that in order for a measure to be classified as 'State aid', within the meaning of EU law, all the conditions provided for by the TFEU must be fulfilled, including the condition that the State measure at issue in a given case must confer an advantage on the recipient undertaking or undertakings. The Court also observes that it is clear from its settled case-law that such an advantage exists in the case of any State measure which, whatever its form or objectives, is likely to favour one or more undertakings directly or indirectly as opposed to the situation they would be in under normal market conditions.

It goes on to point out that the characterisation of such an advantage as existing is, in principle, carried out by applying the market economy operator principle, unless there is no possibility of comparing the State conduct at issue in a particular case with that of a private operator, for example, because that conduct is inseparably linked with the existence of infrastructure that no private operator would ever have been able to create, or the State acted in its capacity as a public authority. The Court explains, however, that the mere exercise of the prerogatives of a public authority, such as the use of means that are legislative or fiscal in nature, does not by itself render that principle inapplicable, since it is the economic nature of the State intervention at issue and not the means put into

¹ Judgments of 13 May 2020, *Volotea v Commission* [T-607/17](#) and *easyJet v Commission*, T-8/18 (see also [Press Release No 59/20](#)).

effect for that purpose that renders that principle applicable.

Lastly, the Court observes that the application of the market economy operator principle means that the Commission must show, following an overall assessment that takes into consideration all the relevant evidence in the case, that the undertaking or undertakings benefiting from the State measure at issue would manifestly not have obtained a comparable advantage from a normally prudent and diligent private operator in a situation that is as alike as possible and acting under normal market conditions. In that context, the Commission must have regard to all the options that such an operator would reasonably have envisaged, all the information available and likely to have a significant influence on the decision of that operator, and the developments that were foreseeable at the time when that decision was taken. Furthermore, the Commission must determine whether the transaction by which the advantage was conferred could be considered rational from an economic, commercial and financial perspective, taking account of its prospects for profitability over the short or longer term and of its other commercial or economic interests.

In the present case, the Court of Justice finds that the General Court, in the judgments under appeal, did not ascertain whether the Commission had fulfilled its obligation, in the decision at issue, to determine whether the contracts for the provision of services concluded between the airport operators and the airlines constituted normal market transactions. The General Court incorrectly found that the market economy operator principle was not applicable because the region had pursued public policy objectives and acted through the intermediary of airport operators which were private undertakings.

Furthermore, the General Court **erred in law** by holding that Volotea and easyJet had to be regarded as having benefited from an 'advantage' on the ground that the remuneration paid to them under the contracts that they had concluded with the operators of Cagliari-Elmas and Olbia airports did not constitute consideration for services that met genuine needs for the region and because those contracts had in addition been concluded without the implementation of a tender procedure or an equivalent procedure beforehand.

As regards the decision at issue, the Court of Justice finds that the Commission also erred in law by failing to apply the market economy operator principle in the present case and by accepting the existence of an advantage on the basis of legal and factual considerations that were not capable of justifying such a finding.

Having regard to the foregoing, **the Court both sets aside the judgments under appeal and annuls the decision at issue.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Stay Connected!

