



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1196/4/8/12

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application on 13 July 2012 under section 120(1) of the Enterprise Act 2002 (“the Act”) by Ryanair Holdings plc (“Ryanair”). Ryanair challenges a decision by the Competition Commission (“CC”) notified to Ryanair by a letter dated 10 July 2012. Ryanair is represented by Cleary Gottlieb Steen & Hamilton LLP, City Place House, 55 Basinghall Street, London EC2V 5EH (ref: Jonathan Kelly/Luke Streatfeild).

The background to this matter is set out in paragraphs 1 to 32 of the Tribunal’s decision dated 28 July 2011¹ in Case No1174/4/1/11 *Ryanair Holdings plc v Office of Fair Trading*, and in a subsequent judgment of the Court of Appeal.²

On 15 June 2012 the Office of Fair Trading (“OFT”) referred to the CC under section 22 of the Act the completed acquisition by Ryanair of 29.82% of the share capital of Aer Lingus Group plc (“Aer Lingus”). However, on 19 June 2012 Ryanair announced its intention to make a public bid for the entirety of Aer Lingus (“the Public Bid”).

According to Ryanair the Public Bid will give rise to a concentration with a Community dimension within the meaning of Article 1 EC Merger Regulation³ (“ECMR”). Its announcement triggered the exclusive jurisdiction of the European Commission under Article 21 ECMR. This exclusive jurisdiction extends to Ryanair’s minority stake in Aer Lingus. In any event, from the date of the announcement of the Public Bid, the CC was precluded by the duty of sincere cooperation under Article 4(3) of the Treaty on European Union (“TEU”) from taking any action which might overlap with those matters being considered by the European Commission. There is a clear overlap between the matters being considered by the CC and the matters being considered by the European Commission.

As a consequence of its decision to continue the investigation under the Act, on 10 July 2012 the CC issued to Ryanair a notice under section 109 of the Act (“the section 109 Notice”) requiring the provision of information and the production of documents.

Ryanair submits that the decision to issue the section 109 Notice was unlawful as the CC ought properly to have suspended its investigation. Moreover, the section 109 Notice is not only unlawful but, as part of an overlapping and parallel merger investigation, it is oppressive and prejudicial to the proper conduct of both investigations. For this reason, Ryanair contends that the continuation of the CC investigation is contrary to the public interest. Further, the requirements of the CC investigation (including the section 109 Notice and supplementary requests by the CC) will cause Ryanair serious and irreparable damage.

In summary, Ryanair submits that the CC has erred in law in deciding to continue its investigation into Ryanair’s acquisition of a minority stake in Aer Lingus notwithstanding the overlapping and parallel investigation into Ryanair’s bid for the entirety of Aer Lingus by the European Commission. The error of law arises under Article 21 ECMR or the duty of sincere cooperation under Article 4(3) TEU or both.

¹ <http://www.catribunal.org.uk/237-6912/1174-4-1-11-Ryanair-Holdings-plc.html>

² <http://www.bailii.org/ew/cases/EWCA/Civ/2012/643.html>

³ Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings [2004] OJ L 24, p.1.

By way of relief Ryanair requests that:

1. The decision to continue the CC's investigation into Ryanair's minority stake in Aer Lingus be quashed or stayed pending the determination of the European Commission's investigation; and
2. The decision to issue the section 109 Notice be quashed or stayed pending the determination of the European Commission's investigation.

In addition, Ryanair applies for an order under rule 61 of the Rules suspending the CC's investigation, including the section 109 Notice, pending the determination of Ryanair's application for review.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received by no later than **5pm on Wednesday 18 July 2012**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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