

Commission Decision (EU) 2017/2336 of 7 February 2017 SA.21877 (C 24/2007), SA.27585 (2012/C) and SA.31149 (2012/C) — Germany Alleged State aid to Flughafen Lübeck GmbH, Infratil Limited, Ryanair and other airlines using the airport (notified under document C(2017) 602) (Only the German text is authentic) (Text with EEA relevance)

- Article 1 It is not necessary to decide whether the potential State...
 - Article 2 The sale of 90 % of the shares of FLG to...
 - Article 3 The 2000 Agreement between Ryanair and Lübeck airport does not...
 - Article 4 The charges for the de-icing of aircrafts do not constitute...
 - Article 5 This Decision is addressed to the Federal Republic of Germany....
- Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2017/2336. (See end of Document for details)

- (1) [OJ C 287, 29.11.2007, p. 27.](#)
- (2) [OJ C 295, 7.12.2007, p. 29](#) and [OJ C 241, 10.8.2012, p. 56.](#)
- (3) *Infratil* is a New Zealand-based infrastructure investment company, investing in the energy, airport and public transport sectors. It owned and operated in particular the following airports: Wellington International airport, New Zealand; Glasgow Prestwick Airport and Kent International Airport, United Kingdom. It has in the meantime divested its investments in European airports.
- (4) *Ryanair* is an Irish airline and member of the European Low Fares Airlines Association. The business of the airline was linked with secondary, regional airports. The airline currently operates approximately 160 European destinations. Ryanair had a homogenous fleet consisting of 272 Boeing 737-800 aircraft with 189 seats. Ryanair operated 23 flights per week at the time of the opening decision in 2007 from Lübeck airport to 5 European destinations, namely London-Stansted, UK, Mailand-Bergamo and Pisa, Italy, Palma de Mallorca, Spain, and Stockholm-Skavsta, Sweden.
- (5) [OJ C 287, 29.11.2007, p. 27.](#)
- (6) [OJ C 295, 7.12.2007, p. 29.](#)
- (7) Schutzgemeinschaft gegen Fluglärm Lübeck und Umgebung Groß Grönau eV and Check-in Lübeck e.V.
- (8) Industrie- und Handelskammer zu Lübeck (IHK).
- (9) Peter C. Klanowski and Horst Conrad.
- (10) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union of the EC Treaty ([OJ L 83, 27.3.1999, p. 1](#))
- (11) Communication from the Commission — Guidelines on State aid to airports and airlines ([OJ C 99, 4.4.2014, p. 3](#)).
- (12) [OJ C 113, 15.4.2014, p. 30.](#)
- (13) This is a non-governmental organisation registered under the rules of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC ([OJ L 156, 25.6.2003, p. 17](#)).
- (14) Prior to the opening, the measures were investigated in cases CP 31/2009 (SA.27585) and CP 162/2010 (SA.31149).
- (15) [OJ C 241, 10.8.2012, p. 56.](#)
- (16) Federal Association for German Commercial Airports (Bundesverband der deutschen Verkehrsflughäfen).
- (17) Yasmina was a 100 % subsidiary of 3 Y Logistic und Projektbetreuung GmbH ('3Y'), an investment company owned by a natural person, namely the Saudi Adel Mohammed Saleh M. Alghanmi. Yasmina was set up for the purpose of buying and operating Lübeck airport.
- (18) Case T-461/12 *Hansestadt Lübeck v European Commission* ECLI:EU:T:2014:758.
- (19) Case C-524/14 P *Commission v Hansestadt Lübeck* ECLI:EU:C:2016:971.
- (20) Bürgerschaft of Hansestadt Lübeck consists of representatives of citizens of the city.
- (21) OJ 2012/S 156-261107 of 16 August 2012 (<http://ted.europa.eu/udl?uri=TED:NOTICE:261107-2012:TEXT:EN:HTML&tabId=1>).
- (22) Commission Decision of 19 January 2005, N644i/2002 — Germany — Ausbau der kommunalen wirtschaftsnahen Infrastruktur nach Teil II Ziffer 7 des Rahmenplans der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur' (i) Errichtung oder Ausbau von Regionalflughäfen ([OJ C 126, 12.5.2005, p. 10](#)).
- (23) The planning permission decision allowing for the developments of Lübeck Airport, which was made on 20 January 2005 and covered various infrastructural measures, has been contested in court by various parties. In the interim procedure two high court decisions have been taken which have force of law: These decisions are Decision 4 MR 1/05 of 18 July 2005 of Schleswig Higher

- Administrative Court (OVG) and Decision 101/05/EC of 21 October 2005 of Schleswig Higher Administrative Court (OVG). On the basis of these rulings, the planning approval was denied.
- (24) Confidential information.
 - (25) Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).
 - (26) Oberverwaltungsgericht Schleswig; 4MR1/05.
 - (27) Case C-482/99 *France v Commission* ('Stardust Marine') ECLI:EU:C:2002:294.
 - (28) Case T-163/05, *Bundesverband deutscher Banken v Commission (Helaba I)* ECLI:EU:T:2010:59.
 - (29) Case C-280/00 *Altmark Trans GmbH und Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* ECLI:EU:C:2003:415.
 - (30) Oxera report, Economic MEOP assessment: Lübeck airport, 6 February 2015.
 - (31) Business plan 'Takeoff Konzept' from 21 December 2009, see http://www.luebeck.de/stadt_politik/rathaus/wahlen/files/M21_Take_off_Konzept_HL-Umdruck_17-156_WA_Ltsh.pdf
 - (32) Case C-482/99 *France v Commission* ('Stardust Marine') ECLI:EU:C:2002:294.
 - (33) Case T-196/04 *Ryanair v Commission* ('Charleroi') ECLI:EU:T:2008:585.
 - (34) Commission Decision of 12 November 2008 State aid N 510/2008 — Italy — *Sale of assets of Alitalia* (OJ C 46, 25.2.2009, p. 6).
 - (35) Cases C-328/99 and C-399/00, *Italy and SIM 2 Multimedia v Commission* ECLI:EU:C:2003:252; Commission decision of 17 September 2008, State aid N 321/2008, N 322/2008 and N 323/2008 — Greece — *Vente de certains actifs d'Olympic Airlines/Olympic Airways Services* (OJ C 18, 23.1.2010, p. 9); Commission decision of 12 November 2008 State aid N 510/2008 — Italy — *Sale of assets of Alitalia* (OJ C 46, 25.2.2009, p. 6); Commission decision of 4 April 2012 SA.34547 — France — *Reprise des actifs du groupe SERNAM dans le cadre de son redressement judiciaire* (OJ C 305, 10.10.2012, p. 5).
 - (36) Case T-123/09, *Ryanair Ltd v Commission* ECLI:EU:T:2012:164.
 - (37) Case T-123/09, *Ryanair Ltd v Commission* ECLI:EU:T:2012:164, paragraph 156.
 - (38) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).
 - (39) Bürgerliches Gesetzbuch [BGB] Aug. 18. 1896, para 613a 242.
 - (40) Commission Decision of 4 April 2012 SA.34547 — France — *Reprise des actifs du groupe SERNAM dans le cadre de son redressement judiciaire*.
 - (41) A due diligence is the examination of a potential target for merger, acquisition, privatisation, or similar corporate finance transaction normally by a buyer.
 - (42) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), recital 94.
 - (43) Case T-415/05, *Greece v Commission* ECLI:EU:T:2010:386, paragraph 146.
 - (44) *Ibid.* The Court has found that economic inconsistency may be an indication for financial continuity.
 - (45) Case C-610/10 *Commission v Spain* [2012] ECLI:EU:C:2012:781, paragraph 106.
 - (46) Insolvency law ('Insolvenzordnung') of 5 October 1994 (BGBl. I S. 2866), last amended by Article 16 of the Law of 20 November 2015 (BGBl. I S. 2010).
 - (47) See Commission Decision of 27 February 2008 on State aid C 46/07 (ex NN 59/07) which Romania has implemented for Automobile Craiova (former Daewoo Romania) (OJ L 239, 6.9.2008, p. 12).
 - (48) Case C-342/96 *Kingdom of Spain v Commission* ECLI:EU:C:1999:210, paragraph 41; Case C-39/94 *Syndicat français de l'Express international (SFEI) and others v La Poste and others* ECLI:EU:C:1996:285, paragraph 60.
 - (49) See for example: Case T-296/97 *Alitalia v Commission* ECLI:EU:T:2000:289; Cases T-228/99 and T-233/99, *WestLB v Commission* ECLI:EU:T:2003:57; Case T-366/00, *Scott SA v Commission*

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- ECLI:EU:T:2007:99; Cases C-328/99 and C-399/00, *Italy and SIM 2 Multimedia v Commission* ECLI:EU:C:2003:252; Case T-358/94, *Air France v Commission* ECLI:EU:T:1996:194.
- (50) XXIIIrd Report on Competition Policy, 1993, p. 255.
- (51) Commission Decision C(2013) 3546 final of 19 June 2013, SA.36197(N/2013) — *Portugal Privatisation of ANA — Aeroportos de Portugal*, OJ C 256, 5.9.2013, p. 3; Case C-40/85 *Belgium v Commission*, ECLI:EU:C:1986:305.
- (52) Case C-482/99 *France v Commission* ('Stardust Marine') ECLI:EU:C:2002:294, paragraph 71.
- (53) Valuation by Berenberg Consult GmbH (a subsidiary of Hamburger Privatbank Berenberg).
- (54) See point 403 of the European Commission's XXIIIrd Report on competition policy, 1993; point 4.2.3.1 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1).
- (55) Case C-482/99 *France v Commission* ('Stardust Marine') ECLI:EU:C:2002:294, paragraph 71.
- (56) See 2014 Aviation Guidelines, paragraph 53.
- (57) See 2014 Aviation Guidelines, paragraph 59.
- (58) See Commission Decision 2011/60/EU of 27 January 2010 on State aid C 12/2008 (ex NN 74/07) — Slovakia — Agreement between Bratislava Airport and Ryanair, recitals 88 and 89 (OJ L 27, 1.2.2011, p. 24).
- (59) See 2014 Aviation guidelines, paragraphs 57 to 59.
- (60) See, as regards benchmarking by reference to profitability (as opposed to pricing) in the sector, Joined Cases T-319/12 and T-321/12 *Spain and Ciudad de la Luz v Commission* ECLI:EU:T:2014:604, paragraph 44.
- (61) See 2014 Aviation guidelines, paragraph 60 for further criteria to be assessed.
- (62) See 2014 Aviation guidelines, paragraphs 59 and 63.
- (63) See 2014 Aviation guidelines, paragraph 63.
- (64) See 2014 Aviation guidelines, paragraph 64.
- (65) 2014 Aviation guidelines, paragraph 64; Commission Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ L 201, 30.7.2015, p. 48); Commission Decision (EU) 2015/1584 of 1 October 2014 on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. and various air carriers operating at Alghero airport (OJ L 250, 25.9.2015, p. 38); Commission Decision (EU) 2016/2069 of 1 October 2014 concerning measures SA.14093 (C76/2002) implemented by Belgium in favour of Brussels South Charleroi Airport and Ryanair (OJ L 325, 30.11.2016, p. 63).
- (66) Case T-196/04 *Ryanair v Commission* ('Charleroi') ECLI:EU:T:2008:585, paragraph 59.
- (67) Case C-482/99 *France v Commission* ('Stardust Marine') ECLI:EU:C:2002:294, paragraph 71.
- (68) Case C-305/89, *Italian Republic v Commission of the European Communities (ALFA Romeo)* ECLI:EU:C:1991:142.
- (69) The report has previously been mentioned in Section 7.3.1.1 regarding the profitability of the agreement between HL and Infratil.
- (70) See 2014 Aviation guidelines, paragraph 64.
- (71) See Decision (EU) 2015/1226.
- (72) Decision (EU) 2015/1584.
- (73) Oxera report, Economic MEOP assessment: Lübeck airport, 1 September 2014.
- (74) Case T-210/02 *RENV British Aggregates Association v Commission*, ECLI:EU:T:2012:110, paragraphs 82 and 83; Joined Cases C-106/09 P and C-107/09 P, *Commission and Spain v Government of Gibraltar and United Kingdom*, ECLI:EU:C:2011:732, paragraphs 74 and 75; Case C-518/13 *Eventech v The Parking Adjudicator*, ECLI:EU:C:2015:9, paragraphs 54 and 55.

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(75) Case C-524/14 P *Commission v Hansestadt Lübeck* ECLI:EU:C:2016:971, paragraph 62.

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