



Luxembourg, 10 December 2014

PRESS RELEASE 18/2014

Judgment in Case E-18/14 *Wow air ehf. v The Icelandic Competition Authority, Isavia ohf. and Icelandair ehf.*

ALLOCATION OF TIME SLOTS AT EEA AIRPORTS

In a judgment delivered today in an accelerated procedure, the Court answered the questions referred to it by Reykjavík District Court (*Héraðsdómur Reykjavíkur*) on the interpretation of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (“the Regulation”).

Wow air and Icelandair are air carriers operating scheduled flight services to and from Iceland. Isavia is a public limited company managing Keflavík International Airport, which is a coordinated airport pursuant to the Regulation.

In November 2013, following a complaint from Wow air, the Icelandic Competition Authority decided that the procedure for allocation of time slots for take-off and landing at the airport had a detrimental impact on competition. It instructed Isavia to provide certain time slots to Wow air for the summer schedule of 2014. In February 2014, the Competition Appeals Board annulled that decision. The Appeals Board stated that the decision should not have been addressed to Isavia, since the airport coordinator was the sole responsible person for time slot allocation.

Wow air challenged the Appeals Board’s decision before Reykjavík District Court. The District Court made a reference to the Court on the status of the airport coordinator, and whether public authorities can intervene in time slot allocations on the basis of competition law.

The Court found that the Regulation requires EEA States to ensure the appointment of a qualified airport coordinator, and that the coordinator must be independent, both legally and factually, and functionally separated from all interested parties. As long as these conditions are fulfilled, an EEA State has discretion in determining the status of the coordinator.

The Court found that the complaint procedure prescribed in the Regulation cannot be considered mandatory or exhaustive. The Regulation expressly states that this procedure is without prejudice to rights of appeal under national law, and also that the Regulation shall not affect the powers of public authorities to require the transfer of time slots between air carriers and to direct how these are allocated pursuant to national or EEA competition law. Therefore, complaints based on competition law considerations may be submitted directly to national competition authorities.

However, the Court held that the purpose of the Regulation suggests that intervention from public authorities in allocated time slots between air carriers must be supported by specific competition concerns based on restrictive practices, abuse of a dominant position or merger rules.

Furthermore, the Court found that instructions as to the reallocation of time slots may be addressed to air carriers, but not to the coordinator or the airport managing body. Unlike the initial allocation of time slots, which is the sole responsibility of the coordinator, the Regulation does not prohibit a transfer of time slots afterwards. Consequently, the authorities of an EEA State may instruct the undertakings concerned, if such a remedy is necessary under national or EEA competition law.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.