This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

►B

COMMISSION DECISION

of 17 September 2008

on State aid C 61/07 (ex NN 71/07) — Greece Olympic Airways Services/Olympic Airlines

(notified under document C(2008) 5073)

(Only the Greek text is authentic)

(Text with EEA relevance)

►C1 (2010/459/EC) ◄

(OJ L 222, 24.8.2010, p. 62)

Corrected by:

►C1 Corrigendum, OJ L 231, 1.9.2010, p. 7 (2010/459/EC)

▼B

COMMISSION DECISION

of 17 September 2008

on State aid C 61/07 (ex NN 71/07) — Greece Olympic Airways Services/Olympic Airlines

(notified under document C(2008) 5073)

(Only the Greek text is authentic)

(Text with EEA relevance)

►C1 (2010/459/EC) ◄

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the above Articles [1], and having regard to these comments,

Whereas:

1. PROCEDURE

(1) By letter dated 19 December 2007, the Commission informed Greece of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of a number of financial flows and transfers which gave rise to issues of State aid concern in connection with the financing and operations of Olympic Airways Services SA and Olympic Airlines SA.

(2) On 14 January 2008 Greece requested an extension of the deadline for its reply which was accepted by the Commission. Greece transmitted its comments on 13 February 2008.

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the measures in question within one month of the publication date.

(4) The Commission received comments on the subject from interested parties. It transmitted the comments to Greece by electronic mail of 9 April 2008. Greece was given the opportunity to respond to these comments, the Commission received Greece's observations by electronic mail dated 13 May 2008.

[1] OJ C 50, 23.2.2008, p. 13.
[2] See footnote 1.

▼B

2. DESCRIPTION OF THE FACTS

2.1. The parties

2.1.1. *Olympic Airways Services SA*

(5) Olympic Airways Services SA is the current name of the company formerly known as Olympic Airways SA ([1]). It is primarily involved in the provision of ground-handling and aircraft maintenance/engineering services in Greece and does not operate any aircraft. It is 100 % state-owned.

2.1.2. *Olympic Airlines SA*

(6) Olympic Airlines SA began operation in December 2003 and was established from the flight divisions of Olympic Airways. It operates scheduled air services within Greece on intra-EU and inter-continental routes. It is 100 % state-owned ([2]).

2.2. Measures under investigation

(7) The opening decision investigated the following four areas:

— Potential State aid to Olympic Airways Services SA through forbearance of debts The Hellenic Republic may have granted illegal and incompatible State aid to this company through its continued forbearance towards Olympic Airways in relation to its tax and social security debts since January 2005 ([3]).

— Potential State aid to Olympic Airways Services SA by means of arbitral panel awards The Hellenic Republic may have granted illegal and incompatible State aid to Olympic Airways Services in connection with payments made in respect of a number of arbitral panel decisions. These decisions result from a number of damages actions taken by this company against the State.

— Potential State aid to Olympic Airlines SA: The Hellenic Republic may have granted illegal and incompatible State aid by means of aircraft lease payments and non-execution

([1]) Olympic Airways SA was formally renamed Olympic Airways – Services SA. An amendment of the Articles of Association of Olympic Airways SA was published in the Greek Govt. Gazette no. 1485/19.2.2004, SA issue, on 19 February 2004. The amendment concerned the provision of article 1, on the basis of which the company was renamed 'Olympic Airways – Services SA' and its duration was set for 46 years, namely up to 31/12/2049 inclusive. The amendment also concerned the provision of article 2. The main purpose of the company is ground handling servicing, engine and aircraft overhaul workshop operations, representation and agency of airline operators etc. Hereafter in this decision the terms 'Olympic Airways' is used to mean both 'Olympic Airways SA' up to February 2004 and 'Olympic Airways – Services SA' thereafter.

([2]) On 14 September 2005 the Commission adopted a final negative decision (Decision 2005/2706/EC – not yet published) concerning aid granted by the Hellenic Republic to Olympic Airways and Olympic Airlines.

([3]) The 2005 Decision only took into account aid granted to Olympic Airways up to and including December 2004.

▼B

of its debts (including tax and social security liabilities) against this indebted State owned company since June 2005 ([1]).

— Potential State aid to Olympic Airways Services SA and to Olympic Airlines by means of special creditor protection: meaning that no legal action or individual or collective enforcement measures (includes precautionary measures and injunctions) may be taken, in Greece or abroad, against either company by any private creditor. This legal protection is not granted to any other entity in Greece and is specific to these companies. Any other company in Greece seeking such creditor protection would have to go into bankruptcy.

(8) The potential State aid to Olympic Airways Services by means of the arbitral panel awards requires further, more detailed examination. It is therefore excluded from the scope of the current decision and will be dealt with in a separate later Commission decision.

2.2.1. *Tax and social security debts of Olympic Airways Services since December 2004*

(9) In its 2005 Decision the Commission identified a pattern of behaviour whereby the State did not collect its taxation and social security liabilities from Olympic Airways when these fell due, these debts would then be 'certified' against the company but no execution of this debt would be undertaken by the State. Over time the company would make partial payments by instalment ([2]). In the 2005 Decision the Commission concluded that the delayed or under-payment of taxation and social security liabilities by Olympic Airways provided a cash flow benefit to this company at the expense of the State.

(10) In the 2005 Decision (Article 3 thereof) the Commission obliged Greece to 'immediately suspend all further payments of aid to Olympic Airways and Olympic Airlines'. On several occasions ([3]) the Commission requested the Greek authorities to provide information on how it had implemented this aspect of the decision. And to provide Commission services with information regarding the tax and social security contributions paid by this company to the State. Notwithstanding these repeated specific requests the Greek authorities have failed to provide adequate information in this regard.

(11) Far from providing the Commission services with information and confirmation that these companies are paying their tax and social security debts in full and on time the information provided by the Greek authorities to the Commission and to the European Courts is such as to suggest that the two companies Olympic Airways Services and Olympic Airlines cannot and do not discharge their ever-increasing debts to the public authorities.

([1]) The 2005 Decision only took into account aid granted to Olympic Airlines up to and including May 2005.

([2]) For example in 2003-2004 Olympic Airways made payments of EUR 7,7 million relating to a Settlement Agreement for years prior to 2003.

([3]) Commission letters of 25 August 2006 (ref D (2006) 217009) and of 16 July 2007 (ref D (2007) 313288).

▼B

(12) By letter dated 30 October 2006 ([1]) the Greek authorities provided the Commission services with a letter dated 13 June 2006 from an 'independent assessor' called 'Progressive Finance' on the subject of the financial situation of Olympic Airways. The expert based itself on the 2004 Balance Sheet (not provided to the Commission) and the 2006 Cash Flow. The expert concluded that, on the basis of the information at its disposal, the company's negative financial situation was directly related to its obligations to the State and to the social security administration and the outstanding State aid issues. 'Progressive Finance' also stated that on the basis of the 2006 Cash Flow, the company is not considered creditworthy and it had no possibility of contracting and servicing a loan to repay the State aid identified in the 2005 Decision.

(13) Furthermore, in the context of Case T-423/05 R, Olympic Airways was asked by the President of the Court of First Instance to provide the Court with information on its capacity to repay the State aid identified by the Commission and its level of indebtedness.

(14) By letter dated 27 November 2006 the company provided the Court with a report by the independent expert PriceWaterhouse-Coopers on the possibility of a repayment by instalments of aid and an assessment of the aid that had been repaid following the negative Commission Decisions of 2002 and 2005.

(15) Olympic Airways' expert (PwC) calculated the amounts to be recovered as a result of the 2005 Decision at EUR 411 million, which it said could be refunded in 48 monthly instalments and which, having regard to the debts owed to the Social Security administration, could be extended to 96 instalments only following a legislative modification. The expert however acknowledged that 'the analysis of Olympic Airway's cash flows as they were provided us by the company (and which, for lack of time could not be subject to a detailed control as to their exactitude and their exhaustiveness) leads to the conclusion that the eventuality of a total or partial repayment of the amounts due is not possible'.

(16) In its opening of the investigative procedure the Commission reached the preliminary conclusion that the obligation to suspend all further payments of aid to Olympic Airways contained in Article 3 of the 2005 Decision has not been respected. Furthermore, the Commission came to the preliminary conclusion that Olympic Airways is not paying its tax and social security liabilities in full and on time and cannot even pay its existing debts and that this behaviour is only possible due to the forbearance of the State.

2.2.2. *State aid to Olympic Airlines since 2005*

(17) In relation to Olympic Airlines the Commission in its 2005 Decision identified as State aid granted to Olympic Airlines the 'Acceptance by Olympic Airways and by Greece of lease payments from Olympic Airlines for the sub-leasing of aircraft which are lower than the amounts paid for head leases …'

([1]) Ref.: 3082.07/004/A/9749.

▼B

(18) The Hellenic Republic ([1]) did not dispute the fact that the State and Olympic Airways had sub-leased the aircraft in question to Olympic Airlines at rates lower than those of the original leases, it did however take issue with the assessment that this amounted to State aid. The Hellenic Republic's contention was that as Olympic Airlines paid the market price for these sub leases it obtained no advantage.

(19) As previously mentioned, Article 3 of the 2005 Decision required Greece to immediately suspend all State aid payments. Notwithstanding repeated reminders of the Commission ([2]) of the obligation to 'immediately suspend all further payments of aid to Olympic Airways and Olympic Airlines' and requests to furnish the Commission with information that Olympic Airlines is currently paying or has paid the head lease payments in respect of the leased aircraft identified in the 2005 Decision, the Greek authorities have failed to do so.

(20) In relation to the financial situation of Olympic Airlines, the Commission has asked Greece to provide it with information regarding the current financial situation of Olympic Airlines and how the company is currently operating. The information provided by the Greek authorities prior to the opening of procedure has not reassured the Commission. The Commission does not understand how the company finances its day-to-day operations and addresses its losses. The Commission expressed doubts as to whether the company is paying its taxes and social liabilities to the State in full and on time or whether, it benefits from the forbearance from the State in this regard.

(21) In the opening decision the Commission noted that although Olympic Airlines began operations in December 2003 with little or no debt ([3]), in 2004 it already suffered an operating loss of EUR 94,5 million on a turnover of EUR 616,7 million and a net loss for the year before taxation of EUR 87,1 million. In 2005 Olympic Airlines posted a net loss of EUR 123,7 million ([4]) on revenues of EUR 643 million for 2005 ([5]). It had been widely reported by the media ([6]) that the losses of the company for 2006 will be in excess of EUR 120 million. On this basis, since it commenced services in December 2003, Olympic Airlines has lost a total of over EUR 330 million over the first three years of operations.

2.2.3. *State aid to Olympic Airways Services SA and to Olympic Airlines SA by means of special creditor protection*

(22) Article 22 of Law No 3404/05 ([7]) provides that 'up to and including 28 February 2006 no legal action or individual or collective enforcement measures (includes precautionary measures and injunctions) may be taken, in Greece or abroad, against Olympic Airlines S.A., Olympic Airways – Services S.A., Olympic Aviation S.A., their assets or any part of their assets which is necessary for or useful to such assets; any such legal

([1]) Letter of 16 November 2006.
([2]) Letters of 25 August 2006 (ref. D (2006) 217009) and 16 July 2007 TREN (ref. D (2007) 313288).
([3]) All long-term debt was left with Olympic Airways and of the taxes, social security and other duties due to the Greek State only one month's liabilities were transferred to Olympic Airlines.
([4]) Source Reuters, 20 December 2006.
([5]) It does not seem that the company has published audited accounts since December 2003
([6]) Source Kathimerini, 21 September 2007.
([7]) 'Regulation of matters relating to the university and technological fields within higher education and other provisions' (Greek Government Gazette A 260).

▼B

action currently ongoing and the consequences of any such measures shall be suspended for the abovementioned period of time. The Greek State is exempted from these restrictions.' The validity of this provision was extended three times, initially until 31 October 2006 ([1]) subsequently to 31 October 2007 ([2]) and finally to 31 October 2008.

(23) This provision effectively prohibited the enforcement of rulings, in Greece or abroad, against any company within the Olympic Group. The effect of this law is to unilaterally shield these companies from their obligations as ruled by a court of law, halting the procedures intended to enforce such obligations, and blocking the possibility of precautionary measures.

(24) The Commission concluded that this provision therefore gives Olympic Airways and the other companies within the group preferential treatment, granting it a type of legal protection not afforded to other domestic or foreign airlines or indeed any other economic operator. Any other company in Greece seeking such creditor protection would have to go into bankruptcy.

2.3. **Initial assessment by the Commission**

2.3.1. *Existence of aid*

2.3.1.1. Tax and social security debts of Olympic Airways Services since December 2004

(25) In opening the investigative procedure the Commission concluded that the State forbearance in relation to its tax and social security debts of Olympic Airways Services accumulated since January 2005 clearly constituted a grant of State resources aimed at one undertaking which is in competition with others and as such constituted State aid.

2.3.1.2. State aid to Olympic Airlines since 2005

(26) In opening the investigative procedure the Commission concluded that the suspected discounted aircraft lease payments and non-execution of State debts (including tax and social security liabilities) in favour of Olympic Airlines since May 2005 involve State resources aimed at specific undertakings in competition with others and as such constituted State aid.

2.3.1.3. State aid by means of special creditor protection

(27) The Commission also concluded that the special creditor protection afforded to both companies is similar to bankruptcy protection. In this regard it is settled jurisprudence ([3]) that in situations where a Member State has put in place a system derogating from the rules of ordinary law relating to insolvency in favour of an undertaking such a system is to be regarded as

([1]) Article 28 of Law No 3446/2006 (Greek Government Gazette A 49, 10.3.2006).
([2]) Article 35(B) of Law No 3492/2006 (Greek Government Gazette A 210, 5.10.2006).
([3]) C-295/97, *Industrie Aeronautiche e Meccaniche Rinaldo Piaggio SpA* v *International Factors Italia SpA (Ifitalia)*.

▼B

State aid where it is established that the undertaking has been permitted to continue trading in circumstances in which it would not have been permitted to do so if the rules of ordinary law relating to insolvency had been applied, or if it has enjoyed further advantages from the State.

2.3.2. *Compatibility of aid*

(28) In opening the investigation in relation to the public financing believed to have been given to Olympic Airways Services by means of forbearance of debts (including tax and social security) and the special creditor protection the Commission expressed serious doubts as whether any of these measures could be declared compatible with the common market, as none of the exceptions to the general prohibition of State aid seemed to apply.

(29) Similarly with regard to the public financing believed to have been given to Olympic Airlines by means of forbearance of debts (including tax and social security), reduced aircraft lease payments and the special creditor protection the Commission expressed serious doubts whether any of this can be declared compatible with the common market, as none of the exceptions to the general prohibition of State aid seems to apply.

3. **COMMENTS FROM GREECE**

(30) The Hellenic Republic began its observations by underlining the importance of clarifying the time period which is being examined in the current investigation. The opening of procedure is stated in relation to Olympic Airways to cover from December 2004 and in relation to Olympic Airlines from May 2005. The Hellenic Republic takes issue with this and points out that for example, the sum of EUR 12 267 250 (capital plus interest) referred to in the third line of the table in paragraph 138 of the 2005 Decision relates to a debt of Olympic Airways – Services S.A. of 9 March 2005 which was a debt to the tax authorities. In the opinion of the Greek authorities the starting point for the Commission's current investigation under Article 88(2) EC has to be the date on which the 2005 Decision was issued (14 September 2005).

(31) Furthermore, the Hellenic Republic stated that it had already recovered the aid covering the period referred to by the 2005 Decision. By letter dated 21 November 2007 the Hellenic Republic informed the Commission that it had fully implemented the 2005 Decision.

3.1. **Tax and social security debts of Olympic Airways Services since December 2004**

(32) In relation to this heading of aid the Hellenic Republic contends that the company holds a tax and social security clearance form. This means that at present the Greek State has no claim against the company which the company is obliged to settle immediately. The company is not obliged to immediately pay any debts to the tax authorities that remain unpaid due to the fact that it successfully sought judicial remedies and has obtained judgements from the competent national courts. There is no claim for due debts from the Civil Aviation Authority relating

▼B

to Olympic Airways Services. Certain older debts of Olympic Airways Services to the IKA (Social Security) Fund are being paid via monthly instalments, in line with the generally applicable provisions of Law 3518/2006. Consequently, Greece argues that there is no 'prolonged forbearance' by the Greek State in relation to the purported non-payment of debts.

(33) The Hellenic Republic acknowledged that the company's delay in publishing the balance sheets is not in line with its obligations under national law. However, it informed the Commission that it has already taken suitable measures to ensure that this matter is dealt with. The Board of Directors of Olympic Airways Services has already taken a decision to appoint an auditing firm to update its financial statements. The company has already drawn up draft balance sheets for the years 2004 to 2006. The company has established an impression of its financial situation for 2007 in a Balance Sheet Estimate.

(34) The draft balance sheets for the 2004-2006 periods show that the company was in the red with equity of […] (*) million at the end of 2006 and had taxes and duties and social security debts of EUR 1 098 million. However, at the end of the 2007 period the company had significantly improved its equity which now stands at […]*million. Its tax, duties and social security debts now stand at […]*million.

(35) According to the information provided (based on estimates provide by the company), the breakdown of debts to the State and social security providers on 31.12.2007 was as follows:

(in EUR million)

	Olympic Airways Services debts	Amounts	Total
Social security debts	Balance of old debts to the IKA fund paid in monthly instalments	[…]*	
Social security debts	Non-due debts of Olympic Airways Services for the month of December and the Christmas bonus (payable by the end of February 2008)	[…]*	
Social Security debts			[…]*
Taxes – duties	Certified debts to FABE Tax Office suspended due to successful judicial remedies (from tax audits up to 30.4.2007)	[…]*	

(*) Business secret.

▼B

(in EUR million)

	Olympic Airways Services debts	Amounts	Total
	Olympic Airways Services estimates of taxes and fines from May to December 2007	[…]*	
Taxes – duties			[…]*
Grand total			[…]*

(36) As far as social security debts are concerned, Olympic Airways Services has paid all its debts to the IKA Fund and has made arrangements for the repayment of old debts for the period up to and including 31.10.2006 under Law 3518/2006. For accounting purposes, the company is shown in the 2007 financial statement assessments as having a liability to social security providers whose total amount is the debt repayment facility amount on 31.12.2007 plus contributions for the month of December and the 2007 Christmas bonus.

(37) The Hellenic Republic has pointed out in relation to the repayment facility for old Olympic Airways Services debts to the IKA Fund and repayment via monthly instalments that under both Community legislation and well established case law the repayment of debts to the State is to be effectuated in accordance with the rules of national law. This is in compliance with Community law where the specific legal framework does not introduce any discrimination between debtors. In this regard the Hellenic Republic also cites the Commission Communication on the application of the State aid rules to measures relating to direct business taxation ([1]) where the Commission states that taxation measures which apply to all economic operators operating within the territory of a Member State are, prima facie, general measures.

(38) In this case, the procedures to collect old IKA Fund debts which are contained in national law apply without any discrimination to all debtors, including Olympic Airways Services, in accordance with the general legislative framework governing the payment of debts to the State. Consequently in the view of Greece there is no specificity and therefore no infringement of Article 87(1) EC.

(39) As far as its tax debts are concerned, Olympic Airways Services has paid all certified debts to the tax office (FABE and FAEE Tax Offices) apart from those debts for which it successfully obtained judicial remedies before the Greek courts. Consequently, its only outstanding debts are those which are not due and payable under national law.

(40) In the 2007 balance sheet estimate, the company is shown as having tax – duties liability covering all amounts in the said table which relate to the year 2007. Overall, those amounts (plus fines and surcharges) come to EUR […]* million. However, the Hellenic Republic states that the company is not

([1]) OJ C 384, 10.12.1998, p. 3.

▼B

under obligation to pay the Greek State any of the aforementioned debts at present since the company has been successful in obtaining judicial remedies on these matters.

(41) Furthermore, the 2007 balance sheet estimates contains an estimate from the company about probable debts of EUR […]* million.

(42) In this regard the Hellenic Republic asks that the Commission draw a distinction between (a) those debts which are presented for accounting purposes in the company's books and (b) those debts which are payable at present to the Greek State in accordance with the generally applicable provisions of national law. Examination of any issues being reviewed by the Commission in the context of this procedure could only focus on the latter.

(43) On the basis of the information provided the Hellenic Republic opines that there is no issue of transfer of state resources in this case within the meaning of Article 87(1) EC, and even less so any issue of favourable treatment of Olympic Airways Services.

3.2. **State aid to Olympic Airlines from 2005 onwards**

(44) In relation to the sub-lease of aircraft to Olympic Airlines by Olympic Airways Services and the Greek State, the Greek authorities state that Olympic Airlines had the financial ability to conclude operating leases directly with market players and that Olympic Airlines was never favoured by concluding operating leases since these leases were concluded at current market rates and thus there was no concealed State aid.

(45) Furthermore, in selecting Olympic Airlines, Olympic Airways Services had acted just as any private investor in the same position would have acted, since not only did it manage to cut its monthly losses in the best possible manner, but it also ensured that that loss would be limited over time given the stated intention of Olympic Airlines to re-negotiate and take over the head leases.

(46) The Hellenic Republic also wished to point out that the lease payments made by Olympic Airlines for operating sub-leases should not be compared with lease payments for finance leases, with which in its view the Commission has erroneously compared them. These are in effect dissimilar types of leases.

(47) In relation to Olympic Airlines' tax and social security debts the Hellenic Republic states that there has been no forbearance on non-payment, Olympic Airlines has fully settled its social security debts. In relation to its tax debts, the delay in payment of only a part of its tax debts to the Greek State for a limited period since the 2005 Decision does not constitute 'prolonged forbearance' on the part of the Greek State. In any event the Greek State states

▼B

that it has already taken all the measures required under national law to certify and then collect the greater part of the company's arrears. Moreover, the company has already submitted a request for repayment of its certified tax debts in 48 instalments under the generally applicable rules of national law.

3.2.1. *Sub-leasing of aircraft*

(48) The sub-leasing of the aircraft at a price below that of the lease payments in the head leases does not constitute State aid because there was no favourable treatment of Olympic Airlines nor did that company obtain any benefit which it would not have obtained anyway in light of market conditions. The Greek authorities argue that the Commission did not examine at all the level of the lease payments in light of the private investor test and employed a flawed methodology by taking into account the difference between the head lease and the sub-lease of the aircraft instead of examining whether the sub-lease was concluded at market rates.

3.2.2. *Finance leases and operating leases*

(49) The Hellenic Republic considers that the Commission was clearly in error in not distinguishing between finance and operating leases.

(50) Firstly, the Hellenic Republic pointed out that of all the aircraft leased by Olympic Airlines, four A340-300 aircraft had been sub-leased to that company by Olympic Airways Services which had those aircraft on the basis of finance leases. From December 2004 the Greek State replaced Olympic Airways Services in the said finance leases from December 2004 onwards (for the first pair) and from April 2005 onwards (for the second pair). From then to now those aircraft have been sub-leased to Olympic Airlines by the Greek State.

(51) Greece explains that a finance lease is a lease under which the risks and benefits deriving from ownership of an asset are effectively transferred (Title may or may not eventually be transferred). In reality it equates to purchase subject to condition of payment of the price in instalments. An operating lease is any lease that is not a finance lease. Consequently, the lease payment under a finance lease corresponds to the amount of the instalment to repay the value of the aircraft so that in the end the finance lessee is the owner of the aircraft at the end of the lease. The monthly lease payment paid by the Greek State to the lessors for the aircraft will cease in 2011 since the aircraft will become its full property then.

(52) The Greek State's decision to sub-lease the aircraft at prices below the finance lease payments paid under the head lease is not a grant of State aid to Olympic Airlines since (a) it is justified by the different nature of the two types of contracts and (b) the lease payments paid in the context of operating subleases reflect the market rates for leases of similar aircraft at the critical time when the contracts are concluded.

(53) Consequently, it is self evident that the lease payment under a finance lease is higher than the lease payment under a simple operating lease since such payment also includes gradual repayment of the value of the aircraft. On the contrary,

▼B

Olympic Airlines paid the Greek State a lease payment only for operating the aircraft without any expectation under the contract of acquiring ownership in the future.

(54) In relation to the operating leases for aircraft operated by Olympic Airlines, the Hellenic Republic informed the Commission that all such subleases for aircraft between Olympic Airways Services and Olympic Airlines have expired apart from one (for an A300-600 aircraft). In a number of cases contracts were renegotiated and renewed (at various dates between 2005 and 2007) between Olympic Airlines and the initial lessors, without the intermediation of Olympic Airways Services based on current market rates.

(55) More specifically, in the case of four leases for DHC 8-102 aircraft, four leases for B-737-400 Aircraft, one lease for a B-737-300 aircraft and three leases for B-717-200 aircraft, where the lessee had been Olympic Airways Services, the position of lessee in the head operating lease is now Olympic Airlines

(56) In the opinion of Greece, Olympic Airways Services' decision to generate income from the aircraft and cut its losses by subleasing them to Olympic Airlines was fully justified in commercial terms and in line with the private investor test. Moreover, by signing these subleases Olympic Airways Services released itself from the aircraft safeguarding and maintenance costs and benefited from ground handling and maintenance services it provided to Olympic Airlines for those aircraft.

3.2.3. *Debts and current financial situation of Olympic Airlines*

(57) Over the period 2004 -2007 Olympic Airlines reported revenues up some 16,5 % and managed to curtail its cost increases (fuel excluded) to 9,7 %.

(58) Under the provisions of Law 2190/1920 the company is obliged to complete preparation of its financial statements for 2007 by the end of April 2008. Greece provided the following table to explain Olympic Airlines financial situation.

INCOME – EXPENSES	2007 Estimates	2006	2005	2004
TOTAL INCOME	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*
AIRCRAFT FUEL	[…]*	[…]*	[…]*	[…]*
OTHER PROPORTIONAL EXPENSES	[…]*	[…]*	[…]*	[…]*
TOTAL PROPORTIONAL EXPENSES	[…]*	[…]*	[…]*	[…]*
RESULTS BEFORE FIXED EXPENSES	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*

▼B

INCOME – EXPENSES	2007 Estimates	2006	2005	2004
AIRCRAFT LEASE PAYMENTS	[…]*	[…]*	[…]*	[…]*
OTHER EXPENSES	[…]*	[…]*	[…]*	[…]*
TOTAL	[…]*	[…]*	[…]*	[…]*
EBITDA	[…]*	[…]*	[…]*	[…]*
	[…]*	[…]*	[…]*	[…]*
TOTAL DEPRECIATION	[…]*	[…]*	[…]*	[…]*
RESULTS	[…]*	[…]*	[…]*	[…]*
OTHER FINANCIAL EXPENSES	[…]*	[…]*	[…]*	[…]*
TOTAL EXPENSES	[…]*	[…]*	[…]*	[…]*
EARNINGS BEFORE TAXES & EXTRA-ORDINARY ITEMS	[…]*	[…]*	[…]*	[…]*
EXTRAORDINARY RESULTS	[…]*	[…]*	[…]*	[…]*
EBT	[…]*	[…]*	[…]*	[…]*

(59) As set out in the table, Olympic Airlines' total income in 2004 was […]*million while total expenses were […]*before tax with the result that the company reported losses of EUR 87,1 million. The company's situation worsened over the following years. In 2007 its losses were […]*million.

(60) According to the Greek authorities, this change in Olympic Airlines' financial situation is to a large extent a consequence of its legal inability to increase its share capital [1] imposed by the sole shareholder (the Greek State) and by the complications which previous state aid decisions have created in the effort to include private funds in the company.

(61) The company has pointed out that a long-term shortage of capital has forced it to significantly increase costs particularly in relation to aircraft leases where short-term rather than long-term leases have made a major contribution to its negative results. Moreover, due to the shortage of capital there have been significant delays in introducing innovations to the production process within the company resulting in delay implementing of for example e-ticketing.

(62) These facts notwithstanding, the Greek authorities state that the company has regularly settled its debts to social security schemes and has no due debts to the main social security scheme, the IKA Fund.

[1] In contrast with its main competitor on the domestic market, Aegean Airlines, which has increased its share capital repeatedly.

▼B

(63) At present the company has delayed its debt payments to a certain number of creditors. More specifically, its total due debts (up to 31.12.2007) to Olympic Airways Services (and its subsidiary Olympic Aviation) were […]*, to Athens International Airport were […]*million and to Olympic Catering were […]*million.

(64) At present there is also some delay is paying certain debts the company has to the tax authorities and the CAA. According to data available to the Hellenic Republic, on 7 February 2008 the certified tax debts of Olympic Airways Services stood at […]* million for the period up to 31.12.2007. Of that amount only […]*million has become due and payable at present.

(65) The company has delayed making lease payments for aircraft to the Greek State in the total sum of […]*million. The company has also not paid the Greek State the sum of […]* million for aircraft maintenance reserves.

(66) The Hellenic Republic points out that the issue of prolonged forbearance of non-payment of Olympic Airlines' debts to the Greek State is raised for the first time in the 2005 Decision. It points out that the 2005 Decision found that following the investigation by Community experts the company had discharged its obligations in this regard for the period which had been examined (namely up to May 2005).

(67) Consequently the Hellenic Republic stresses that even if there are at present certain unpaid debts of Olympic Airlines to the State any delay in paying them only relates to a short time period. In the opinion of the State this is not sufficient on its own to establish a claim of prolonged forbearance by the Greek State in light of the conditions laid down in Community case law in this regard.

(68) According to case law, 'where a public body with responsibility for collecting social security contributions tolerates late payment of such contributions, its conduct undoubtedly gives the recipient undertaking a significant commercial advantage by mitigating, for that undertaking, the burden associated with normal application of the social security system' ([1]).

(69) However, in order for that economic advantage to be treated as State aid within the meaning of Article 87(1) EC it also needs to be shown that the undertaking would not have obtained that advantage under normal market conditions, in other words one needs to examine whether the organisation which received the contributions acted in the same way that a private creditor would do under the same circumstances.

(70) In the view of Greece, it is not easy to apply this criterion in practice since there is no standard of conduct for a private creditor. More specifically, depending on the financial prospects of the debtors and its viability, a creditor may decide to do nothing or utilise all legal means available to him to collect

([1]) C-256/97, DM Transport [1999] ECR I-3913, para 19.

▼B

debts due. Therefore Greece opines that one should examine whether the public authority took all available legal steps to collect the debt and whether it did so without delay ([1]).

(71) In the Magefesa ([2]) case the court ruled that non-payment of tax and social security debts for many years (more than 8 years) indicated that the authorities were not using all lawful means to ensure payment of the debts.

(72) Likewise, in the Lenzing ([3]) case, the CFI considered that a) forbearance of non-payment of social security contributions for a period of at least 6 years which permitted debts to accumulate, b) forbearance of non-compliance with the debt repayment arrangement which had been concluded and c) conclusion of a new debt repayment arrangement even though the authorities were able to claim immediate repayment of the total amount of the claims due to breach of the terms of the original arrangement – possibly by compulsory enforcement, did not meet the private creditor test and consequently was equivalent to State aid.

(73) Lastly in the Spain v. Commission case ([4]) the ECJ ruled the Spanish authorities, even though they needed three years to reach debt restructuring agreements with undertakings and even though they wrote off two thirds of the debts and concluded debt restructuring agreements of 10 years duration with a two year grace period acted in line with the private creditor tests and used all lawful means to collect the debts.

(74) In light of this the Hellenic Republic considers that there was no protracted forbearance on its part in relation to collection of debts due from Olympic Airlines.

3.3. **State aid via special creditor protection**

(75) In its response the Hellenic Republic argues that the legal provisions in question do not lead to a removal of the rights of the creditors of Olympic Airways and Olympic Airlines concerning the enforcement of their claims under national law but simply to a suspension thereof, which national case law has found to be compatible with national law (and in particular with the Constitution). They further note that the State (including all agencies of the State which could provide advantages via state resources) is expressly excluded from the scope of this creditor protection. Consequently, in their view there can be no State aid within the meaning of Article 87(1) EC. There would only be State aid if the Greek State had guaranteed payment of Olympic Airways Services' and/or Olympic Airlines' debts to creditors or if it made payments on behalf of those companies to suppliers and/or creditors.

([1]) C-480/98, *Spain* v *Commission* (Magefesa) [2000] ECR I-8717, and C-276/02, *Spain* v *Commission* [2004] 1-8091.
([2]) See footnote 23.
([3]) T-36/99 *Lenzing AG* v *Commission* [2004] ECR II-3597, para. 131, 136,138 and 146.
([4]) Case C-276/02, *Spain* v *Commission*.

▼B

(76) The Hellenic Republic does not disagree that this specific provision relates specifically to Olympic Airways Services and Olympic Airlines. However, the specificity of those provisions on its own is not sufficient to constitute an infringement of Article 87 EC as Article 22 of Law 3404/2005 does not confer any economic advantage.

(77) In the opinion of Greece, in order for there to be State aid under Article 87 EC it is vital that State resources actually be transferred ([1]). The creditor protection afforded from 17 October 2005 to 28 February 2006 and then following an extension to the original deadline to 31 October 2006 and then to 31 October 2007 and then to 31 October 2008 for Olympic Airways Services and Olympic Airlines only relates to debts to private creditors.

(78) The rationale for excluding the Greek State from the scope of this provision was precisely to ensure compliance with the requirements of Community law on State aid as the explanatory report accompanying the law states.

(79) The Hellenic Republic would stress that the only case in which there would be an issue of State aid on the basis of special creditor protection for private creditors would be the case where the Greek State had guaranteed the payment of Olympic Airways Services and Olympic Airlines' debts to their creditors or where it made payments on behalf of the companies to their suppliers and/or creditors.

4. COMMENTS FROM THIRD PARTIES

4.1. Olympic Airlines SA

(80) Olympic Airlines' comments were fully in line with the response provided by the Hellenic Republic dated 11 February 2008.

(81) With respect to the sub-leasing of aircraft from the Greek State and Olympic Airways, Olympic Airlines is of the opinion that both Olympic Airways and the Greek State acted in a manner absolutely in accordance with the private investor test and there was no favourable treatment for Olympic Airlines. Furthermore it submits that the lease payments paid by Olympic Airlines to both Olympic Airways and the Greek State are in general terms in line with current market rates.

(82) Olympic Airlines also referred to the distinction that should be drawn between the case of a finance lease and an operating lease.

Finance leases

(83) The choice made by the Greek State to sub-lease the aircraft at prices below the finance lease prices paid in the head lease was not necessarily a grant of unlawful aid to Olympic Airlines. Firstly the difference in the level of lease payments is justified by the different nature of the two types of leases, and secondly by the fact that the lease payments paid in the context of operating leases reflect market rates for leasing similar aircraft at the critical point in time when the leases were concluded.

([1]) C-248/84, *Germany* v *Commission* [1987] ECR 4013, paragraph 17.

▼B

(84) In simple terms, the finance lessee acquires the right to expect to acquire ownership of the aircraft at the end of the finance lease, which would not occur in the case of an operating lease. Consequently, the lease payment under a finance lease corresponds to the amount of the instalment to repay the value of the aircraft so that in the end the finance lessee is the owner of the aircraft at the end of the lease. In the specific case, the monthly lease payment paid by the Greek State to the lessors for the aircraft will cease in 2011 since the aircraft will become its full property then.

Operating Leases

(85) Olympic Airlines pointed out that all operating sub-leases for aircraft from Olympic Airways have now expired.

(86) The operating leases concluded between Olympic Airways and Olympic Airlines for such time as they were in effect (until the latter took its placed in the head leases) had been concluded at current market rates, as stated above. Consequently, there was no concealed State aid. Olympic Airlines repeated that it did not receive any favourable treatment under the said operating sub-leases since the lease payment agreed at the time they were concluded (11.12.2003) reflected the market rate as can be seen from the aforementioned Aviation Economics report. Following that Olympic Airlines directly concluded leases with the original lessors (in some cases in 2005 and in others in 2007) at current market rates.

(87) Moreover, the sole operating lease which had been concluded between Olympic Airways and Olympic Airlines in 2003 and which remained in effect until a few days ago, which related to an A 300-600 aircraft, had –like all the other contracts- been concluded at current market rates. This contract has now expired.

(88) The decision of Olympic Airways to sub-lease the said aircraft to Olympic Airlines was required under the circumstances and was in accordance with the conduct of any private investor in the same position. If it had not been done, Olympic Airways would have been called upon to pay immense amounts of compensation to the aircraft lessor, which it would no longer have been able to use due to removal of air carrier services from its business objectives in December 2003.

(89) It should be noted that under the lease concluded with the initial lessors, payment of the lease payments continued to be mandatory irrespective of whether the aircraft were used for flights by Olympic Airways. Given these circumstances, Olympic Airways' decision to generate income from the aircraft and to cut its losses by subleasing them to Olympic Airlines was fully justified in commercial terms and in line with private investor test. Moreover, by concluding these sub-leases Olympic Airways released itself from safeguarding and maintenance costs for the aircraft. It also benefited from the provision of ground handling and maintenance services to Olympic Airlines for these aircraft.

▼B

(90) In relation to the debts and current financial situation of Olympic Airlines the company confirmed the information already provided by the Hellenic Republic.

(91) In relation to the allegation of State aid to Olympic Airlines by means of the special creditor protection, the company takes the view that Article 22 of Law 3404/2005 conveys no financial benefit on Olympic Airlines.

(92) In conclusion, Olympic Airlines considers that after taking into consideration these comments the Commission will no longer have any doubts about the issues being examined.

4.2. **Olympic Airways Services SA**

(93) The comments received from Olympic Airways Services primarily referred to the arbitration panel proceedings and the awards. These are excluded from the scope of the present decision [1]. In as much as these touched on the other issues covered by the present decision they were completely in line with the comments received from Olympic Airlines and with the response provided by the Hellenic Republic dated 11 February 2008.

4.3. **Aegean Airlines**

(94) Aegean Airlines is a competitor of Olympic Airlines, in its comments it particularly wished to address the issue of the arbitration panel awards. Aegean Airlines also pointed out that with 35 million passengers in the Greek aviation market and activity of more than 150 airlines Olympic Airlines covers 17 % of the market, as such it is not an 'essential' part of the market. What Aegean Airlines opine is needed in the Greek aviation market is fairness in regulation, equal treatment and no special subsidies, costs or rights for one market participant.

4.4. **HATTA**

(95) The Hellenic Association of Travel and Tourism Agencies (HATTA) represents more than 1 500 Greek travel agencies and tour operators and expresses great concerns about the future of Olympic Airlines and the impact it may have on the Greek tourism industry.

(96) HATTA expresses the opinion that Olympic Airlines should become a privately owned and managed company that will operate on a level playing field will other domestic and Community carriers. HATTA also wishes to underline the magnitude of the impact of potential bankruptcy of Olympic Airlines on the Greek economy; this in their view makes this case a political matter rather than a legal procedure.

(97) As tourism represents 18 % of the Greek GDP; if Olympic Airlines were to disappear they opine that there would not be sufficient commercial interest to fill the entire gap in flights that would be lost. What is at stake is not just the future of a State owned company but the future and stability of a sector upon which the Greek economy is greatly dependent.

[1] See recital 8 above

▼B

4.5. **Ryanair**

(98) Ryanair states that it does not currently operate any routes to and from Greece, although it flies to less popular tourist destinations for western European travellers such as Riga in Latvia, Kaunas in Lithuania, and Constanta in Romania. Their lack of presence on the Greek market is they state, due to the artificial maintenance of Olympic Airlines and Olympic Airways Services through State aid. Should such State aid disappear, Ryanair would be in a much better position to become, with the fleet of aircraft at its disposal, a competitor of Olympic Airlines on a number of domestic and international routes to and from Greece. As a result Ryanair states that it is not only a party concerned, but its market position is substantially affected by the State aid in favour of Olympic Airlines/Olympic Airways Services.

(99) In Ryanair's view, the Article 88(2) EC investigation should have been initiated earlier and must be concluded without delay, well before the 18 month period. Ryanair points to the numerous state aid actions taken by the Commission in connection with Olympic Airways since 1994. Ryanair states that while superficially, these various actions and investigations concern distinct forms and instances of State aid, all of the aid measures are interrelated. They evidence a systematic, and thus far successful, effort by the Greek authorities to delay the whole process by constantly repackaging earlier and new aid into new forms — and then disputing, through any available means, that these measures constitute illegal State aid. The close links between different forms of State aid granted through various means over many years are also evident from the Commission's narrative.

(100) In the opinion of Ryanair, if the past is anything to go by, the detailed financial information required by the Commission will be incomplete and/or delayed; the Commission will, eventually, adopt a negative decision ordering recovery, which the Greek authorities will both appeal and ignore and by the time the Community Courts have upheld the Commission's decision and found that Greece has infringed its obligations, part or the whole of the State aid involved will have morphed into new forms of illegal support to Olympic Airlines/Olympic Airways Services.

(101) Ryanair state that the Commission has the power and duty to speed up the process significantly. In its view it would be outrageous if the formal investigation finally initiated by the Commission were to exhaust or even exceed the 18 month period provided by Article 7(6) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1] (hereafter the Procedural Regulation). Such a formalistic approach would only reward the Greek authorities' delaying tactics and provide a precedent for others to follow. Information provided on the amount of aid is incomplete because key data described as 'confidential' by the Greek authorities have not been properly disclosed.

[1] OJ L 83, 27.3.1999, p. 1.

▼B

(102) In the view of Ryanair there is no justification for treating certain information concerning amounts of aid and how this has been calculated as confidential. Its disclosure would not confer any competitive advantage to competitors or other parties, but would help them respond to the Commission's invitation with more concrete arguments, provide comparative data and expose flaws in Olympic Airlines/Olympic Airways Services' machinations that may escape the Commission's examination.

(103) In relation to the forbearance of tax and social security debts since December 2004, Ryanair points out that the indicative figures for Olympic Airways Services losses underline the seriousness of the case.

(104) In relation to the special creditor protection, Ryanair urges the Commission to clarify specifically the compensation rights that private parties will derive from this violation of the State aid rules.

5. COMMENTS FROM GREECE ON THIRD PARTY COMMENTS

(105) The Hellenic Republic declared itself to be in complete agreement with the observations made by Olympic Airways Services, Olympic Airlines and HATTA. However, in relation to the observations of Aegean Airlines and Ryanair, the Hellenic Republic disputes the comments made and according to the Hellenic Republic, the observations of Aegean Airlines and of Ryanair do not substantially add any new or critical information and or documentation to the investigation.

(106) In relation to the comments of Aegean Airlines the Hellenic Republic underlines that Aegean Airlines has been particularly successful on the Greek market over the last ten years and that this success ultimately works in favour of the final consumer – the passenger – thus proving the benefits of competition. The existence of competition in air travel constitutes the main position and aim of the Greek government.

(107) The Greek authorities highlight what they see as a contradiction in Aegean Airline's observations in that it presents its main competitor – Olympic Airlines – as on the one hand, having significant activity, but on the other, being replaceable. In the view of the Hellenic Republic this assessment is founded on Olympic Airways supposedly having a small percentage of the total transfer of passengers to/from Greek airports, the Greek authorities dispute this assessment.

(108) The main aim of the Greek government constitutes the assurance of unhindered air travel service to Greek islands and remote areas, with the use of special provisions for the provision of public service (PSOs) where necessary. They point out that to date Aegean has not participated in any tender of the Civil Aviation Authority for PSOs.

(109) The Greek authorities take issue with the references by Aegean Airlines to the 'Olympic Airways Group', which in the view of the State is inaccurate as Olympic Airways Services does not participate in the share capital or in the management of Olympic Airlines, neither does it control the decisions of the latter's General Meeting, nor does it have the authority to appoint members to its Board of Directors. In particular, the

▼B

two companies do not constitute one common financial unit, since the one company does not influence the financial policy of the other, nor is there a common interest between them; on the contrary, their business relations are conducted strictly on market terms.

(110) With regard to the financial situation of Olympic Airways, the Hellenic Republic observes that Aegean Airlines has not presented any information proving that the daily operation of Olympic Airways is ensured by means of state aid.

(111) In the view of the Hellenic Republic, Ryanair cannot be deemed as an 'interested party' in this case. This is because Ryanair does not carry out flights to and/or from Greece, so it cannot be maintained that it is affected in any way by the supposed granting of state aid to Olympic Airlines and Olympic Airways.

(112) In the view of Greece, Ryanair's claims that it does not carry out flights to and/or from Greece because of the long-term granting of a competition advantage to Olympic Airways and Olympic Airlines by the Greek government are not substantiated by the facts. The Greek authorities point out that other low-cost airlines are active on the Greek market, 'Easy Jet', 'Aer Lingus', 'Air Berlin', 'Sky Europe', 'Germanwings' and 'Virgin Express'. Both 'Easy Jet' ([1]) and 'Germanwings' ([2]) carry out daily flights to and from Athens International Airport, while they are also connected with other major Greek airports. Similarly, 'Air Berlin' carries out flights to a total of fifteen of the country's airports ([3]), with daily flights (more than one) to and from Athens International Airport.

(113) Second, there is no obstacle existing in Ryanair's entry to the Greek market due to alleged advantages in favour of Olympic Airlines, given that the two companies provide their services on the basis of two entirely different business models. As is evident from the entry of the above-mentioned low-cost airlines to the Greek market, the activity of Olympic Airline and Aegean would not impede or influence the entry of Ryanair, nor is there an issue of a restricted number of slots at Greek airports.

(114) The Greek authorities therefore find it odd that Ryanair claims that it is incapable of carrying out flights on the Greek market due to the alleged distortion of competition, as all the above-mentioned carriers, many of which are of a smaller size and higher cost than Ryanair, have done so successfully.

(115) The Hellenic Republic sums up the main views of the above-mentioned companies as follows:

5.1. **Regarding Olympic Airways Services tax and social insurance debts**

(116) As of 11 February 2008, the updated taxation and insurance records of Olympic Airways Services had already been proven. Regarding Olympic Airway's older debts to the Social Security Institute, an adjustment has been made to pay off these debts

([1]) EasyJet is connected with Athens, Kerkyra, Myconos, Rhodes, Heraklion and Thessaloniki (see http://www.easyjet.com).

([2]) Germanwings is connected with Athens, Kerkyra, Kavala, Myconos, Rhodes, Heraklion and Thessaloniki (see http://www.aia.gr).

([3]) Air Berlin is connected with Athens, Kerkyra, Kavala, Myconos, Rhodes, Heraklion, Thessaloniki, Volos, Preveza, Zakynthos, Santorini, Kos, Samos, Karpathos, Lesvos (see http//www.aia.gr).

▼B

in monthly instalments, according to the general provisions of Law No 3518/2006, applicable to all Greek companies and natural persons ([1]).

(117) Consequently, in the view of Greece there can be no 'tolerance' and even less of 'perpetual tolerance' on behalf of the Greek Government as regards the non-payment of Olympic Airway's debts.

5.2. **Regarding alleged state aid to Olympic Airlines**

5.2.1. *State aid through aircraft subleases*

(118) Greece agrees with the declaration made by Olympic Airlines that it had the financial potential to conclude operating leasing contracts directly with the market. This is proved to be true as immediately after the expiry of each operating leasing contract, some of the initial lessors in the main contracts were directly contracted to Olympic Airlines at the current market rates, without the intermediation of Olympic Airways.

(119) In turn, Olympic Airways, in selecting Olympic Airlines, acted out as any other private investor would have in the same position. On the one hand, it succeeded in reducing monthly damages in the best possible way and on the other hand, ensured that the damages in question were to be time-restricted given the stated intention of Olympic Airlines to renegotiate and enter itself into the main leasing contracts.

(120) Olympic Airlines were not favoured even in the case of the sub-leasing of four financial leases of Airbus A340-300 to the Greek Government as these contracts were drawn up at the market price. Regarding this matter, it should be mentioned that the lease charges paid by Olympic Airlines for operating leasing agreements can only be compared with the respective operating leasing charges on the market during the same period, and not the financial leasing charges, as the Commission erroneously worked out.

5.2.2. *State aid through Olympic Airlines' tax and social insurance debts*

(121) The Hellenic Republic observes that there is no 'perpetual tolerance' regarding this company's overdue payments.

5.3. **Regarding the special protection against creditors**

(122) The provisions of Law No 3404/05 imply a suspension rather than an elimination of the rights of Olympic Airways' and Olympic Airlines' creditors regarding the execution of their claims. This is compatible with Greek legislation.

(123) The credit protection that had been provided to Olympic Airlines and to Olympic Airways concerns only debts owed to private persons and not debts pertaining to the state, namely the Greek Government. Consequently, there can be no state aid within the meaning of Article 87(1) of the EC Treaty.

([1]) The provisions of Law No 3518/2006 have been included in the Hellenic Republic's Reply of 11 February 2008, paragraph 75.

▼B

6. RESULTS OF THE EXPERT STUDY REQUESTED BY THE COMMISSION

(124) Before the Commission can engage in an assessment of the points raised in the opening of procedure and of the information furnished by Greece and the third parties, it was necessary to examine the current economic and financial situation of Olympic Airways Services and of Olympic Airlines.

(125) To this end the Commission engaged the services of an independent expert (Moore Stephens) to carry out a study of the financing and operations of both companies to determine what has happened since Commission 2005 decision.

(126) Moore Stephens (hereinafter 'the experts') carried out their study in Athens between 1 and 15 July 2008. In carrying out this study they were facilitated by the Hellenic authorities, Olympic Airways Services and Olympic Airlines as well as their advisers.

6.1. Regarding Olympic Airways Services tax and social insurance debts

(127) In respect of forbearance of taxes (including surcharges and fines) Moore Stephens have determined (based on an assessment of total liabilities by the tax authorities provided on 17 June 2008) that the sum owed by Olympic Airways Services is EUR […]* million. The balances as of 31 May 2008 represents the cumulative balances at that date which, except where otherwise noted, include amounts arising prior to 31 December 2004. This liability is arrived at after setting off EUR […]* million on the basis of arbitral panel awards i.e. (EUR […]* million – EUR […]* million). The liability includes:

— Outstanding income tax, VAT, stamp duty and withholding taxes ([1]) Passenger duty for airport development (Spatosimo),

— Airport parking and handling charges for airports other than AIA,

— ABN loan repayments made by Greek state on behalf of Olympic Airways Services.

(128) Moore Stephens note that this amount was subject to court appeal by Olympic Airways Services. The court issued a decision suspending the debt pending a final ruling. The suspension is in application of the general legal framework on requests for interim relief, which can be invoked by any individual or undertaking in litigation with the Greek State. The amount offset against the arbitral panel award represented that part of the total balance that was not subject to dispute by Olympic Airways Services.

(129) The surcharges included in the amount of EUR […]* million concern the period until June 2008.

(130) Current withholding taxes (mainly employee income tax) for the period May 2007 to May 2008 amounts to some EUR […]*million, while current withholding taxes (employee income

([1]) Comprises withholding tax other than that payable for the periods set out in the table below.

▼B

tax) regarding personnel seconded to Olympic Aviation for the period Dec 2006 to May 2008) is some EUR […]*million.

(131) With regard to the forbearance of social security contributions these amount to some EUR […]* million for the period up to October 2006 allowing for the payment of EUR […]* million by the Greek State in September 2007 from funds received following the arbitral panel awards. The amount of EUR […]* million (including surcharges and fines) is what remains (in July 2008) to be paid by Olympic Airways Services in future instalments according to the general framework of Law 3518/2006. The Social Security Administration (IKA) has accepted a deposit of EUR […]* million euro from Olympic Airways Services.

(132) […]*.

(133) […]*.

(134) Further social security debts for the period November 2006 to May 2008 of […]*for Olympic Airways Services and EUR […]*million for persons seconded to Olympic Aviation were also noted.

(135) Notwithstanding all of the above, the Commission notes that Olympic Airways Services had obtained a confirmation from IKA that its liabilities were not overdue. Moore Stephens' findings can be summarised as follows

in EUR million

	Balance
Assessment of total liabilities by tax authorities provided on 17 June 2008 (suspended)	[…]*
Current withholding tax May 2007- May 2008 (mainly employee income tax)	[…]*
Current withholding tax December 2006 – May 2008 (Olympic Aviation)	[…]*
Social security debt up to October 2006	[…]*
Social Security debts November 2006 – May 2008	[…]*
Social Security debts November 2006 – May 2008 (Olympic Aviation)	[…]*
Debts of Olympic Airways Services to State as of June 2008 (excluding suspended debts)	[…]*
Total debts of Olympic Airways Services to State as of June 2008	[…]*

(136) Moore Stephens conclude that given that Olympic Airways Services have relied upon some […]* of arbitration panel awards in order to in part meet its tax and social security liabilities (EUR […]* million payment to tax authorities and EUR […]* million to IKA) if the Commission was to conclude

▼B

that the continued forbearance of the State towards Olympic Airways Services since 2005 constituted State aid then Olympic Airways Services would be unable to repay this State aid based upon its current operating results and financial position.

6.2. **Regarding alleged state aid to Olympic Airlines**

6.2.1. *State aid through aircraft subleases*

(137) Moore Stephens noted an amount of EUR […]*million as being overdue to Greek State in respect of aircraft leases, Moore Stephens note that the amount in question as of 31 May 2005 was EUR […]*meaning that during the period covered by the present decision the Olympic Airlines ran up a debt of EUR […]*million to the State for aircraft leases. The amount payable is approximately EUR […]*million per month for the […]* and EUR […]*million per month for the maintenance reserves. Approximately EUR […]* million has been paid over the 36-month period, representing about 6 months' payments. Nothing was paid in 2007 or 2008.

6.2.2. *State aid through Olympic Airlines' tax and social insurance debts*

(138) The amount overdue for passenger duty for airport development (Spatosimo) as assessed by tax authorities is EUR […]* million. The total payable as of 31 May 2008 was EUR […]* million. Of this, EUR […]* million is payable in monthly instalments up to 2012 and has not been considered as overdue. Of the remaining balance of EUR […]* million, EUR […]*million is the subject of a court appeal by Olympic Airlines. The court issued a decision suspending this part of the debt pending a final ruling.

(139) Moore Stephens identified an amount of EUR […]* overdue to Olympic Airways Services and Olympic Aviation for services received as per various contracts for ground handling and maintenance services.

(140) A further sum of EUR […]* million for landing fees and parking charges payable to the Hellenic Civil Aviation Authority was also identified

in EUR million

		Balance
Overdue amount for aircraft leases	[…]*	[…]*
Lease payments due	[…]*	[…]*
Maintenance reserve due	[…]*	[…]*
Interest lease payment & maintenance reserve	[…]*	[…]*
Difference between head-leases and subleases	[…]*	[…]*
Spatosimo (Passenger duty for airport development - total due EUR 98 million of which EUR 59,9 million is subject to judicial suspension)	[…]*	[…]*
Amount overdue to other entities	[…]*	[…]*
Olympic Airways Services	[…]*	[…]*
Olympic Aviation	[…]*	[…]*
Landing fees and parking charges (other than AIA)	[…]*	[…]*

▼B

in EUR million

		Balance
Debts of Olympic Airlines to State as of June 2008 (excluding suspended debts)	[…]*	[…]*
Total estimated debts of Olympic Airlines to State as of June 2008	[…]*	[…]*

6.3. **Regarding the special protection against creditors**

(141) Moore Stephens confirmed that the special creditor protection was extended to 31 October 2008 by Art. 21 of Law 3607/2007.

7. **ASSESMENT OF THE AID**

7.1. **Legal basis for appraisal of aid**

(142) By virtue of Article 87(1) of the EC Treaty 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.'

(143) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(144) The criteria laid down in Article 87(1) EC are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 87(1) EC all of the following conditions need to be fulfilled. Namely, the financial support:

— is granted by the State or through State resources,

— favours certain undertakings or the production of certain goods,

— distorts or threatens to distort competition, and

— affects trade between Member States.

(145) The present decision relates only to aid granted since the period taken into consideration by the 2005 Decision.

7.2. **Existence of aid**

(146) The Commission has carried out a close and in-depth analysis of the comments received in the course of the opening of procedure as well as of the observations of Greece and of the expert study carried out into the accounts and operations of Olympic Airways Services and Olympic Airlines. In this regard it has decided to carry out its appraisal on the existence of aid under three main headings being;

— Potential State aid to Olympic Airways Services through forbearance of its tax and social security debts since December 2004 ([1]).

([1]) See footnote 5.

▼B

— Potential State aid to Olympic Airlines by means of aircraft lease payments and non-execution of its debts (including tax and social security liabilities) since May 2005 ([1]).

— Potential State aid to Olympic Airways Services and to Olympic Airlines by means of special creditor protection.

7.2.1. *State aid to Olympic Airways Services through forbearance of debts*

(147) As has been demonstrated by the Commission's expert, since the date of the adoption of 2005 Decision, Olympic Airways Services has deferred the payments of amounts due to the State and its tax and social security liabilities to the State have increased.

(148) Olympic Airways Services difficult and deteriorating tax and social security situation has been previously described. Olympic Airways Services' tax and social security liability as taken into consideration in the 2005 Decision was already large, at EUR 627 million, made up of an estimated EUR 431 million of unpaid tax and a further EUR 196 million of unpaid IKA contributions.

(149) In respect of its tax liabilities and notwithstanding a 'set-off' payment of EUR […]* million made following the arbitral panel awards the estimated total tax liability as of June 2008 and as set out in the table following paragraph 135 above is now estimated as being in the order of EUR […]* million. This deferral of payment of tax of at least EUR […]* million is imputable to the State.

(150) Olympic Airways Services has argued that the sum of EUR […]* million in respect of tax debts is suspended meaning that the company is 'tax current', this ignores the fact that while part of its tax debt to the State may have been deferred such deferral does not call the sum into question. While a Greek court may adjust this figure downwards, it is the conclusion of the Commission that the order of magnitude of the sum due by Olympic Airways Services to the State in the context of taxes will not change substantially. This opinion notwithstanding the Commission can conclude that the sum which Olympic Airways Services owes the State in respect of its tax liabilities is in the order of EUR […]* million.

(151) In relation to Olympic Airways Services' mounting tax liabilities, it is the State itself through the tax administration which tolerates the constant deferral and non-payment of various taxes and charges due by Olympic Airways Services.

(152) With respect to social security contributions the situation is similar. The social security debts identified in the 2005 decision as amounting to […]* have now risen to EUR […]*

([1]) See footnote 6.

▼B

million as set out in the table following paragraph 135 above, notwithstanding the payment on 27 September 2007 of a once-off sum of EUR […]* million from the arbitration panel awards.

(153) In relation to these social security contributions, the body tasked with their collection (IKA) is a public body established by Greek Law ([1]), which has been made responsible, under State supervision for managing the social security system, and collecting mandatory social security contribution. It has the right ([2]) but not the obligation to enter into settlement agreements for late payments of debts. The ever increasing social security liability of Olympic Airways Services to the State is therefore, clearly imputable to the State.

(154) Both tax and social security funds are State resources and their forbearance therefore involves a transfer of State resources.

(155) This forbearance grants an advantage to Olympic Airways Services. The forbearance on the part of the State defers the payment of charges that the undertaking would normally have to pay in due time, providing the beneficiary with a source of operating capital. Olympic Airways Services is loss making and chronically indebted, therefore such a deferral cannot be considered a normal or usual behaviour of a market economy creditor; it is systematic and given the parlous financial situation of Olympic Airways Services as has been demonstrated by the Commission's expert there is no realistic prospect Olympic Airways services ever being in a position to repay these amounts to the State at any stage in the future. The forbearance affects trade between Member States and distorts competition as the markets concerned are fully liberalised.

(156) The Commission must therefore conclude that the forbearance of the State concerning Olympic Airways Services' unpaid and mounting tax and social security liabilities amount to State aid to Olympic Airways Services within the meaning of Article 87(1) of the Treaty. As this aid was never notified to the Commission it is therefore illegal.

7.2.2. *State aid to Olympic Airlines through forbearance of debts*

(157) As has been concluded by the Commission's expert, since the period taken into consideration by the 2005 decision Olympic Airlines has lost money and accumulated further debts to the State.

(158) In relation to leases for 4 A340 aircraft, during the period covered by the current investigation Olympic Airlines' debts to the State have reached EUR […]* million, the balance of this amount as of 31 May 2005 had been EUR […]*. This means that during the period covered by the present decision the Olympic Airlines ran up a debt of EUR […]* million to the State for unpaid aircraft leases.

([1]) Law 1846/1951, article 11.
([2]) Law 2676/1999.

▼B

(159) However, in the opinion of the Commission this amount does not fully reflect the amounts that Olympic Airlines owed the State in respect of these aircraft leases. As set out in the 2005 decision, following its take over of the headleases from Olympic Airways the State paid a price of between EUR […]*and EUR […]*per month in respect of each of these aircraft. However, as has been demonstrated by the Commission's expert, Olympic Airlines paid between USD […]* and USD […]*. In accepting such a lower amount the State 'accepts' to lose somewhere between EUR […]*and EUR […]*on each aircraft per month – making for a further State aid amount of at least EUR 36 million and up to EUR 50,4 million.

(160) In relation to the passenger duty for airport development (Spatosimo) the sum now owed by the company to the state is EUR […]* million. Olympic Airlines has argued that the total of this amount is not due as some EUR […]* million of this amount has been suspended by a judge pending a court decision. In this regard the Commission notes that such suspension does not remove the debt but only suspends its payment. In this regard the Commission can conclude that the sum which Olympic Airlines owes in respect of unpaid Spatosimo as of May 2008 is somewhere between EUR 38 million and EUR 98 million.

(161) A sum of EUR 86,3 million is owed by Olympic Airlines to two related entities being Olympic Airways Services and Olympic Aviation. As of 31 May 2005 the amount owed by Olympic Airlines to these companies was EUR 2,6 million which sum has mushroomed over the following three years, meaning that in the period under investigation by the present decision the debts due have increased by EUR 83,7 million. A further sum of EUR 4,5 million is owed for landing fees and parking charges at airports other than AIA and is payable to the Hellenic Civil Aviation Authority, Olympic Airlines has argued that the this amount is not due its payment has been suspended by a judge pending a court decision. Once again the Commission notes that such suspension does not remove the debt but only suspends its payment.

(162) All the forbearance described above, which amounts to EUR 326 million as set out in the table following paragraph 140 above, involves State resources as it relates to debts owed to the State, State bodies (the Hellenic Civil Aviation Authority) or State-owned undertakings (Olympic Airways Services and Olympic Aviation).

(163) As regards the imputability to the State of the forbearance shown by Olympic Airways Services and Olympic Aviation towards Olympic Airlines, the Commission notes that the imputability to the State of a measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which the measures were taken.

(164) In this regard the Commission notes that the State held 100 % of the shares of all three companies. In addition all the management and boards of these companies were appointed by the State. In these circumstances, it has to be concluded that the companies have been at all material times under the control of the State. Greece was able directly and indirectly (as the largest creditor of

▼B

both Olympic Airways Services and of Olympic Airlines) to exercise dominant influence over all undertakings. Finally, this forbearance is concomitant to the forbearance of the State itself and public bodies. As such the decisions of Olympic Airways Services and of Olympic Aviation to extend credit to Olympic Airlines and allow debts amounting to EUR 86,3 million to build up were not the acts of independent undertakings and are therefore imputable to the State.

(165) This forbearance also involves an advantage to Olympic Airlines by freeing it from the liabilities that it would otherwise have to bear.

(166) The difficult financial situation of Olympic Airlines has already been set out in detail. In 2004 the company reported losses of EUR 87,1 million, with each successive year it has continued to lose more money and in 2007 its losses were EUR […]* million. The business of Olympic Airlines is heavily cyclical, as evidenced by the negative cash flow in the months of October to March that is compensated for by positive cash flow in the months of April to September. This cycle repeats itself with deeper losses each year. The net inflows in the summer months never compensate in full the net outflows in the winter months so that, overall, the company loses more and more money. It can only exist thanks to the largesse of the State. It is far from clear if the company as it is presently structured can ever become cash-flow positive. It is therefore obvious that this forbearance cannot reflect the normal behaviour of a market economy creditor, it is systematic and given the difficult situation of Olympic Airlines there is little possibility that these debts will ever be paid.

(167) The Commission also notes that the measures involved affect inter-state trade and distort or threaten to distort competition inside this market as they involve a Community air carrier. The Commission therefore concludes that the continued forbearance on the part of the State, State bodies and State-owned undertakings of Olympic Airlines' tax and other operational liabilities constitute State aid to Olympic Airlines for the purposes of Article 87(1) of the Treaty. As this aid was never notified to the Commission it is therefore illegal.

7.2.3. *State aid by means of special creditor protection*

(168) According to settled case-law, the concept of aid encompasses advantages granted by public authorities which, in various forms, mitigate the charges which are normally included in the budget of an undertaking ([1]). Considerable advantage appears to be granted to Olympic Airways Services and to Olympic Airlines by means

([1]) See, inter alia, the judgments in Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 1, Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 13; Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraph 34; and Case C-256/97 *DM Transport* [1999] ECR I-3913, paragraph 19).

▼B

of the special and unique creditor protection it has been afforded by the State by means of the law specifically passed whereby the execution of any judgment against this company by any private creditor is postponed.

(169) In the present case, the special creditor protection has only been extended to Olympic Airways services and Olympic Airlines; it is thus a selective and specific measure within the meaning of Art. 87(1).

(170) It is settled jurisprudence that the concept of aid is wider than that of a subsidy because it embraces not only positive benefits, such as subsidies themselves, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect ([1]).

(171) The expression 'aid', within the meaning of Article 87(1) of the Treaty, necessarily implies advantages granted directly or indirectly through State resources or constituting an additional charge for the State or for bodies designated or established by the State for that purpose ([2]).

(172) By analogy with what the Court held in *Ecotrade* ([3]) concerning Article 4c of the ECSC Treaty, several characteristics of special creditor protection make it possible to establish the existence of aid within the meaning of Article 87(1) of the Treaty.

(173) First, it is apparent that the special creditor protection applies only to Olympic Airways Services and Olympic Airlines both State-owned entities that owe particularly large debts to certain, mainly public, classes of creditors. Indeed as has already been shown in the present decision Olympic Airlines owes some EUR 86,3 million to Olympic Airways Services for unpaid services.

(174) It is also indisputable that the special creditor protection places Olympic Airways Services and Olympic Airlines in a more favourable situation than others, inasmuch as it allows them to continue trading in circumstances in which that would not be allowed if the ordinary insolvency rules were applied, since under those rules protection of creditors' interests is the determining factor. The fact that these two companies can continue their activity involves an additional burden for the public authorities as State owned bodies are among the principal creditors of the undertaking in difficulties, all the more so because, by definition, that undertaking owes debts of considerable value. Indeed, given the parlous financial situation of Olympics and the special creditor protection privately owned companies will in all likelihood not wish to do business with Olympic Airlines or Olympic Airways Services on normal commercial terms as there is no realistic possibility to recover sums due. Moreover, given the large debts to publicly owned creditors (see recital 139), State-owned companies will lose resources as a result of the special creditor protection and

([1]) Case C-387/92 *Banco Exterior de Espana* v *Ayuntamiento de Valencia* [1994] ECR I-877, paragraph 13; Case C-200/97, *Ecotrade Srl* against *Altiforni e Ferriere di Servola SpA*, [1998] ECR I-07907, paragraph 34).

([2]) Joined Cases C-52/97 to C-54/97 *Viscido and Others* v *Ente Poste Italiane* [1998] ECR I-2629, paragraph 13.

([3]) Case C-200/97, see footnote 40.

▼B

taking into consideration that the continuous State support to Olympic Airlines and Olympic Airways Services can only be due to national industry policy considerations rather than that of a market creditor seeking repayments of sums due, the Commission can conclude that State resources are involved and that the measure is imputable to the State.

(175) In the light of the foregoing, it must be concluded that application to an undertaking of a system of special creditor protection of the kind existing in the present case which derogates 'from the rules of ordinary law relating to insolvency', is to be regarded as giving rise to the grant of State aid, within the meaning of Article 87(1) of the Treaty, where it is established that the undertaking

— has been permitted to continue trading in circumstances in which it would not have been permitted to do so if the rules of ordinary law relating to insolvency had been applied, or

— has enjoyed de facto waiver of public debts wholly or in part, which could not have been claimed by another insolvent undertaking under the application of the rules of ordinary law relating to insolvency ([1]).

(176) In the present case, with regard to the special and unique creditor protection afforded to Olympic Airways Services and to Olympic Airlines, the Commission notes that both the above criteria are complied with. The companies in question have been permitted to continue in business in circumstances in which they would not have been permitted to do so if the rules of ordinary law relating to insolvency had been applied. Furthermore and has been shown throughout this decision the companies in question have enjoyed several advantages from the State which could not have been claimed by another insolvent undertaking under the application of the rules of ordinary law relating to insolvency.

(177) The measures concerned affect trade between Member States as they concern companies which operate in a liberalised market. Therefore, they also distort or threaten to distort competition within this market as they are focused on specific undertakings competing with other Community operators.

(178) Under these conditions, having regard to the special creditor protection provided to Olympic Airways Services and Olympic Airlines the Commission concludes that this amounts to State aid. As this aid was never notified to the Commission it is therefore illegal.

([1]) Case C-295/97 Rinaldo Piaggio (paragraph 43 thereof).

▼B

7.3. **Compatibility of Aid**

7.3.1. *Compatibility of aid granted to Olympic Airlines through aircraft lease payments, forbearance of debts and special creditor protection*

(179) Having reached the conclusion that Olympic Airlines has received State aid since 2005, the Commission must then examine the measures in favour of this company in the light of Article 87(2) and (3) of the Treaty which provide for exemptions to the general rule of incompatibility set out in Article 87(1).

(180) The exemptions in Article 87(2) of the Treaty cannot apply in the present case because the aid measure does not have a social character and is not granted to individual consumers, nor do they make good the damage caused by natural disasters or exceptional occurrences nor are they granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

(181) Further exemptions to the general prohibition on State aid are set out in Article 87(3). The exemptions in Articles 87(3)(b) and 87(3)(d) do not apply in this case because the aid does not promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a Member State nor does it promote culture and heritage conservation.

(182) Article 87(3)(a) and (c) of the Treaty contain derogation in respect of aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Greece is a region falling entirely within the scope of Article 87(3)(a). Nevertheless the aid does not meet the criteria of the applicable 'Guidelines on National Regional Aid' ([1]).

(183) With regard to the derogation provided by Article 87(3)(c) of the Treaty in respect of aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission will have to examine whether this provision can apply to the current situation. In carrying out this examination the Commission has to have regard to the applicable guidelines relating to the aviation sector ([2]).

(184) In this context, it is obvious that none of the provisions of the guidelines are met in the present case. It is also obvious that the aid does not aim at compensating for PSO obligations within the meaning of Article 86(2) of the EC Treaty and is therefore incompatible with the common market.

([1]) For the period 2000-2006, OJ C 74, 10.3.1998, p. 9, for the period 2007-2013, OJ C 54, 4.3.2006, p. 13.

([2]) '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) and 'Community Guidelines on financing airports and start-up aid to airlines departing from regional airports' (OJ C 312, 9.12.2005, p. 1).

▼B

7.3.2. *Compatibility of aid granted to Olympic Airways Services through forbearance of debts and special creditor protection*

(185) Having concluded that Olympic Airways Services has also received illegal state aid, the Commission must examine the measure in the light of Article 87(2) and (3) of the Treaty which provide for exemptions to the general rule of incompatibility set out in Article 87(1).

(186) The exemptions in Article 87(2) of the Treaty cannot apply in the present case because the aid measure does not have a social character and is not granted to individual consumers, nor does it make good the damage caused by natural disasters or exceptional occurrences nor are they granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

(187) Further exemptions to the general prohibition on State aid are set out in Article 87(3). The exemptions in Articles 87(3)(b) and 87(3)(d) do not apply in this case because the does not promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a Member State nor does it promote culture and heritage conservation.

(188) Article 87(3)(a) of the EC Treaty contain derogation in respect of aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Nevertheless the aid does not meet the criteria of the applicable 'Guidelines on National Regional Aid'.

(189) With regard to the derogation provided by Article 87(3)(c) of the Treaty in respect of aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission will have to examine whether this proviso can apply to the current situation. In carrying out this examination the Commission has to have regard to the applicable guidelines relating to the aviation sector ([1]).

(190) In this context, it is obvious that none of the provisions of the guidelines are met in the present case. It is also obvious that the aid does not aim at compensating for PSO obligations within the meaning of Article 86(2) of the EC Treaty and is therefore incompatible with the common market.

(191) Accordingly the Commission concludes that Greece has granted incompatible State aid to Olympic Airways Services through its tolerance of late and non-payment of tax and social security and by means of the special creditor protection it has afforded this company,

([1]) See footnote 45.

▼B

HAS ADOPTED THIS DECISION:

Article 1

1. The continued forbearance of the Greek State towards Olympic Airways Services in relation to its tax and social security debts to the State which are estimated to stand at least at EUR 590,4 million constitutes illegal state aid to Olympic Airways Services which is incompatible with the Treaty.

2. The continued forbearance of the Greek State toward Olympic Airlines in respect of aircraft leases estimated in the sum of EUR 137,2 million, debts owed to Olympic Airways Services and Olympic Aviation estimated at totalling EUR 86,3 million, debts owed to the Hellenic Civil Aviation Authority of EUR 4,5 million and Spatosimo tax of at least EUR 38,1 million constitutes illegal state aid to Olympic Airlines which is incompatible with the Treaty.

3. The special creditor protection granted through Greek legislation to Olympic Airways Services and Olympic Airlines constitutes illegal state aid to both companies which is incompatible with the Treaty.

Article 2

1. Greece shall recover the aid referred to in Article 1 from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([1]) as amended by Regulation (EC) No 271/2008 ([2]).

4. Greece shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this decision.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. Greece shall ensure that this decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Greece shall submit the following information to the Commission:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

([1]) OJ L 140, 30.4.2004, p. 1.
([2]) OJ L 82, 25.3.2008, p. 1.

▼B

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 5

Greece shall immediately suspend all further payments of aid to Olympic Airways Services and Olympic Airlines.

Article 6

This Decision is addressed to the Hellenic Republic.