

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 October 1994

on the aid granted by Greece to Olympic Airways

(Only the Greek text is authentic)

(Text with EEA relevance)

(94/696/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

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

Having given notice to interested parties to submit their comments in accordance with the abovementioned Articles, and having regard to these comments,

Whereas :

THE FACTS

I

Founded by Aristotle Onassis in 1956, Olympic Airways was made over in 1975 to the Greek State, which has since been the sole shareholder. This transaction was the subject of Greek Law No 96 of 26 June 1975.

From the outset, Olympic Airways (hereinafter referred to as 'OA') was considered to be the Greek national carrier. Consequently, various obligations and duties were imposed on it, designed in particular to provide a good service over the whole of Greek territory and links to the

main Greek communities in the world. In return, OA was given a monopoly in air transport, ground handling and maintenance. While the public service activities conferred on OA were redefined in 1981, 1982 and 1990, the monopolies enjoyed by the company were in part abolished by Presidential Decree No 276 of 17 June 1991, except for handling and scheduled air services other than intra-Community services.

OA is currently by far the leading air carrier in Greece. It has 11 520 employees and its turnover in 1992 and 1993 was Dr 182,5 billion and Dr 202 billion respectively (ECU 662 million and ECU 708 million). Together with its subsidiary Olympic Aviation, which operates the minor Greek domestic services, it has a fleet of 55 aircraft (34 belonging to OA itself; 21 turbo-prop belonging to Olympic Aviation) and 3 helicopters. The average age of OA's 34 aircraft exceeds 11 years — one of the highest of any European airline. Olympic Aviation's fleet, however, is much more modern.

The carriage of passengers accounts for 75 % of turnover and is by far the principal activity undertaken by the airline, ahead of handling (13 % of turnover), cargo (3 %), mail (1 %) and aircraft maintenance and overhaul. OA has a network comprising some 75 destinations around the world, 33 of which are in Greece. The domestic network is very complete, including all Greek Islands of any size. OA serves most major European cities from Greece. It has several services to the Middle East, a

daily service to North America, with New York as the hub, a route to the Far East (Bangkok, Tokyo and Sydney) and a service to South Africa via Nairobi. Broken down geographically, the turnover of the airline derives chiefly from Greece (41 %) ahead of the rest of Europe (33 %), Asia (12 %) and North America (9 %).

Within the Community, OA is one of a group of relatively small flag carriers. In terms of turnover, its ranking is similar to that of the European companies Sabena, TAP, Finnair and Austrian Airlines.

The chief comparative advantage of OA over other Community airlines is its low unit operating costs. Costs per employee and per available seat- or tonne-kilometre (Askm/Atkm) are the lowest of any Community airline. But it has failed to capitalize on this advantage owing to its poor productivity and unit revenue. OA's load factor, which was 60 % in 1992 compared with 68,9 % in 1989, was the lowest of all flag carriers in the EEA in 1991 except Austrian Airlines. In 1992 OA had 21 % of total available seat capacity on international routes originating or terminating in Greece but carried only 15,5 % of the traffic on them. This dropped to 13 % in 1993. OA's international traffic fell by 4,7 % between 1990 and 1992. It is losing market share on the main European routes terminating in Athens. While 90 % of passengers arriving in or leaving Greece come from Europe or are going there, OA's market share of traffic between Greece and the rest of Europe fell from 27,6 % in 1988 to 22,7 % in 1992. It should be noted, however, that the market in air travel to and from Greece is dominated by seasonal leisure traffic: charter flights account for 66 % of passenger traffic between Greece and the rest of the world. OA is practically absent from this charter market.

In addition, the revenue per employee at OA is the lowest of the chief Community airlines. Comparison with other European airlines also shows how low the productivity of OA is, particularly in terms of Askm per employee and passenger-kilometres per employee.

Finally, total passengers carried by OA fell from 6 660 million in 1988 to 6 135 million in 1990 and 5 466 million in 1992. The fact that the start of this fall predated the international crisis affecting air transport from the end of 1990, bears witness to the airline's inherent internal problems. According to the Greek

authorities themselves, those problems arose as early as 1986 and were due to management errors, lack of any system of internal controls, the imposition of public service obligations without financial compensation and under-capitalization of the airline.

As regards the financial situation of OA, an examination shows a lopsided balance-sheet structure: at the end of 1992 total assets were Dr 155 billion (ECU 562 million) while debts amounted to Dr 444 billion (ECU 1,610 billion), of which Dr 165 billion was long-term debt, balance being achieved by negative equity of Dr 288 billion (ECU 1,045 billion). This financial structure is the worst of all comparable Community airlines. In addition, it is deteriorating rapidly owing to the size of the losses and the growing volume of financing costs. This situation is due to the consistent losses made by the airline. OA's operating accounts have been in the red for several years. The loss on operating account was 10,95 %, 16,66 %, 11,28 % and 6,44 % of turnover in 1990, 1991, 1992 and 1993 respectively. The overall result was even worse: losses of 22,85 %, 23,59 %, 33,24 % and 66,83 % of turnover respectively in the same years.

In the absence of a recapitalization or restructuring plan, the chances of improvement are non-existent owing to the high level of financing charges. These, in keeping with the amount of debt, were about Dr 40 billion and Dr 136 billion in 1992 and 1993 respectively, or 22 % and 67 % of turnover. The airline, in fact, has been kept going by the Greek State's guarantees on its borrowings, which have enabled it to raise the funds needed to operate. The cost financing these debts was added to the structural operating deficit of the airline, causing considerable losses which could themselves be financed only with further borrowings guaranteed by the State.

However, the recent, apparently spectacular deterioration these figures represent (year's results, debts, financing costs) is somewhat artificial, since it is largely due to penalty interest charged by the Greek State, which is added exponentially to the amount of debt.

This difficult and delicate financial and economic context forms the backdrop to the Commission's decision to examine the various aids granted or planned by the Greek State in favour of OA in the light of the provisions of Article 92 of the Treaty and Article 61 of the Agreement on the European Economic Area.

II

By letter of 14 July 1992, registered on 16 July 1992, the Greek Government lodged with the Commission at the latter's request, a notification on the loan guarantees which it has extended to OA in the period 1986 to 1992. The guarantees in question are covered by Article 6 of Greek Law No 96 of 26 June 1975 on the acquisition of the shares in OA by the Greek State, which states: 'OA, which has been a public utility undertaking from the outset, may borrow in Greece or abroad, the State being entirely at liberty to guarantee, adjust or repay such borrowings and, more generally, obligations of whatsoever nature assumed by the airline'. According to the Greek authorities, all of OA's loans, in Greek or other currencies, are in fact guaranteed by the State. In view of the lateness of this notification of measures already being implemented, the Commission registered the file on 8 December 1992 as non-notified aid NN 133/92.

By a further letter, dated 16 July 1993 and registered by the Secretariat-General of the Commission on 2 August 1993, the Greek authorities notified the Commission, under Article 93 of the Treaty, of a restructuring and reorganization plan for OA. In their letter of notification, the Greek authorities asked the Commission to take account of the special and semi-insular geography of Greece. They also claimed compatibility in accordance with Article 92 (3) (b) because the aid was intended to remedy a serious disturbance in the Greek economy. The case was registered as N 514/93.

The plan notified to the Commission in July 1993 was prepared by the Greek authorities and the airline's, management during the first half of 1993, with coordination by an American bank, Bear Sterns, and assistance from accountants Coopers & Lybrand and Avmark (consultants). Coopers & Lybrand were, in particular, given the job of recasting the accounts for 1990, 1991 and 1992 in accordance with generally recognized international accounting principles. Avmark, specializing in civil air transport, produced a study which led to the measures recommended by the plan. Financial projections up to 1997 were prepared to that end.

According to the Greek authorities, the plan notified in July 1993 should make the airline viable within five years

in the new competitive environment in the Community. The plan comprises a financial programme and a turnaround programme.

The financial programme includes restructuring of the airline's liabilities, which is essential owing to its current financial difficulties as described above. It comprises:

- reduction of OA's debts by Dr 326 billion (ECU 1,182 billion) by: (a) writing off Dr 200 billion (ECU 725 million) of OA's debts guaranteed by the Greek State; and (b) conversion of Dr 126 billion (ECU 457 million) of debts to three State agencies: the Revenue Service, the Civil Aviation Authority and the State oil refineries,
- an injection of capital by the Greek State: Dr 26,6 billion (ECU 96 million) in 1993, 1994 and 1995,
- replacement over the next four years of the State guarantee for Dr 15 billion (ECU 54 million) of OA's long-term debts,
- a further State guarantee for Dr 64 billion (ECU 232 million) to facilitate the acquisition of seven new aircraft over the next five years,
- assumption of responsibility by the State for money which could be claimed from OA by parties suing it (no further particulars given).

So as to make the financial restructuring a lasting success, there will also be a turnaround programme. Its essential aim is to revitalize the business. It calls for the following steps:

- the annual loss of 300 employees by natural wastage,
- remodelling of the route network, with more emphasis on European services,
- rationalization and adaptation of the fleet, resulting in a temporary reduction in the number of aircraft, disposal of old machines and the purchase of new, smaller medium-haul aircraft,
- a strategy of forging alliances with future new partners in North America, Europe, Asia and the Middle East to take advantage of network synergies,

- a new approach to marketing, including better market segmentation, promotion of OA's image and services, and development of sales activities,
- recasting of timetables to promote flight transfers (connections) and meet customers' requirements better,
- a staff training policy and the introduction of a business culture and internal reorganization based on strategic business units,
- internal reorganization to improve the flow of information, to improve monitoring procedures and to orientate the airline's culture to market requirements.

The plan as thus notified, however, was not sufficient as it stood to enable the Commission to take an informed view of the case.

First, there was a need for precise data for 1993. Much more information was also needed on how the forecast results for 1993 to 1997 had been worked out. The documents supplied to the Commission did not actually provide any particulars, either of the assumptions on which the financial projections for that period were based, or of the financial consequences of the various steps in view, particularly as regards costs and changes in market share. The restructuring plan was put forward as a list of actions; the costs, timing and precise manner of implementation of each, and their impact on OA's future results, were not known — the results being given only in overall terms.

The information from the Greek authorities hardly did any more to make clear how the loss of profits due to Greek Government policy in 1975 to 1991 had been worked out: losses due to price controls and public-service obligations on unprofitable routes were estimated at Dr 375 billion (ECU 1,360 billion); under-capitalization, due to failure on the part of the Greek State to carry out an undertaking given by it in 1981 to provide Dr 68 billion (ECU 247 million) of equity capital, was stated to have caused estimated losses of between Dr 34 and 72 billion (ECU 123 and 261 million).

The Commission also wished to have more detailed information on OA's situation on the chief markets or routes

on which it operates, specifically changes in its market share and its margins; this assumed that the airline had an analytical accounting system. It was important to have an accurate picture of the state of competition on the Greek domestic market and the conditions under which Community regulations liberalizing it are applied; all these were lacking in this case. It was essential for the Commission to be supplied with a list, including the amount, of all subsidies OA was likely to receive for operating certain Greek domestic routes and particulars of how they were worked out.

The Greek authorities had provided very little information on the present and future status of OA, particularly in tax and social terms, and on the special obligations to which it would continue to be subject as a publicly owned undertaking.

In view of these inadequacies, a request for additional information on the above points was sent to the Greek authorities, first in French on 16 August 1993, and then in Greek on 23 August 1993. As the Greek authorities did not respond to this request for information, the Commission decided, on 10 March 1994, to initiate the procedure provided for in Article 93 (2) of the Treaty. The procedure concerned both the loan guarantees received by OA and the recapitalization and restructuring plan notified in July 1993. The Commission had three principal reasons for initiating the procedure: inadequate information and lack of transparency; low credibility of the recovery plan for the airline; risk of transferring OA's difficulties to its Community competitors, particularly in view of Greece's problems in implementing the liberalization provisions of the third package of air transport measures⁽¹⁾.

The Commission informed the Greek Government of its decision to initiate the procedure by letter of 23 March 1994, and gave it the opportunity to submit comments. This letter was published in the *Official Journal of the European Communities*⁽²⁾ and the other Member States and interested parties were also invited to submit their comments in conformity with the provisions of Article 93 (2) of the Treaty.

⁽¹⁾ Council Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92, OJ No L 240, 24. 8. 1992, p. 1, 8 and 15 respectively.

⁽²⁾ OJ No C 94, 31. 3. 1994, p 4.

III

The British, Norwegian, Finnish and Swedish Governments, several airlines competing with OA, in particular SAS, South East European Airlines and British Airways, and other interested parties including Abela Corporation and the Association of Airline Companies of the European Community (ACE) submitted comments on this matter. All these parties, except one, approved the Commission's decision to initiate the procedure provided for in Article 93 (2) and raised several questions relating in particular to the reservations expressed in that decision. Only the undertaking Crédit Lyonnais/PK Airfinance stated that it was unable to make an appraisal. However, it expressed fears that it would not be reimbursed for the loan guaranteed by the Greek State which it had granted in the framework of leasing agreements made by OA in the event of the Commission's decision being negative.

The four countries which submitted comments shared the doubts, expressed by the Commission on initiating the procedure, regarding the inadequacy of the recovery plan, the lack of information and transparency and the transfer of difficulties to competitors. They particularly stressed the adverse effects of the aid on competitors within the European Economic Area, above all on small private airlines. Norway requested that this aid should be the very last granted to OA. It also mentioned the risk of maintaining overcapacity and uneconomic pricing. The United Kingdom said that the Greek Government should undertake to cease interfering in OA's affairs in future. Furthermore, the United Kingdom considered that any additional information sent by the Greek authorities to the Commission should be communicated to the member countries of the EEA and to the interested parties, in order to enable them to submit further comments in full knowledge of the facts.

All these points also figured in the comments made by the Community airlines competing with OA and by the ACE. In addition, they made the following remarks :

- with regard to handling, OA's monopoly at all Greek airports, with the exception of the self-handling which is authorized, was reflected in a service of mediocre quality at a high price. The aid would authorize OA to continue to abuse this situation at the expense of its Community competitors. As a result, all the Community airlines that commented called for the abolition of this monopoly,
- with regard to the provision of services, the aid would permit OA, if no precautions were taken, to continue to offer tariffs that did not cover its costs, particularly on the Athens-Stockholm and Athens-London route, or to maintain its current overcapacity, in view above all of its low load factor. They also requested strict

surveillance of the tariffs and limitation of the capacity offered by OA, including the discontinuation of uneconomic services or routes and the disposal of certain assets,

- the adverse effects of the aid were exacerbated by the incorrect application of the third air transport package by the Greek authorities and by the designation monopoly from which OA still benefited within Greece. The Greek authorities imposed various restrictions on Community carriers operating non-scheduled flights to the Greek islands and on carriers holding a licence issued in Greece who wished to operate non-scheduled services within Greece.

Other points raised were OA's disproportionate occupation of facilities at Greek airports, the preferential treatment of OA in the allocation of slots at Greek airports, opening hours of certain Greek airports geared exclusively to OA's needs and the lack of transparency regarding cross-subsidies between profitable traffic and uneconomic traffic (public service links) operated by OA.

Finally, Abela described the contractual difficulties it experienced with OA relating to the management of Olympic Catering, a joint subsidiary of OA and Abela, as a 'microcosm' typical of the situation within the Greek national airline.

All these comments were communicated to the Greek Government.

IV

On 16 May 1994 the Greek authorities sent to the Commission their comments in response to the letter they had received dated 23 March, and their replies to the requests for information dated August 1993.

It emerges from the comments supplied by the Greek Government that Avmark consultants carried out an additional study of OA's recovery possibilities at the beginning of 1994. In the light of the results of this study, and in order to take account of the doubts expressed by the Commission in its letter initiating the procedure, the Greek authorities have supplemented the company recapitalization and restructuring plan notified in July 1993 in order to remedy the inadequacies to which the Commission had drawn attention.

With regard to the financial situation, the proposed total amount of recapitalization now amounts to Dr 545 billion (ECU 1,915 billion) compared with Dr 352,6 billion in the plan notified in July 1993. This amount breaks down as follows :

- an easing of OA's debt burden by guarantees from the Greek State totalling Dr 427 billion in 1994, compared with Dr 200 billion previously,
- a conversion to equity of Dr 64 billion of OA's debts in 1994, compared with Dr 126 billion previously,
- a capital injection of Dr 54 billion in three instalments of Dr 19,23 and 12 billion in 1995, 1996 and 1997 respectively, compared with Dr 26,6 billion previously planned in three instalments in 1993, 1994 and 1995.

This recapitalization is in addition to the guarantees which the Greek State plans to extend to OA for the purchase of new aircraft over the next few years for a total of US \$ 378 million (ECU 322 million) compared with Dr 64 billion (ECU 232 million) previously. However, the other financial measures in the plan notified in July 1993, namely the replacement of the State guarantee for OA's long-term debts amounting to Dr 15 billion and the assumption of responsibility by the State for monies which could be claimed from OA by parties suing it, have been abandoned. It should be noted that the guarantees relating to the debts remaining after recapitalization have not been withdrawn, but will expire as and when these debts are amortized, at the latest in 2004.

The higher recapitalization now planned compared with that notified in July 1993 can be explained by the increase in OA's indebtedness by Dr 153 billion in 1993, from Dr 356 billion to Dr 509 billion. However, 82 % of this increase stems, in fact, from the penalties imposed by the Greek State on OA at the statutory rate of about 3 % per month on the airline's arrears *vis-à-vis* the State bodies (Civil Aviation Authority, State refineries, etc.).

With regard to the turnaround programme, the measures envisaged in the plan notified in July 1993 have been supplemented by action designed above all to reduce the airline's costs. The following are the three main measures :

- discontinuation of the service to Tokyo and the American services other than New York. This will entail the disposal of a Boeing 747,
- discontinuation of the operation of four A 300s,
- above all, a reduction in personnel costs of 15 % in 1994 and 30 % in 1995 with the aid of three simultaneous measures: changes in working conditions (reduction in rest periods and miscellaneous advan-

tages granted to staff); a two-year salary freeze; a net reduction in staffing levels of 1 500 between 1994 and 1997, starting with 927 in 1994.

These cost-reduction measures are to be supplemented by other measures relating to reorganization and productivity of the undertaking, such as a reduction in the number of hierarchical levels, regrouping of all of the airline's offices on a single site, development of computer support systems in handling and maintenance activities, introduction of a computerized reservation system (Hermes II) and yield management system, greater focus on customers and travel agencies, etc. There is not to be any extension to the fleet or change in its composition during the term of the plan; the only action envisaged is renewal of part of the fleet by the acquisition of medium-haul aircraft; without the type and number of aircraft being specified. It should be noted that the various measures of the recovery programme concern both OA and its subsidiary Olympic Aviation.

The communication from the Greek authorities to the Commission of 16 May 1994 also contains answers to most of the questions raised by the Commission in its request for information of August 1993. In particular, the Greek Government supplied the detailed provisional balance sheet and accounts for the years 1993 to 1997, and the assumptions on which these forecasts were based. The chosen scenario is based on assumed average growth in traffic for OA of 3 % per annum during the period 1993 to 1997, which is lower than the growth rate estimated by the international organizations AEA and IATA, although these vary depending on the region of the world. The average yield is expected to decrease over the same period, in conformity with the AEA forecasts and in the light of the devaluation of the drachma.

The chosen scenario is based on a model integrating the preceding assumptions and the discontinuation of the Tokyo service and the American services other than New York, as well as the discontinuation of operations with four A 300s. If these elements alone are included, OA's result will remain negative throughout the period despite a return to a moderate level of financing costs owing to the substantial debt relief resulting from recapitalization. However, when the reductions in personnel costs and productivity improvement measures are added to the basic model, the airline's net result becomes positive from 1995 to reach Dr 30 billion before tax in 1997 or 10,8 % of the estimated turnover.

The Greek authorities also described the manner in which the loss of profits resulting from Greek Government policy in the period 1975 to 1991 with regard to price controls, public service obligations and undercapitalization can be calculated. This information also makes it possible to estimate at Dr 5 billion the annual loss to OA in 1991, 1992 and 1993 resulting from price controls on domestic Greek services. The losses resulting from other public service obligations (transport of officials, VIP's, press representatives) can be estimated at just under Dr 4 billion per annum in 1989 and 1990 and less than Dr 2 billion per annum since 1991.

In addition, the Greek authorities communicated a detailed analysis of the airline's results by destination and aircraft type, the fruit of the analytical accounting system developed by Avmark. Other information supplied enables the Commission to have a clear picture of OA's comparative position on the various markets in which it is present, particularly within the EEA and Greece. This shows that OA continues to operate all domestic scheduled services within Greece as a monopoly, but several competing Greek airlines have recently emerged, whose activity is limited to non-scheduled services for the moment. In this respect, the Greek authorities indicated that OA had never received and was not receiving any subsidy to operate the domestic Greek services.

Furthermore, the Greek Government does not dispute in its communication to the Commission of 16 May 1994 that the loan guarantees extended and the planned recapitalization constitute aid, but it maintains that this may be covered by the provisions of point (a) of Article 92 (3) of the Treaty relating to regional aid. It points out:

- that Greece is the poorest country in the European Union, and
- that the air transport services provided by OA are vital to the Greek economy owing to Greece's geographical isolation, the importance of tourism, the role of the Greek community in the world, the employment created in Greece by OA and the need to provide a good service to the islands.

The Greek Government also states that the aid measures in question meet the exemption conditions of point (c) of Article 92 (3) to the extent that:

- the recapitalization forms part of a general restructuring programme that will make the airline viable again owing in particular to the reduction of the debt

burden. No other aid or guarantee outside this programme will be extended to OA, which will be managed like a commercial undertaking,

- the recapitalization will take place in a transparent manner under the scrutiny of an independent external consultant,
- the recapitalization will not shift OA's difficulties to its competitors since OA has only 13 % of the overall market in scheduled and non-scheduled flights originating or terminating in Greece and forecasts of OA's traffic within the EEA do not anticipate any increase in market shares.

Finally, the Greek authorities declared in their communication of 16 May 1994 that they consider maintenance of the current handling system at Greek airports, which is an OA monopoly subject to authorized self-handling to be vital to the success of the programme. However, they will participate actively in the process of restructuring this sector planned by the Commission. In addition, they will apply in full Regulation (EEC) No 2408/92 on access for air carriers to intra-Community air routes, subject to the exceptions provided for, concerning the Greek islands in particular.

V

At a series of meetings in Brussels during the first two weeks of June 1994 with the Commission, the Greek authorities were asked to provide further details of the conditions in which the Community regulations constituting the third air transport package were being applied in Greece. They confirmed in particular that Regulation (EEC) No 2407/92 on licensing of air carriers was now being correctly implemented in Greece, particularly as regards the order of granting air operators's certificates and operating licences, the non-restriction of operating licences to non-scheduled services or certain routes and the term of validity of those licences. A document handed to the Commission on 13 June 1994 explains these points and shows that OA's Greek competitors received operating licences in conformity with Community rules.

With regard to Regulation (EEC) No 2408/92, the Greek Government said it was not currently applying the provisions of Article 4 of this Regulation relating to the imposition of public service obligations. However, the Commission was not able to verify entirely the conditions of Article 5 of the Regulation. With regard to Regulation (EEC) No 2409/92 on fares, the Greek authorities said that the fares for scheduled air services within Greece,

including to the islands, had been completely liberalized since 1 January 1994. According to the abovementioned document given to the Commission on 13 June 1994, the committee which had been responsible for approving fares on the domestic network had been abolished.

The question of OA's status was discussed at these meetings. According to the Greek Government, ordinary law applies to OA, particularly with regard to social, accounting and financial matters; except for the loan guarantee system, the only arrangements derogating from ordinary law in favour of OA concern tax matters (exoneration from corporation tax replaced by turnover tax). In addition, according to the Greek authorities, the airlines other than OA licensed in Greece are in no way subject to discrimination regarding access to airports or airport facilities in Greece. Furthermore, self-handling was authorized in full in all respects at Greek airports.

In addition, on 24 June 1994 the Greek Government gave several undertakings in a letter to the Commission. The Greek authorities undertook:

(a) with regard to the management and status of OA:

- to repeal Article 6 of Greek Law No 96 of 26 June 1975 permitting the Greek State to extend guarantees for the loans contracted by OA, except for the guarantees explicitly provided for in the plan communicated to the Commission,
- not to intervene in future in the 'operational management' of OA,
- to give OA a fiscal status comparable to that of Greek companies under ordinary law (public limited company); however, the Greek Government intends to exempt OA from any taxes likely to affect the recapitalization operation that is part of the restructuring programme for the airline,
- to modify the agreements made between the Greek State and OA in order to take account of the provisions of the third air transport package,
- no longer to grant aid to OA in any form whatsoever for the duration of the restructuring programme.

(b) with regard to the monitoring of the plan accepted by the Commission:

- to have adopted immediately the legislation necessary for effective implementation of the salary, social and financial aspects of the plan,
- to accept that the Commission would, where appropriate, have the main results of the restructu-

ring programme and the application of the conditions relating to the approval of aid verified by an independent consultant chosen by common accord,

- to submit to the Commission each year, at least four weeks before payment of each instalment of the capital increase scheduled in January 1996 and January 1997, a report on the implementation of the restructuring and recapitalization plan, in order to enable it to comment,
- not to carry out the scheduled capital increases in 1995, 1996 and 1997 in the event that the plan's objectives had not been achieved in the preceding years.

(c) with regard to OA's activities:

- that OA would refrain from using the aid to acquire a holding in any Community air carrier.

(d) with regard to implementation of the third air transport package:

- to improve the procedure for registering aircraft or for the granting of an air operator certificate (AOC),
- to comply with the principles of interpretation concerning the application of Article 3 (1) of Regulation (EEC) No 2408/92 and the interrelationships between the authorization procedure of Regulation (EEC) No 2408/92 and the provisions of the other regulations forming part of the third package and Council Regulation (EEC) No 95/93⁽¹⁾. (The principles of interpretation are those specified in the document sent to the Greek authorities in French by the Commission on 18 November 1993 and in Greek on 26 January 1994),
- to reply in writing to the applications made by Community undertakings, within reasonable periods and to the extent possible,
- to open to competition all air routes within continental Greece by 1 January 1996 at the latest, subject to application of Article 4 of Regulation (EEC) No 2408/92,
- not to make the exercise of traffic rights granted to Community undertakings other than those licensed in Greece subject to the payment of guarantees for the repatriation of passengers,

⁽¹⁾ OJ No L 14, 22. 1. 1993, p. 1.

- to comply with the definition of non-scheduled air service as it results indirectly from the provisions of Regulation (EEC) No 2408/92; in particular, not to impose on non-scheduled services any constraint such as prohibition of the 'seat-only' provision on return journeys, prohibition of the transport of cargo or mail and the requirement of a minimum sojourn time.

LEGAL ASSESSMENT

VI

Following this letter of 24 June 1994, further meetings were held in Brussels at the end of June and during the first two weeks of July 1994 between the Greek authorities and the Commission. At these meetings, the Greek authorities stated that they interpreted 'operational management' as the entire management of the undertaking which did not normally fall within the competence of the undertaking's shareholders. They also said that the date of payment of the instalments of the capital increase scheduled in January 1996 and January 1997 would be postponed by four weeks in the event that the Commission submitted the report, which it would receive four weeks before payment, to an independent consultant chosen by common accord for an assessment. The discussions also concerned the restrictions to which OA could be subject within the EEA and the question of the designation monopoly the Greek national airline still enjoyed on routes to non-member countries and the Greek islands not covered by the third air transport package. By letter of 13 July 1994 the Greek Government gave the following additional undertakings, according to which :

- it accepts the principle that Greek companies other than OA are authorized to operate routes between Greece and non-member countries. Airlines will therefore be designated on the basis of the inherent merits of each request,
- it will ensure that, during the term of the restructuring plan (1994 to 1997 inclusive), the increase in the number of seats offered by OA within the EEA will be proportional to the predicted growth of this market. The basis for determining the increase in capacity will be the 12-month period ending in April 1994,
- it will ensure that OA does not act as price leader in scheduled traffic on the Athens-Stockholm and Athens-London route,
- the Greek islands will continue to be exempt from implementation of the third air transport package until 1 July 1998.

Greece stated that there will be no change to the handling system at Greek airports.

Pursuant to Article 92 (1) of the Treaty and Article 61 (1) of the Agreement on the European Economic Area (hereinafter referred to as 'the Agreement') 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 and between contracting parties, be incompatible with the common market and with that Agreement.

Article 222 of the Treaty and Article 125 of the Agreement embrace the principle of neutrality as regards the system of property ownership in the Member States and the principle of equality between publicly and privately owned undertakings. According to those principles, action by the Commission may be neither prejudicial nor beneficial to publicly owned undertakings, in particular when it is examining a transaction in the light of the aforesaid Article 92 of the Treaty and Article 61 of the Agreement. It is accordingly necessary to establish, case by case, whether a transaction between a Member State and a publicly owned undertaking is a normal commercial transaction or whether it contains, in whole or in part, elements of aid.

In order to determine the existence of State aid, the Commission must base its judgment on the principle of the investor operating in a market economy. According to this principle, there is no State aid in an injection of capital on terms which would be acceptable to a private investor operating under the normal conditions of a market economy⁽¹⁾. The Court has had occasion to point out that 'although the conduct of a private investor with which the intervention of the public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realizing a profit in the relatively short term, it must at least be the conduct of a private holding company

⁽¹⁾ Commission communication on the application of Articles 92 and 93 of the Treaty to public authorities' holdings in company capital, Bulletin of the European Communities No 9-1984; Court of Justice of the European Communities, Joined Cases 296 and 318/82, *Kingdom of the Netherlands and Leeuwarder Papierwarenfabrik BV v. Commission* [1985] ECR 809, paragraph 17, p. 823.

or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term' (1).

In this case, four separate transactions are under consideration: the loan guarantees; debt relief; conversion of the debt to equity; and the injection of capital in three instalments.

With regard to the loan guarantees, the Commission informed the Member States, by letter of 5 April 1989, of the criteria which it intended to apply in examining State guarantees (2). It considered that all guarantees extended by the State, either directly or through financial institutions operating for or on behalf of the State, were covered by Article 92 (1) of the Treaty. Every case of a guarantee being extended by the State had to be notified in accordance with Article 93 (3), whether it came under an existing general system of guarantees or was a specific measure.

It follows from this that the loan guarantees extended to OA to date constituted aid falling within the scope of Article 92 (1). According to the comments sent to the Commission by the Greek authorities on 16 May 1994, the same is true of the further loan guarantees which the Greek State intends to extend to OA before 1998 for a total of US \$ 378 million as part of the restructuring and recapitalization plan for the undertaking.

The Commission also made clear that it proposed only to examine schemes instituting guarantees, and not all cases in which those schemes were applied, except where a guarantee was extended outside the scope of a scheme (3).

In this case the guarantees extended by the Greek State in respect of borrowings by OA in the period 1986 to 1993 were not part of a general scheme. The abovementioned Article 6 of the Law of 26 June 1975 only gave the State power to guarantee borrowings or any other obligation assumed by the airline. In those circumstances, the Greek authorities should have notified the Commission of all the required information on every guarantee extended to OA. By failing to do so in due time, the Greek State failed to fulfil its obligations under Article 93 (3). Consequently, in the opinion of the Commission the aid in question was

granted illegally. This applies in particular to the guarantees extended from 5 April 1989.

To the Commission, the aid deriving from a loan guarantee is generally equal to the difference between the rate of interest on a loan raised on normal market terms and the actual rate secured by virtue of the guarantee. In the case of OA, however, the Greek State made full use of its powers to guarantee loans in the period 1986 to 1993, guaranteeing all the carrier's new borrowings indiscriminately. OA's annual reports state explicitly that all credit institutions require a guarantee from the Greek State before lending to OA. This can be easily explained by the magnitude of the risks: from 1990 onwards, OA's debt was three times the book value of its assets.

Because, in these severe financial circumstances, no credit institution would agree to lend to OA, even at a very high rate of interest, without the State guarantee, the guarantees extended by the Greek State amount to operating aid. In this case the amount of the aid is equal to the amount of the loans themselves, which are actually disguised subsidies.

There is no doubt either that the reduction of OA's debts by Dr 427 billion in 1994 is tantamount to aid. By this action, the Greek State is taking over responsibility for repaying part of the borrowings of the airline equal to that amount under the guarantees examined above. This unilateral action, with no alleged *quid pro quo*, is equivalent to a subsidy of the same amount. The sums thus paid out by the Greek State were in the nature of grants, in view of the situation of the airline as described earlier. No private investor would have taken such action and this, consequently, makes it aid. This aid overlaps, however, with the aid deriving from the loan guarantees examined above, since it merely highlights the nature of the guaranteed loans as disguised subsidies.

The conversion to equity in 1994 of Dr 64 billion of OA's debts is equivalent to an injection of capital of the same amount. The nature of this investment has to be considered in the light of the principle of the investor in a market economy. The insurmountable financial difficulties of OA, whose position continues to deteriorate, combined with its structural unprofitability, leave no doubt at this stage about the absence of any prospect of a return, at any point in time, on the capital invested. The capital injection, therefore, like the guarantees and the writing-off of part of the debt, has no other aim than to ensure that the national airline survives. Consequently, it constitutes aid.

(1) Court of Justice of the European Communities, Case 305/89, *Italy v. Commission*, [1991] ECR I-1603, paragraph 20, p. I-1640.

(2) Ref. SG(89) D/4328.

(3) Commission letter to Member States, ref. SG(89) D/12772, 12 October 1989.

The same applies to the capital injection of Dr 54 billion in three instalments in the years 1995 (19 billion), 1996 (23 billion) and 1997 (12 billion).

The various categories of aid examined above, granted directly by the Greek State, affect trade between Member States because they concern a company whose activities in the transport field, which by its very nature directly affects trade, cover the entire common market. They also distort competition within the common market because they are granted to only one undertaking which is in competition with the other Community airlines on the greater part of its European network, particularly since the entry into force of the third air transport liberalization package on 1 January 1993. Consequently, they constitute aid within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement, a point which is not disputed by the Greek authorities. It is accordingly necessary to examine the possible compatibility of this aid with Article 92 (2) and (3) of the Treaty and Article 61 (2) and (3) of the Agreement.

VII

Article 92 (2) of the Treaty and Article 61 (2) of the Agreement do not apply to the aid in question in that it is neither aid having a social character granted to individual consumers, nor aid to make good the damage caused by natural disasters or exceptional occurrences, nor yet aid granted to the economy in certain regions of Germany.

Article 92 (3) of the Treaty and Article 61 (3) of the Agreement list aid which may be considered to be compatible with the common market. Such compatibility has to be assessed in the context of the Community and not of a single Member State. The derogations provided in Article 92 (3) and Article 61 (3) apply only where the Commission is able to establish that, but for the aid in question, market forces would not have sufficed to persuade the future aid recipient to act in a way conducive to the attainment of one of the objectives of those derogations.

To safeguard the proper functioning of the common market, and in view of the principles enshrined in Article 3 (g) of the Treaty, derogations from the principles enshrined in Article 92 (1) and set out in Article 92 (3) must be strictly interpreted when a system of aid or any individual aid measure is under examination.

Article 92 (3) (a) and (c) of the Treaty and Article 61 (3) (a) and (c) of the Agreement contain derogations in respect of aid intended to promote or facilitate the development of certain areas. The Greek authorities referred to these provisions in their letter of 16 May 1994. They pointed to the low level of economic development of Greece compared with the Community as a whole, and the vital role of OA in the country's economy. However, the Commission cannot accept the Greek Government's reasoning in this case. Although Greece is a region falling entirely within the scope of Article 92 (3) (a) of the Treaty and Article 61 (3) (a) of the Agreement, the aid at issue in this Decision, namely the loan guarantees and the various aspects of recapitalization, do not form part of a general aid scheme for all airlines operating on routes between Greece and the rest of the world or even all airlines established or licensed in Greece. Quite the reverse: they are *ad hoc* measures intended solely to keep OA going, without any link with regional aid.

Nor are these measures aimed at promoting the execution of an important project of common European interest, as provided for in Article 92 (3) (b) of the Treaty and Article 61 (3) (b) of the Agreement. The Greek authorities, however, invoked subparagraph (b) in their notification of 16 July 1993 in so far as it relates to aid to remedy a serious disturbance in the economy of a Member State.

It should be pointed out that that provision was the basis for the Commission's decision of 31 July 1991, addressed to the Greek State, concerning the privatization of 208 undertakings belonging to the Business Reconstruction Organization and the various public banks and certain public undertakings and organizations known as 'DEKO'. At that time the Commission decided not to raise any objections to this privatization programme, bearing in mind that the economic indicators for Greece showed that there was a serious disturbance in its economy. The decision of 31 July 1991, however, explicitly reserved judgment in the case of OA and restated, where the latter was concerned, the principle of prior notification. As pointed out earlier, the aid in question is aimed chiefly at preventing the airline from going bankrupt. It relates to only one undertaking and could not possibly have either as its object or effect the remedying of a serious disturbance in the Greek economy. Article 92 (3) (b) of the Treaty and Article 61 (3) (b) of the Agreement therefore do not apply in this case.

With regard to the derogation provided for in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement in respect of aid to facilitate the development of certain economic activities, the Commission may consider aid for restructuring an undertaking to be compatible with the common market if it meets a number of criteria⁽¹⁾. These criteria must be examined in the light of the two principles enshrined in those provisions: the aid must be necessary for the development of the activity, from the Community point of view, and the aid must not adversely affect trading conditions to an extent contrary to the common interest⁽²⁾.

These criteria have been interpreted in the sectoral context of air transport by memorandum No 2⁽³⁾, which states that the Commission may, in certain cases, consider aid granted to an airline which is in serious financial difficulties to be in compliance with Article 92, subject to the fulfilment of certain conditions:

- (a) the aid must be part of a programme approved by the Commission and aimed at putting the airline back on its feet so that it may, within a reasonable period of time, be profitable without receiving further aid;
- (b) the aid must be transparent and verifiable;
- (c) the aid in question must not shift the Member State's problems onto the rest of the Community.

In view of the increased competition linked with the progressive liberalization of air transport by the third package of measures, the Commission must abide by a strict policy of control of State aid, that takes account of the opportunities presented by liberalization in order to avoid effects detrimental to the common interest.

In its notification to the Commission of 16 May 1994, the Greek Government invoked the provisions of Article 92 (3) (a) and (c) of the Treaty and Article 61 (3) (a) and (c) of the Agreement with a view to obtaining an exemption for the aid in question. To this end, it stated that the three conditions listed above were met in this case.

It is necessary to examine point by point whether these conditions have been met in the light, in particular, of all the facts set out in parts I to V.

To begin with the capacity of the planned recapitalization and restructuring programme to make OA viable within a reasonable period in the context of increased liberaliza-

tion, it is first of all necessary to examine whether the aid is adequate to meet the undertaking's financial needs. At the end of 1993, OA's balance sheet showed its equity to be negative to the tune of Dr 375 billion, with assets of Dr 192 billion (excluding leasing) balanced by debts and provisions respectively of Dr 510 billion and Dr 57 billion. This considerable imbalance in the balance sheet structure increased in the first half of 1994. However, the effect of the debt relief of Dr 427 billion combined with the capital increase of Dr 64 billion resulting from debt conversion will lead to an improvement in the structure of the balance sheet from the end of 1994. On that date, OA's assets of Dr 187 billion (excluding leasing) should be balanced by equity, provisions and debts of Dr 40, 66 and 101 billion respectively. The debt-equity ratio at the end of 1994 will thus be 2,5, which is higher than the figure currently considered acceptable for an airline. The three capital injections envisaged in the programme submitted to the Commission and the other measures it contains should bring this ratio down to 0,78 by the end of 1997. On the basis of these figures, the proposed recapitalization appears to be sufficient and non-excessive, in view of the size of the undertaking and its special situation on the Community's periphery.

The very substantial reduction in debt provided for by the plan will also serve to bring OA's financing costs down to reasonable levels: from Dr 136 billion in 1993, they should fall to Dr 74 billion in 1994 and Dr 3 billion in 1995, or 1,3 % of turnover at that time. In addition, according to the plan presented, OA's operating result will substantially improve between 1993 and 1997 thanks to savings in salary costs and the abolition of the public service burdens still in excess, it would appear, of Dr 5 billion in 1993. On this question of cost reductions, as on the issue of the necessary amount of recapitalization, the Greek Government took account of the doubts expressed by the Commission in its letter initiating the procedure. The operating result should therefore improve from - Dr 13 billion in 1993 to + Dr 17 billion as early as 1995. This latter figure does not appear in any way improbable if the various measures to cut OA's costs are actually implemented. It should be borne in mind that OA's operating result, which shows the airline's capacity to achieve operating surpluses independently of the financing sources, improved slightly between 1990 and 1993, even though it was negative during that period.

The plan communicated to the Commission also shows that the return to profit from 1995 will generate an increase self-financing capacity. This, together with the capital increases and the new scope for contracting debt in 1997, should satisfy both the need for working capital and finance the investments essential to the undertaking's long-term operations.

⁽¹⁾ Eighth Report on Competition Policy, paragraph 176.

⁽²⁾ Judgment of the Court of Justice of the European Communities of 17 September 1980 in Case 730/79, *Philip Morris v. Commission*, [1980] ECR 2671.

⁽³⁾ Com(84) 72 final of 15 March 1984.

In addition, the assumptions as to growth in traffic and earnings on which the financial projections are based, appear reasonable. The annual growth in traffic assumed for OA in the programme submitted to the Commission is below the average estimated for the sector during the period 1994 to 1997. The drop also envisaged in the yield takes account both of the changes in customer behaviour observed since the Gulf War and the increase in competition, particularly in Europe, as a result of the liberalization measures. In this respect, the undertakings given by the Greek authorities regarding correct application of the third air transport package appear to testify to the Greek Government's desire to place OA in a truly competitive environment. The same applies to the undertakings regarding the absence of any further aid and the management and status of OA, which is to become an undertaking subject to ordinary law on the same footing as the other Community airlines, with no special privileges or constraints. The Commission also considers that the undertakings regarding the repeal of Article 6 of the Greek Law of 26 June 1975, the adoption of a fiscal status governed by ordinary law and the modification of the agreements between OA and the Greek State to comply with the provisions of the third air transport package, should be honoured as quickly as possible and at all events before 31 December 1994. In addition, the loan guarantees continuing until redemption of the corresponding debt in 2004 and the new guarantees to be extended before 31 December 1997 for borrowings of US \$ 378 million must meet the conditions set out in the Commission's letter to Member States of 5 April 1989⁽¹⁾. Otherwise, the maintenance of any protected situations would have been or would be of a nature to cast doubt on the viability of the undertaking, and hence on the credibility of the recovery plan, in the international context of greater competition and in the new context of opening up of markets within the EEA. It is worth noting in this context the Greek Government's undertaking given in its letter of 13 July 1994 not to maintain beyond 30 June 1998 the exemption of the airports in the Greek islands from the application of Regulation (EEC) No 2408/92.

Finally, in view of the facts at its disposal, the Commission considers that OA's recapitalization and restructuring plan can enable the company to create an operation of lasting viability within three years without receiving further aid.

With regard, secondly, to the transparency of the aid and possibilities of monitoring it, the Commission considers that this second condition is also met. The Greek Government supplied the Commission with virtually all the information it had requested in order to be able to rule on

this matter in full knowledge of the facts. The doubts expressed on this score by the Commission when initiating the procedure can thus be dealt with in the terms and conditions of this Decision. Several questions raised by Member States and interested parties following initiation of the procedure have also been the subject of discussions between the Greek authorities and the Commission.

In addition, the undertakings given by the Greek authorities regarding the follow-up to the plan presented to the Commission guarantee adequate possibilities of verification and surveillance: the Greek Government will take all the necessary steps to ensure effective implementation of the plan; it will submit two reports to the Commission on this subject before January 1996 and January 1997 respectively; the Commission may call in an independent consultant to verify implementation, in particular before payment of the two final instalments of the capital increase; finally, the Greek authorities will not carry out the capital increases planned in 1995, 1996 and 1997 if the objectives of the plan have not been attained.

On the subject, thirdly, of OA's difficulties being shifted to its Community competitors, it emerges from what has been said earlier that the planned recapitalization programme is not only necessary, but also sufficient without being excessive. It will not lead to 'over-capitalization' of the undertaking likely to give it privileged access to the capital market or to enable it to contract debts without any constraints. The programme is simply designed to put OA on an 'equal footing' with its competitors, without giving it any special advantage in terms of balance sheet structure.

It should be added that, since 1992, air transport in Europe has once again been experiencing high growth rates and that prospects appear favourable for the coming years. This general context of renewed growth can only dilute the adverse effects on the competition of the aid extended to OA. More precisely, the plan should not be reflected in an increase in OA's activity at the expense of other Community airlines, since the growth rate assumed for the undertaking on the EEA internal market during the term of the programme is lower than the estimated growth rate in overall traffic in this same market. Similarly, the plan submitted to the Commission does not provide for a significant increase in OA's fleet before 1998 but, on the contrary, the withdrawal of several aircraft from operation and the simple replacement by aircraft of a lower capacity of the undertaking's most obsolescent aircraft, soon to be affected by the provisions of Council Directive 92/14/EEC⁽²⁾ on aircraft noise.

⁽¹⁾ See footnote 2, page 31.

⁽²⁾ OJ No L 76, 23. 3. 1992, p. 21.

At all events, the Greek authorities have given the undertaking that OA will not be able to act as price leader on the Athens-London and Athens-Stockholm routes, on which particular risks have become apparent. The Commission believes that this renunciation of a price leader role implies that OA will not be offering fares lower than those offered by its competitors on the routes in question, when account is taken of the nature of the services and the conditions and restrictions attached to the individual fares. The Greek authorities have also given an undertaking that OA will refrain from acquiring a holding in any Community air carrier thanks to the aid. They also made a commitment that the increase in the number of seats offered annually by OA within the EEA would be proportional to the growth rate of the market in the period 1994 to 1997. The Commission considers that this latter undertaking should be implemented in the following manner in conformity with the Commission's policy on aid to air carriers. First, it should be stressed that the possible growth in the number of seats offered by OA should be at most equal to the growth of the overall market, in order to prevent the airline expanding at the expense of its Community competitors owing to the aid received. It is then necessary to take 1993 as the reference period, being the year in which the aid was notified to the Commission and for which there are complete and reliable data available. Finally, with a view to limiting the risk of shifting capacity from one route to another which is likely to distort competition, it is necessary to define the market in question and that of the scheduled services operated by OA within the EEA, including additional and seasonal flights, but excluding the scheduled services between continental Greece and the Greek islands, which account for a higher volume of seats offered and on which OA is not competing with any other Community airline. The number of seats offered by OA on the EEA market thus defined was 3 518 778 in 1993.

The Commission has also ascertained that the grant of the aid in question, which guarantees OA's survival and hence entails continuation of some of its activities in a monopolistic fashion, will not constitute an obstacle to the opening of markets and the development of competition within the EEA, particularly *vis-à-vis* undertakings licensed in Greece other than OA, which would be contrary to the common interest within the meaning of Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement. There is therefore no risk that the adverse effects of the aid in question on competition will be magnified by the maintenance of privileged or protected situations that conflict with the liberalization measures of the third aid transport package. It is worth noting in this context the assurances given by the Greek authorities regarding correct application of the Community legislation on the granting of AOCs and operating licences, and

nondiscrimination in the field of access to airport facilities. Attention is also drawn to the undertakings given by the Greek Government, specified in part V above, regarding the application of the other provisions of the third air transport package, particularly those relating to Regulation (EEC) No 2408/92 on access to the market, abolition of the designation monopoly in favour of OA and the operating up to competition of the services to the Greek islands by 1 July 1998 at the latest. The Commission points out that Article 5 of Regulation (EEC) No 2408/92 cannot be invoked to maintain a monopoly situation on routes which were not operated before 1 January 1993 or which have not been operated continuously since then. Seasonal traffic in particular is excluded from the scope of Article 5.

The Commission considers that, as regards the common interest, the capitalization and restructuring of OA will contribute to the development of air transport activity in a fragmented, peripheral region of the Community, of which it is one of the least developed parts.

VIII

In the light of the foregoing, the aid provided to OA by the Greek Government in the form of loan guarantees, writing-off of debt to equity and capital injections accompanying the restructuring programme for the undertaking, may benefit from the derogation provided for pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement provided that a number of conditions are met to ensure that the aid does not adversely affect trading conditions to an extent contrary to the common interest,

With regard to handling at Greek airports, and without prejudging the Community initiatives in progress, the Commission takes note of the Greek authorities' assurances that all aspects of self-handling are authorized at those airports ⁽¹⁾,

HAS ADOPTED THIS DECISION :

Article 1

The restructuring aid to Olympic Airways provided in the form of :

- loan guarantees extended to the company to date pursuant to Article 6 of Greek Law No 96 of 26 June 1975 ;

⁽¹⁾ See Commission Decision 94/118/EC on the granting by Ireland of aid to the Aer Lingus group, OJ No L 54, 25. 2. 1994, p. 30.

- a new loan guarantees totalling US \$ 378 million for loans to be contracted before 31 December 1997 for the purchase of new aircraft,
- easing of the undertaking's debt burden by Dr 427 billion,
- conversion of Dr 64 billion of the undertaking's debts to equity,
- a capital injection of Dr 54 billion in three instalments of Dr 19, 23 and 12 billion in 1995, 1996 and 1997 respectively,

are considered to be compatible with the common market pursuant to Article 92 (3) (c) of the EC Treaty, provided that the Greek Government:

- (a) meets its commitment to repeal, by 31 December 1994, Article 6 of Greek Law No 96 of 26 June 1975 which permits the Greek State to extend guarantees for the loans contracted by Olympic Airways;
- (b) meets its commitment not to interfere in the management of Olympic Airways except within the strict limits of its role as shareholder;
- (c) meets its commitment to give Olympic Airways, by 31 December 1994, the fiscal status of a public limited company comparable to that of Greek undertakings under ordinary law, except, however, for exonerating Olympic Airways from any taxes likely to affect the recapitalization operations envisaged in the undertaking's recapitalization and restructuring plan communicated to the Commission (hereinafter referred to as 'the plan');
- (d) meets its commitment to bring the agreements between the Greek State and Olympic Airways into line with the provisions of the third air transport package by 31 December 1994;
- (e) meets its commitment not to grant any further aid to Olympic Airways in any form whatsoever, in conformity with Community law;
- (f) meets its commitment to have adopted immediately the legislation necessary for the effective implementations of the salary, social and financial aspects of the plan;
- (g) meets its commitment to accept that the Commission will, if necessary, have the main results of the plan and the application of the present conditions relating to the approval of the aid verified by an independent consultant chosen by the Commission in conjunction with the Greek Government;
- (h) meets its commitment, first, to submit to the Commission each year, at least four weeks before payment of each instalment of the capital increase scheduled in January 1996 and January 1997, a report on implementation of the plan to enable the Commission to comment and, secondly, to postpone by four weeks payment of those instalments should the Commission submit the report in question for scrutiny by an independent consultant;
- (i) meets its commitment not to carry out the capital increases scheduled in 1995, 1996 and 1997 if the objectives of the plan, as set out in part IV of this Decision have not been attained for the previous years;
- (j) meets its commitment to ensure that Olympic Airways will abstain from acquiring, by means of the aid, a holding in any EEA air carrier;
- (k) meets its commitment to improve the procedure for registration of aircraft or for the granting of an AOC in favour of Community airlines, in particular those other than Olympic Airways licensed in Greece, which implies in particular the absence of excessive delays or cumbersome, unjustified procedures;
- (l) meets its commitment to comply with the principles of interpretation concerning application of Article 3 (1) of Regulation (EEC) No 2408/92 and the interrelationships between the authorization procedure pursuant to Regulation (EEC) No 2408/92 and the provisions of the other regulations forming part of the third package and of Regulation (EEC) No 95/93, as set out in the document transmitted to it by the Commission in French on 18 November 1993 and in Greek on 26 January 1994;
- (m) meets its commitment to reply in writing within a reasonable period to applications for the registration of aircraft, air operator's certificates or operating licences submitted by Community carriers, notably carriers other than Olympic Airways licensed in Greece;
- (n) meets its commitment not to make the exercise of traffic rights granted to Community airlines other than those licensed in Greece subject to the provision of guarantees for the repatriation of passengers;
- (o) meets its commitment to accept the principle that companies other than Olympic Airways should be authorized to operate routes between Greece and States not belonging to the EEA, which implies amending the agreements made between the Greek State and Olympic Airways and making designations or multiple designations solely on the basis of the merits of each request;
- (p) meets its commitment to ensure that Olympic Airways does not act as price leader on the scheduled routes Athens-Stockholm and Athens-London during the period 1994 to 1997 inclusive (point VII);

- (q) meets its commitment that the exemption from the application of Regulation (EEC) No 2408/92, from which airports in the Greek islands benefit pursuant to Article 1 (4) of that Regulation, will end on 30 June 1998, which implies that exclusive right of Olympic Airways to operate the scheduled services to these islands must be repealed by that date at the latest;
- (r) meets its commitment to comply with the definition of non-scheduled air service as it results indirectly from the provisions of Regulation (EEC) No 2408/92; in particular, not to impose on non-scheduled services any constraint such as prohibition of the 'seat-only' provision on return journeys, prohibition of the transport of cargo or mail and the requirement of a minimum sojourn time;
- (s) ensures that, throughout the entire duration of the plan, the number of seats offered by Olympic Airways on scheduled flights in the EEA, including addition and seasonal flights, but excluding services between continental Greece and the Greek islands, will not exceed that offered by Olympic Airways in the EEA market in 1993 (3 518 778 seats), taking account, however, of a possible increase proportional to the growth of the market in question;
- (t) ensures that the remaining loan guarantees extended to Olympic Airways and the new guarantees to be extended before 31 December 1997 explicitly provided for in the plan to the amount of US \$ 378 million, comply with the conditions set out in the

letter of 5 April 1989 from the Commission to the Member States;

- (u) does not maintain, in conformity with Article 5 of Regulation (EEC) No 2408/92, any exclusive concession to the benefit of Olympic Airways on domestic scheduled flights within continental Greece which were not operated by Olympic Airways before 1 January 1993 or which have not been operated continuously by Olympic Airways since that date, in particular those of a seasonal nature.

Article 2

The commitments and conditions set out in Article 1 shall concern both Olympic Airways and its subsidiary Olympic Aviation.

Article 3

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 7 October 1994.

For the Commission

Marcelino OREJA

Member of the Commission