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European Court of Justice rules on airport charges

On 7 November 2019, the European Court of Justice provided a preliminary ruling in Case C-379/18, between Deutsche Lufthansa AG and Berlin (Land of Berlin Germany), as to the interpretation of Directive 2009/12/EC in relation to airport charges [1].

Deutsche Lufthansa, in its capacity as an airport user, contested the approval of a new system of airport charges by Berliner Flughafen GmbH (BFG) for Berlin-Tegel Airport, which is managed by the Land of Berlin. The Land of Berlin as the independent supervisory authority had authorised a new system of airport charges with effect from 1 January 2015.

Accepting Lufthansa's appeal, the referring court held that Lufthansa had standing to bring an action for annulment under German Law if the contested authorisation had an effect of giving rise to consequences under private law as the system of airport charges would directly affect Lufthansa in its capacity as a user. The following two questions were referred to the Fourth Chamber to provide a preliminary ruling:

(1) "Is a national provision which provides that the system of airport charges decided upon by the airport managing body must be submitted to the independent supervisory authority for approval, without prohibiting the airport managing body and the airport user from setting charges different from those approved by the supervisory authority, compatible with Directive [2009/12], in particular Article 3, Article 6(3) to (5) and Article 11(1) and (7) thereof?"

(2) "Is an interpretation of national law whereby an airport user is prevented from challenging the approval of the charging system by the independent supervisory authority, but can bring an action against the airport managing body and can plead in that action that the charges determined in the charging system are inequitable, compatible with the aforementioned directive?"

With respect to the first question, the Fourth Chamber ruled that Directive 2009/12/EC precludes a national provision that permits an airport managing body from determining airport charges with an airport user that differ from those set by the independent supervisory authority. It ruled that Article 11(7) provides that the decisions of the independent supervisory authority should have a binding effect, without prejudice to parliamentary or judicial review. If the airport managing body and airport user were able to conclude independent contracts with each other that were separate from the independent supervisory authority, then its authority would be significantly reduced. Recital 2 of Directive 2009/12/EC required the establishment of a common framework regulating the essential feature of airport charges and the way in which they are set to promote the principles of consultation, transparency and non-discrimination of airport users, as laid down in Article 3, Article 6(1) and (2) and Article 7 of Directive 2009/12/EC.

Article 6(1) of Directive 2009/12/EC requires member states to make provisions for consultations between the airport users and the airport managing body as to the airport charges, whilst Article 6(2) of the Directive encourages member states to use a consensual approach while amending the system or level of airport charges, together with discussions as to the reasons for the proposed changes.

With reference to the second question, the court ruled that the interpretation of national law that an airport user can not challenge the decision of the independent supervisory authority that approves that charging system, but is able to bring an action against the airport managing body on the basis that the charges that the user must pay are inequitable, is precluded.

[1]<http://curia.europa.eu/juris/document/document.jsf?jsessionid=C83087CC12982726F6AAD6ACE80D3477?text=&docid=220810&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5338012>

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