Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 February 2025*

(Appeal – State aid – Aviation sector – Measures implemented by Timişoara International Airport (Romania) in favour of Wizz Air and other airlines using that airport – Decision finding that there is no State aid – Action for annulment – Article 263 TFEU – Admissibility – Condition that the applicant must be directly and individually concerned – Obligation to state reasons – Distortion of the evidence)

In Joined Cases C-244/23 P to C-246/23 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 17 April 2023,

European Commission, represented by I. Georgiopoulos and F. Tomat, acting as Agents,

appellant in Case C-244/23 P,

the other parties to the proceedings being:

Carpatair SA, established in Timişoara (Romania), represented by P. González Alarcón, J. Rivas Andrés, abogados, and J. Saké, advocaat,

applicant at first instance,

Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.), established in Budapest (Hungary), represented by I.-G. Metaxas-Maranghidis, dikigoros, S. Rating, abogado, and E. Vahida, avocat,

Societatea Națională 'Aeroportul Internațional Timişoara – Traian Vuia' SA (AITTV), established in Ghiroda (Romania), represented by V. Power, Senior Counsel, and R. Hourihan, Solicitor,

interveners at first instance,

and

Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.), established in Budapest, represented by I.-G. Metaxas-Maranghidis, dikigoros, S. Rating, abogado, and E. Vahida, avocat,

appellant in Case C-245/23 P,

* Language of the case: English.

the other parties to the proceedings being:

Carpatair SA, established in Timişoara (Romania), represented by P. González Alarcón, J. Rivas Andrés, abogados, and J. Saké, advocaat,

applicant at first instance,

European Commission, represented by I. Georgiopoulos and F. Tomat, acting as Agents,

defendant at first instance,

Societatea Națională 'Aeroportul Internațional Timişoara – Traian Vuia' SA (AITTV), established in Ghiroda, represented by V. Power, Senior Counsel, and R. Hourihan, Solicitor,

intervener at first instance,

and

Societatea Națională 'Aeroportul Internațional Timişoara – Traian Vuia' SA (AITTV), established in Ghiroda, represented by V. Power, Senior Counsel, and R. Hourihan, Solicitor,

appellant in Case C-246/23 P,

the other parties to the proceedings being:

Carpatair SA, established in Timişoara (Romania), represented by P. González Alarcón, J. Rivas Andrés, abogados, and J. Saké, advocaat,

applicant at first instance,

European Commission, represented by I. Georgiopoulos and F. Tomat, acting as Agents,

defendant at first instance,

Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.), established in Budapest, represented by I.-G. Metaxas-Maranghidis, dikigoros, S. Rating, abogado, and E. Vahida, avocat,

intervener at first instance,

THE COURT (Ninth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Third Chamber, acting as President of the Ninth Chamber, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2024,

gives the following

Judgment

1 By their respective appeals, the European Commission (Case C-244/23 P), Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) ('Wizz Air') (Case C-245/23 P) and Societatea Națională 'Aeroportul Internațional Timișoara – Traian Vuia' SA (AITTV) (Case C-246/23 P) seek to have set aside the judgment of the General Court of the European Union of 8 February 2023, *Carpatair* v *Commission* (T-522/20, 'the judgment under appeal', EU:T:2023:51), by which that court annulled Article 2 of Commission Decision (EU) 2021/1428 of 24 February 2020 on the State aid SA. 31662 – C/2011 (ex NN/2011) implemented by Romania for Timișoara International Airport – Wizz Air (OJ 2021 L 308, p. 1; 'the decision at issue'), in so far as it concludes that the airport charges in the Aeronautical Information Publication ('the AIP(s)') of 2010 and the agreements concluded between AITTV and Wizz Air during 2008 ('the 2008 agreements'), including the amendments to which those agreements were subject during 2010 ('the 2010 amendment agreements'), do not constitute State aid.

Background to the dispute

2 Timișoara International Airport (Romania) is operated by AITTV, a company in which the Romanian State holds 80% of the capital.

3 Carpatair SA is a Romanian regional airline. In 2000, it set up its hub at that airport, from which it operated a hub-and-spoke network.

4 During 2008, as part of a strategy intended to attract low-cost airlines and increase the overall profitability of that airport, AITTV signed with Wizz Air, a Hungarian low-cost airline, the 2008 agreements, which determine the principles of their cooperation as well as the terms and conditions for the use of the airport infrastructure and services by Wizz Air. On 25 June 2010, by the 2010 amendment agreements, two of the 2008 agreements were amended by way of a new scheme agreed between Wizz Air and AITTV, covering the period up to 6 February 2011. Wizz Air began operating flights from that airport in October 2008.

5 On 30 September 2010, Carpatair submitted a complaint to the Commission regarding alleged unlawful State aid in favour of Wizz Air.

6 On 24 May 2011, the Commission notified Romania of its decision to initiate the formal investigation procedure provided for in Article 108(2) TFEU concerning, inter alia, the 2008 agreements and the discounts and rebates on airport charges granted under the 2007, 2008 and 2010 AIPs.

7 As of 2014, Carpatair ceased its operations at Timișoara International Airport and underwent a judicial reorganisation procedure. Its main base of operations is now located at Arad airport (Romania), which is 50 kilometres (km) from Timișoara International Airport and from which it offers, inter alia, charter flights. It no longer offers scheduled flights.

8 On 24 February 2020, the Commission adopted the decision at issue.

9 As regards the airport charges in the 2007, 2008 and 2010 AIPs, the Commission found, in the decision at issue, that the base rate, the rebates and the discounts on those charges were not selective.

10 As regards the 2008 agreements and the 2010 amendment agreements (together, 'the 2008 and 2010 agreements'), the Commission stated, having regard to economic evaluations drawn up after the conclusion of those agreements, that they were expected to be incrementally profitable for AITTV. Consequently, it found that a prudent private operator in a market economy would have entered into such agreements. Moreover, those agreements formed part of an overall strategy and long-term effort towards the overall profitability of Timișoara International Airport. The Commission therefore concluded that they had not conferred an economic advantage on Wizz Air which that company would not have obtained under normal market conditions.

The action before the General Court and the judgment under appeal

11 By application lodged at the Registry of the General Court on 11 August 2020, Carpatair brought an action for the annulment of the decision at issue.

12 By the judgment under appeal, the General Court held, first, that the Commission had erred in law by failing to examine whether the discount on airport charges provided for in point 7.3 of the 2010 AIP, taken individually, was selective. Second, the General Court held that the Commission had failed to state grounds in law for the assessment that the 2008 and 2010 agreements had not conferred an economic advantage on Wizz Air which it would not have obtained under normal market conditions. Thus, after upholding the first plea and, in part, the second plea raised by Carpatair in support of that action, the General Court annulled Article 2 of the decision at issue to the extent specified in paragraph 1 of the present judgment.

Forms of order sought by the parties to the appeals

Forms of order sought by the parties in Case C-244/23 P

13 By its appeal, the Commission claims that the Court should:

– set aside the judgment under appeal in so far as it upheld Carpatair's second plea in law;

– reject the second plea in law in Case T-522/20; and

– order Carpatair to pay the costs of both proceedings.

14 Carpatair contends that the Court should:

– dismiss the appeal; and

– order the Commission to pay the costs of the proceedings both at first instance and on appeal.

Forms of order sought by the parties in Case C-245/23 P

15 By its appeal, Wizz Air claims that the Court should:

– set aside the judgment under appeal;

– dismiss the action brought by Carpatair before the General Court; and

– order Carpatair to pay the costs of the proceedings both at first instance and on appeal.

16 The Commission submits that the Court should:

– set aside the judgment under appeal; and

– order Carpatair to pay the costs.

17 Carpatair contends that the Court should:

– dismiss the appeal; and

– order Wizz Air to pay the costs of the proceedings both at first instance and on appeal.

Forms of order sought by the parties in Case C-246/23 P

18 By its appeal, AITTV claims that the Court should:

– set aside the judgment under appeal;

– dismiss the action at first instance brought by Carpatair or refer the case back to the General Court; and

– order Carpatair to pay the costs of the proceedings both at first instance and on appeal or, if it decides to refer the case back to the General Court, reserve the costs.

19 The Commission submits that the Court should:

– set aside the judgment under appeal; and

– order Carpatair to pay the costs.

20 Carpatair contends that the Court should:

– dismiss the appeal; and

– order AITTV to pay the costs of the proceedings both at first instance and on appeal.

The grounds of appeal, alleging Carpatair's lack of standing to bring proceedings

Arguments of the parties

Wizz Air's first ground of appeal in Case C-245/23 P

21 By its first ground of appeal, Wizz Air, supported by the Commission, submits that the General Court, in holding that the 2008 and 2010 agreements were one of the causes of the adverse effect on Carpatair's competitive position, distorted evidence and infringed an essential procedural requirement.

22 In the first place, Wizz Air states that the General Court held that Carpatair was individually and directly affected by the 2008 and 2010 agreements, on the ground that, when the decision to initiate the formal investigation procedure was adopted, in 2011, Carpatair and Wizz Air were in competition on five routes from Timişoara International Airport and that, between 2008 and 2010, Carpatair's passenger numbers, yields and revenues on those five routes had decreased significantly.

23 However, in its view, the General Court failed to take account of the fact that that decrease was similar to, or significantly lower than, that which Carpatair had suffered on the routes on which it did not compete with Wizz Air.

24 It goes on to state that the judgment under appeal contains manifest errors affecting the calculation of the level of the drop in Carpatair's yields.

25 In the second place, in paragraph 77 of the judgment under appeal, Wizz Air states that the General Court held that it was apparent from the comments submitted by Carpatair during the administrative procedure that Carpatair also complained that it was unable to take over the flights operated from Timişoara International Airport by two other airlines which had withdrawn from that airport in 2008, since those flights were operated by Wizz Air from then on. However, that inability to take over those flights was not debated before the General Court. Annex A.8 to the application for annulment, entitled 'Carpatair's submission of 7 June 2011 to the Commission', was simply cited in that application, but was not summarised. A fortiori, that annex was not the subject of an exchange of views before the General Court, in breach of the essential procedural requirement constituted by Wizz Air's right to be heard in that regard.

26 Carpatair disputes the admissibility of Wizz Air's first ground of appeal. In its view, Wizz Air is merely asking the Court to carry out a new assessment of the facts and the evidence. Moreover, the distortion alleged by Wizz Air is not manifestly apparent from the documents in the case.

27 In the alternative, Carpatair takes the view that that ground of appeal is unfounded.

28 In the first place, Carpatair submits, first of all, that that ground of appeal is based on a misreading of paragraph 73 of the judgment under appeal, by which the General Court merely stated that Carpatair had established that the 2008 and 2010 agreements were one of the causes of the adverse effect on its competitive position. The fact that routes operated by Carpatair other than those on which it competed with Wizz Air also experienced declines in yields does not invalidate that finding.

29 Next, Wizz Air ignores the fact that the harmful effects of the 2008 and 2010 agreements are not confined to the routes on which it competed with Carpatair. However, the judgment under appeal merely establishes those effects on the routes on which Carpatair was in direct competition with Wizz Air, as required by the fourth paragraph of Article 263 TFEU.

30 Lastly, it is true that, in paragraphs 75 and 76 of the judgment under appeal, the General Court made a minor error in calculating the reduction in yields on Carpatair's routes. Nonetheless, it is a fact that those yields decreased significantly between 2008 and 2010.

31 In the second place, the General Court did not infringe Wizz Air's right to be heard on the argument that it was impossible for Carpatair to take over the routes of two other airlines from Timişoara International Airport. As the General Court indicated in paragraph 77 of the judgment under appeal, Carpatair had already submitted its comments in that regard during the initial investigation. Wizz Air was therefore aware of Carpatair's point of view. In addition, Wizz Air disregards the fact that the General Court's finding, in paragraph 78 of the judgment under appeal, is based on the evidence contained in Annexes A.7 and A.8 to the application for annulment.

32 In the third and last place, Wizz Air fails to take into account all the factors on the basis of which, in paragraphs 54 to 86 of the judgment under appeal, the General Court found that Carpatair was individually concerned.

AITTV's first ground of appeal in Case C-246/23 P

33 By its first ground of appeal, AITTV, supported by the Commission, claims, inter alia, that the General Court erred in law in finding that Carpatair was directly and individually concerned by the decision at issue.

34 In the first place, the General Court simply assumed, without sufficient evidence, that Carpatair and Wizz Air were competitors, without taking into account the evidence provided by AITTV showing that Carpatair and Wizz Air were not airlines of comparable types and sizes and that they operated on largely different routes.

35 In the second place, the General Court also assumed, without sufficient evidence, that Carpatair was substantially affected by the decision at issue without taking into account the arguments raised before it.

36 First, AITTV claimed before the General Court that, regardless of the 2008 and 2010 agreements, at the time when those agreements were concluded, Carpatair's legal and factual situation was such that that airline could not have continued to operate successfully from Timişoara International Airport, as its business model was outdated. Despite the evidence submitted to it to that effect, the General Court also failed to take account of the global financial crisis which affected airlines at the material time, which would have been an alternative explanation for Carpatair's difficulties.

37 Second, Carpatair has not provided any evidence of any effect caused by the 2008 and 2010 agreements on its situation, which it itself considered, in paragraph 4 of its application for annulment, to be the same as that of many other airlines operating from Timişoara International Airport. In addition, it follows from paragraph 116 of that application that the effects of those

agreements were not necessarily specific to that airline. However, the General Court failed to examine whether any loss to that company was due to competition from airlines other than Wizz Air or to other factors.

38 It is true that, as was noted in paragraph 70 of the judgment under appeal, between 2008 and 2010, Carpatair's passenger numbers, yields and revenues on the five routes on which it competed with Wizz Air had dropped significantly. However, the evidence before the General Court demonstrates that Carpatair's yields decreased on all of that airline's routes from Timişoara International Airport and not just on those which overlapped with the routes operated by Wizz Air. The judgment under appeal does not address those matters, which show that Carpatair is not directly and individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU.

39 In the third place, the General Court referred, in paragraph 78 of the judgment under appeal, to Carpatair experiencing the loss of an opportunity to make a profit, whereas Carpatair did not rely on that loss in its written pleadings at first instance.

40 Carpatair disputes the admissibility of AITTV's first ground of appeal, on the ground that it is vague and imprecise, since AITTV fails to distinguish between the measures at issue and the corresponding legal tests and confuses the General Court's examination of standing and interest in bringing proceedings.

41 In the alternative, Carpatair takes the view that that ground of appeal is unfounded.

42 The General Court meticulously set out and applied the relevant legal tests to establish Carpatair's standing to seek annulment of the decision at issue in so far as that decision concerns both the 2008 and 2010 agreements and the 2010 AIP. It is clear from the scheme of the judgment under appeal, which addresses exhaustively the question whether Carpatair is individually concerned by the 2008 and 2010 agreements and whether it is directly concerned both by those agreements and by the 2010 AIP, that Carpatair's standing to bring proceedings was established to the requisite legal standard.

AITTV's fifth ground of appeal in Case C-246/23 P

43 By its fifth ground of appeal, AITTV, supported by the Commission, submits, in the first place, that the General Court failed sufficiently to take into account the evidence submitted by the Commission, Wizz Air and AITTV demonstrating the material lack of competition between Wizz Air and Carpatair on the date on which the 2008 and 2010 agreements were concluded.

44 AITTV submits that, although the General Court is not required to evaluate every argument put forward before it, it nevertheless infringes an essential procedural requirement where, as in the present case, it sets out, in paragraphs 63 and 69 of the judgment under appeal, a large number of material arguments and items of evidence, without carrying out an evaluation of those arguments and evidence, even though a different evaluation of them would have led to Carpatair's action being declared inadmissible.

45 The evidence adduced by AITTV, Wizz Air and the Commission shows, inter alia, the economic rationality of the 2008 and 2010 agreements and the fact that the airlines had been selected by means of calls for expressions of interest, which enabled AITTV to accept the most attractive bids. That evidence showed that those agreements were expected to be incrementally profitable.

46 In addition, the judgment under appeal does not contain details relating to the relevant markets and market shares, airlines' capacities, route substitutability, costs and profit margins and other parameters for determining whether Wizz Air and Carpatair were competitors.

47 Furthermore, although the General Court acknowledged, in paragraph 15 of the judgment under appeal, that Carpatair had ceased its operations at Timişoara International Airport and that it no longer offered scheduled flights, it failed to have sufficient regard to those fundamental facts.

48 In the second place, the General Court infringed its obligation to state reasons by failing to identify the causal link between Carpatair's financial difficulties and Wizz Air's alleged competition and by merely making assumptions, in paragraph 83 of the judgment under appeal, while ignoring alternative explanations on file.

49 While maintaining, in paragraph 46 of its application at first instance, that it was in direct competition with Wizz Air on five routes, Carpatair admitted, in paragraph 50 of that application, that it had ceased operations on fifteen routes from Timişoara International Airport. It follows that the difficulties encountered by Carpatair were too significant to be attributable to Wizz Air's competition on only one third of the routes operated by Carpatair from that airport.

50 Furthermore, Carpatair failed to disclose, in its application at first instance, that, on certain routes, it was in competition with airlines other than Wizz Air. However, that competition, which might also have had an impact on Carpatair's situation, was not examined in the judgment under appeal.

51 Carpatair contends that AITTV's fifth ground of appeal is inadmissible in that, by that ground, AITTV merely repeats arguments already put forward before the General Court, without adducing evidence of an error of law or distortion of the evidence.

52 In the alternative, Carpatair takes the view that that ground of appeal is unfounded.

53 In that regard, it notes that, according to settled case-law, the substantial adverse effect on the applicant's competitive position on the markets in question results not from a detailed analysis of the various competitive relationships on those markets, but, in principle, from a prima facie finding that the grant of the measure concerned has the effect of substantially adversely affecting that position.

54 The detailed analysis in the judgment under appeal shows that the General Court sufficiently examined all the evidence submitted to it and correctly concluded that the 2008 and 2010 agreements were liable to have a substantial effect on Carpatair's competitive position on the markets concerned.

Findings of the Court

Admissibility

55 As regards, in the first place, the admissibility of Wizz Air's first ground of appeal, it must be stated that Carpatair, while claiming that the findings of fact made by the General Court are not substantially incorrect, nevertheless acknowledged that the General Court erred in the calculation of the reduction in Carpatair's yields, in the light of the amounts referred to in one of the annexes to its application for annulment. Furthermore, by pleading that the General Court

infringed the right to be heard, Wizz Air is not merely asking the Court to carry out a new assessment of the facts, but is alleging infringement of an essential procedural requirement, which constitutes a point of law which the Court may hear and determine in the context of an appeal.

56 As regards, in the second place, the admissibility of AITTV's first ground of appeal, it should be noted that that ground of appeal is not drafted in such an imprecise manner that it does not make it possible to understand the arguments on which it is based. Moreover, the mere contention that AITTV misinterprets the conditions for the admissibility of an action for annulment, which are laid down in the fourth paragraph of Article 263 TFEU, cannot have the consequence that that ground of appeal must be declared inadmissible. Indeed, if it were established, such an error would have to result in that ground of appeal being rejected as unfounded.

57 As regards, in the third and last place, the admissibility of AITTV's fifth ground of appeal, it must be stated that, by that ground, AITTV disputes the judgment under appeal in so far as, in its submission, the General Court failed to take account of evidence adduced before it and failed to comply with its obligation to state reasons. Therefore, since that ground of appeal arose from the judgment under appeal, that ground cannot, by definition, constitute a repetition of the arguments put forward at first instance.

58 It follows that Carpatair's arguments relating to the inadmissibility of Wizz Air's first ground of appeal and of AITTV's first and fifth grounds of appeal must be rejected in their entirety.

Substance

59 It is not disputed that the decision at issue constitutes, first, an individual act, in so far as it is found in that decision that the 2008 and 2010 agreements are not State aid, and, second, a regulatory act not entailing implementing measures, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU, in so far as it is found in that decision that the system of airport charges established by the 2010 AIP is not State aid. Consequently, the General Court rightly held that, in order to establish its standing to bring proceedings, Carpatair had to demonstrate that it was directly and individually concerned by the part of the decision at issue relating to the 2008 and 2010 agreements, while it was sufficient for it to demonstrate that it was directly concerned by the part of that decision relating to the 2010 AIP.

60 AITTV and Wizz Air, supported by the Commission, dispute the General Court's findings in which it held that Carpatair was directly and individually concerned by the part of the decision at issue relating to the 2008 and 2010 agreements and directly concerned by the part of that decision relating to the 2010 AIP.

– *The condition that Carpatair must be individually concerned*

61 Where an applicant calls into question the merits of a decision appraising the aid taken on the basis of Article 108(3) TFEU or after the formal investigation procedure, it must show that that decision affects it by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons and, by virtue of those factors, distinguishes it individually just as in the case of the person addressed by such a decision. That applies in particular where the applicant's position on the market concerned is substantially

affected by the aid to which the decision at issue relates (see, to that effect, judgments of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 97, and of 31 January 2023, *Commission* v *Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraph 54).

62 In paragraphs 61 to 86 of the judgment under appeal, the General Court held that Carpatair was individually concerned by the part of the decision at issue relating to the 2008 and 2010 agreements. More specifically, after refusing to attach decisive importance to the fact that Carpatair had played an active role in the course of the administrative procedure, the General Court observed (i) that Carpatair had adduced evidence concerning the markets on which it had a competitive relationship with Wizz Air and had established that those agreements were one of the causes of the substantial adverse effect on its competitive position on those markets and (ii) that that company had demonstrated that it had a particular status which differentiated it from the other airlines operating at Timişoara International Airport.

63 As regards, in the first place, the General Court's finding, in paragraphs 63 to 70 and 73 to 85 of the judgment under appeal, that Carpatair demonstrated that the 2008 and 2010 agreements were liable to have a substantial effect on its competitive position on the markets concerned, it must be borne in mind that the demonstration by the applicant of a substantial adverse effect on its position on the market concerned does not entail a definitive ruling on the competitive relationship between that applicant and the undertakings benefiting from the measure at issue, but requires only that the applicant adduce pertinent reasons to show that the Commission's decision may harm its legitimate interests by substantially adversely affecting its position on that market. The substantial adverse effect on the applicant's competitive position on that market results not from a detailed analysis of the various competitive relationships on that market, allowing the extent of the adverse effect on its competitive position to be established specifically, but, in principle, from a prima facie finding that the grant of the measure covered by the Commission's decision leads to a substantial adverse effect on that position (see, to that effect, judgments of 12 July 1990, *COFAZ* v *Commission*, C-169/84, EU:C:1990:301, paragraph 28, and of 20 January 2022, *Deutsche Lufthansa* v *Commission*, C-594/19 P, EU:C:2022:40, paragraphs 74 and 75 and the case-law cited).

64 In the present case, AITTV complains, first, that the General Court held, in paragraph 69 of the judgment under appeal, that Wizz Air and Carpatair were competitors on five routes from Timişoara International Airport, without taking into account the counter-arguments put forward before it.

65 In that regard, it must be borne in mind that a plea alleging that the General Court failed to address arguments relied on at first instance amounts essentially to alleging a failure to comply with the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and from Article 117 of the Rules of Procedure of the General Court (see, to that effect, judgments of 20 May 2010, *Gogos* v *Commission*, C-583/08 P, EU:C:2010:287, paragraph 29, and of 14 September 2023, *Land Rheinland-Pfalz* v *Deutsche Lufthansa*, C-466/21 P, EU:C:2023:666, paragraph 93).

66 Moreover, it is apparent from paragraphs 64 to 69 of the judgment under appeal that the General Court found that Wizz Air and Carpatair were competitors on five routes from Timişoara International Airport, on the ground that those routes served the same airports or airports located less than 100 km apart. However, it is not apparent from any passage in the judgment

under appeal that the General Court examined the arguments by which AITTV disputed the existence of such competition, AITTV having claimed, inter alia, in paragraph 15 of its statement in intervention before the General Court, that Wizz Air and Carpatair had different business models and aircraft fleets with different technical characteristics.

67 It is true that the General Court is not required to provide an account which follows exhaustively and one-by-one all the arguments put forward by the parties to the case, and the General Court's reasoning may therefore be implicit on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgments of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 96, and of 14 September 2023, *Land Rheinland-Pfalz* v *Deutsche Lufthansa*, C-466/21 P, EU:C:2023:666, paragraph 94).

68 It is also true, as has been recalled in paragraph 63 of the present judgment, that, in the context of the assessment of the admissibility of an action under the fourth paragraph of Article 263 TFEU, the demonstration by the applicant of a substantial adverse effect on its position on the market concerned does not entail a definitive ruling on the competitive relationship between that applicant and the alleged beneficiary of the aid at issue.

69 However, in the present case, since the data submitted by AITTV sought to challenge the relevance of the information provided by Carpatair in order to establish that, prima facie, that airline was in competition with Wizz Air, the General Court should, in order to satisfy its obligation to state reasons, have set out the reasons why it considered that those data were not capable of calling into question its finding that Carpatair and Wizz Air were competitors.

70 It follows from the foregoing that, by holding that Carpatair was in competition with Wizz Air on five routes from Timișoara International Airport without setting out the reasons why it did not uphold AITTV's arguments challenging the existence of such competition, the General Court infringed the obligation to state the reasons on which its judgments are based in a manner sufficient to enable the parties concerned to be apprised of the grounds on which it relied and the Court to have the evidence available to it to exercise its power of review on appeal.

71 Second, Wizz Air and AITTV submit that the General Court failed to demonstrate, in paragraphs 73 to 85 of the judgment under appeal, that the 2008 and 2010 agreements could be the cause of the substantial effect on Carpatair's competitive position.

72 In the judgment under appeal, the General Court relied on two grounds to conclude, in paragraph 79 of the judgment under appeal, that Carpatair had established that the 2008 and 2010 agreements were one of the causes of the substantial effect on its position on the markets and of the adverse effect on its competitive position.

73 First, the General Court noted, in paragraph 77 of the judgment under appeal, that, during the administrative procedure, Carpatair complained of the loss of an opportunity to make a profit resulting from the fact that it was impossible for that airline to take over two routes from Timișoara International Airport to the north of Italy.

74 As is apparent from the case-law cited in paragraph 61 of the present judgment, it is, however, for the applicant to adduce before the General Court the evidence demonstrating its standing to bring proceedings. However, as Wizz Air and AITTV, supported by the Commission, point out, Carpatair did not rely on that loss of an opportunity to make a profit in its application at first instance.

75 While it is true that Carpatair appended to that application, as Annex A.8, the submission which it had made during the administrative procedure and in which it referred to that loss of an opportunity to make a profit, it must be stated that that application refers to that annex only in footnote 31 thereto and that that footnote refers only in a general manner to that annex. No passage in Carpatair's application dealing with the admissibility of its action for annulment referred to such a loss of an opportunity to make a profit caused by the unfair competition from Wizz Air.

76 However, 'the brief statement of the pleas in law' which must be stated in any application, within the meaning of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 76(d) of the Rules of Procedure of the General Court, means that the application must specify the nature of the grounds on which the application is based. Thus, it is necessary, in particular, in order for an action before the General Court to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with those provisions, must appear in the application (see, to that effect, judgments of 3 March 2022, *WV* v *EEAS*, C-162/20 P, EU:C:2022:153, paragraphs 67 and 68, and of 27 February 2024, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2024:172, paragraph 96).

77 Consequently, in those circumstances, it was not for the General Court to supplement the arguments put forward by Carpatair in its application, by searching for and identifying, in the annexes thereto, evidence capable of supporting the admissibility of Carpatair's action.

78 The General Court therefore erred in law in relying, in paragraph 77 of the judgment under appeal, on the existence of a loss of an opportunity to make a profit resulting from the fact that it was impossible for Carpatair to take over two routes from Timișoara International Airport to the north of Italy.

79 Second, the General Court noted, in paragraphs 74 to 76 of the judgment under appeal, that it was apparent from Annex A.7. to the application that, between 2008 and 2010, Carpatair's net yield on the five routes from Timișoara International Airport on which it held that that company was in competition with Wizz Air had decreased by 52% as regards four routes to Italy, and by 57% as regards the route to Düsseldorf (Germany).

80 In that regard, it should be noted that, as Wizz Air has argued, that finding stems from a distortion of Annex A.7 to Carpatair's application for annulment. Those percentages do not reflect the decrease in yield on those routes, but are equivalent to the ratio represented by the yields on those routes for 2010 compared with the yields on the same routes for 2008, as Carpatair indeed acknowledges in its response.

81 In addition, as Wizz Air and AITTV submit, without being contradicted by Carpatair, it is apparent from Annex A.7 that, during that period, the yield on certain routes operated by Carpatair from Timișoara International Airport, on which the General Court held, in paragraph 69 of the judgment under appeal, that Carpatair had not demonstrated that it was in competition with Wizz Air, decreased as much as, if not more than, the yield on the routes on which, according to the General Court, Carpatair was in direct competition with Wizz Air.

82 By not taking such evidence into account even though it was manifestly apparent from Annex A.7 to Carpatair's application at first instance and by not explaining the reasons for that omission, the General Court distorted that item of evidence and infringed its obligation to state reasons.

83 Moreover, in the light of such an overall reduction in yield on the routes operated by Carpatair from Timișoara International Airport, the General Court could not merely state, in paragraph 80 of the judgment under appeal, that the evidence submitted by that airline in order to establish that the 2008 and 2010 agreements were able to have a substantial effect on its competitive position on the markets concerned was not called into question by the arguments seeking to demonstrate that that reduction might have been caused by other factors, such as the allegedly outdated business model of that airline, that company's competition with airlines other than Wizz Air or the global financial crisis, without taking those arguments into consideration and, in any event, without explaining why those arguments had to be rejected.

84 Admittedly, as the General Court observes in paragraph 82 of the judgment under appeal, Carpatair cannot be required to demonstrate that its substantial financial difficulties are due exclusively to the 2008 and 2010 agreements. However, it is still necessary that the General Court could conclude that it was at least plausible that those agreements were the cause of those difficulties.

85 It follows from all the foregoing considerations that the General Court did not substantiate its finding that the 2008 and 2010 agreements were liable to have a substantial effect on Carpatair's competitive position on the markets concerned.

86 As regards, in the second place, the General Court's finding, in paragraphs 71 and 72 of the judgment under appeal, that Carpatair demonstrated that it had a particular status which distinguished it from the other airlines operating at Timișoara International Airport, it should be recalled, as a preliminary point, that questions concerning the admissibility of an action for annulment constitute a question of public policy which the EU Courts may consider at any time, even on their own initiative (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 42 and the case-law cited).

87 However, the statement in paragraph 72 of the judgment under appeal that Carpatair had a particular status since it was the only company in direct competition with Wizz Air on five routes from Timișoara International Airport is vitiated by an inadequate statement of reasons, as has been noted in paragraph 70 of the present judgment.

88 The alleged competitive relationship between Wizz Air and Carpatair could not therefore support the finding that Carpatair had a particular status which distinguished it from all other persons and, as a result, distinguished it individually just as in the case of the addressee of the decision at issue, namely Romania.

89 In those circumstances, the statement, in paragraph 71 of the judgment under appeal, that the activity of Timișoara International Airport was centred on Carpatair's activities and that Carpatair derived 90% of its turnover from its activities at that airport cannot suffice to demonstrate that that company, in respect of which it has not been established to the requisite legal standard that it was in competition with Wizz Air, is individually affected by the part of the decision at issue finding that the 2008 and 2010 agreements, which were concluded between that airport and Wizz Air, do not constitute State aid within the meaning of Article 107 TFEU.

90 It follows from all the foregoing considerations that the General Court did not substantiate to the requisite legal standard its conclusion that Carpatair had demonstrated that it was individually concerned by the part of the decision at issue relating to the 2008 and 2010 agreements.

– *The condition that Carpatair must be directly concerned*

91 As the General Court rightly pointed out in paragraphs 87 and 89 of the judgment under appeal, in order to establish that it was directly concerned by the decision at issue, Carpatair was required, inter alia, to demonstrate that that decision produces direct effects on its legal situation by adequately explaining the reasons why that decision is liable to place it in an unfavourable competitive position.

92 In that regard, the General Court noted, in paragraph 90 of the judgment under appeal, that it was apparent from the file that Wizz Air was the alleged recipient of the 2008 and 2010 agreements and of the 2010 AIP, that that company and Carpatair carried out similar activities and that they were active on the same services market and on the same geographical market. It therefore concluded from this that Carpatair had adequately explained the reasons why the decision at issue was liable to place it in an unfavourable competitive position.

93 However, AITTV complains that the General Court found, in essence, in paragraph 90, that Wizz Air and Carpatair were competitors, without taking into account the counter-arguments which had been put forward before it in that regard.

94 As has already been stated in paragraph 70 of the present judgment, such a finding by the General Court is in fact vitiated by an inadequate statement of reasons.

95 The judgment under appeal is therefore also vitiated by an inadequate statement of reasons in so far as the General Court held that Carpatair is directly concerned by the decision at issue inasmuch as it covers both the 2008 and 2010 agreements and the 2010 AIP.

96 It follows from all the foregoing considerations that the General Court did not substantiate to the requisite legal standard that Carpatair had standing to bring an action for annulment of the decision at issue. Accordingly, in so far as Wizz Air's first ground of appeal and AITTV's first and fifth grounds of appeal dispute that standing of Carpatair, they must be upheld.

97 Without it being necessary to rule on the other grounds of AITTV and Wizz Air's appeals, or on the Commission's appeal, in particular in so far as they seek to call into question the General Court's reasoning concerning the substance, the judgment under appeal must be set aside.

The action before the General Court

98 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

99 That is not the position in the present case.

100 Having regard to the presence, in the judgment under appeal, of distortions of evidence and failures to state reasons, the examination of the admissibility of the action at first instance and, if necessary, of the merits of that action involves assessments of fact which would require, on the part of the Court, the adoption of additional measures of organisation of the procedure or investigation of the case.

101 Accordingly, the case must be referred back to the General Court.

Costs

102 Since the case is to be referred back to the General Court, the costs relating to the present appeals must be reserved.

On those grounds, the Court (Ninth Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 8 February 2023, *Carpatair* v *Commission* (T-522/20, EU:T:2023:51);**

2. **Refers the case back to the General Court of the European Union;**

3. **Reserves the costs.**

Lycourgos Rodin Spineanu-Matei

Delivered in open court in Luxembourg on 13 February 2025.

A. Calot Escobar
Registrar

K. Lenaerts
President