



Brussels, 14.12.2016  
C(2016) 8612 final

Hjelmco Oil  
Runskogsvägen 4B  
RSE-192 48 Sollentuna  
Sweden

**Subject: Case AT.40348 – Bromma Airport**  
**Commission Decision rejecting the Complaint**  
(Please quote this reference in all correspondence)

Dear Sir,

(1) I am writing to inform you that the European Commission (the "Commission") has decided to reject your Complaint against Swedavia AB ("Swedavia") pursuant to Article 7(2) of the Commission Regulation (EC) 773/2004.<sup>1</sup>

#### **1. THE COMPLAINT**

(2) By letter dated 27 March 2014, you submitted a Complaint requesting that the Commission launch an investigation into certain alleged infringements of Art. 102 of the Treaty on the Functioning of the European Union (TFEU).

(3) In your Complaint you alleged in essence that Swedavia infringes Article 102 TFEU by imposing certain changes to the land leasing arrangements between Swedavia and the complainant. Your Complaint contained further allegations regarding possible infringement of Council Directive on access to ground handling<sup>2</sup>, including the possibility of providing ground handling services by a single operator only.

(4) The present decision (the "Decision") exclusively concerns the alleged infringement of Article 102 TFEU. Allegations regarding possible infringement of the Council

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<sup>1</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

<sup>2</sup> Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272, 25.10.1996, p. 36-45.

Directive on Ground handling was subject to a separate administrative procedure – reference number CHAP (2013) 02139.

- (5) Hjelmcö Oil AB (the "Complainant" or "Hjelmcö") is a Swedish company providing aviation fuel services at Bromma Airport in Stockholm. It focuses on services for business and general aviation.
- (6) Swedavia is a Swedish state-owned company which owns and operates a network of ten airports across Sweden including the two airports which serve the city of Stockholm - Arlanda and Bromma.
- (7) According to the Complaint, the land leases held for a number of years by Hjelmcö as well as by its owner Lars Hjelmcberg (through another company Hjelmcberg Co) were terminated by Swedavia in 2011. The termination of the leases was part of a general termination of all leases at the Bromma Stockholm Airport by Swedavia. The Complaint suggests this was on the basis of Swedavia's plans to expand heavy commercial aviation instead of business and general aviation at this airport. Swedavia offered Hjelmcö an option to sign a new lease agreement for a site known as the "East Ramp" at a price which was higher than Hjelmcö's then-current lease price. The Complainant neither entered into this alternative lease, nor vacated its premises.
- (8) You claim that Swedavia is abusing its dominant position by demanding an unreasonably high rent for renting out the new premises in the "East Ramp". You claim such rent would render its operations unviable in the long-run. At the time of the Complaint submission, only air ambulance and individual private pilots had agreed to sign a new lease contract.
- (9) Furthermore, the Complaint also points out an alleged discriminatory nature of pricing. While it has been offered a lease at EUR 80 per square meter<sup>3</sup>, it is familiar with at least one lessee on the East Ramp that is leasing the land for EUR 50 per square meter. The Complainant is not familiar with circumstances which would justify the difference.
- (10) Lastly, you consider Bromma Stockholm Airport an essential facility (effectively, alleging a refusal to supply) for your operations as well as for providing business and general aviation services at this airport.
- (11) The Complaint was lodged on 27 March 2014 and was initially investigated by DG Move under Reference CHAP (2013) (02139). The Complaint was transferred to DG Competition on 30 March 2015. You provided additional information and explanations in particular during a telephone call on 21 May 2015.
- (12) By letter of 5 April 2016 ("the Art. 7 (1) Letter"), the Commission informed you of its intention to reject the Complaint. In response, you made additional observations in your letter of 16 May 2016 (the "Observations") which can be summarised as follows:
- (13) You now inform us that you signed a new lease agreement with Swedavia in April 2016 which will "run until 2038 for a new area within the airport for its fuel business". The

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<sup>3</sup> The Complaint mentions several contradictory prices.

rent is approximately €20m<sup>2</sup> or roughly the same as in 2011<sup>4</sup> increased in line with the index. In other words rent levels have been brought down to levels similar to those applying in 2011. You further explain that “Swedavia has begun to put things right again”, that “negotiations are underway” and that “there seems to be a desire to reach an agreement”. Although you say that it might seem that the problem has now been resolved you nevertheless wish to maintain your complaint so as to obtain a declaration in relation to the past that the matters complained of infringed EU law.

- (14) You take issue with the statement in the Art. 7 (1) Letter that in essence the Complaint relates to the cost of the lease. Rather you claim that the raising of the rent was merely part of a “concerted action against light aviation” involving discrimination against different customers. Further you take issue with the fact that the Art. 7 (1) Letter only deals with the issue of unreasonably high rent increases whereas you had in your Complaint raised concerns about other alleged abuses such as the imposition of unreasonable business conditions, restriction of production, discrimination, tying, refusal to deliver, reduction of deliveries, nominal pricing, unfair pricing and "structural abuse".
- (15) You consider that it would be impossible to win a case in the Swedish courts against the Swedish state or against Swedish public bodies because inter alia the Swedish competition authority “practises discrimination”. You do not accept that there is insufficient impact on the functioning of the internal market on the grounds that in adopting the Directive on Fuel Taxation for small aircraft the Commission implicitly accepted that “activity involving small aircraft” is particularly important for the proper functioning of the internal market.
- (16) You contest the position taken in the Art. 7 (1) Letter regarding lack of a strong cross-border dimension because “business and general aviation by its nature has a cross-border dimension”. You also disagree with the position taken in the Art. 7 (1) Letter regarding the limited size of the market in terms of geographical scope and trade volumes.

## **2. THE NEED FOR THE COMMISSION TO SET PRIORITIES**

- (17) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of Complaints<sup>5</sup> and the case law of the European Courts.<sup>6</sup>

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<sup>4</sup> In your Observations, you point out the Complaint contained a typing error: whereas a figure of €80m<sup>2</sup> is quoted “for rent charges up to 2011 ... the correct figure should be €18m<sup>2</sup> ...” Also you point out that “Swedavia reduced the rent in 2014 to approximately €80m<sup>2</sup> from the 100-150m<sup>2</sup> it originally requested”.

<sup>5</sup> OJ C 101, 27.04.2004, p. 65. See also the Commission’s Report on Competition Policy 2005, p. 25-27.

<sup>6</sup> Case C-119/97 *UFEX and Others v Commission*, ECLI:EU:C:1999:116, paragraphs 88 and 89; Case C-449/98P *International Express Carriers Conference (IECC) v Commission of the European Communities, La Poste, United Kingdom of Great Britain and Northern Ireland and The Post Office*, ECLI:EU:C:2001:275, paragraph 36; Case T-432/10 *Vivendi v Commission*, ECLI:EU:T:2013:538, paragraph 22.

- (18) When deciding which cases to pursue, the Commission takes various factors into account. In particular, the Commission may attach importance to the potential impact of the alleged infringement on the functioning of the internal market.<sup>7</sup> The Commission may also take into account whether a national court or national competition authority might be well-placed to examine the allegations made.<sup>8</sup>

### **3. ASSESSMENT OF YOUR COMPLAINT**

- (19) In the Article 7 (1) Letter, the Commission indicated that, after examination of the information provided by you, it intended to reject the Complaint. The Commission considers that the additional information provided by you and the points made on your Observations do not involve new elements which would justify a modification of its preliminary assessment.
- (20) The Commission has therefore decided not to conduct a further in-depth investigation into your claims for the reason set out below.

#### **3.1. The impact on the functioning of the internal market**

- (21) First the alleged infringement primarily concerns one Member State (Sweden). While Sweden forms a substantial part of the internal market, the Commission generally gives precedence to cases that concern multiple Member States or that have a strong cross-border dimension.
- (22) Secondly the size of the market concerned appears to be relatively limited, both in terms of its geographical scope and in terms of cross-border trade volumes.
- (23) The Complaint concerns a single city airport. While Bromma Stockholm Airport seems to be the fifth largest Swedish airport in terms of passenger numbers (in 2014, it served 2.4 million passengers), its operations tend to be mainly regional in scope. It has limited international links, serving just four scheduled international destinations as opposed to 13 domestic ones. Its top three destinations are all located in Sweden: Malmö, Gothenburg and Umeå. It has one runway of 1,600 m, three shops and two restaurants.<sup>9</sup>
- (24) Finally the cross-border element of business and general aviation itself seems to be limited in scope and size, due to the very nature of the business models employed in this specific sector. In particular, general aviation normally concerns services which are generally local in nature, such as fire and rescue, helicopter flights, flying schools, or recreational flights using light aircraft. Business aviation uses only small aircrafts with a limited number of passengers per flight and without regular schedules. As acknowledged in the Complaint itself, there are four other all-weather airports with an

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<sup>7</sup> Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97 paragraph 86.

<sup>8</sup> Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97 paragraphs 88 to 90.

<sup>9</sup> Figures relating to Bromma Stockholm Airport were taken from [https://en.wikipedia.org/wiki/Stockholm\\_Bromma\\_Airport](https://en.wikipedia.org/wiki/Stockholm_Bromma_Airport) and <http://www.swedavia.com/bromma/>.

asphalt runway suitable for business and general aviation within a 100 km radius of Stockholm.<sup>10</sup>

### **3.2. National courts and authorities appear to be well-placed to handle the matters raised**

- (25) The Commission has also decided to reject your Complaint on the basis that the Swedish competition authority and national courts are well placed to handle the matters raised in your Complaint, in accordance with the principles set out at points 8 and 9 of the Notice on cooperation within the Network of Competition Authorities.<sup>11</sup>
- (26) As explained above the effects of the practices complained of are confined to Bromma Stockholm Airport, i.e. the territory of Sweden. In those circumstances, the Commission considers that the Swedish competition authority and courts are well-placed to examine the allegations made,<sup>12</sup> to obtain relevant evidence and if necessary bring the infringements to an end.
- (27) The Commission notes that Council Regulation (EC) No 1/2003 creates a system of parallel competences in which the Commission and the Member State's competition authorities cooperate closely in order to protect competition. The purpose of the greater participation of the Member States' competition authorities in the implementation of EU competition rules is precisely to ensure that their effective application is attained. Accordingly, the requirement to ensure the effective application of EU competition rules cannot have the effect of imposing an obligation on the Commission to verify whether the competition authority concerned has the institutional, financial and technical means available to it to enable it to accomplish the task entrusted to it by that regulation.<sup>13</sup>
- (28) In any event, the Commission notes that the Swedish competition authority has the necessary powers to gather the factual information necessary to determine whether Swedavia's conduct constitutes an infringement of Article 102 TFEU and, if so, the Swedish competition authority has the power to bring the matter before the Swedish national courts which have the power to apply Article 102 TFEU in full. The Swedish national courts can make a reference for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 TFEU concerning the compatibility of Swedavia's conduct with Article 102 TFEU<sup>14</sup> and also have the power to award damages for breaches of Article 102 TFEU.<sup>15</sup> There is no indication, therefore, that the Swedish authorities are not capable of protecting your rights under Article 102 TFEU in a satisfactory manner.

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<sup>10</sup> These include Västerås, Eskilstuna, Stockholm Skavsta (Nyköping) as well as Arlanda, the biggest Swedish airport. Out of these, only Arlanda is operated by Swedavia.

<sup>11</sup> OJ C 101 of 27.4.2004, p.2.

<sup>12</sup> As regards the admissibility of this consideration, cf. Case T-575/93, *Koelman*, at para. 79.

<sup>13</sup> Judgment of the General Court in case T-201/11, *Si.mobil*, ECLI:EU:T:2014:1096, paragraphs 56 and 57.

<sup>14</sup> Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, para. 92.

<sup>15</sup> Case T-119/09 *Protégé International v Commission*, ECLI:EU:T:2012:421, para 79.

#### 4. CONCLUSION

- (29) For the reasons set out above, the Commission concludes that, even if established, the alleged anti-competitive conduct would only have a limited impact on the functioning of the internal market. In addition, the Commission considers that the national courts and authorities appear to be well-placed to handle the matters raised in the Complaint with respect to Article 102 TFEU, and are capable of protecting your rights in a satisfactory manner. Based on your Observations, we also take note that rent levels, which was one of the issues raised in your complaint, have been brought back to a level you consider to be acceptable on a long term basis.
- (30) Therefore, the Commission has come to the conclusion that the Complaint does not display sufficient Union interest to justify further investigation. This conclusion does not prejudge whether the conduct is anti-competitive or not, in respect of which the Commission does not take a position at this time.
- (31) It has been consistently held in the case-law that the Commission is not required to establish the existence or non-existence of an infringement when deciding to reject a Complaint.<sup>16</sup> In particular, the Commission considers that it does not have the obligation to verify each and every alleged abuse identified in the Complaint (such as imposition of unreasonable business conditions, restriction of production, discrimination, tying, refusal to deliver and reduction of deliveries). According to the case-law, the fact that the Commission has not verified the information supplied cannot affect the lawfulness of a decision, if the assessment of the Union interest does not depend on the material accuracy of that information.<sup>17</sup> In any event, the reasons mentioned above which explain why the Commission considers your complaint not to be a priority, apply irrespective of the legal qualifications you give to the underlying facts.
- (32) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s) and consequently rejects the Complaint pursuant to Article 7(2) of Regulation No. 773/2004.

#### 5. PROCEDURE

##### 5.1. Possibility to challenge this Decision

- (33) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

##### 5.2. Confidentiality

- (34) The Commission reserves the right to send a copy of this Decision to Swedavia. Moreover, the Commission may decide to make this Decision, or a summary thereof,

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<sup>16</sup> This point has been reiterated in the judgement in case C-159/08, ECLI: EU: C: 2009:188, paragraphs 7 and 12.

<sup>17</sup> Cf. Case T-306/05, *Scippacercola*, ECLI:EU:T:2008:9, at paragraph 129-134.

public on its website.<sup>18</sup> If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform [REDACTED]

Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to Swedavia.

- (35) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

*For the Commission*  
*Margrethe VESTAGER*  
*Member of the Commission*



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<sup>18</sup> Paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.