



EUROPEAN COMMISSION

Brussels, 28.6.2016
C(2016) 4169 final



**Subject: Case AT.40304 – Air freight handling Warszawa Chopin Airport
Commission Decision rejecting the complaint**
(Please quote this reference in all correspondence)

Dear Sir/Madam,

- (1) I am writing to inform you that the European Commission (the "Commission") has decided, pursuant to Article 13 of Council Regulation No 1/2003 ("Regulation 1/2003"),¹ in conjunction with Article 9 of Commission Regulation (EC) No 773/2004 ("Regulation 773/2004"),² to reject your complaint against Przedsiębiorstwo Państwowe Porty Lotnicze ("PPPL").

1. THE COMPLAINT

- (2) By letter of 15 December 2014 (subsequently complemented on 18 February 2015) you complained with the Commission about a violation of Article 102 of the Treaty on the Functioning of the European Union ("TFEU") allegedly committed by PPPL.
- (3) In the complaint it was in particular indicated that [REDACTED] at Frederyk Chopin International airport ("the Airport") in Warszawa (Poland), which is managed and operated by the State-owned entity PPPL. According to you, (i) PPPL would hold

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 1, 04.01.2003, p.1-25.

² 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.

a dominant position on the provision of airport infrastructure services at the Airport and (ii) it would have abused this dominant position by [REDACTED]

- (4) According to you, [REDACTED]
- (5) In April 2012, you had already submitted to the Polish national competition authority (NCA) *Urząd Ochrony Konkurencji i Konsumentów* ("UOKiK") an analogous complaint, based on Polish antitrust law, concerning the very same abuse of a dominant position allegedly committed by PPPL. On the basis of its preliminary proceeding, UOKiK rejected your allegations. On 15 April 2014 the UOKiK sent you a letter informing you that there were no grounds for suspecting that PPPL had committed an abuse of a dominant position in violation of Article 9 of the Polish Law on competition and consumer protection (the "Polish competition law").⁴ Therefore UOKiK concluded that there were no grounds for action on its part.
- (6) By letter of 19 February 2016, the Commission indicated to you that the alleged abuse of a dominant position referred to in the complaint addressed to the Commission had already been dealt with by UOKiK under reference [REDACTED]. The Commission therefore explained that, for that reason, on the basis of Article 13 of Regulation 1/2003, it did not intend to conduct a further investigation into your allegation that PPPL has infringed Article 102 TFEU. The Commission invited you to submit possible comments on that preliminary position.
- (7) On 25 March 2016, in reply to the Commission's letter, you submitted written observations on this provisional assessment and asked the Commission to further pursue the case.

2. ASSESSMENT OF [REDACTED] COMPLAINT

- (8) The analysis of your complaint led the Commission to conclude that the assertions about the abuse of a dominant position allegedly committed by PPPL formed the object of the earlier procedure initiated by UOKiK, which concerned the very same conduct, in the same relevant market, within the same timeframe.
- (9) The Polish NCA analysed the conduct in question. The complaints addressed to both the Commission and UOKiK concern the same alleged practice described above. UOKiK has rejected your complaint after an assessment on substance because there were no grounds for action on its part. [REDACTED]

⁴ *Ustawa o ochronie konkurencji i konsumentów* – (Dz. U. z 2007 r. Nr 50, poz. 331 ze zm.).

- [REDACTED]
- [REDACTED]
- (10) On the basis of the above analysis, the Commission has concluded that it would reject your complaint pursuant to Article 13 of Regulation 1/2003 because the national authority has already dealt with the case. This was brought to your attention in the aforementioned letter of 19 February 2016.
 - (11) In your submission of 25 March 2016, you have argued that the Commission should nevertheless deal with the case because UOKiK has not taken a formal decision and because the reasoning of its letter was insufficient.
 - (12) In its letter of 19 February 2016, the Commission pointed out that, as clarified by the EU case-law,⁵ it may reject the complaint on the basis of Article 13(2) of Regulation 1/2003 irrespective of whether the NCA has dealt with the same allegedly abusive practice by way of a decision within the meaning of Article 5 of that Regulation or of an administrative letter. Therefore, the circumstance that UOKiK did not close the complaint addressed to it by a formal decision within the meaning of Article 5 of Regulation 1/2003, but by an administrative letter, does not preclude the Commission from rejecting the complaint, pursuant to Article 13(2) of that Regulation, because it had been dealt with by the NCA. As to the merits of the analysis carried out by UOKiK, it must be underlined that it is not for the Commission to rule on the arguments and findings set out by the Polish NCA or on the methodology used by it.
 - (13) In your submission, you have not argued that the complaints lodged before UOKiK and the Commission concerned different allegedly abusive conducts. However, you argued that the complaint to the Commission should be considered as a new complaint because the Polish NCA has not performed an adequate investigation of the case and has not taken any final decision. On this basis, you claim that the Commission is "*particularly well placed*" to deal with the case.
 - (14) After having carefully analysed your submission, the Commission considers that you did not present new elements which could alter the conclusion that the allegedly abusive practices brought to the Commission's attention are the same as those that constituted the object of the complaint examined by UOKiK. Contrary to your assertions, UOKiK has assessed the merits of your claims in the preliminary proceeding, at the end of which the NCA has deliberated that there were no sufficient grounds to open the antitrust proceeding.
 - (15) Therefore, as explained in the letter of 19 February 2016, the Commission considers that UOKiK has dealt with the same case that you have brought to the Commission's attention and that UOKiK has assessed the merits of your allegations concerning PPPL's allegedly abusive conduct. This represents a necessary and sufficient condition for the application of Article 13(2) of Regulation 1/2003. As a consequence, on the basis of this provision, the Commission can reject your complaint without having to further assess whether it is "*particularly well placed*" to deal with the case.

⁵ Case T-355/13 *easyJet Airline v Commission*, EU:T:2015:36, paragraph 40.

- (16) The Commission also considers that it is irrelevant that the Polish authority dealt with the case under Article 9(2) of the Polish competition law and not Article 102 TFEU. It is important to point out that these Polish legal provisions cover abuses of a dominant position and correspond to Article 102 TFEU. Moreover, the reasons given by UOKiK for rejecting the complaint about the alleged abuse of a dominant position indicate that the review of the complaint under Article 9(2) of the Polish competition law was conducted in the light of principles of Article 102 TFEU, since UOKiK carried out an assessment similar to that foreseen by Article 102 TFEU and applied similar concepts. For example, the Polish NCA took into account the doctrine of essential facilities that has been developed under Article 102 TFEU, following the interpretation provided by the Court of Justice.⁶
- (17) It follows from the foregoing that your complaint must be deemed to have been dealt with by UOKiK in the light of EU competition law rules.⁷

3. CONCLUSION

- (18) In view of the above consideration, the Commission has come to the conclusion that the Polish competition authority has dealt with the case and consequently rejects the complaint pursuant to Article 13 of Regulation 1/2003, in conjunction with Article 9 of Commission Regulation (EC) No 773/2004.

4. THE PROCEDURE

4.1. Possibility to challenge this Decision

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

4.2. Confidentiality

- (20) The Commission reserves the right to send a copy of this Decision to PPPL. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.⁸ If you considers 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 the Commission, by writing directly to responsible case-handler in DG COMP [REDACTED]. Please identify clearly the information in question and indicate why you consider that 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 PPPL.
- (21) 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.

⁶ Case C-7/97 *Bronner* EU:C:1998:569.

⁷ See *easyJet v Commission*, cited *ut supra*, at paragraphs 44-46.

⁸ See 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.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission