

# Kluwer Competition Law Blog

## How State Aid Control Grounded Another Flag Carrier: The Case of Montenegro Airlines

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Amidst a never-ending stream of news related to COVID-19, it went somewhat under the radar that another European flag carrier airline has been grounded – Montenegro Airlines. The halt of operations of the airline up came as a result of the inability of the government to further subsidize the loss-making carrier, due to state aid rules. What is the story behind this?

### State aid control in Montenegro: Towards the EU model

While not in the EU, Montenegro has state aid legislation based on the EU model, with substantive rules virtually a copy of the EU state aid rules. In addition, Montenegro is a party to the [Stabilization and Association Agreement with the EU](#), which prohibits distortive state aid which may affect trade between the Balkan country and the EU.

The EU context is important for Montenegro in another way – the manner in which Montenegro is applying its state aid legislation is under constant review by the European Commission, in the context of Montenegro's accession to the EU. This means that Montenegro is both legally and politically bound to dutifully implementing state aid control in accordance with the EU standards.

State control oversight in Montenegro is in the hands of the country's competition authority (the Agency for Protection of Competition), which also deals with antitrust and merger control matters. Actually, [that the competition authority deals with state aid issues is a relative novelty in Montenegro](#), as before 2018 state aid control was in the hands of a separate Commission for the Control of State Aid. Having a separate body for state aid control was seen as ineffective and led to the current institutional setup.

### Montenegro Airlines: A (former) government favourite

Perhaps it is different in other parts of Europe, but in the Balkans having a national airline is almost a sign of statehood and a source of national pride. That may explain why it was so important for Montenegro to have its own flag carrier airline, especially in the light of the country's relatively young independence. And helps explain why the government was for years pouring money into the loss-making airline.

The *former* government, to be exact, as late last year Montenegro witnessed a change of power for the first time in a while. Important for our story, the new government did not have an emotional attachment to Montenegro Airlines, to put it mildly. And was therefore not too sad to see the carrier finally collapsing.

### **The 2012 restructuring plan**

The Montenegrin specialized state aid watchdog (as mentioned, since 2018 this has been the country's competition authority) has looked into government assistance to Montenegro Airlines on several occasions.

Back in 2012, the state aid authority cleared a restructuring plan of Montenegro Airlines, aimed at helping out the carrier which was in dire straits even then. In retrospect, the restructuring plan did not resolve anything substantially for the airline, it only bought it time to survive for several more years.

Based on the restructuring plan, in the period 2012-2015, Montenegro Airlines got from the state almost 36 million euros of assistance. This money was used to cover some of the carrier's debt to suppliers, a bank guarantee for loans the company took for obtaining working capital, as well as for covering the company's debt toward the state for unpaid taxes.

Generous as this aid was, it was not enough to keep the airline afloat for long – and the government had to dip into the state budget again. This attracted the attention of the country's state aid watchdog, which started a state aid probe in 2019. At that point, the watchdog was looking into the funds Montenegro Airlines received from the state in 2018 (approx. 7.2 million euros) and was supposed to receive in 2019 (another 5.5 million euros).

Then, in 2020, came the final state aid punch for the carrier – a state aid probe on the support the Montenegrin government was planning to give to the airline by way of a *lex specialis*.

### **The probe which led to the carrier's demise**

In the 2020 probe, the watchdog was investigating whether the Montenegrin government had provided unlawful state aid to the airline by way of a special law on assistance to Montenegro Airlines. The planned assistance amounted to as much as EUR 150 million – a considerable amount, even for economies larger than the Montenegrin one.

This plentiful aid was supposed to consist of the following:

- EUR 34 million was dedicated for paying the taxes and contributions the carrier owed to the state,
- EUR 32 million for paying the carrier's debt to the company operating the Montenegrin airports,
- EUR 6.5 million for paying the debt to the air traffic control,
- EUR 6.8 million for paying a loan the company took from a commercial bank,
- EUR 6 million for paying the debt to suppliers,
- EUR 11 million for the company's working capital in 2020,

- as much as EUR 50 million for purchase of new aircraft,
- and EUR 8.8 million for the restoration of aircraft engines.

However, Montenegro Airlines never got this aid, as the competition watchdog found it problematic.

In its analysis, the state aid watchdog first established that the aid intended for Montenegro Airlines did not pass the market economy operator test and therefore constituted state aid.

The watchdog then noted that Montenegro Airlines was a firm in difficulty and that the only way it could receive state aid was through restructuring aid. The problem for Montenegro Airlines being that, back in 2012, it had already received restructuring aid and Montenegrin state aid legislation, as its EU model, prescribes that a company can receive restructuring aid only once in ten years.

The watchdog never got to complete this probe, as Montenegro Airlines went down in December 2020, before the state aid proceedings ended.

### **Ryanair's complaint to the European Commission**

There was another aspect of Montenegro Airlines' demise, and it had to do with its European competitors. Perhaps not surprisingly – with Ryanair.

Early December, while the Montenegrin state aid probe was pending, [Ryanair reported Montenegro Airlines to the European Commission](#), complaining of the unlawful state aid received by the Montenegrin flag carrier. Considering Montenegro's legal obligations in terms of distortive aid found in the country's Stabilization and Association Agreement with the EU, as well as political implications of such aid in the EU accession process, the impact of Ryanair's complaint on the fate of Montenegro Airlines should not be underestimated.

So, while its interventions against State aid to EU carriers have recently suffered a setback before the General Court (see [Ryanair's Food Envy – Who Allocates Corona Aid?](#)), Ryanair could at least savour in having helped to ground the troubled Montenegrin flag carrier. Until a new one starts to fly.

### **The outcome: Montenegro Airlines grounded, ToMontenegro to fly – one day**

As of 26 December 2020, Montenegro Airlines ceased all operations. It could not survive without the aid intended for it – and the government's position was that it could give no assistance due to state aid rules. Realistically, no matter how much aid it would get, it is unlikely that the now-grounded-carrier would ever stop generating losses.

But, at least in the Balkans, having a national airline goes a long way. So, unbaffled by the chronic unprofitability of the now-defunct Montenegro Airlines, the new Montenegrin government established a new air carrier, with a working name ToMontenegro. The government itself admitted it may take several months for the new airline to make its first flight. One thing is certain – whenever it starts flying, remaining in the black will be a constant challenge for the newborn

carrier.

Instead of establishing a new carrier, could have the government done something more prudent? Something like subsidizing necessary but unprofitable routes by way of public service obligation (PSO) routes? It could have. But having a national airline goes a long way. At least in the Balkans.

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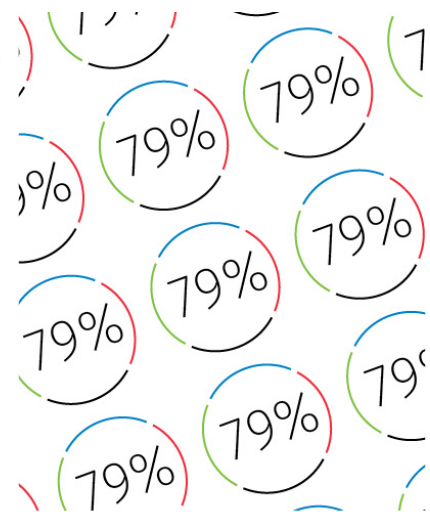
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