Corte costituzionale

JUDGMENT NO. 51 OF 2008

FRANCO BILE, PRESIDENT

SABINO CASSESE, AUTHOR OF THE JUDGMENT

JUDGMENT No. 51 YEAR 2008

In this case the Court considered questions raised by various regions concerning a range of questions concerning the regulation of airports under state legislation. The Court dismissed as inadmissible the applications based on the fact that the regions concerned were shareholders in the airport operators. On the other hand, the complaints that the state legislation violated the principle of loyal cooperation were upheld, on the grounds that the legislation covered a "confluence of several areas of law", over one of which (regulation of airports) competence was shared, and therefore the Court held that the Joint Assembly should be consulted.

THE CONSTITUTIONAL COURT

Composed of: President: Franco BILE; Judges: Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies* of decree-law No. 203 of 30 September 2005, concerted into law with amendments by law No. 248 of 2 December 2005 (Measures to combat tax evasion and urgent provisions relating to tax and financial matters), commenced pursuant to applications by Tuscany Region, Sicily Region, Piedmont Region, Campania Region and Emilia-Romagna Region, served on 30, 26, 30 and 31 January 2006, filed in the Court Registry on 2, 3, 6, 7 and 8 February 2006 and registered as Nos. 6, 7, 18, 19 and 20 in the Register of Appeals 2006.

Considering the entries of appearance by the President of the Council of Ministers, as well as the interventions by the companies *Aeroporti di Roma* [Rome Airports] and *Alitalia–Linee Aeree Italiane s.p.a.* [Alitalia – Italian Airlines Inc.];

having heard in the public hearing of 15 January 2008 the Judge Rapporteur Sabino Cassese;

having heard Fabio Lorenzoni, barrister, for Tuscany Region, Michele Conte, barrister, for Piedmont Region, Vincenzo Cocozza, barrister, for Campania Region, Maria Chiara Lista, barrister, for Emilia-Romagna Region and the *Avvocato dello Stato* Giorgio D'Amato for the President of the Council of Ministers.

The facts of the case

1. – Tuscany Region raised the question of the constitutionality of Articles 11-*nonies* and 11-*decies* of decree-law No. 203 of 30 September 2005, converted into law, with amendments, by law No. 248 of 2 December 2005 (Measures to combat tax evasion and urgent provisions relating to tax and financial matters), with reference to Articles 117 and 118 of the Constitution.

1.1. – The region claims that Article 11-*nonies* of decree-law No. 203 of 2005, which amended Article 10(10) of law No. 537 of 24 December 1993 (Miscellaneous provisions to correct the public finances), provides that the level of airport fees be determined, for individual airports, on the basis of criteria laid down by the ICEP,* by decree of the Minister for Infrastructure and Transport, acting together with the Minister for the Economy and Finance, giving consideration: a) to the income from and costs of each of the services, including regulated and unregulated services, such as the operation of commercial activities, provided on airport premises; b) to the qualitative and quantitative level of the services offered; c) to cost recovery requirements, in accordance with efficiency and airport installation development criteria; d) to the effective achievement of environmental protection objectives; e) to a share no less than 50 percent of the margin operated by the airport managing body in relation to the unregulated activities carried on within airport premises, that is so-called non aviation

* Inter-ministerial Committee for Economic Programming (*Comitato Interministeriale per la Programmazione Economica*).

activities carried on by the airport, such as, for example, the use of spaces, advertising and parking.

This calculation mechanism (the so-called price cap) is also extended to security services and to fees for the loading and unloading of goods.

The same provision removes the 50 percent surcharge on airport fees for night flights and provides for a simplified determination of fees for airports with a traffic volume below 600,000 units.

Article 11-*decies* of decree-law No. 203 of 2005 provides that, until the introduction of the system for determining airport fees described above, the state fees due from the managing bodies to the state shall be reduced by 75 percent; airport fees are reduced by a similar amount up until the same date. An additional 10 percent reduction of these fees was granted for managing bodies which do not have a cost accounting system.

1.2. – In the opinion of the region, the above provisions have a significant impact on the development of airports, which are cornerstones of the regional economy. In fact, for managing bodies airport fees represent the return on the construction, management, maintenance and development costs of airport installations. This means that the 75 percent reduction provided for under Article 11-*decies* and the application of the price capping criteria introduced by Article 11-*nonies* of decree-law No. 203 of 2005 imposes a significant limitation on these activities.

1.2.1. – According to the applicant, this translates above all into an infringement of the regional competences guaranteed under Article 117(3) of the Constitution, since the contested provisions relate to the substantive area of "civilian ports and airports" which is included amongst the matters over which legislative jurisdiction is shared. Against this background, the state should limit itself to establishing only fundamental principles, "it being a matter for the region to implement the applicable regulatory framework, including in relations with third parties", whilst the contested provisions "lay down complete, self-applying, detailed and comprehensive legislation, without leaving any possible space for regional legislation".

1.2.2. – Secondly, the contested provisions are claimed to violate Article 118 of the Constitution, since they do not satisfy the prerequisites for the so-called "call for action on a national level" ("*chiamata in sussidiarietà*") by the state administration and,

therefore, the centralisation requirements which would enable the adoption of state legislation. In any event, even in this case, the provision would not be constitutional in the light of the case law of this court, which has held that "consultation and horizontal coordination, that is agreements which must be carried out in accordance with the principle of loyal cooperation, [must must be given their] due prominence" (judgments Nos. 383 and 378 of 2005 and No. 303 of 2003).

According to the applicant region, the contested provisions do not moreover provide for any form of understanding between the state and the regions as regards procedures for the new determination of the level of airport fees, and this omission "is clearly unconstitutional due to violation of Article 118 of the Constitution", in particular in view of the fact that the reduction of the level of fees received by the managing bodies ends up heavily undermining the competitiveness of the system since it has "negative effects both on the airport system, their industrial and commercial activities, as well as on transport and tourism"; that is "in substantive matters where the region is called upon to govern in that they fall within its competence both over concurrent (civil airports, transport) and residual matters (tourism, economic development)".

1.2.3. – The provisions are also claimed to be unconstitutional in that they violate Article 117(6) of the Constitution. This provision in fact states that the state may exercise its power to issue regulations only in the matters falling under its own exclusive legislative competence. If follows that in the case before the court the provisions which allow ministers to issue regulations setting new levels of airport fees are unconstitutional, since these do not relate to matters reserved to the state pursuant to Article 117(2) of the Constitution.

2. – Sicily Region questions the constitutionality of Articles 11-*nonies*(1) and 11-*decies*(1) and (2) of decree-law No. 203 of 2005, converted into law by law No. 248 of 2005, with reference to Articles 17(a), 20, 36 and 37 of the Regional Statute, Articles 1 and 4 of presidential decree no. 1113 of 17 December 1953 (Provisions implementing the Statute of Sicily Region in matters relating to communication and transport, including subsequent amendments and supplementary provisions), Articles 117(3), 118 and 119 of the Constitution and Article 10 of constitutional law No. 3 of 18 October 2001 (Amendments to Title V of Part Two of the Constitution).

2.1. – According to the region, the contested provisions clearly violate the division of legislative competences between the state and Sicily Region in relation to "regional communication and transport of any nature" (Article 17 of the Regional Statute, with reference to Articles 1 and 4 of presidential decree No. 1113 of 1953) as well as "ports and civil airports" (Article 117(3) of the Constitution).

2.1.1. – The applicant notes that under the terms of Article 17(1) of the Regional Statute the substantive matter of "regional communication and transport of any nature" is included amongst those for which, "subject to the limits of the principles and general interests which underlie state legislation, the Regional Assembly may enact laws in order to further [...] the interests of the region, also in relation to the organisation of services", also specifying that "the president and the regional local government officials [...] shall carry out in the region the executive and administrative functions pertaining to the matters falling under [Article] 17". It goes on to note that the provisions implementing the Regional Statute confer upon the region "the powers of the central and local state authorities in matters concerning communications and transport of any nature" (Article 1(1) of presidential decree No. 1113 of 1953), also listing transport services of regional interest, which include "air and helicopter transport services operating exclusively on a regional level" (Article 4(3) of the above presidential decree). Furthermore, pursuant to Article 1 of legislative decree No. 296 of 11 September 2000 (Provisions implementing the Special Statute of Sicily Region containing amendments and supplementary provisions to presidential decree No. 1113 of 17 December 1953 concerning communications and transport), "within the region, Sicily Region shall exercise all powers of the central and local state authorities in matters concerning communications and transport of any nature".

In the light of the above, according to the applicant, the contested provisions violate the reservation to the region of legislative competence over transport. The provisions contained in Articles 11-*nonies* and 11-*decies* in fact relate to the substantive matter of air transport *tout court* (although the provisions mentioned are not strictly related to "transport", but rather to the "rationalisation" of airport management) since they introduce detailed provisions governing airport fees, the level of which is determined with reference to a range of parameters which directly concern both the management of

individual airports (see Article 11-*nonies*(1)(b), (c) and (d)), as well as the transit of aircraft (see Article 11-*decies*, "with a view to [...] rationalising the national air transport system").

In this way, both the determination of the level of airport fees and the related calculation methods (including the removal of the surcharge on night flights), as well as the reduction of the state fees must, in the opinion of the region, be considered to be matters reserved to the legislative power of the region in that they fall "within the reach of the broadest competence over transport".

For this reason, Articles 11-*nonies*(1) and 11-*decies*(1) and (2) are unconstitutional insofar as they violate Articles 17(a) and 20 of the regional Statute, as well as Articles 1 and 4 of presidential decree No. 1113 of 1953.

2.1.2. – The applicant adds that the contested provisions violate Articles 117(3), 118, 119 of the Constitution, Article 10 of constitutional law No. 3 of 2001 and Articles 36 and 37 of the Statute of Sicily Region.

Pursuant to Article 117(3) of the Constitution, competence over "ports and civil airports" is shared and, for this reason, falls under the legislative power of the region, other than for the determination of fundamental principles, which remains a legislative prerogative of the state.

Since the contested legislation falls within the substantive area of air transport or airport management, according to the region there is no doubt that competence thereover should be shared between the state and the regions. Accordingly, the state legislature should have limited itself exclusively to the identification of general and fundamental principles in this area, whilst the enactment of detailed provisions should be reserved to each of the regional legislatures on account of their territorial specificity. By contrast, Articles 11-*nonies* and 11-*decies* were enacted "without any consultation with Sicily Region and hence in open breach of the principles of subsidiarity and adequacy which underlie Article 118 of the Constitution".

2.1.3. – According to the applicant, by introducing a system for recalculating airport fees and, above all, by providing for the removal of the 50 percent surcharge on night flights, as well as the 75 percent reduction of the state fees, the legislation in question also violates Article 119(1) and (4) of the Constitution and Articles 36 and 37 of the

Sicily Region Statute, which guarantee fiscal autonomy to the region and local authorities. In fact, it would create "a serious detriment to the balance sheets of the Sicilian airport management companies", with knock-on effects also on the local authorities which have subscribed to the company capital.

2.1.4. – The applicant also invokes Article 10 of constitutional law No. 3 of 2001, which – in providing that "the provisions [...] shall also apply to the regions governed by special statute [...] only insofar as they provide for autonomy greater than that already conferred" – combined with Articles 17 and 20 of the Sicily Region Statute, grants the regional legislature a broader legislative autonomy also in relation to eventual restrictions enacted "as principles" by the state legislature (Article 117(3) of the Constitution).

2.1.5. – The provisions finally violate the principle of loyal cooperation. Since the legislation made provision for the procedures for determining airport fees and the state fees also in Sicily Region, the state legislature should in any case have consulted the region, since competence over the matters in question was shared with the region.

3. – Piedmont Region contests Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies* of decree-law No. 203 of 2005, converted into law by law No. 248 of 2005 with reference to Article 117(1), (3), (4) and (6) and Article 11 of the Constitution.

3.1. – In the first place, the provisions violate Article 117(3) of the Constitution which provides for concurrent jurisdiction over civil airports. In fact, in addition to violating a range of constitutional principles which cannot be relied upon by the region (Articles 3, 41, 42 and 77 of the Constitution), the contested provisions breach the regional system of competences as set out under Article 117 of the Constitution. The contested provisions completely ignore the concurrent competence of the region, laying down specific and detailed substantive rules, thereby infringing the competence of the region (citing, as similar cases, those resolved by judgments Nos. 147 and 120 of 2005, No. 282 of 2004 and No. 329 of 2003).

The same conclusion would be reached, according to the region, if it were argued that since they relate to airports in general, the matters regulated by law No. 248 of 2005 do not concern simply "civil airports", over which competence is shared, but is rather a so-

called cross-cutting matter in which "diverse interests which give rise to differentiated competences, shared between the local authorities, the regions and the state, [are] gathered together and intertwined" (judgment No. 96 of 2003). It can in fact be argued that the contested provisions also touch upon matters such as "competition law", "security" and "environmental protection" under the exclusive competence of the state pursuant to Article 117(2)(e), (h) and (s) of the Constitution, or indeed other concurrent matters such as "territorial government" (Article 117(3)). It is in essence claimed to be an issue governed by several areas of law, some of which fall under exclusive state competence, others under shared competence, and yet others under the residual competence of the regions.

The region notes that the Constitutional Court has already considered cases of this nature, finding (in relation to the intersection of competences over the employment market) that "in such cases there is a confluence of competences rather than shared or concurrent competence. The Constitution does not contain any express criteria regulating the dynamics of these intersections and it is therefore necessary to look to different principles: that of loyal cooperation, which on account of its flexibility makes it possible to take into account the special circumstances of individual cases, but also that of predominance, which this court has relied upon where it is clear that the essential core of a body of legislation belongs to one area of law rather than to another" (judgment No. 50 of 2005).

No matter which perspective is adopted, it is clear, according to the region, that the contested provisions infringe upon the competences of the regions. Indeed, should the court find that there is a "confluence of competences" over airports governed by law No. 248 of 2005, there would be a complete lack of any form of cooperation to safeguard the aspects of regional competence. Were on the other hand the court to apply the criterion of predominance, the area of law "civil airports" should without doubt be considered to prevail in this case over the others mentioned above ("competition law", "security", "environmental protection" or "territorial government"), and therefore would fall foul of the requirement to limit legislation in that area only to fundamental principles.

The infringement of the competences of the regions is according to the applicant even more serious since the provisions in question fail to make provision for any form of cooperation with the regions in relation to the decrees to be issued to set the new airport fees pursuant to Article 11-*nonies*, as well as the new measures concerning airport security pursuant to Article 11-*duodecies*.

On this point, the regions points out that the Court was recently called upon to rule on the new state legislation governing the appointment of port authorities (a matter similar to airports, so much so that it appears next to it in the matters listed in the Constitution). Certain regions had contested these provisions precisely on the grounds that concurrent regional competences over "ports and civil airports" had been infringed. The Constitutional Court in part accepted the questions raised, laying particular emphasis on the debasement of the regions' recognised power of co-determination (judgment No. 378 of 2005).

It follows from this, according to the region, that the mechanisms for reaching agreement are decisive in establishing the constitutionality of provisions which concern matters over which competence is shared.

3.2. – The provisions are also claimed to be unlawful due to violation of Article 117(6) of the Constitution, since they provide that the specific determination of the new levels of airport fees may be made by regulations issued by state organs. In the opinion of the applicant, the matters governed by the contested provisions may largely be classified under the head "civil airports", over which competence is shared pursuant to Article 117(3) of the Constitution, and it follows that the relative power to issue regulations can only be vested in the regions, as the court has reiterated on various occasions in relation to similar cases (judgments No. 31 of 2005, Nos. 256, 36 and 26 of 2004 and No. 329 of 2003).

The conclusion would not be changed, according to the region, by any considerations of a (possible) overlap of exclusive state competences and shared competences over the same matters.

The region concludes that the parallel presence of grounds for exclusive state competence and grounds for shared competence between state and regions over the

same matters essentially means that the power to issue regulations may be exercised by the state, but in consultation with the regions (citing judgment No. 270 of 2005).

3.3. – According to the region, the contested provisions also violate Articles 117(1) and 11 of the Constitution on the requirement to comply with Community law obligations.

In the opinion of the applicant, the measures as enacted constitute state aids within the meaning of Article 87 of the EC Treaty, in that they create economic benefits for air carriers, and in particular those which operate more frequently through Italian airports, through the use of state resources. The region notes that these measures result in an unjustified reduction in certain production costs of the airlines (above all airport fees) which operate in Italy, granting them a clear competitive advantage over airlines which do not use Italian airports, thereby distorting competition on the European market for air transport (citing on this point the ECJ judgment of 17 September 1980 in Case C-730/79, *Philip Morris v. Commission* [1980] ECR 2671).

In particular, by reforming the system for the determination of airport fees, Article 11-*nonies*(1) of law No. 248 of 2005 amounts to a state aid insofar as it causes a "contraction" in the income of "public" airport managing bodies, to the benefit of the air carriers.

Moreover, the new method for calculating the initial level of fees, including the income of the airport managing body flowing from commercial and unregulated activities does not comply with current Community law requirements governing payments for the use of airport installations (citing the Commission Document on Airport capacity, efficiency and safety in Europe of 15 September 2005).

Again, the contested provisions result in an unjustified reduction in the income of airport managing bodies, as well as causing serious detriment to and discriminating against private managing bodies by clearly devaluing the capital invested by the same. The provisions therefore violate the principle of non-discrimination between public and private property (Articles 43 *et seq* of the EC Treaty), and with the principles of the free movement of capital and the freedom to provide services (Articles 56 *et seq* and 49 *et seq* of the EC Treaty).

Furthermore, the state aid regime introduced by law No. 248 of 2005 is claimed also to breach the requirement of notification (Article 88(3) of the EC Treaty) since the Commission was not informed in advance, and was therefore unlawful (Council Regulation CE No. 659/99 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty).

4. – Campania Region challenges Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies* of decree-law No. 203 of 2005, converted by law No. 248 of 2005, with reference to Articles 114, 117 and 118 of the Constitution, as well as due to violation of the principle of loyal cooperation between state and region and due to the "infringement of the region's competence" provided for under Articles 102 *et seq* of legislative decree No. 112 of 31 March 1998 (Conferral of the administrative functions and tasks of the state on the regions and local authorities in accordance with Part I of law No. 59 of 15 March 1997).

4.1. – In the opinion of the region, the contested articles have a significant impact on programming policies relating to "ports and civil airports", competence over which is shared between the regions and the state. Whilst it may be true that the specific legislative contents for the most part concern the determination of the level of payments and fees for subjects which use airport installations, these so to speak qualitative initiatives are an instrument for the programming and management of sectoral policies, also by virtue of express legislative provision.

In particular, the region claims that by enacting Article 11-*nonies*, the state legislature acted unlawfully for three reasons: it rigidly set the parameters for the determination of the level of airport fees; secondly, it provided that the precise determination of their levels shall occur by statutory instrument on the basis of the criteria mentioned; finally, it provided that, again, a statutory instrument may establish rules to simplify the determination of airport fees applicable to airports with lower volumes of traffic.

According to the region, far from amounting to a merely revenue driven reform, these financial interventions have precise – restrictive – implications on the policy choices which the region is competent to make in relation to the aforementioned area of law; this is clear not only from the tone of the legislation, but also from the very goals stated therein when Parliament classifies the legislation as an instrument for

"[r]ationalising and increasing the efficiency of the airport management sector", thereby defining their operational scope. In this way, the region notes that, "in a manner similar to the situation for so-called "tied financing, the contested legislation ...may become an indirect but pervasive instrument of state interference in the exercise of the functions of the regions and local authorities, as well as creating an overlap between central government policies and trends and those legitimately decided by the regions within the substantive matters falling within their competence" (Constitutional Court judgments Nos. 51/05; 424/2004; 423/2004; 320/2004; 16/2004 and 370/2003)".

There has according to the region therefore been a twofold violation of Article 117 of the Constitution, because both self-applying legislation other than general principles has been enacted (sub-section three), and also, for matters falling under the concurrent legislative power of the regions, state organs were charged with the concrete implementation, by statutory instrument, of the legislation claimed to be unconstitutional (sub-section six).

The region's competence is also claimed to have been violated by Article 11-*decies*, as the reduction of the state fee and the precise determination of the level of airport fees are measures which indirectly impinge upon matters falling under regional competence. In the same way, Articles 11-*duodecies* and 11-*terdecies* apply to the area of law mentioned above, without providing for any role for the region.

4.1.2. – The region also claims that the same constitutional provisions mentioned above are also violated by Article 11-*undecies*, which governs the procedures for the drafting of infrastructure projects, without providing for any participation by the region concerned.

In fact, since it concerns infrastructure projects, the legislation must be regarded as falling within the ambit of so-called "public works" which, as the Constitutional Court has held, "do not constitute a proper area of law, but are classified depending on the nature of the relevant project and therefore may be from time to time be classified as matters falling under the exclusive legislative power of the state or the concurrent power of the regions" (judgment No. 303 of 2003). Since the projects in question are intended, as expressly provided, to further the "development of airport installations", the court finds that, also in this case, the contested provision unlawfully infringes the concurrent

legislative powers of the region over “ports and civil airports”, in addition to those over “territorial government”. In this way, the provision is unlawful due to the complete absence of any role for local authorities in the definition of the programmes provided for.

4.1.3. – The contested provisions are also claimed to be unconstitutional in that they violate the principle of loyal cooperation along with Articles 117 and 118 of the Constitution.

On this point, the region recalls the Constitutional Court's finding that the adoption of mechanisms allowing for an appropriate involvement of the region balance out, through the principle of loyal cooperation, centralising requirements with local interests and competences recognised under the Constitution (citing judgments No. 50 of 2005 and No. 407 of 2002; and order No. 252 of 2005).

5. – Emilia-Romagna Region contests Articles 11-*nonies* and 11-*decies* of law No. 248 of 2005 due to violation of Articles 117(1), 118, 11 and 41 of the Constitution, “insofar as they regulate airport fees through a form of crossed subsidy between commercial activities and aeronautical activities and substantially reduce the income guaranteed to the managing bodies, without any justification on the grounds of public interest (in particular, Article 11-*nonies*(a)); as well as insofar as they do not provide, for the purposes of the setting of production objectives and the determination of airport fees for smaller airports (Article 11-nonies(b)), for loyal cooperation procedures, prior consultation and agreement with the regions in the appropriate *fora*”.

5.1. – According to the region, the provisions contained in Articles 11-*nonies* and 11-*decies* substantially provide for state intervention in favour of the airlines, and a regulation of airport fees which causes serious detriment to the airport managing bodies – in which also regional or local bodies are by law shareholders – thereby causing an impact on the development of regional airports and on overall economic policy within the sector, for the most part distorting competition.

On this point, the region justifies its interest in the matter by arguing that, ever since law No. 537 of 24 December 1993 (Miscellaneous provisions to correct the public finances), state legislation has recognised the interest of the regions and local authorities

in participating as shareholders in the companies which operate services and construct airport installations (Article 10(13)).

As far as Emilia-Romagna is concerned, whilst the state is not one of the shareholders, the region holds a significant share (9 percent) of the managing body of the principal regional airport, Bologna; other local authorities, the municipality and province of Bologna, hold a combined share of 30 percent and the Chamber of Commerce of Bologna holds the majority share (52 percent). Moreover, the Integrated Regional Transport Plan envisages coordination policies between the four regional airports of Parma, Forlì, Rimini and Bologna with a view to achieving a rational and unitary management of these installations, and to this end also provides for the acquisition of significant share packets for all four airports. For this reason, it is therefore clear that the region and the local authorities have a direct interest in challenging state legislation which causes detriment to the proper functioning of the airports, their financial equilibrium and in essence the proper administration of the airports.

In the light of the above, the region claims that its title to sue is grounded in the "area of law" under which the contested law falls, i.e. that of "ports and civil airports", competence over which is shared pursuant to Article 117(3). It claims that the state's legislation, contested before the court, cannot in fact be justified on other grounds, since its goal is neither the coordination of the public finances, nor the protection of competition, but is strictly related to the management of "port and airport" installations.

5.2. – Articles 11-*nonies* and 11-*decies* are also claimed to be unconstitutional due to violation of Articles 117(1), 118, 11 and 41 of the Constitution.

The region notes that the interventions ordered by the contested provisions do not appear to be justified on the strength of the fact that the state is the owner of the land and grantor (and therefore on the basis of the landowner's right to fix the state fee). Neither moreover can it be justified by the requirement to coordinate the public finances, nor on competition law grounds, nor by the principle of subsidiarity, nor finally by virtue of the shared competence over ports and airports.

5.2.1. – According to the applicant, in relation to the first point, Article 11-*decies* provides that the state fee shall be reduced only on a transitional basis in order to allow

for a corresponding reduction in airport fees. This legislation however does not lay down a new rule for determining the state fee, but is a prelude to a new regulation of airport fees, in essence granting a "discount" on the landowner's fee as partial compensation for the loss which the airport managing bodies will incur due to the effects of Article 11-*nonies* (which establishes the level of airport fees at a rate not lower than 50 percent of the financial margin operated by the airport managing body in relation to unregulated activities carried on by the same as a business subject), "with the result that the substantive matter to which the law applies is to be equated exclusively with airport fees, and the regulation of the state fee remains only a transitional measure associated with a specific goal".

5.2.2. – Requirements for financial coordination are also irrelevant for the state's intervention since the contested provisions do not produce any benefit in terms of greater income or cost savings for the public finances. In fact "by contrast, Article 11-*decies* significantly reduces the state fee, by 75 percent, up until the date – entirely uncertain – of the introduction of a new system for airport fees, as provided for under Article 11-*nonies* whilst, from the opposite perspective, the above reduction of the level of the state fee has a neutral effect on the finances of the airport managing bodies".

5.2.3. – As regards the third question, i.e. justification on competition law grounds, the region notes that "that state may certainly intervene with rules concerning the market – and this is a significant market segment – but the intervention must be justified on competition law grounds, and must not distort it". By contrast, the region continues, "there are multiple distorting effects here", since far from raising the level of competition between managing bodies on the market, that it between airports, the provisions in question provide for the exact opposite: "the airports are required to lower their fees to the same level, without giving consideration to the airport project costs already taken on and approved, but above all they violate several Community law principles of competition law specifically intended to require a separation between the income from the management of the installations, and the that flowing from other activities which the airport may carry on as ancillary activities, subject to the usual competition law constraints, in competition with other service providers on land". On the other hand, Community directive No. 96/67/EC of 15 October 1996 "provided for

the liberalisation of the groundhandling market […] in order to reduce costs, without prejudice to the proper functioning" of the airports.

The region recalls that the Court of Justice has found, in relation to property rights, that "the fact that the managing body of an airport is not authorised to collect an access fee does not mean […] that that body does not have the right to profit from the economic services that it provides on the groundhandling market to which it must grant access. Article 16(3) of the Directive requires that the fee which may be collected in return for access to airport installations must be determined according to relevant, objective, transparent and non-discriminatory criteria. That provision does not prevent the fee from being determined in such a way that the managing body of the airport is able not only to cover the costs associated with the provision and maintenance of airport installations, but also to make a profit" (ECJ judgment in Case C-363/01 [2003] ECR I-11893).

According to the applicant region, the principle of freedom of economic initiative has been violated because, in contrast to the findings of the Court of Justice in the above judgment, the airport managing body is prevented from managing the airport along business lines, not only covering its costs but also generating profits, which it is required to use to cover the costs of its principal activities.

It also breaches competition law by imposing restrictions on a category of businesses (airport managing bodies) which favour companies located in another business sector (the airlines).

Finally, the legislation furthers a forbidden policy or so-called below-cost sale or dumping, which creates different cost levels for the airlines, favouring foreign companies over national airlines, in order to attract flights by foreign carriers to Italian airports through the application of unlawful mark-downs.

5.2.4. – It is also claimed that the provisions before the court also violates the principle of loyal cooperation, since on a legislative level they are essentially complete and self-applying, do not distinguish between principles and details and, on an administrative level, are characterised by a state-run management model.

The applicant region argues that Article 11-*nonies*(a) is unconstitutional insofar as it does not provide for loyal cooperation procedures involving the prior determination of

the productivity objectives and the programme contracts to be concluded with *Enac* [National Agency for Civil Aviation]. It also claims that Article 11-*nonies*(b) is unconstitutional insofar as, by introducing sub-section 10-*ter* after Article 10 of law No. 537 of 1993, it provides that the Minister for Infrastructure and Transport may, outwith the strictures of loyal cooperation procedures, issue administrative regulations for the simplification of the procedures for determining airport fees in smaller airports.

5.2.5. – Finally, according to the applicant, the self-applying nature of these provisions means that they cannot be regarded as "principles" in this area and, accordingly, that they are incompatible with the shared legislative competence over "ports and airports".

6. – The *Avvocatura Generale dello Stato* entered an appearance for the President of the Council of Ministers in all proceedings, arguing that the contested provisions do not infringe regional competences over ports and civil airports pursuant to Article 117(3) of the Constitution, and that the reduced airport fees do not hinder the completion of efficient infrastructure or stifle the competitiveness of the system. It also challenges the assertion that the provisions violate Article 117(6), since the determination of the new levels of airport fees may be made by statutory instrument in spite of the fact that it does not concern a matter under the exclusive legislative competence of the state. Finally, it submits that the requirements for the call for action on a national level have been satisfied, without any violation of Article 118 of the Constitution.

In the opinion of the *Avvocatura Generale dello Stato*, the state legislature intended through the contested provisions to render the Italian airport sector more competitive. In particular, Article 11-*nonies*, which replaced Article 10(10) of law No. 537 of 1993, introduced a new system for setting "airport fees", to be determined, for individual airports, on the basis of criteria laid down by the ICEP by decree of the Minister for Infrastructure and Transport acting together with the Minister for the Economy and Finance and, for the purposes of this determination, set out a series of principles.

The new criteria tend to favour the adoption of a cost accounting system, certified by auditors, with a view to introducing greater transparency into the identification of the income and costs borne by airport operators with reference to all services offered on airport premises, whether regulated or not, including the running of commercial

activities. The general goal is to encourage investment and to allow for a recovery in the productivity of the airport system.

Article 11-*decies* provides that, up until the entry into force of the new system for determining airport fees, the state fees due to by the managing bodies to the state shall be reduced by 75 percent, and that this reduction in the costs borne by the managing bodies must be accompanied by a corresponding lower level of airport fees. For the managing bodies which cannot operate cost accounting, a further reduction in fees of 10 percent is provided for.

According to the *Avvocatura Generale dello Stato*, it is therefore clear that the view underlying the region's application is mistaken.

The contested provisions seek to rationalise the management of state goods and services contracted out to the airport managing bodies.

It argues that, "'as regards the entitlement to set and collect the [state] fee it is the ownership of the property which is decisive and not the fact that the legislative and administrative functions pertaining to the use of the said property are vested in the regions' (see judgments No. 286 of 2004, No. 150 of 2003, No. 343 of 1995 and No. 326 of 1989)" and stresses that the contested provisions are intended to protect competition, a matter which Article 117(2)(e) reserves to the exclusive competence of the state.

Furthermore, the *Avvocatura Generale dello Stato* recalls that, according to constitutional case law, "competition law ... is one of the levers of state economic policy and therefore cannot be understood only in a static sense as a guarantee of regulatory interventions and actions to restore lost equilibrium, but also with the dynamic meaning well known under Community law, which justifies public measures aimed at reducing imbalances, favouring the conditions for a sufficient development of the market or introducing competitiveness"; moreover, "the fact that the measure was addressed to all companies operating nationally, along with the clear goal of stimulating investment and the expansion of the market in that sector, are indices of the relevance of the initiative for the function of macroeconomic stabilisation – a task vested in the state – and its status as a competition law matter promoting and regulating the dynamics of competition structures" (judgment No. 14 of 2004).

In the final analysis, the principles invoked and complaints raised are not relevant.

According to the *Avvocatura Generale dello Stato* moreover, the applicant regions have not considered the advantages for their regional economies flowing from the competitive relaunch of the entire airport system, with the resulting greater attractiveness for domestic and foreign carriers and the increase in both business and tourist traffic.

The *Avvocatura Generale dello Stato* therefore requests that the applications be declared inadmissible, or in any case groundless.

7. – The company *Aeroporti di Roma* intervened in all proceedings, reserving the right to submit written statements and produce documents within the relevant time limits, claiming in any case that the question is without doubt well founded, as is clear from the arguments submitted by the regional administrations.

8. – The company *Società Alitalia-Linee Aeree Italiane s.p.a.* intervened in the proceedings commenced by Piedmont Region and Campania Region, requesting that the question of the constitutionality of Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*doudecies* and 11-*terdecies* of decree-law No. 203 of 2005, converted into law, with amendments, by law No. 248 of 2005, be declared inadmissible, irrelevant and in any case groundless.

9. – Following the remittal of the case for rescheduling, shortly before the date set for the hearing, Campania and Emilia-Romagna Regions, the *Avvocatura Generale dello Stato* and the intervener companies, *Alitalia-Linee Aeree Italiane s.p.a.* and *Aeroporti di Roma*, submitted additional written statements in which they respectively reiterated their previous arguments.

In particular, Emilia-Romagna Region pointed to the passing of the ICEP resolution of 15 June 2007 (Directive concerning the regulation of tariffs for airport services provided on an exclusive basis), published in the *Official Journal* of 22 September 2007, general series No. 221, which replaced the previous ICEP resolution No. 86 of 2000 in the light of the legislative amendments introduced by the contested law.

Conclusions on points of law

1. – In five distinct applications (respectively, Register of Appeals Nos. 6, 7, 18, 19 and 20 of 2006), Tuscany, Sicily, Piedmont, Campania and Emilia-Romagna Regions questioned the constitutionality of Articles 11-*nonies* and 11-*decies* of decree-law No. 203 of 30 September 2005, converted into law, with amendments, by law No. 248 of 2 December 2005 (Measures to combat tax evasion and urgent provisions relating to tax and financial matters), whilst Piedmont and Campania Regions also questioned Articles 11-*undecies*, 11- *duodecies* and 11-*terdecies* of the same decree-law, as converted into law, due to alleged violation of Articles 11 (Piedmont and Emilia-Romagna Regions), 41 (Emilia-Romagna Region), 114 (Campania Region), 117 (all regions, on different grounds) and 118 of the Constitution (Tuscany, Sicily, Campania and Emilia-Romagna Regions), and the principle of loyal cooperation (Campania, Emilia-Romagna and Sicily Regions), as well as Articles 17(a), 20, 36 and 37 of royal legislative decree No. 455 of 15 May 1946 (Approval of the regional statute of Sicily Region), Articles 1 and 4 of presidential decree No. 1113 of 17 December 1953 (Provisions implementing the Statute of Sicily Region in matters relating to communication and transport, including subsequent amendments and supplementary provisions) and Article 119 of the Constitution (Sicily Region).

Since the applications raise similar questions, the related proceedings must be joined for unitary treatment and a single decision.

2. – As a preliminary matter, the court finds that the interventions in these proceedings by the companies *Aeroporti di Roma* and *Alitalia-Linee Aeree Italiane s.p.a.* are inadmissible since, in accordance with the settled case law of this court, only those subjects vested with the legislative competences in dispute may be parties to constitutional proceedings in which the court is seized directly (most recently, judgment No. 265 of 2006).

3. – Before going on to examine the questions of constitutionality raised, it is important to reconstruct the various stages leading to the enactment of decree-law No. 203 of 2005 converted into law, with amendments, of the disputed law No. 248 of 2005.

3.1. – Airport fees represent the consideration due – under contract – by the air transport companies (the carriers) and by the users of air transport (passengers, airfreight operators, etc.) to the managing bodies of the airport installations for the

services provided to them. Therefore, the question of airport fees is covered by the legislation regulating the provision of these services.

The first legislation governing airport fees dates back to law No. 24 of 9 January 1956 (Fees for the use of aerodromes open to civil air traffic), later entirely replaced by law No. 324 of 5 May 1976 (New provisions concerning fees for the use of airports open to civil traffic), which sub-divided them into the two categories of "air fees" and "ground fees", providing for their revision every two years by decree of the President of the Republic, acting on the proposal by the Transport Minister together with the Treasury and Finance Ministers, giving consideration to the tariff policy requirements of the sector and trends in the costs of airport services.

The system was modified by law No. 537 of 24 December 1993 (Miscellaneous provisions to correct the public finances), which provided – starting from 1995 – for the annual revision of fees by decree of the President of the Republic on the basis of criteria laid down by the ICEP acting on a proposal of the Minister for Infrastructure and Transport, together with the Minister for the Economy and Finance, giving consideration to a series of objectives and parameters contained in the same law.

Subsequently, law No. 662 of 23 December 1996 (Measures for the rationalisation of the public finances), provided, starting from 1997, that should the revision decrees not be issued on time, they shall in any case be increased annually in line with the projected rate of inflation (Article 2(190)).

Again in 1996, the ICEP resolution of 24 April (Guidelines for the regulation of services in the public interest) contained guidelines for the regulation of services in the public interest, recognising price capping as the most suitable way of guaranteeing the efficiency of the regulated companies and of securing investment to modernise services. It also provided for the use of programme contracts as the ordinary instrument for the definition of relations between the competent administrations and the regulated companies. The resolution also created a technical organ, the NARS (Advisory body for the implementation of guidelines for the regulation of services in the public interest not regulated by independent authorities[*]), within the ICEP secretariat charged with

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* *Nucleo di consulenza per l'attuazione delle linee guida per la regolazione dei servizi di pubblica utilità.*

drawing up guidelines to favour the harmonisation of programme contracts and with monitoring their effects.

In 2000, implementing the 1993 and 1996 laws, the ICEP adopted resolution No. 86 of 4 August, which applied price capping to the tariff levels for airport services provided on an exclusive basis.

3.2. – It was against this background that law No. 248 of 2005 was enacted which, by converting decree-law No. 203 of 2005 into law, introduced provisions from another decree-law (in turn awaiting conversion, concerning – amongst other things – the updating of airport fees), including Articles 11-*nonies* to 11-*terdecies*, contested in these proceedings.

The provisions in question amended the tariff system for airport services offered on an exclusive basis, raising to the status of law the criteria laid down by the ICEP in resolution No. 86 of 2000 and introduced other provisions also contested by some or all of the applicant regions.

3.3. – In particular, Article 11-*nonies*(1)(a) (Rationalisation of and increase in the efficiency of the airport management sector) provides that the level of airport fees shall be determined and subsequently varied – in line with procedures (the so-called price cap) set out in the same resolution and in criteria laid down by the ICEP – by decree of the Minister for Infrastructure and Transport, acting together with the Ministry for the Economy and Finance.

The legislation provides that the costs of and income from both services subject to regulation as well as unregulated services, at a level not lower than 50 percent, shall be taken into account in the determination of the level of airport fees.

This gamut of services covers all those which entail some form of location or monopoly income for the airport operator, resulting from the exclusive right to use airport premises also for commercial purposes and the further possibility of limiting the access of third party competitors to the premises.

Therefore, of relevance for the determination of the fees are the income from services provided on airport premises (for example, parking and commercial activities) and the income from services which, whilst rendered outwith the premises, are provided within

the airport, with the additional feature that the managing body can regulate the access of other competitors to the airport area.

By contrast, these calculations do not consider activities carried out in competition with third parties, for which the managing body is able to demonstrate the absence of location rents, or of limitations on the access to installations.

As essential prerequisite to the new tariff system is that the airport operators dispose of a cost accounting system, capable of distinguishing between the costs and income relating to the different services, whether regulated or not.

Article11-*nonies* moreover provides that for a period of between 3 and 5 years, there shall be a maximum limit applicable to the annual variation of airport fees (thus imposing a cap on their increases).

The maximum permitted variation is determined in line with the following elements: the projected rate of inflation; the productivity recovery objective assigned by the administration to the service operator (according to the programme contract between the administration and the managing body); the return on the capital invested; the amortisation of new investments made with the operator's own capital or on credit.

Article11-*nonies*(1)(b) provides: for the abolition of the 50 percent surcharge on airport fees applied to night flights; that the fees for security services contracted out by the administration and the freight loading and unloading levies shall be determined in the same way as airport fees; that the Minister for Infrastructure and Transport, acting together with the Minister for the Economy and Finance, may issue simplified regulations for the determination of airport fees concerning airports with a traffic volume below 600,000 units. Sub-section 2 abolishes the annual adjustment of airport fees in line with the projected rate of inflation.

Article 11-*decies* (Competitiveness of the airport system) provides for the reduction by 75 percent of the state fees due from the airport management bodies, pending the introduction of the new mechanism for the determination of airport fees, with the corresponding immediate reduction of the amount of the state fees. The provisions also further reduced the level of airport fees for airport management bodies which do not operate a cost accounting system, certified by auditors, which allows for the identification of income and costs, itemised for all services provided.

Article 11-*undecies* (Development of airport infrastructure) confers competence over the revision of the "priority programming" of infrastructure projects creating [transport] links with airports of national interest for the civil aviation sector on the Ministry for Infrastructure and Transport and provides that "the infrastructure projects of the *Enac* [National Agency for Civil Aviation*] and the *Enav S.p.A.* [National Agency for Flight Assistance**] shall be drawn up in accordance with the guidelines contained in the programming" carried out by the ministry, following consultation with the representative associations of the air carriers and airport managing bodies.

Article 11-*duodecies* (Airport security) permits the Minister for Infrastructure and Transport and the Interior Minister to establish by decree, on the basis of *Enac* inquiries, the activities necessary to guarantee airport security in relation to baggage and passenger checks. Moreover, it provides that the Minister for Infrastructure and Transport may issue a decree regulating the division of these activities between the airport managing bodies and the carriers and determining the amounts due to the state by the operator of existing airport security services and of the taxes applicable to users.

Article 11-*terdecies* (Royalties on fuel) provides, in relation to regulated services which are subject to *Enac* oversight pursuant to Council directive 96/67/EC of 15 October 1996, that surcharges, and in particular royalties on the supply of fuel, not effectively related to the costs borne for the provision of the same service may not be applied by airport managing bodies or by service providers.

4. – It is now possible to move on to an examination of the questions of constitutionality raised with reference to each of the provisions contested.

5. – The question of the constitutionality of Articles 11-*nonies* and 11-*decies* raised by Emilia-Romagna Region with reference to Article 41 of the Constitution is inadmissible.

The applicant region invokes a constitutional principle which does not apply to its own sphere of constitutionally guaranteed autonomy, without even claiming an

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* *Ente nazionale per l'aviazione civile.*

** *Ente nazionale per l'assistenza al volo.*

infringement of regional competences, but rather limiting itself to relying on the fact that it is a shareholder of a airport managing body.

6. – The question of the constitutionality of Articles 11-*nonies* and 11-*decies*, raised by Sicily Region with reference to Article 119(1) and (4) of the Constitution and Articles 36 and 37 of the regional statute on the grounds that the removal of the 50 percent surcharge on fees for night transit, as well as the 75 percent reduction in state fees, causes "serious harm to the finances of Sicilian airport managing bodies", is inadmissible. Also in this case, the region does not aver any infringement of its own financial autonomy, but points to the fact that it is a shareholder of the airport managing body.

7. – The question raised by Piedmont Region of the constitutionality of Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies*, concerning the violation of Articles 117(1) and 11 of the Constitution due to the alleged status as "state aids" of the provisions in question – insofar as they are intended to favour airlines – is groundless.

The price cap provided for under Article 11-*nonies* is a mechanism for the regulation of tariff structures. It cannot be regarded as a "state aid". The new levels of airport fees are determined in line with calculation methods which associate the price of the services provided by the managing bodies with objective parameters based on the profitability of the investment. This therefore favours all carriers, both Italian and foreign; it therefore lacks the element of selectivity which is a necessary prerequisite of the concept of state aid (ECJ judgment of 6 September 2006 in Case C-88/03; judgment of 1 December 1998 in Case C-200/97).

8. – The questions of the constitutionality of Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies*, concerning the infringement of regional legislative competences pursuant to Articles 114, 117(2), (3), (4) and (6) and 118 of the Constitution, and the violation of the principle of loyal cooperation, raised on the basis of different arguments by Tuscany, Emilia-Romagna and Sicily Regions on the one hand and Piedmont and Campania Regions on the other, are well founded only in relation to Article 11-*nonies* and in the following terms.

The legislation before the court covers the confluence of several areas of law: it concerns private law relationships relating to airports (and therefore falls within the scope of private law, under the exclusive legislative competence of the state), touches on competition law issues (a matter also under the exclusive legislative competence of the state), but concerns airports (over which legislative competence is shared). Due to the variety of the objects regulated and interests pursued, the legislation cannot therefore be classified under one single area of law.

The determination, in line with methods which are necessarily uniform, of criteria to establish the price cap impinges upon the contractual relations between the operator on the one hand, and companies and users on the other, placing limits on their contractual autonomy (Article 1322(1) of the Civil Code), and is therefore a private law matter for the purposes of Article 117(2)(i) of the Constitution. In fact, it prevents the operator from taking advantage of its own market presence to apply unfairly high tariffs, carrying on unlawful practices to the detriment of consumers.

It should be added that, as this court has already found, there are cases under Italian law in which an institution "maintains its status as a private law matter, […] even though it is characterised by elements which are without doubt of a public law nature. Nevertheless, for certain non unimportant reasons, it also performs the task of guaranteeing the competitiveness of the market, and hence for this reason too falls under the exclusive legislative competence of the state" (judgment No. 401 of 2007). In the case before the court, the legislation under examination may therefore be partially classified as a competition law matter pursuant to Article 117(2)(e) of the Constitution, because its goal is to prevent the operator from unlawfully extending its dominant position into contiguous markets.

Finally, although the contested provisions relate to airports, they cannot be entirely classed under the corresponding area of law, mentioned in Article 117(3) of the Constitution after "territorial government" and before "large transport networks and navigation", which principally concerns infrastructure and its territorial location. For the same reason, the legislation cannot be brought entirely under "regional communication and transport of any nature" (Article 17 of the Sicily Region Stature), as argued by Sicily Region.

In the case before the court however, the legislation governing contractual relations has an impact on the management of civil airports. It therefore concerns a question of interference between the legislative competences of the state and the regions, which means that it is necessary to apply the principle of loyal cooperation. This "must manifest itself through episodes of reciprocal institutional involvement and a necessary coordination between state and regional government bodies" (judgments No. 240 of 2007 and No. 213 of 2006). This interference means that one of the models for consultation between state and regional bodies must be applied. Therefore, in view of the interferences and – as mentioned above – the interrelations between the different matters, it is reasonable to conclude that, prior to the adoption of the ICEP resolution provided for under Article 11-*nonies*, the Joint Assembly mentioned in Article 8 of legislative decree No. 281 of 28 August 1997 (Specification and extension of the competences of the permanent Assembly for the relations between the state, the regions and the autonomous provinces of Trento and Bolzano and unification, for matters and tasks of common interest to the regions, provinces and municipalities, with the State, Cities and Local Autonomous Bodies Assembly) must be consulted.

This court has already found that "the core principle which allows the regions to play a role in the determination of the contents of certain legislative acts of the state which affect matters within the competence of the regions manifests itself through the Assembly system. It […] puts in place a form of organisational cooperation and is one of the most appropriate *fora* for the elaboration of rules intended to supplement the principle of loyal cooperation" (judgments Nos. 401 and 201 of 2007 and, with reference to ICEP resolution procedures, judgment No. 242 ofy2005).

9. – The question of the constitutionality of Article 11-*duodecies* raised by Piedmont Region, which claims that the decrees which will implement the new measures relating to airport security unlawfully fail to provide for any agreement or collaboration with the regions, is groundless.

The contested provision leaves to the Minister for Transport, following an inquiry by the *Enac*, the definition by decree of the activities necessary to guarantee airport security in relation to baggage and passenger checks, the division of these activities between the airport managing bodies and the carriers and the determination of the

amounts due to the state by the operators of existing airport security services and of those applicable to users. This provision relates to the matter of passenger and airport staff security, which falls under "state security and public order" and the "protection of the state's borders" and is therefore under the exclusive competence of the state pursuant to Article 117(2)(d), (h) and (q) of the Constitution. The state was therefore entitled, in contrast to the arguments submitted by the region, to adopt implementing measures.

10. – The question raised by Campania Region in relation to Article 118 of the Constitution, and concerning the procedures for the drafting of infrastructure projects provided for under Article 11-*undecies* is well founded.

This court has held that "in cases in which there is 'concurrent competence', the Constitution does not expressly state a criterion for the resolution of the interferences. In such cases – where [...] it is not possible to ascertain with certainty the prevalence of one body of legislation over others, thereby rendering dominant the relevant legislative competence – the parties must follow the principle of "loyal cooperation", which requires that the state law provide adequate measures for the involvement of the regions in order to safeguard their competences" (judgments Nos. 219 and 50 of 2005).

In matters relating to airports, the new wording of Article 704 of the Navigation Code, introduced by legislative decree No. 96 of 9 May 2005 (Reform of the aeronautical part of the Navigation Code, pursuant to Article 2 of law No. 265 of 9 November 2004, No. 265), provides that before granting an airport management licence, the competent region in the territory of which the airport in question is located be consulted. Moreover, Article 698 of the Navigation Code provides that airports of national interest be identified in consultation with the Permanent Assembly for Relations between the State, the Regions and the Autonomous Provinces.

Since the substantive matter of infrastructure projects touches on the interests of the regions and the local authorities, the question must be accepted insofar as Article 11-*undecies* does not provide for consultation with the interested region in relation to such projects.

11. – The remaining complaints concerning the other principles invoked are moot.

on those grounds

THE CONSTITUTIONAL COURT

hereby,

1) *rules* that the intervention in proceedings by *Aeroporti di Roma* and *Società Alitalia-Linee Aeree Italiane s.p.a.* is inadmissible;

2) *rules* that the question of the constitutionality of Articles 11-*nonies* and 11-*decies* of decree-law No. 203 of 30 September 2005, converted into law, with amendments, by law No. 248 of 2 December 2005 (Measures to combat tax evasion and urgent provisions relating to tax and financial matters), raised by Emilia-Romagna Region with reference to Article 41 of the Constitution in the application mentioned in the headnote, is inadmissible;

3) *rules* that the question of the constitutionality of Articles 11-*nonies* and 11-*decies* of decree-law No. 203 of 2005, converted into law, with amendments, by law No. 248 of 2005, raised by Sicily Region with reference to Article 119(1) and (4) of the Constitution and Articles 36 and 37 of royal legislative decree No. 455 of 15 May 1946 (Approval of the regional statute of Sicily Region), in the application mentioned in the headnote, is inadmissible;

4) *declares* that Article 11-*nonies* of decree-law No. 203 of 2005, converted into law, with amendments, by law No. 248 of 2005 is unconstitutional insofar as it does not provide that the Joint Assembly be consulted before the adoption of the ICEP resolution;

5) *declares* that Article 11-*undecies*(2) of decree-law No. 203 of 2005, converted into law, with amendments, by law No. 248 of 2005 is unconstitutional insofar as, with reference to infrastructure projects, it does not provide that the interested region be consulted;

6) *rules* that the questions of the constitutionality of Articles 11-*nonies*, 11-*decies* and 11-*terdecies* of decree-law No. 203 of 2005, converted into law, with amendments, by law No. 248 of 2005, raised with reference to Articles 117(1) and 11 of the Constitution by Piedmont Region in the application mentioned in the headnote, are groundless;

7) *rules* that the questions of the constitutionality of Articles 11-*nonies*, 11-*decies*, 11-*undecies*, 11-*duodecies* and 11-*terdecies* concerning the infringement of regional competences pursuant to Articles 114, 117(2), (3), (4) and (6) and 118 of the

Constitution, raised by Tuscany, Emilia-Romagna, Sicily, Piedmont and Campania Regions in the applications mentioned in the headnote, are groundless.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 27 February 2008.

Signed:

Franco BILE, President

Sabino CASSESE, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 7 March 2008.

The Director of the Registry

Signed: DI PAOLA