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Judgment of the Court in Case C-457/23 P | Deutsche Lufthansa v Ryanair and Condor Flugdienst

The Court of Justice upholds the annulment of the Commission's decision to approve Germany's recapitalisation of Lufthansa, amounting to €6 billion, during the COVID-19 pandemic

On 12 June 2020, Germany notified the European Commission of a planned individual aid measure, in the form of a recapitalisation of €6 billion, granted to Deutsche Lufthansa AG ('Lufthansa'). The recapitalisation, which was part of a wider series of support measures for the Lufthansa Group, ¹ was intended to restore the balance sheet position and liquidity of the undertakings in that group owing to the exceptional situation caused by the COVID-19 pandemic.

The recapitalisation consisted of three different elements, namely an equity participation of approximately €300 million, a silent participation, not convertible into shares, of approximately €4.7 billion ('Silent Participation I') and a silent participation of €1 billion with the features of a convertible debt instrument ('Silent Participation II').

Without initiating the formal investigation procedure, ² the Commission classified the recapitalisation as State aid that was compatible with the internal market. ³ To that end, it relied on the provision of the Treaty on the Functioning of the European Union that concerns aid to remedy a serious disturbance in the economy ⁴ and on its Communication on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ('the Temporary Framework'). ⁵

The airlines Ryanair and Condor brought two actions for annulment of that decision.

By judgment of 10 May 2023, ⁶ the General Court upheld those actions and annulled the Commission's decision.

Lufthansa subsequently lodged an appeal with the Court of Justice against the judgment of the General Court.

By its judgment today, the Court of Justice dismisses Lufthansa's appeal and thus upholds the General Court's ruling to annul the decision by which the Commission had approved the recapitalisation of Lufthansa.

The Court of Justice finds that the General Court was correct to hold that the Commission had infringed the Temporary Framework by accepting methods for determining the price of the shares at the time of the conversion of Silent Participation II into equity. Since each of the errors found by the General Court is capable, if established, of justifying, in itself, the annulment of the Commission's decision, the Court of Justice upholds the annulment.

Nevertheless, the Court of Justice also finds that the General Court was wrong to hold that the Commission had committed several errors, (i) by ruling that Lufthansa was not able to find financing on the markets at affordable terms; (ii) by failing to require a mechanism to incentivise Lufthansa to buy back Germany's shareholding as quickly as possible; (iii) by denying that Lufthansa held significant market power at certain airports; (iv) by accepting various commitments that did not ensure the maintenance of effective competition; and (v) by failing to fulfil its obligation to provide reasons.

The Court of Justice states, in particular, that the General Court, in several respects, carried out an overly strict examination of the Commission's decision, thus encroaching on the broad discretion that the Commission must of necessity enjoy in

complex economic contexts. In such situations, the General Court must confine itself to reviewing whether the Commission has committed a manifest error of assessment and it cannot substitute its own assessment for that of the Commission.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ Deutsche Lufthansa AG is the parent company of the Lufthansa Group, which includes in particular the airlines Lufthansa Passenger Airlines, Brussels Airlines SA/NV, Austrian Airlines AG, Swiss International Air Lines Ltd and Edelweiss Air AG.

² Provided for in Article 108(2) TFEU.

³ Commission Decision C(2020) 4372 final of 25 June 2020 concerning State aid SA 57153 (2020/N) – Germany – COVID-19 – Aid to Lufthansa. On 14 December 2021, the Commission adopted Decision C(2021) 9606 final, rectifying that decision.

⁴ Article 107(3)(b) TFEU.

⁵ That communication, published on 20 March 2020 in the *Official Journal of the European Union*, has been amended seven times.

⁶ Judgment of 10 May 2023, *Ryanair and Condor Flugdienst v Commission (Lufthansa; COVID-19)*, Joined Cases [T-34/21](#) and [T-87/21](#); See also press release [No 75/23](#).