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By PwC Deutschland | 19 May 2022

EU General Court confirms German state aid for the rescue of Condor

The General Court of the European Union confirmed in its judgment of 18 May 2022 that the German aid for the rescue of Condor is compatible with EU law. The fact that Condor’s financial difficulties were caused by the Thomas Cook group being placed into liquidation did not preclude the approval of that aid by the Commission.

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The events which led to the legal dispute:

On 25 September 2019, the airline Condor Flugdienst GmbH (Condor) filed for insolvency owing to Thomas Cook Group plc (the Thomas Cook group), which fully owns that airline, being placed into liquidation. On the same day, Germany notified the EU Commission of a rescue aid measure in favor of Condor, restricted to a period of six months. The notified aid was intended to maintain orderly air transport and to limit the negative consequences for Condor and its passengers and staff arising from the liquidation of its parent company by enabling Condor to continue operating until it reached a settlement with its creditors and, depending on the circumstances, until it was sold. Without initiating the formal investigation procedure provided for in Article 108(2) TFEU, the EU Commission, by decision of 14 October 2019, classified the notified measure as State aid.

Judgment

The action for annulment of that decision, as brought by the airline Ryanair DAC (the applicant), was dismissed by the Tenth Chamber of the General Court in its judgment of 18 May 2022.

Explanation of the General Court in brief

The Court rejects, in the first place, the pleas for annulment alleging that the Commission erred in law in deciding not to initiate the formal investigation procedure despite the doubts which it should have had during the preliminary examination of the compatibility of the notified aid with the internal market.

While confirming that the Commission is under an obligation to initiate the formal investigation procedure where there are doubts as to the compatibility of notified aid with the internal market, the Court rejects, first of all, the complaint alleging that the Commission infringed point 22 of the Guidelines. In accordance with point 22, '*a company belonging to … a larger business group is not normally eligible for aid under [the Guidelines], except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself*'.

Since the applicant did not succeed in rebutting the Commission's findings that Condor's difficulties were the result mainly of the Thomas Cook group being placed into liquidation and not of an arbitrary allocation of costs within the group, it failed to demonstrate the existence of doubts as to the compatibility of the notified aid measure with the condition set out in point 22 of the Guidelines.

The General Court went on to say that the applicant did not succeed in demonstrating the existence of doubts in respect of the examination of the condition laid down in point 22 of the Guidelines, according to which the difficulties of an undertaking which, like Condor, belongs to a group, must be too serious to be dealt with by the group itself. This being said, the Court notes that, first, the Thomas Cook group was itself in liquidation and had ceased trading. Second, the Commission was not obliged to await the outcome of discussions concerning a possible sale of Condor with a view to resolving its financial difficulties, given the urgency surrounding any rescue aid and the uncertainty that is inherent in any ongoing commercial

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negotiations.

Next, the Court rejects the complaint alleging that the Commission should have had doubts as to whether the notified aid met the requirements set out in point 44(b) of the Guidelines, which details the ways in which Member States may establish that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure.

In accordance with point 44(b) of the Guidelines, Member States may adduce such proof by demonstrating that '*there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (for example, a national infrastructure provider)'*.

The complete judgment of the General Court could be found **here**.

Source:

GENERAL COURT, judgment of 18 May 2022 (T-577/20*), Ryanair / Commission (Condor; aide au sauvetage)*; General Court of the European Union **PRESS RELEASE No 87/22**.

Keywords

state aid