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By PwC Deutschland | 10 May 2023

General Court annuls EU-Commission’s approval of aid measure for recapitalization of Lufthansa

In today’s judgment the European General Court annuls the decision of the European Commission to approve the recapitalization of Lufthansa by Germany, amounting to €6 billion euros, in the context of the COVID-19 pandemic.

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Background

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

Without initiating the formal investigation procedure provided for in Article 108(2) TFEU, the Commission classified the measure at issue as State aid that was compatible with the internal market 2 under Article 107(3)(b) TFEU. The airlines *Ryanair DAC* and *Condor Flugdienst GmbH* brought two actions for annulment of that decision before the European General Court (EGC).

EGC decision

The EGC decided that the contested decision contains several errors and irregularities and, in consequence, annuls the decision of the EU Commission.

According to the General Court the Commission committed several errors, in particular, by considering that Lufthansa was unable to obtain financing on the markets for the entirety of its needs, by failing to require a mechanism incentivizing Lufthansa to buy back Germany's shareholding as quickly as possible, by denying that Lufthansa held significant market power at certain airports, and by accepting various commitments that do not ensure that effective competition on the market is preserved.

The General Court focused primarily on the following main aspects:

In the first place, as regards the definition of the relevant markets, the Commission held in the contested decision that the markets on which the Lufthansa Group operated were the markets for the provision of passenger air transport services to and from the airports served by that group. It thus identified the relevant markets according to the 'airport-by-airport' approach. That approach is contested by the applicants, which state that the Commission should have defined the markets for the provision of passenger air transport services as pairs of cities between a point of origin and a point of destination ('the O&D markets').

The General Court analyses, in the second place, the complaints related to whether the Lufthansa Group holds SMP (significant market power) at the airports examined by the Commission.

Third, the General Court examines the complaints contesting several aspects of the structural commitments accepted by the Commission under point 72 of the Temporary Framework, to preserve effective competition at Frankfurt and Munich airports.

Source

Judgment of the General Court in the joined cases T-34/21 *Ryanair v Commission* and T-87/21 *Condor Flugdienst v Commission* (Lufthansa; COVID-19).

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More details to be found in the **PRESS RELEASE No 75/23** of 10 May 2023.

Keywords

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