General Court of the European Union
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Press and Information

Judgment in Case T-577/20
Ryanair v Commission (Condor – rescue aid)

The General Court of the European Union confirms 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

On 25 September 2019, the airline Condor Flugdienst GmbH ('Condor'), which provides air transport services mainly to tour operators from a number of German airports, 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, the Federal Republic of Germany notified the European Commission of a rescue aid measure in favour 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 Commission, by decision of 14 October 2019 ('the contested decision'), [1] classified the notified measure as State aid that was compatible with the internal market under Article 107(3)(c) TFEU and the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. [2]

The action for annulment of that decision, **brought by** the airline **Ryanair** DAC ('the applicant'), **is dismissed** by the Tenth Chamber (Extended Composition) of the General Court. In this instance, the court, inter alia, provides clarification regarding the assessment of the compatibility of rescue and restructuring aid with the internal market in the light of the rule, laid down by the Guidelines, that a company belonging to a larger business group is eligible for such aid only if that company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and if those difficulties are too serious to be dealt with by the group itself.

Findings of the General Court

The General 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.

In that regard, the applicant argued, more specifically, that the finding that the notified aid was compatible with the internal market was contrary to points 22, 44(b) and 74 of the Guidelines, which is indicative of doubts that should have led the Commission to initiate the formal investigation procedure.

[1] Commission Decision C(2019) 7429 final of 14 October 2019 on State aid SA.55394 (2019/N) – Germany – Rescue aid to Condor (OJ 2020 C 294, p. 3).
[2] Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ 2014 C 249, p. 1; 'the Guidelines').

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 General 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'.

As regards the part of the sentence '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', it is apparent, according to the General Court, from a textual, teleological and contextual interpretation of point 22 of the Guidelines that that part of the sentence merely sets out one and the same condition which is to be interpreted as meaning that the difficulties of an undertaking belonging to a group must be regarded as being intrinsic if they are not the result of an arbitrary allocation of costs within the group.

In that regard, the General Court notes that the purpose of point 22 of the Guidelines is to prevent a group of undertakings from offloading its costs, debts or liabilities onto an entity within the group, thus making it eligible for rescue aid, whereas it would not be otherwise. By contrast, the objective of that point is not to exclude from the scope of rescue aid an undertaking belonging to a group solely on the ground that that undertaking's difficulties have been caused by the difficulties faced by the rest of the group or by another company in the group, in so far as those difficulties have not been created artificially or allocated arbitrarily within that group.

In the present case, 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.

That conclusion is not called into question by the finding that Condor's difficulties were, in that context, connected with the write-off of significant amounts of receivables held by Condor as against the Thomas Cook group in the context of the pooling of that group's cash. The pooling of cash within a group is a common and widespread practice within groups of companies, which is intended to facilitate financing of the group while enabling companies in that group to make savings in respect of financing costs. In addition, in the present case, that cash-pooling system had been implemented by the Thomas Cook group several years previously and was not the cause of that group's difficulties.

In the absence of any concrete evidence to establish the arbitrary nature of the Thomas Cook group's cash-pooling system, it was not for the Commission to investigate, on its own initiative, the fairness of that system.

Nor, furthermore, did the applicant 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**. In that regard, the General Court notes, first, that **the Thomas Cook group was itself in liquidation and had ceased trading**. It states, second, that 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 negotiations.

Next, the General 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)'.

In order for a service to be regarded as 'important', it is not necessary, according to the General Court, that the undertaking providing that service play a systemic role which is important for the economy of a region of the Member State concerned; nor is it necessary that it be entrusted with a service of general economic interest or with a service that is of national importance. Accordingly, **in view of the fact that the immediate repatriation of 200 000 to 300 000 Condor passengers distributed across 50 to 150 different destinations could not have been carried out at short notice by other, competing airlines, the Commission had correctly concluded that there was a risk of disruption to an important service which was hard to replicate, with the result that Condor's exit from the market was likely to involve a severe failure of that market**.

Lastly, the General Court also rejects as unfounded the applicant's complaint that the Commission carried out an incomplete and insufficient examination of the one time, last time condition for rescue aid laid down in point 74 of the Guidelines.

In the second place, the General Court rejects the plea alleging that the Commission failed to fulfil its obligation to state reasons and, consequently, dismisses the action in its entirety.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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