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Judgment of the General Court in Case T-657/20 | Ryanair v Commission (Finnair II; Covid-19)

The action seeking annulment of the decision by the Commission to approve aid granted by Finland to the airline Finnair is dismissed in its entirety

The Commission was entitled to approve the recapitalisation of Finnair, carried out by its public and private owners on a pro rata basis in proportion to the previously existing ownership structure, without initiating the formal investigation procedure

On 3 June 2020, Finland notified the Commission of an aid measure in favour of the airline Finnair, Plc, of which it is the majority shareholder. Under the notified measure, Finland planned to subscribe, on a *pro rata* basis in proportion to its existing shareholding, to the new shares that were being offered to all of Finnair's shareholders in order to carry out a recapitalisation of the airline ('the measure at issue').¹

Without initiating the formal investigation procedure laid down by Article 108(2) TFEU, the Commission, by a decision of 9 June 2020,² accepted the measure at issue pursuant to Article 107(3)(b) TFEU, which provides that aid to remedy a serious disturbance in the economy of a Member State may be declared compatible with the internal market.

The action for annulment brought against that decision by the airline Ryanair DAC ('the applicant') has been dismissed by the Tenth Chamber (Extended Composition) of the General Court. In this instance, the General Court upholds the choice made by the Commission to depart, for the purpose of its examination of the compatibility of the measure at issue with the internal market, from certain requirements set out in its communication entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'.³

Findings of the General Court

In support of its action for annulment, the applicant, in essence, criticises the Commission on the ground that it did not initiate the formal investigation procedure despite the doubts that it should have had during the preliminary examination of the compatibility of the aid with the internal market.

According to the applicant, the Commission, *inter alia*, infringed the principles of equal treatment, legal certainty

¹ That measure follows the grant of a State guarantee to Finnair covering 90% of a loan of €600 million obtained by it from a pension fund, which the Commission classified as State aid that was compatible with the internal market by Decision C(2020) 3387 final of 18 May 2020 on State aid SA.56809 (2020/N) – Finland COVID-19: State guarantee for Finnair. By judgment of 14 April 2021, *Ryanair v Commission (Finnair I; Covid-19)*, [T-388/20](#) (under appeal) (see also [PR 53/21](#)), the General Court dismissed the action brought by Ryanair DAC against that decision.

² Decision C(2020) 3970 final of 9 June 2020 on State aid SA.57410 (2020/N) – Finland COVID-19: Recapitalisation of Finnair ('the contested decision').

³ Commission Communication on the temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ 2020 C 91 I, p. 1), as amended on 3 April and 8 May 2020 ('the temporary framework').

and the protection of legitimate expectations by waiving, for the purpose of examining the measure at issue, the application of a number of requirements laid down in section 3.11 of the temporary framework in relation to aid measures in the form of recapitalisation, namely:

- the requirement that individual recapitalisation measures must include a step-up mechanism increasing the remuneration of the State,
- a prohibition on beneficiaries from acquiring a stake of more than 10% in competing undertakings as long as at least 75% of those measures have not been redeemed, and
- a ban on beneficiaries from making dividend payments as long as those measures have not been fully redeemed.

In the opinion of the applicant, the non-compliance with the requirements laid down by the temporary framework is indicative of the doubts which ought to have led the Commission to initiate the formal investigation procedure.

While confirming that the Commission is under an obligation to initiate a formal investigation procedure in cases where there are doubts as to the compatibility of notified aid with the internal market, the General Court rejects the various arguments put forward by the applicant in that regard.

As far as the legal status of the temporary framework is concerned, the General Court observes first of all that, while the adoption of that framework results in a self-imposed limitation on the discretionary power enjoyed by the Commission when examining whether aid measures are compatible with the internal market, the adoption of such a framework does not, however, relieve the Commission of its obligation to examine the specific exceptional circumstances relied on by a Member State, in a particular case, for the purpose of requesting the direct application of Article 107(3)(b) TFEU.

In addition, the General Court points out that the temporary framework was adopted a few days after the introduction of the first lockdown measures by the Member States, in order to allow those States to act with the urgency that the situation demanded. Since that framework could not foresee all the measures that the Member States might adopt, it has been amended several times. Accordingly, in line with the announcement made to that effect in the contested decision, the temporary framework was amended once again, approximately 20 days after the adoption of that decision, in order to take account of the type of temporary aid measures such as that at issue in the present case.

Next, the General Court notes that the measure at issue has several very particular characteristics which the Commission had not envisaged at the time when the requirements set out in section 3.11 of the temporary framework were adopted and from which it departed in the contested decision.

As regards, in the first place, the requirement to provide for a step-up mechanism in respect of the shares acquired by the State, the General Court notes that the objective of that mechanism is to incentivise the beneficiary of the aid to buy back the State capital injections and, as a consequence, to ensure that the *status quo ante* is restored. However, since Finland planned to acquire new shares on a *pro rata* basis in proportion to its previous shareholding in the capital of Finnair, the application of the step-up mechanism for its remuneration would lead in the present case to a change in the capital structure of Finnair, which would go beyond the objective of that requirement.

The General Court points out, in addition, that the new shares were offered at a sufficiently large price discount for the view to be taken that Finland has received sufficient remuneration.

In the second place, as for the prohibition on acquisitions laid down by the temporary framework, the applicant contested the decision of the Commission not to prohibit Finnair from acquiring a stake of more than 10% in competing undertakings as long as at least 75% of the aid had not been redeemed and to accept, by contrast, the ban imposed by Finland on Finnair from making acquisitions for a period of three years from the date of the capital increase.

However, since the application of the acquisition ban in the manner laid down by the temporary framework would again have had the objective of forcing Finland to reduce its stake in the capital of Finnair to a level below that which it held before the COVID-19 pandemic, the General Court finds that the Commission was entitled to waive it.

In the third place, as regards the lack of a prohibition on Finnair from paying dividends as long as the measure at issue has not been fully redeemed, the General Court observes that the absence of such a prohibition is justified by the fact that Finland does not increase its shareholding in Finnair on account of the simultaneous participation by private shareholders and investors in the airline's recapitalisation, which decreases the amount of the aid. Accordingly, the dividends paid to the private shareholders and investors are merely the remuneration for their significant investment in Finnair in crisis circumstances and amid a downbeat investment climate.

Since the measure at issue thus differs from the situations covered by section 3.11 of the temporary framework, the General Court finds that, contrary to what was argued by the applicant, the Commission did not infringe the principles of equal treatment, legal certainty and the protection of legitimate expectations. The mere fact that the Commission derogated from the application of certain requirements of section 3.11 in order to take account of the specific circumstances of the measure at issue is thus not sufficient to demonstrate that the Commission ought to have had doubts as to the compatibility of that measure with the internal market.

The General Court, in addition, rejects the applicant's line of argument that the Commission infringed the rule laid down by the temporary framework stating that, where the beneficiary of a recapitalisation measure above €250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. In that context, the applicant, more specifically, criticised the Commission for having erred in its assessment in finding that Finnair did not have significant market power.

In that respect, the General Court states that, since the measure at issue seeks as far as possible to maintain the entirety of Finnair's operations and does not target particular routes, the Commission could examine the presence of a competitive constraint on that airline at the airports where it held slots. In the present case, the Commission carried out that assessment, *inter alia*, on the basis of the level of congestion at Helsinki Airport, Finnair's main base and hub, and on the share of slots held by Finnair at that airport. That share was less than 25% of the total number of slots at the airport in 2019. Furthermore, slots are available at any time of the day for new entrants, including those wishing to compete with Finnair on one route or another. It follows that the share of slots held by Finnair does not enable it to disturb the various markets for passenger air transport services departing from or arriving at Helsinki Airport.

Having regard to those considerations, the General Court finds that the applicant has likewise not adduced any conclusive evidence of the existence of doubts as to the compatibility of the measure at issue with the internal market with respect to the Commission's assessment of Finnair's market power on the markets in question.

After also rejecting all the other complaints intended to establish the existence of doubts that should have led the Commission to initiate the formal investigation procedure, the General Court rejects the plea in law alleging failure to state reasons and, consequently, dismisses the action in its entirety.

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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