



Reports of Cases

Case T-643/20

Ryanair DAC

v

European Commission

Judgment of the General Court (Tenth Chamber, Extended Composition), 19 May 2021

(State aid – Netherlands – State guarantee for loans and subordinated loan by the State to KLM amid the COVID-19 pandemic – Temporary Framework for State aid measures – Decision not to raise any objections – Decision declaring the aid compatible with the internal market – Aid granted previously to another company in the same group of companies – Duty to state reasons – Maintenance of the effects of the decision)

1. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Commission decision finding State aid compatible with the internal market without opening the formal investigation procedure – Action by interested parties for the purpose of Article 108(2) TFEU – Admissibility – Conditions (Arts 108(2) and (3), and 263, fourth para., TFEU; Council Regulation 2015/1589, Art. 1(h))*

(see paragraphs 23-29)

2. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Commission decision finding State aid compatible with the internal market without opening the formal investigation procedure – Action by interested parties for the purpose of Article 108(2) TFEU – Identification of the subject matter of the action – Action designed to safeguard the procedural rights of the parties concerned – Pleas capable of being invoked (Arts 108(2) and 263, fourth para., TFEU; Council Regulation 2015/1589, Art. 1(h))*

(see paragraphs 30, 31)

3. *Acts of the institutions – Statement of reasons – Obligation – Scope – Commission decision on State aid – Decision not to open the formal investigation procedure – Brief summary of reasons leading the Commission to conclude that there were no serious difficulties assessing compatibility of the aid concerned with the internal market – Failure to take into account the impact of aid granted previously to another company which is part of the same group of undertakings as the beneficiary of the aid – Insufficient statement of reasons (Arts 107(1), 108(2) and 296 TFEU)*

(see paragraphs 36, 38-43, 71, 72)

4. *State aid – Prohibition – Exceptions – Aid capable of being regarded as compatible with the internal market – Discretion of the Commission – Identifying the beneficiary of two aid measures granted to two companies which are part of the same group of undertakings – Concept of economic unit*
(Arts 107(1) and 108(2) TFEU; Commission Notice 2016/C 262/01, paragraph 11)

(see paragraphs 43-67)

5. *Acts of the institutions – Statement of reasons – Obligation – Scope – Commission decision on State aid – Correction of an error of reasoning during the proceedings before the Court – Not permissible*
(Arts 107(1), 108(2) and 296 TFEU)

(see paragraph 66)

6. *Action for annulment – Judgment annulling a measure – Effects – Limitation by the EU judicature – Maintenance of the effects of the contested measure pending the replacement of that measure – Justification on grounds of legal certainty*
(Art. 264, second para., TFEU)

(see paragraphs 79-84)

Résumé

The General Court annuls the Commission’s decision to approve the Netherlands financial aid for the airline KLM amid the COVID-19 pandemic on the grounds of inadequate reasoning. However, due to the particularly damaging impact of the pandemic on the Netherlands economy, the Court suspends the effects of the annulment pending the adoption of a new decision by the Commission

In June 2020, the Kingdom of the Netherlands notified the European Commission of State aid for the airline KLM, a subsidiary of the Air France–KLM holding company. The notified aid, with a total budget of EUR 3.4 billion, consisted, first, of a State guarantee for a loan to be granted by a consortium of banks and, secondly, a State loan. By that measure, the Kingdom of the Netherlands intended to provide temporary liquidity needed by KLM to deal with the adverse effects of the COVID-19 pandemic. Bearing in mind KLM’s importance for the country’s economy and air transport connectivity, the Kingdom of the Netherlands considered that the company’s failure would have exacerbated the serious disturbance in its economy caused by that pandemic.

On 4 May 2020 the Commission had already declared individual aid granted by the French Republic to Air France, another subsidiary of the Air France–KLM holding company, in the form of a State guarantee and a shareholder loan, totalling EUR 7 billion, to be compatible with the internal market.¹ That aid measure was intended to finance Air France’s immediate liquidity needs.

¹ Commission Decision C(2020) 2983 final of 4 May 2020 on State aid SA.57082 (2020/N) – France – COVID-19: Temporary Framework [Article 107(3)(b) TFEU] – Guarantee and shareholder loan for Air France (‘the Air France decision’).

Finding that the aid notified in favour of KLM constituted State aid within the meaning of Article 107(1) TFEU, the Commission appraised it in the light of its communication of 19 March 2020 entitled ‘Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak’.² By decision of 13 July 2020, the Commission declared that aid compatible with the internal market, in accordance with Article 107(3)(b) TFEU.³ Under that provision, aid to remedy a serious disturbance in the economy of a Member State may, under certain circumstances, be considered to be compatible with the internal market.

The airline Ryanair brought an action for annulment of that decision, which is upheld by the Tenth Chamber (Extended Composition) of the General Court of the European Union after an expedited procedure, although it suspends the effects of the annulment pending the adoption of a new decision by the Commission. In its judgment, the Court provides clarification on the scope of the Commission’s duty to state reasons when it declares aid granted to the subsidiary of a holding company to be compatible with the internal market, where another subsidiary of the same holding company has already benefited from similar aid.

The Court’s assessment

In support of its action for annulment, Ryanair alleged, inter alia, a breach by the Commission of the duty to state reasons, in that the Commission failed to set out the reasons why the aid previously granted to Air France had no impact on the assessment of whether the aid adopted for KLM was compatible with the internal market, even though Air France and KLM are two subsidiaries of the same holding company.

In that regard, the Court states, first of all, that the previously adopted decision on aid granted to Air France constitutes a contextual factor that has to be taken into consideration for the purpose of examining whether the contested decision’s statement of reasons satisfies the requirements of Article 296 TFEU. In addition, where there are grounds to fear the effects on competition of an accumulation of State aid within the same group, the onus is on the Commission to exercise particular vigilance when examining the links between the companies belonging to that group, in order to determine whether those companies can be regarded as forming one economic unit, and, therefore, a sole beneficiary, for the purposes of the application of State aid rules.⁴

In the light of those considerations, the Court observes that the contested decision does not contain any details as to the shareholder structure of Air France and KLM or any information about the functional, economic and organic links between the Air France–KLM holding company and its subsidiaries, even though it makes it apparent that the holding company is involved in the grant and administration of the aid envisaged for both KLM and Air France. Nor does the contested decision set out the possible existence of any kind of mechanism which would prevent the aid granted to Air France via the Air France–KLM holding company from benefiting KLM, through that same holding company, and vice versa.

² Communication from the Commission 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), amended on 3 April 2020 (OJ 2020 C 112 I, p. 1), 13 May 2020 (OJ 2020 C 164, p. 3) and 29 June 2020 (OJ 2020 C 218, p. 3) (‘the Temporary Framework’).

³ Commission Decision C(2020) 4871 final of 13 July 2020 on State aid SA.57116 (2020/N) – The Netherlands – COVID-19: State loan guarantee and State loan for KLM (OJ 2020 C 355, p. 1; ‘the contested decision’).

⁴ In accordance with paragraph 11 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ 2016 C 262, p. 1), several separate legal entities may be considered to form one economic unit for the purposes of the application of State aid rules. To that end, it is necessary to take into consideration the existence of a controlling share and the existence of other functional, economic and organic links.

In that context, the Court rejects as inadmissible the explanations put forward for the first time by the Commission at the hearing to demonstrate that the aid granted previously to Air France was not able to benefit KLM. Furthermore, while the Commission has a broad discretion in determining whether companies which form part of a group should be regarded as an economic unit for the purposes of applying the rules governing State aid, it nevertheless failed to set out, in the contested decision, in a sufficiently clear and precise fashion, all the relevant matters of fact and law to be taken into account in order to assess a complex situation, featuring the parallel grant of two State aid measures to two subsidiaries of the same holding company, which is, moreover, involved in the grant and administration of that aid.

In addition, in view of the inadequacy of the statement of reasons vitiating the contested decision, the Court was not able to verify the necessity and proportionality of the aid or compliance with the conditions for cumulation and the ceilings laid down in paragraph 25(d) and paragraph 27(d) of the Temporary Framework.⁵ For the same reasons, the Court found that it was impossible to review whether the Commission was faced with serious difficulties in assessing the compatibility of the aid in question with the internal market.

Consequently, the Court rules that the Commission, by merely finding, first, that KLM was the beneficiary of the measure at issue and, secondly, that the Netherlands authorities had confirmed that the financing granted to KLM would not be used by Air France, failed to provide reasons for the contested decision to the requisite legal standard, and that that inadequacy of the statement of reasons requires that it be annulled.

However, given that the cause of that annulment is the inadequacy of the statement of reasons for the contested decision and that the immediate calling into question of the receipt of the sums of money envisaged by the notified aid measure would have had particularly damaging consequences for the Netherlands economy and air transport connectivity in an economic and social context which is already affected by the serious disturbance in the economy caused by the COVID-19 pandemic, the Court decides to suspend the effects of the annulment of the contested decision pending the adoption of a new decision by the Commission.

⁵ In accordance with paragraph 25(d)(i) of the Temporary Framework, State aid in the form of new public guarantees on loans is considered to be compatible with the internal market on the basis of Article 107(3)(b) TFEU provided that, for loans with a maturity beyond 31 December 2020, the total amount of loans per beneficiary is not more than double the annual wage bill of the beneficiary for 2019, or for the last year available. The same threshold applies to State aid in the form of subsidies to public loans, in accordance with paragraph 27(d)(i) of that framework.