



2025/2178

30.10.2025

COMMISSION DECISION (EU) 2025/2178

of 28 April 2025

on the State aid SA.63203 (2024/C) (ex 2021/N) implemented by Germany for Condor Flugdienst GmbH

(notified under document C(2025) 2294)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions ⁽¹⁾ cited above and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) Following pre-notification contacts ⁽²⁾, by electronic notification of 23 July 2021 completed on 25 July 2021, Germany notified the Commission pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) of its intention to grant restructuring aid to Condor Flugdienst GmbH ('Condor').
- (2) By Decision of 14 October 2019 ⁽³⁾ ('the rescue aid decision'), the Commission approved, on the basis of Article 107(3), point (c), TFEU, rescue aid for Condor within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('R&R Guidelines') ⁽⁴⁾. The rescue aid took the form of a EUR 380 million rescue loan ('the rescue loan') from the German public development bank Kreditanstalt für Wiederaufbau ('KfW') backed by a State guarantee, with a maturity of six months from the date of disbursement of the first instalment.
- (3) By Decision of 26 April 2020 ⁽⁵⁾, the Commission approved prospective compensation for damage that Condor was expected to incur in the period from 17 March 2020 to 31 December 2020, on the basis of Article 107(2), point (b), TFEU ('the annulled damage compensation decision'). The aid instruments were two loans from KfW for a total amount of EUR 550 million backed by a State guarantee. Condor used part of those loans to reimburse the rescue loan within six months from the date of disbursement of the first instalment. In its judgment of 9 June 2021 in the case *Ryanair v Commission*, the General Court annulled the damage compensation decision of 26 April 2020 and suspended the effects of the annulment for two months pending the adoption of a new decision by the Commission ⁽⁶⁾.

⁽¹⁾ OJ C, C/2024/5533, 16.9.2024, ELI: <http://data.europa.eu/eli/C/2024/5533/oj>.

⁽²⁾ Those exchanges started on 25 May 2021 and included, until the notification, exchanges of emails, technical discussions during video and teleconferences and preliminary feedback on the draft notification forms and restructuring plan.

⁽³⁾ Commission Decision of 14 October 2019 C(2019)7429 final in case SA.55394 (2019/N) – Germany – Rescue aid to Condor (OJ C 294, 4.9.2020, p. 1).

⁽⁴⁾ OJ C 249, 31.7.2014, p. 1.

⁽⁵⁾ Commission Decision of 26 April 2020 C(2020)2795 final in case SA.56867 (2020/N) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH (OJ C 310, 18.9.2020, p. 1).

⁽⁶⁾ Judgment of the General Court of 9 June 2021, *Ryanair v Commission*, Case T-665/20, ECLI:EU:T:2021:344.

- (4) The Commission reassessed the damage compensation in light of the judgment of 9 June 2021 and, on 26 July 2021, adopted a new decision regarding the damage compensation for Condor for the period from 17 March 2020 to 31 December 2020 ('the Condor I decision') ⁽⁷⁾. On the same day, the Commission adopted another decision regarding damage compensation for Condor for the period from 1 January 2021 to 31 May 2021 ('the Condor II decision') ⁽⁸⁾ and a decision approving the restructuring aid notified by Germany in favour of Condor ('the 2021 restructuring aid decision') ⁽⁹⁾. Germany granted the restructuring aid to Condor at the end of July 2021.
- (5) Ryanair DAC ('Ryanair') brought an action for annulment of the 2021 restructuring aid decision. In its judgment of 8 May 2024 ('the 2024 Condor judgment'), the General Court found that the Commission should have had doubts justifying the initiation of the formal investigation procedure under Article 108(2) TFEU and, for that reason, annulled the 2021 restructuring aid decision ⁽¹⁰⁾.
- (6) In the Condor I decision, the Commission assessed the damage suffered by Condor during the period from 17 March 2020 to 31 December 2020 based on *ex post* figures of actual damage and concluded that Condor had suffered within that period a damage of EUR 175,35 million. In the Condor II decision, the Commission found that Condor had suffered a damage of EUR 73,66 million during the period from 1 January 2021 to 31 May 2021 and approved aid to partly compensate Condor for that damage in the form of a EUR 60 million write-off of the EUR 550 million loans. The calculation for the period between 17 March 2020 and 31 May 2021, described in the Condor I and Condor II decisions, had resulted in the aggregate actual damage amount of EUR 249,02 million.
- (7) In the annulled damage compensation decision, the Commission approved aid which Condor was subsequently granted to compensate prospective damage of EUR 276,7 million. Recital 44 of that decision recalls that Germany committed that it would recover from Condor any over-compensation based on an *ex post* calculation of the actual damage suffered, including interest. According to recital 24 of the Condor I decision, the over-compensation amounted to EUR 91,74 million. In addition, Condor had to pay interest for the advantage it got through the over-compensation in an amount of EUR [...] million and outstanding interest still due in an amount of EUR [...] million. Recitals 24 and 25 of the Condor I decision describe how the claw-back mechanism provided for in the annulled damage compensation decision would be implemented based on the *ex post* calculation of the damage.
- (8) By its 2021 restructuring aid decision, the Commission approved Germany's plans to support the restructuring plan for Condor by means of the following measures: (i) a modification to the terms and a further partial write-off of the EUR 550 million KfW loans for an amount of EUR 90 million; and (ii) a EUR 20,2 million write-off of the interest for the advantage received from the over-compensation and of interest still due, based on the initial loan agreement, which Condor would have had to reimburse (see recital (7)). That decision found that measures (i) and (ii) involved restructuring aid in the amount of EUR 321,18 million, consisting in the part of the EUR 550 million loans not representing COVID-19 damage, namely EUR 300,98 million, plus the EUR 20,2 million of interest written off. The assessment of the compatibility with the internal market of the restructuring measures was separate from the assessment of the damage compensation measures, based on different legal bases and eligible costs.
- (9) Following the annulment of the 2021 restructuring aid decision, by letter dated 29 July 2024, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid (the 'opening decision').

⁽⁷⁾ Commission Decision of 26 July 2021 in case SA.56867, (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH (OJ C 177, 29.4.2022, p. 1).

⁽⁸⁾ Commission Decision of 26 July 2021 in case SA.63617, (2021/N) – Germany – COVID-19 – Condor damage compensation II (OJ C 169, 22.4.2022, p. 1).

⁽⁹⁾ Commission Decision C(2021) 5729 final of 26.7.2021 in case SA.63203 (2021/N) Germany – Restructuring aid for Condor (OJ C 429, 22.10.2021, p. 1).

⁽¹⁰⁾ Judgment of the General Court of 8 May 2024, *Ryanair v Commission*, Case T-28/22, ECLI:EU:T:2024:301.

- (10) The opening decision was published in the *Official Journal of the European Union* ⁽¹¹⁾. The Commission called on interested parties to submit their comments. Germany transmitted its comments on 27 September 2024.
- (11) The Commission received comments from two interested parties. It forwarded them to Germany, which was given the opportunity to react. On 18 November 2024, Germany informed the Commission that it would not submit any observations regarding third-party comments.
- (12) By letter dated 19 July 2021, Germany exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Council Regulation No 1/1958 ⁽¹²⁾, and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE AID

- (13) This Decision assesses the compatibility of State aid involved in two measures in favour of Condor notified by Germany and to which the Commission raised no objections in the 2021 restructuring aid decision, which was subsequently annulled by the General Court. The 2024 Condor judgment is subject to pending proceedings before the Court of Justice following an appeal submitted by Condor ⁽¹³⁾. The Commission's assessment of the restructuring aid in this Decision is without prejudice to those pending appeal proceedings. This is regardless of the provision made in Article 2 and explained in recital (258) of this Decision.

2.1. The annulment of the 2021 restructuring aid decision

- (14) Ryanair's action for annulment of the 2021 restructuring aid decision relied on 10 pleas in law, alleging, in essence: (i) that the measure at issue fell outside the scope of the R&R Guidelines; (ii) a manifest error of assessment with regard to demonstrating market failure and social hardship; (iii), (iv), (v) and (vi), that the Commission failed to establish the need for State intervention and its incentive effect, that the restructuring plan was realistic, coherent and far-reaching and was suitable to restore Condor's long-term viability, and the appropriateness and proportionality of the aid at issue; (vii) that the Commission erred in its examination of the negative effects of the measure at issue; (viii) infringement of the principles of non-discrimination, the free provision of services and free establishment; (ix) infringement of Ryanair's procedural rights; and (x) breach of the duty to state reasons.
- (15) The General Court dismissed pleas (i) to (viii) as inadmissible, finding that Ryanair had not demonstrated that it was individually concerned by the 2021 restructuring aid decision within the meaning of Article 263 TFEU and it therefore did not have standing to challenge that decision on the merits. The General Court admitted Ryanair's ninth plea, finding that Ryanair was a party concerned for the purposes of Article 108(2) TFEU and an interested party within the meaning of Article 1, point (h), of Council Regulation (EU) 2015/1589 ⁽¹⁴⁾ and that it therefore had standing to bring proceedings in order to protect its procedural rights. Within that plea, Ryanair raised eight items of evidence, corresponding to its pleas (i) to (viii), to substantiate its claim that the Commission's examination of the measure at issue was insufficient and incomplete, which it alleged showed that serious doubts as to the compatibility of the measure under Article 107 TFEU persisted and should have prompted the Commission to open the formal investigation procedure under Article 108(2) TFEU.

⁽¹¹⁾ Cf. footnote 1.

⁽¹²⁾ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

⁽¹³⁾ Case C-505/24 P Condor Flugdienst GmbH v Ryanair DAC.

⁽¹⁴⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

- (16) The General Court recalled that, according to settled case-law, when the Commission's preliminary examination of an aid measure had not enabled it to overcome the serious difficulties involved in assessing the compatibility of that measure with the internal market, the Commission was under a duty to initiate the procedure provided for in Article 108(2) TFEU and had no discretion in that regard. The General Court then proceeded to examine Ryanair's items of evidence, and dismissed as unfounded Ryanair's pleas (i) to (v). Among other things, the General Court confirmed the Commission's view that the assessment of the compatibility with the internal market of the restructuring aid measures was separate from the assessment of the damage compensation measures, based on different legal bases and eligible costs. The General Court held in particular that it was apparent from recital (131) of the 2021 restructuring aid decision that 'a share of the COVID-19 loans of 2020 served to cover the exceptional costs incurred by Condor in the COVID-19 pandemic, and which therefore do not constitute restructuring costs included in the restructuring plan, while the remaining portion of those loans funded the restructuring, with the addition of the sum corresponding to the second part of the measure at issue' ⁽¹⁵⁾.
- (17) The General Court then examined the applicant's pleas (vi) and (vii), which challenged the Commission's assessment of the proportionality of the measure and of its negative effect on competition and trade. In that respect, the General Court found that the Commission should have had doubts, first, as to whether the measure at issue satisfied the requirement of adequate burden sharing set out in point 67 of the R&R Guidelines and, second, whether the scope of the measures to limit distortions of competition complied with the requirements set out in particular in Section 3.6.2.2 of the R&R Guidelines. According to the General Court, those doubts rendered the Commission's preliminary examination incomplete and insufficient, which in turn constituted evidence of the existence of serious difficulties.
- (18) This led the General Court to conclude that the Commission should have had doubts justifying the initiation of the formal investigation procedure under Article 108(2) TFEU and the annulment of the 2021 restructuring aid decision ⁽¹⁶⁾. Finally, the General Court held that it was not necessary to examine the eighth item of evidence presented by Ryanair, nor its tenth plea alleging a failure to state reasons.
- (19) The Commission adopts this Decision in order to comply with the General Court's judgment in accordance with Article 266 TFEU, notwithstanding the appeal pending against that judgment (see recital (13)).

2.2. The measures

- (20) In Section 2, the measures and their context are described at the time they were granted (that is in July 2021). The assessment of the measures, following the annulment of the 2021 restructuring aid decision, must be based on the facts and elements prevailing at the moment of granting of those measures. This is because when assessing the compatibility with the internal market of aid measures already granted, the Commission can only take into account elements that existed when the granting took place. As a result, the financial and commercial data refer to the period up to the financial results of 2019, as the last year of normal business operations before Condor entered insolvency proceedings and before the restructuring aid was granted, as the year 2020 was heavily affected by the COVID-19 pandemic and was thus not considered to be representative.
- (21) The first measure consists in the modification of the conditions – described in recitals (51) and (52) – of the EUR 550 million KfW loans that had been granted to Condor pursuant to the annulled damage compensation decision, to the extent that the modified loans and the EUR 90 million write-off supported Condor's restructuring plan and did not compensate it for damage related to COVID-19. The second measure consists in the waiver and write-off of EUR 20,2 million interest due that Condor would have had to reimburse as a result of the Condor I decision.

⁽¹⁵⁾ Case T-28/22 Ryanair v Commission, paragraph 133.

⁽¹⁶⁾ Case T-28/22 Ryanair v Commission, paragraphs 243 and 244.

- (22) The two measures are part of a financial package negotiated between Germany, Condor's new private shareholder Attestor Limited ('Attestor') and KfW, with a view to supporting the restructuring and continuation of Condor's business.
- (23) Germany committed to publish on the website www.bmwi.de the following information regarding the measures:
- the full text of the individual aid granting decision and its implementing provisions, or a link to it,
 - the identity of the granting authority/(ies),
 - the identity of the individual beneficiary, the form and amount of aid granted to the beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).

2.3. The beneficiary

2.3.1. Corporate structure, ownership and activities

- (24) The beneficiary of the measures is Condor and its controlled subsidiaries (see recital (38)). Condor is a German charter airline, headquartered in Kelsterbach (Hessen). It provides air transport services to individual clients and tour operators from its airports in Germany, with a focus on the leisure travel market, to destinations all over the world. In 2019, it had a turnover of EUR 1,7 billion, a balance sheet total of EUR 7,2 billion and 4 022 employees ⁽¹⁷⁾.
- (25) Germany confirmed that neither Condor, nor its past or present shareholders, nor any entity controlled by it, have received rescue or restructuring aid in the past 10 years, except the rescue aid approved on 14 October 2019 in the rescue aid decision (see recital (2)).
- (26) At the time of the notification, SG Luftfahrt GmbH ('SGL') was the sole shareholder of Condor. SGL was a holding company without operational activities. It held Condor's shares in trust since Condor exited insolvency proceedings in December 2020 (see recital (33)), pending its sale to a strategic investor ⁽¹⁸⁾. SGL was wholly owned by Team Treuhand GmbH, which was in turn wholly owned by Noerr & Stiefenhofer. SGL had been created solely to hold the shares of Condor pending its sale to Attestor and would be liquidated once all shares were sold (see recital (38)). According to the draft purchase agreement submitted by Germany at the moment of the notification ⁽¹⁹⁾, SGL was prohibited until the day of enforcement of the agreement from acting as a majority shareholder could normally act when exercising its rights. The prohibition includes actions such as the dissolution of Condor, conclusion, termination or cancellation of company agreements within the meaning of paragraphs 291 et seq. of the German stock corporations act (*Aktiengesetz*) ⁽²⁰⁾, a capital increase or decrease, amendments to the articles of association of Condor's subsidiaries, the distribution of dividends, the transfer of profits, the advance payment on profits, the collection or repurchase of shares, disposal or encumbrance of material assets (with exceptions), material investments above EUR 2 million per month (in total), conclusion, amendment or termination of (including new) financing agreements, including aircraft leasing contracts, or the appointment of a director, or member of the supervisory board. Figure 1 shows the structure of the Condor group before the execution of the agreement negotiated with Attestor (see recitals (37) and (39)).

⁽¹⁷⁾ KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, p. 5.

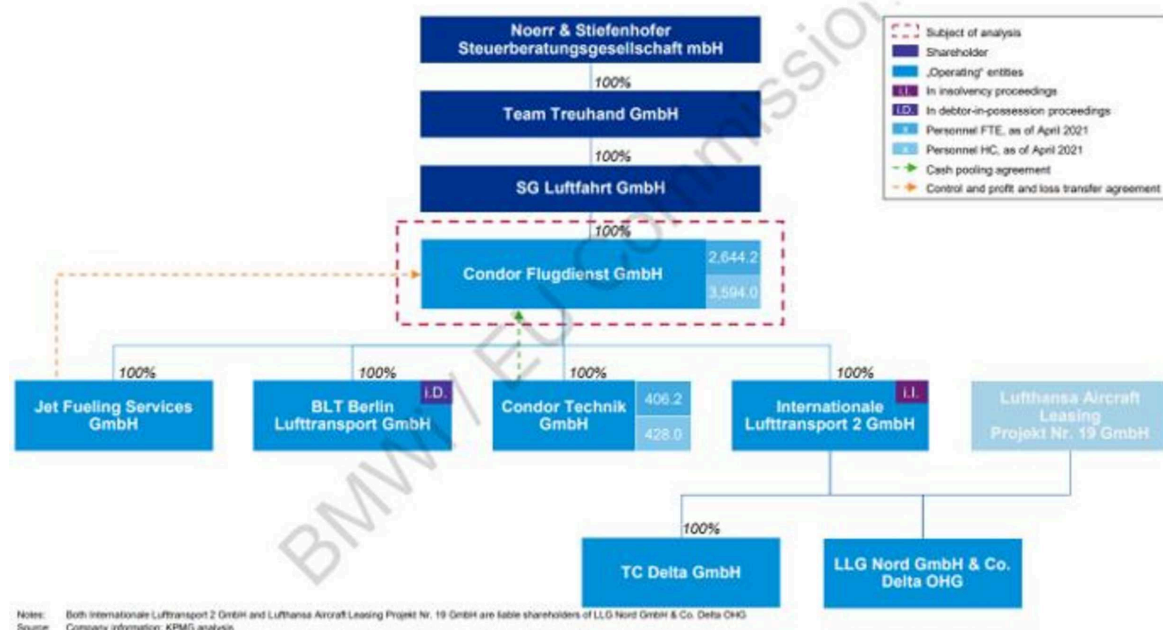
⁽¹⁸⁾ Since 28 July 2021, 51 % of the shares held by SGL are controlled by the private investment fund Attestor under the terms of an agreement negotiated with the German State as set out in recitals (37) and (39).

⁽¹⁹⁾ The final purchase agreement had not yet been signed then.

⁽²⁰⁾ Such company agreements include control agreements, as well as profit transfer agreements.

Figure 1

The structure of the Condor groupTitle, scheme



Source: KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, p. 22.

- (27) As a charter airline, Condor provides services to tour operators and travel agencies. Condor also sells flight seats directly to end customers, for example via the internet (so-called 'dry seats'). Condor serves short-medium and long-haul routes and also flies to airports that are not served by scheduled airlines ⁽²¹⁾.

2.3.2. Competition on the markets where Condor is active on and its position therein

- (28) Concerning charter companies, Condor mainly faces competition from TUIfly, the airline of the TUI group, on routes from Germany to tourist destinations, such as Spain, Greece, Italy or Portugal, the Caribbean or Mexico ⁽²²⁾. Some routes operated by Condor are also operated by Eurowings, the low-cost carrier of the Lufthansa group ⁽²³⁾, or Ryanair. However, Condor potentially competes with such airlines only as regards its dry seat sales on charter flights to certain destinations that those airlines also serve.

⁽²¹⁾ Scheduled airlines consist of legacy carriers (or full service network carriers), such as Lufthansa, and low-cost carriers, such as Ryanair.

⁽²²⁾ The TUI Group includes the airline and tour operators. In contrast to Condor, which serves also independent tour operators, TUIfly only serves tour operators of the TUI Group. On 27 March 2020, Germany decided to grant TUI a loan of EUR 1,8 billion (channelled through KfW) and on 4 January 2021 a recapitalisation measure totalling EUR 1,25 billion, to compensate for the effects of the COVID-19 pandemic (Commission Decision C(2021) 49 final of 4 January 2021 in case SA.59812 – Recapitalisation of TUI (OJ C 169, 22.4.2022, p. 1)).

⁽²³⁾ On 25 June 2020, the Commission raised no objections to Germany's plans to grant Lufthansa a recapitalisation of EUR 6 billion (Commission Decision C(2020) 4353 final of 25.6.2020, in case SA.57153 – Aid to Lufthansa (OJ C 397, 20.11.2020, p. 1)). On 10 May 2023, the General Court annulled the Commission's Decision (judgment of the General Court, *Ryanair and Condor v Commission*, Cases T-34/21 and T-87/21, ECLI:EU:T:2023:248). On 8 July 2024, the Commission opened the formal investigation procedure (see Commission Decision C(2024) 4481 final of 8.7.2024, in case SA.57153 – Aid to Lufthansa (OJ C, C/2024/5957, 4.10.2024)).

- (29) According to the German authorities, Condor is – alongside Eurowings – the only provider of direct long-haul leisure flights departing from Germany. In summer 2019, Condor served a total of 126 destinations, of which 35 were long-haul destinations. On routes to long-haul destinations, Condor was the sole supplier on 63 % of the routes, while 29 % were served by Condor and one other airline, and on 8 % more than two airlines were present. In the short and medium haul segment, Condor was the sole supplier on 25 % of the routes it served in summer 2019; on 32 % of them two airlines were present and 43 % of those routes were served by more than two airlines.
- (30) In 2019, Condor's total fleet comprised 61 aircraft, two of which were operated by Brussels Airlines. Condor carried out approximately 45 400 flights carrying approximately 9,4 million passengers, with a total of available seats per kilometre ('ASK') of 10,4 million and a load factor of 90 % of the aircraft operated. In summer 2019, Condor had a market share of air passenger transport in Germany of 6,4 %, which placed it third after Lufthansa (37 %) and Eurowings (8 %), which are both owned by the Lufthansa Group. Ryanair had a share of 5 % and TUIfly of 3 %. In the leisure air travel segment, the Lufthansa Group is also the leading operator with a share of 31 % (Lufthansa and Eurowings), while Condor and Ryanair have 16 % each, followed by TUIfly with 9 %, SunExpress with 7 % and EasyJet with 4 %.
- (31) In 2019, Condor operated charter flights at nine German airports with four core airport bases in Hamburg, Düsseldorf, Munich and Frankfurt ⁽²⁴⁾. Considering the whole German air transport passenger business, Condor held 3 % in terms of frequencies, 4 % of capacity and 6 % of ASK. In terms of frequencies, among the individual airports it serves, Condor exceeded 10 % only in the airport of Leipzig. The second highest proportion was in Hanover, with 8 % of frequency, 11 % of capacity and 18 % ASK. The greater share of total capacity and ASK by Condor in some airports was due to Condor using larger aircraft and operating longer routes than those of domestic or continental airlines carrying business passengers on short distances. Leipzig and Hanover are also mainly regional airports that were not congested and where there was no shortage of available slots for airlines using them. In all other airports it served, Condor had often less than 5 % of share of the total frequencies, capacity and ASK ⁽²⁵⁾.

2.4. Condor's financial difficulties and search for a strategic investor

- (32) The financial performance of Condor on a stand-alone basis was positive before the COVID-19 pandemic. Condor mainly earned recurrent annual profits since 2009, amounting to EUR 530 million cumulated and an annual average of EUR 44,1 million over the period between 2008 and 2019, as illustrated in Table 1. Condor thus had prima facie a functioning and profitable business model.

Table 1

Condor's profits/losses from 2008 to 2019

Financial year	Profit in EUR
1.10.2008-30.9.2009	54 901 000
1.10.2009-30.9.2010	61 471 000
1.10.2010-30.9.2011	79 184 000
1.10.2011-30.9.2012	45 180 000
1.10.2012-30.9.2013	56 898 000
1.10.2013-30.9.2014	62 849 000
1.10.2014-30.9.2015	76 463 000
1.10.2015-30.9.2016	– 16 916 000

⁽²⁴⁾ The other five airports are Hanover, Nuremberg, Stuttgart, Leipzig and Sylt, see notification, Annex 26.

⁽²⁵⁾ In none of the remaining airports (Hamburg, Munich, Düsseldorf, Frankfurt, Stuttgart, Nuremberg and Sylt), did Condor have more than a [...] % share in frequencies, and only in one of them in capacity ([...] % in Sylt). In five of the remaining airports, namely Hamburg, Düsseldorf, Frankfurt, Stuttgart and Sylt, Condor had a share higher than [...] % in ASK ([...] %, [...] %, [...] %, [...] % and [...] %, respectively), see notification Annex 26.

Financial year	Profit in EUR
1.10.2016-30.9.2017	9 791 000
1.10.2017-31.12.2017	257
1.1.2018-30.9.2018	43 233 000
1.10.2018-30.9.2019	56 904 000
TOTAL CUMULATED	529 957 743

- (33) However, Condor's financial situation was and remained at the time of granting the aid negatively affected by the insolvency of its former controlling shareholder, the Thomas Cook Group ('TCG'). Condor participated in the cash-pool of TCG, had receivables of around EUR [...] million against TCG and no bank funding ⁽²⁶⁾. With the insolvency of its parent, Condor could not fund its liquidity needs on the market and had to file for insolvency under self-administration in September 2019 ⁽²⁷⁾.
- (34) On 1 December 2019, the Insolvency Court in Frankfurt am Main ('the insolvency court') opened the insolvency procedure and authorised Condor to continue its business, while drawing up an insolvency plan. The insolvency court considered that Condor was fundamentally an operationally profitable company whose need for restructuring was not triggered by shortcomings in its own business model and profitability, but by the insolvency of TCG. The insolvency plan set out the measures for the continuation of the business model as a provider of leisure flights, an agreement with its creditors, restructuring measures and the entry of a new investor. The main element of the plan was the operational and financial unbundling of Condor from TCG, as well as the takeover by a new investor. Condor's shares held by TCG were fully written down to zero and new shares of a value of EUR 20,2 million were issued to a trustee (SGL, see recital (26)), whose purpose was to hold them until a new investor was found.
- (35) Three offers for the purchase of Condor were submitted in January 2020. Those offers valued Condor at between EUR [...] and EUR [...] million. PGL, the parent company of LOT Polish Airlines, was the successful bidder offering a purchase price of EUR [...] million. The purchase agreement with PGL including the notarial requirements was signed on 24 January 2020. On 24 February 2020, the German Federal Cartel Office (Bundeskartellamt) authorised the merger. In March 2020, Condor's creditors' committee adopted the insolvency plan by the required majority and the insolvency court approved it. However, on 13 April 2020, PGL withdrew from the agreement as it experienced financial and economic difficulties related to the COVID-19 pandemic, resulting in LOT Polish Airlines requiring approximately EUR 650 million in support from the Polish Government ⁽²⁸⁾.
- (36) The withdrawal of PGL prolonged Condor's insolvency procedure for seven months. The prolongation triggered additional costs for which Condor was liable for an amount totalling approximately EUR 23,7 million ⁽²⁹⁾. On 22 October 2020, Condor's creditors' committee approved an amended plan that the insolvency court endorsed on 24 November 2020. On 30 November 2020, the insolvency court pronounced Condor's exit from insolvency.

⁽²⁶⁾ Through Condor's participation in the regular TCG cash-pools, the latest of which had entered into force in February 2018, claims arising from the profit transfer agreements between them were offset and Condor received intra-group liquidity if necessary. That possibility of financing was no longer available after the compulsory liquidation of TCG. In the absence of an independent own risk profile and as it was part of the compulsorily liquidated TCG, Condor was unable to obtain finance on the capital markets. Moreover, at the time of entry into liquidation of TCG, Condor had receivables of around EUR [...] million against its parent company that it could no longer enforce and that had to be written off. Finally, Condor was jointly liable for certain TCG debt.

⁽²⁷⁾ See also rescue aid decision, recitals 14 to 20.

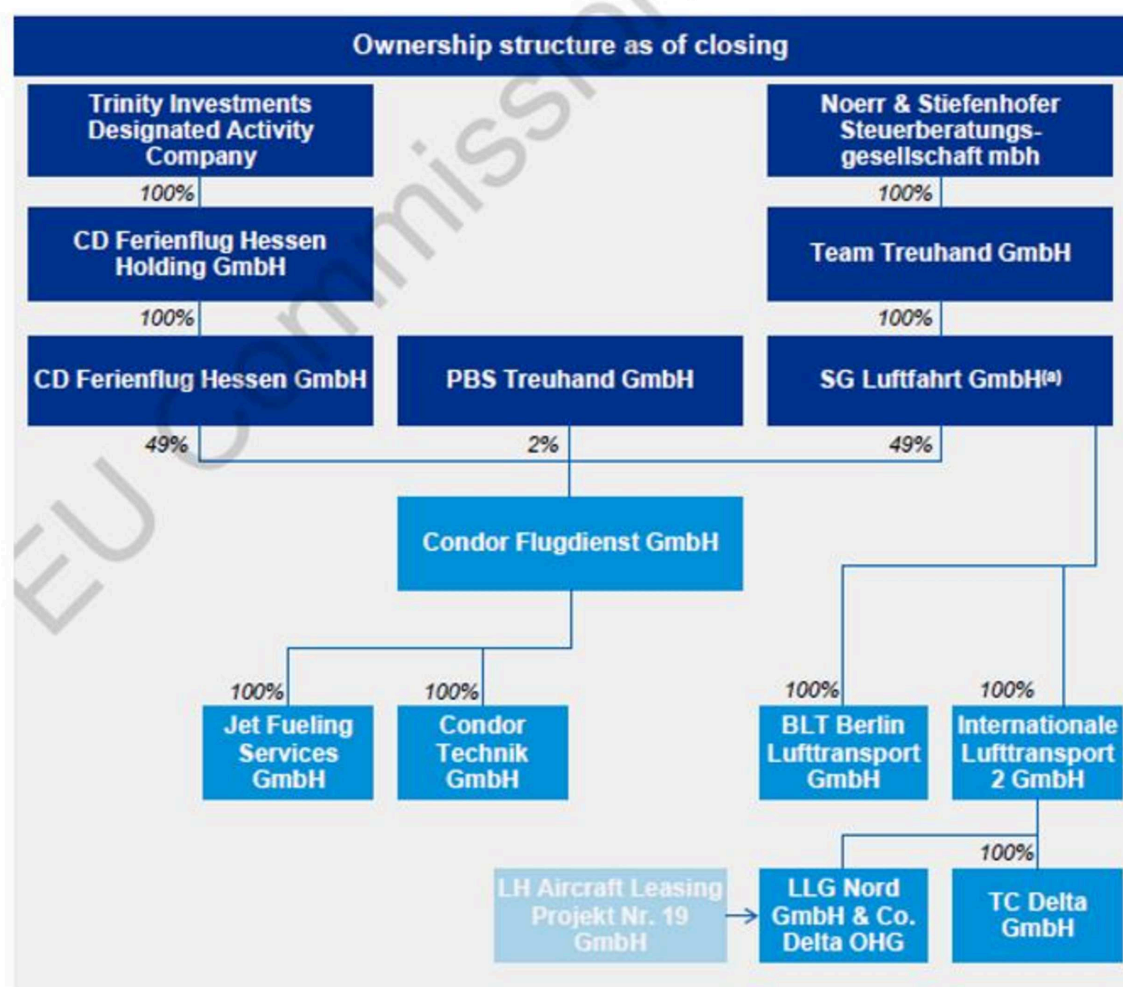
⁽²⁸⁾ As authorised by Commission Decision C(2020) 9606 final of 22.12.2020 in case SA.59158 – COVID-19 – Aid to LOT Polish Airlines (OJ C 260, 2.7.2021, p. 1).

⁽²⁹⁾ The General Court annulled the damage compensation decision of April 2020 because the Court found that the Commission had not established to the requisite standard that there was a direct link between the losses suffered by Condor as a result of the restrictions imposed to prevent the spread of the COVID-19 pandemic and the increased insolvency costs of EUR 17 million resulting from the prolongation of the insolvency procedure subsequently to the withdrawal of PGL from the purchase agreement concluded with Condor (see annulled damage compensation decision, recital 21). As the procedure had to be prolonged beyond the two to three months initially foreseen, from April 2020 until November 2020 instead of until June/July, the final amount of those costs increased to EUR 23,7 million.

- (37) Condor continued searching for an investor and underwent an unconditional, competitive, transparent and non-discriminatory bidding process. Among the three offers received at the term of the procedure, Condor's Supervisory Board, whose shareholder members are representatives of the German Federal Government and the *Land* of Hesse (the guarantors of the KfW loans), selected the private investment fund Attestor. Attestor offered the best conditions for Condor and for the repayment of the public loans of KfW backed by public guarantees. A notarial act of 20 May 2021 recorded the planned purchase.
- (38) Germany confirmed that prior to that bid, Attestor, which is an investment fund, had had no links to Condor nor had it transacted any business with Condor.
- (39) According to the draft purchase agreement, Condor's shares in its subsidiaries Berlin Lufttransport and Internationale Lufttransport would be sold to the holding company SGL, Attestor would take over 49 % of Condor's shares from SGL, while 2 % would be held by a trust company on behalf of Attestor. Attestor would have the option to acquire the remaining 49 %. In line with the agreement, Attestor controls 51 % of Condor's shares since 28 July 2021 (49 % via an investment fund managed by Attestor and 2 % via a trustee) and provided equity as agreed (see recital (46)). The financial terms for the transaction involve financing the business plan of Condor and the restructuring of existing public loans provided to Condor on the terms described in recitals (51) and (52). The ownership structure of Condor after the transaction is shown in Figure 2:

Figure 2

Ownership structure of Condor after its sale to Attestor



Source: KPMG, Condor Flugdienst GmbH, German restructuring concept according to IDW S6/BGH, 16 June 2021, p. 51.

2.5. Condor's restructuring plan

- (40) Condor began implementing the restructuring plan in October 2019, when it started a rationalisation and restructuring programme running until September 2023. The plan is based on three main components: (i) cost and efficiency gains through rationalisation and fleet renewal; (ii) financial and capital restructuring through private funding from Attestor and the renegotiation of the KfW loans; and (iii) organisational stabilisation through the entry of a strategic partner.

2.5.1. Operational and organisational restructuring

- (41) Condor has launched a programme of rationalisation, commercial optimisation and productivity improvement, in order to reduce operating costs and to maintain and further enhance its profitability. According to the restructuring plan submitted by Germany, that programme was expected to generate cost and productivity gains as follows: (i) a 23 % reduction in staff by May 2021, comprising in particular a reduction of ground staff workforce by 17 % despite having taken over a series of tasks formerly handled by TCG, as well as reductions of cabin crew as from 2022 through pre-negotiated social plan measures; (ii) payroll cost reductions through adjustments of collective agreements, management bonuses and salaries, as well as cuts of certain additional payments such as the canteen bonus and the vacation allowance; (iii) move to low-cost headquarters; (iv) renegotiation of supplier contracts (during the insolvency proceedings, legal notice and terms periods did not apply, which allowed the termination of unfavourable contracts) and adjustment of aircraft lease agreements; and (v) fleet renewal. The rationalisation programme was expected to result in over EUR [...] million of permanent cost reductions per year.
- (42) The operational restructuring measures, as shown in Table 2, aim to maintain and streamline Condor's operations until it can generate profits after the gradual phasing-out of flight restrictions imposed to prevent the spread of the COVID-19 pandemic. Their implementation will ensure Condor's competitiveness through further cost reductions and the necessary fleet renewal with modern fuel-efficient aircraft.
- (43) Condor had an ageing fleet, which in summer 2019 included 61 planes, of which 59 were operated directly. In particular, the 16 Boeing 767-300s it used on long-haul routes were on average 26 years old, which is above the industry average. The fleet restructuring, which is planned to take place between 2022 and 2025 for long-haul aircraft and between 2022 and 2029 for short- and medium-haul aircraft, will lead to reductions in fuel consumption and CO₂ emissions. Based on the offers at hand at the moment of granting the aid, Condor expected annual savings in fuel costs of around EUR [...] million, savings of between 15-25 % in CO₂ emissions and a reduction in average fuel consumption to below 2 litres/100 k km/passenger in the long-haul segment alone, where it is replacing 16 Boeing 767-300s.

Table 2

Condor's restructuring measures

Measure	Implementation
Staff reductions	Reduction in ground staff: achieved by March 2020
Reduction in staff costs	— Adaptation of collective agreements: December 2019-March 2020 — Short-time work contracts and prolongation of pay freeze negotiations in Summer 2020 and Spring 2021
Renegotiations of supply contracts	Permanent reviews with all suppliers ongoing since September 2020

Measure	Implementation
Move to less costly headquarters	— Negotiations in April-May 2020 — Move completed in July 2021
Fleet renewal	Gradual renewal starting in the third quarter of 2022, 12 new long-haul aircraft expected to be in place by 2023

Source: Notification, Annex 13.

- (44) Moreover, the entry of the strategic investor has created a stable corporate framework. In particular, the sale of part of Condor's shares to Attestor was a first step towards Condor's structural independence, after its exit from insolvency proceedings. In addition, the entry of Attestor and the restructuring of the KfW loans have provided Condor with sufficient financing and enabled the company to strengthen its equity base.

2.5.2. Capital and financial restructuring and financing of restructuring plan

- (45) The restructuring costs included the costs of Condor's fleet renewal as well as its uncovered operating costs during the restructuring period. As such, they included the repayment of the rescue loan and its substitution by other KfW loans, the write-off of interest claim on the over-compensation as set out in recital (7), and EUR 23,7 million of insolvency costs (recital (36)). The restructuring costs were financed partly from own resources, for a total amount of EUR [...] million, and partly from public financing in the form of debt restructuring, for a total amount of EUR 300,98 million. The financing from non-public resources was provided through funds from Attestor and supported by permanent cost savings and debt write-offs resulting from the insolvency plan, as set out in the following recitals.
- (46) Attestor has provided EUR 200 million of equity to Condor, in the form of a EUR 150 million injection into the company's capital reserve, and a EUR 50 million deposit on a notary's escrow account available to Condor if required for operations.
- (47) In addition, Attestor committed EUR [...] million for Condor's fleet renewal as well as a credit line of USD [...] million (approximately EUR [...] million), which Condor can draw on in several tranches, without revolving, for pre-delivery payments on aircraft. In particular, [...] provided a leasing facility to Condor and its subsidiaries, committing directly or via one or more special purpose vehicles equity leasing financing of EUR [...] million for the acquisition of aircraft to be leased to Condor. The aircraft financing would be completed with external financing expected to cover, in line with trade practice, between [...] % of the total expenditure for aircraft acquisition. The draft leasing commitment would thus enable Condor to lease aircraft worth up to EUR [...] million for a minimum of [...] years.
- (48) Moreover, Condor's creditors have accepted to write off claims amounting to EUR 630,8 million in the context of the insolvency procedure. The proceedings were governed by the obligatory legal provisions of standard German insolvency law which contains provisions regarding the establishment of different groups of creditors and their treatment. Within each group, creditors were treated equally. The claims in 'Group 7 – Shareholders' were treated as subordinated to other claims of other groups of creditors for the purposes of the insolvency procedure. In accordance with the insolvency plan, the company's share capital was reduced to zero, causing the shareholders to lose their shares. At the same time, the right to subscribe for new shares as part of the capital increase under the plan was excluded. As a result, shareholders received no payments and lost their existing rights, both with regard to their shares and the debt that Condor owed them. Germany explains that regarding the remaining claims, Condor's creditors' committee could choose between a liquidation of Condor or accepting an insolvency quote of 0,1 % on claims amounting to EUR 631,5 million in total and several creditors voted against the plan. The insolvency plan identified the following seven groups of creditors:
- Employees (*Arbeitnehmer*),
 - Federal Agency for Employment (*Bundesagentur für Arbeit*),

- Association for insolvency insurance of company pension schemes (*Pensions-Sicherungs-Verein Versicherungsverein auf Gegenseitigkeit – PSVaG*),
 - Joint liability creditors (*Gläubiger aus Mithaftung*),
 - Group companies with non-subordinated claims (*Gruppengesellschaften mit nicht nachrangigen Forderungen*),
 - Other unsecured and non-subordinated creditors (*Sonstige unbesicherte und nicht nachrangige Gläubiger*),
 - Shareholders (*Gesellschafter*).
- (49) Several of those groups, as for example staff, group companies, shareholders, are composed of exclusively private creditors. Each creditor included in one of the groups has voting rights. According to German insolvency law, every group of creditors votes separately, and a majority of creditors with voting rights, not only of the votes but also of the sums owed, is required to take a decision in each group ⁽³⁰⁾. The majority of creditors decided to accept the quote and the creditors' committee approved the plan on 22 October 2020. The insolvency court endorsed the plan.
- (50) Finally, in the context of its rationalisation programme, Condor is achieving permanent cost reductions of EUR [...] million per year, deriving from leasing contract adaptations, renegotiation of supplier contracts and adjustment of collective agreements as described in recital (41). Those cost savings affect the profit and loss account of Condor and reduce the need for external funding.
- (51) The purchase agreement and funding for leasing financing from Attestor set as a pre-condition a restructuring of Condor's EUR 550 million existing loans from KfW. Before the restructuring, the KfW loans had the following conditions:
- (a) loan 1, with a total amount of EUR 529,8 million, was composed of tranche A, with a nominal amount of EUR 256 million, and tranche B, with a nominal amount of EUR 273,8 million. In order to secure loan 1, Condor had constituted a package of securities, comprising, inter alia, share pledges, liens on aircraft, security transfers, assignments and account pledges:
 - (1) tranche A of loan 1 had a maturity on 30 June 2026; it was to be reimbursed in quarterly instalments of EUR [...] million starting on 30 June 2021, and through a one-off payment of all outstanding amounts on 30 June 2026; the interest rate was composed of a base rate equivalent to 3-month EURIBOR + [...] basis points (bps) per year + KfW's refinancing costs;
 - (2) tranche B of loan 1 was a revolving credit facility with an end-maturity on 31 December 2031; the interest rate was composed of a base rate equivalent to 1-month EURIBOR + [...] bps per year + KfW's refinancing costs; amounts drawn from tranche B were to be repaid at the end of each interest period, plus any interest accrued up to that date but not yet paid; amounts repaid could be drawn again within the availability period provided that doing so did not exceed the total loan amount available for tranche B; from 30 June 2026, the total loan amount for tranche B would be automatically reduced by EUR [...] million at the end of each subsequent calendar quarter;
 - (b) loan 2, with a nominal amount of EUR 20,2 million and a maturity on 31 December 2031, had an interest rate composed of a base rate equivalent to 3-month EURIBOR + [...] bps + KfW's refinancing costs; loan 2 was secured by [...] in favour of KfW;
 - (c) if Condor were sold by way of a share deal, the contractual arrangements provided for a hierarchy of repayments of the various tranches. First of all, loan 2 would be repaid, subsequently tranche A of loan 1, followed by tranche B of that loan 1. In addition, in the case of other sales of assets of Condor, tranche A would also be reduced before tranche B. In the case of a disposal of the collaterals, a similar order of priority would be applied to the repayment of tranches. In the case of proceeds from other collaterals, tranche A would take precedence over tranche B, that is to say that the proceeds would be used first to repay tranche A and then to repay tranche B.

⁽³⁰⁾ Insolvency Code (*Insolvenzordnung*) of October 1994 (BGBl. I S. 2866), paragraphs 243 and 244(1).

- (52) According to the notification and the draft agreements submitted by Germany, Germany contributes to the financing of the restructuring plan by restructuring the existing EUR 550 million of KfW loans as follows:
- (a) the reimbursement of EUR 90 million of tranche B of loan 1 would be waived;
 - (b) the outstanding amounts of loan 1 (after the write-off of EUR 90 million mentioned in point (a) and the write-off of EUR 60 million under the Condor II decision (see recital (6)) would be restructured as follows:
 - a EUR 175 million senior tranche with the same conditions as tranche A of loan 1, except for the two following changes: (i) the end maturity would be set to September 2026, so as to coincide with Condor's financial year (previously June 2026 for tranche A of loan 1 and 31 December 2031 for tranche B of loan 1, and loan 2); (ii) [...],
 - a EUR 204,8 million junior tranche with the following conditions: (i) interest rate: [...] costs; (ii) type of debt: [...]; (iii) collateral: as previously; (iv) amounts available for repayment conditional upon revenue following an earn-out mechanism (underlying exit date: 30 September 2026);
 - (c) loan 2, which had been granted to SGL for the acquisition of the shares, would be amended so as to follow the same conditions as the new junior tranche, except that its existing collateral would be reinforced by a [...]. The reimbursement of the junior tranche would be [...].
- (53) Germany confirmed that the draft agreements have been implemented as described in recital (52). According to the information submitted by Germany, the earn-out mechanism provides that payment under the earn-out mechanism can only take place once the investor has received net proceeds (e.g. through a sale) of at least EUR [...] million (earn-out limit) by 30 June 2026 or if the equity valuation of the company as at 30 September 2026 is at least equal to that amount. Above an earn-out limit of EUR [...] million, an amount of EUR [...], will be paid. Of amounts between EUR [...] million and EUR [...] million, the lender receives a share of between [...] % and [...] %. The actual amount of return depends on the net proceeds. The payment terms of the earn-out mechanism thus ensure that the German State receives payments of between EUR [...] and EUR [...] million by September 2026, depending on the economic success of Condor. Payments from the earn-out mechanism have to be used for repayment of the junior tranche and loan 2.
- (54) Germany, through KfW, granted the guaranteed loans to Condor to make good part of the damage the company was estimated to have incurred in the context of the COVID-19 pandemic. After the adoption of the annulled damage compensation decision, the Commission found that Condor suffered a damage of EUR 175,355 million during the period from 17 March to 31 December 2020 ⁽³¹⁾ and a damage of EUR 73,66 million during the period from 1 January to 31 May 2021 ⁽³²⁾, making a total of EUR 249,02 million during the period from 17 March 2020 to 31 May 2021. The difference between, on the one hand, the amounts of the loans (EUR 550 million) before applying the write-offs (EUR 90 million and EUR 60 million – recitals (6) and (8)) and, on the other hand, the estimated damage during the period from 17 March 2020 to 31 May 2021 (EUR 249,02 million) amounts to EUR 300,98 million. This is the amount of the loans granted for the restructuring.
- (55) Germany submits two evaluations of the aid element contained in the restructuring of the loans.
- (56) According to the first approach, Germany submits that the aid element of the loan restructuring would be the nominal amount of the loans of EUR 400 million (that is the original amount of EUR 550 million reduced by the write-off of EUR 150 million) minus the amount notified by Germany as damage compensation aid for the period from 17 March 2020 to 31 May 2021 of EUR 144,1 million, which would result in a nominal amount of restructuring aid of EUR 255,9 million.

⁽³¹⁾ See Condor I decision, recital 203.

⁽³²⁾ See Condor II decision, recital 112.

- (57) However, Germany considers that a less conservative valuation of the aid element would be possible. For the senior tranche of EUR 175 million, the aid element would be EUR 18,9 million of difference between the interest actually paid by Condor and that it would have to pay for a hypothetical market loan. A market lender would also agree to the deferral of repayment and interest, which would thus be free of aid. Finally, Germany assesses the debt waiver of EUR 90 million as a grant with an aid element of EUR 90 million.

2.5.3. *Operational and financial trajectory of restructuring and return to viability*

- (58) Germany submits that until the COVID-19 pandemic, the German outbound travel market was growing constantly with annual increases of up to 4,6 %. However, the market dropped sharply by 58,1 % in 2020. The restructuring plan assumes that demand on the German source market for leisure travel would start to pick up in the summer of 2021. Germany submits that travel is strongly correlated to the Gross Domestic Product, which was expected to return to pre-crisis levels by the end of 2021. The strong increase of the net savings rate of households in Germany from 10,9 % in 2019 to 16,3 % in 2020 suggested strong consumer spending as restrictions were progressively lifted. Leisure travel was expected to recover faster than general travel with a return to pre-crisis levels about a year earlier than general travel ⁽³³⁾.
- (59) The assumptions in the restructuring plan are based on an analysis of different trends as well as their impact on leisure travel. The restructuring report by KPMG, provided by Germany, also includes forecasts for market development, based on third-party assessments ⁽³⁴⁾. Several expert studies covering forecasts of passengers (PAX), RPK (revenue passenger kilometres) ⁽³⁵⁾, IFR (instrument flight rules) ⁽³⁶⁾ movements and numbers of passengers expected a recovery of the air travel sector to the 2019 level in 2023 as a best-case scenario ⁽³⁷⁾. A first increase was expected in the third and fourth quarters of 2021 if travel restrictions ended and vaccinations progressed. Those forecasts are used to assess the plausibility of the underlying assumptions of Condor's business plan.
- (60) According to the data provided (Euromonitor data on outbound leisure travel in number of trips and expenditures, Statista and McKinsey data on revenue), the worldwide tourism market was set to recover to 2019-levels in 2022 in the best-case scenario and in 2024/2025 in the worst-case scenario. As shown in Figure 3, it was expected that the recovery of key performance indicators ('KPIs') PAX, RPK, and IFR would reach 2019-levels around 2023/2024. However, those forecasts concern the entire airlines sector. The same forecasts also point to a faster recovery for tourist flights.

⁽³³⁾ Notification, KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, p. 27.

⁽³⁴⁾ Third-party sources include: BDL (Bericht zur Lage der Branche – January 2021), ICAO (Effects of novel Coronavirus on civil aviation: Economic impact analysis – May 2021), Eurocontrol (Forecast Update 2021-2024 – May 2020), ACI (Covid-19 & Airports: Traffic forecast & financial impact – January 2021), IATA (Airline industry financial forecast – April 2021), Jefferies (Iata cuts 2021 forecast – vaccinations, travel restrictions slow the recovery – April 2021).

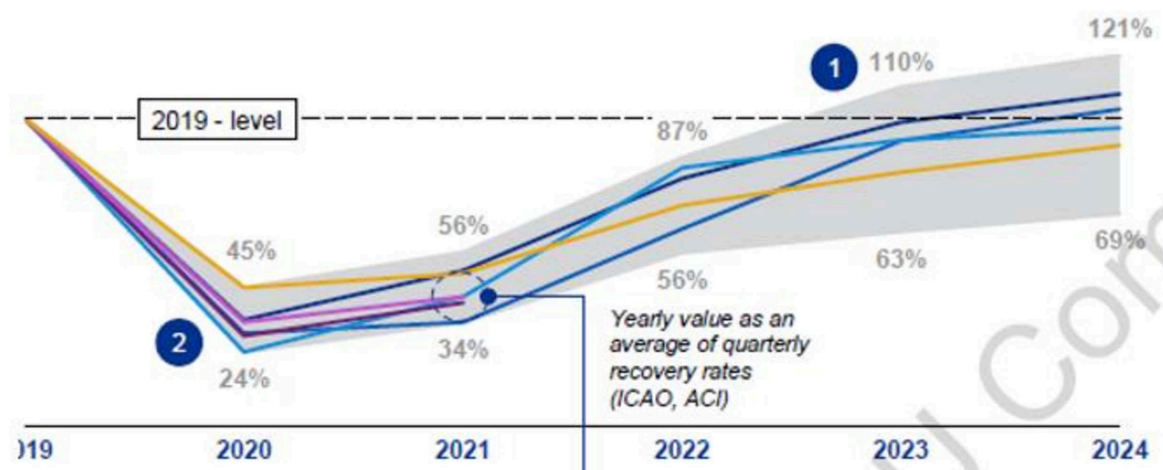
⁽³⁵⁾ RPK or 'revenue passenger kilometres' means the number of paying passengers carried multiplied by the distance flown.

⁽³⁶⁾ IFR or 'instrument flight rules' are a set of regulations that prescribe how aircraft are to be operated when the pilot is unable to navigate using visual references under visual flight rules.

⁽³⁷⁾ Source: KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, p. 33.

Figure 3

Forecasts of airline KPIs in % of 2019



Source: KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, page 33.

- (61) The main operating costs of Condor's business are for maintenance, fuel and staff. The assumptions in the restructuring plan are based on aircraft economics per type on the assigned route, oil price projections and performance. The restructuring plan takes into account effects from measures implemented as part of the insolvency plan, stemming from fleet renewal, a gradual shift from [...] as well as staff reductions, COVID-19-related short-term work, etc.
- (62) Condor's revenues from flight operations are projected to increase gradually. After a ramp-up phase during 2020-2022, aircraft load factors are expected to reach pre-COVID levels in [...], in line with the expected recovery of the leisure travel market. In the baseline scenario (Table 3), Condor is expected to become profitable and cover interest charges and depreciation at the end of the restructuring period in September 2023 with a net result of EUR [...] million and [...] % earnings before interest and taxes (EBIT) margin ⁽³⁸⁾. That upwards trend will continue after the end of the restructuring period, with a net result of EUR [...] million and an EBIT margin of [...] % in 2024 and thereafter reaching a net result of EUR [...] million and [...] % EBIT margin in 2026.

Table 3

Profit and loss account for Condor in the baseline scenario

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Operating income	1 803,8	1 684,2	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating expenses	- 1 684,4	- 1 542,9	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Thereof: Fleet rental costs			[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽³⁸⁾ EBIT or 'earnings before interest and taxes' is a company's revenue minus expenses excluding tax and interest. The EBIT margin is a financial ratio that is an indicator of a company's profitability and can be calculated by dividing EBIT by sales.

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Depreciation and amortisation	- 96,4	- 93,9	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet depreciation</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating profit (EBIT) pre-exceptional	23,0	47,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Finance costs	- 29,6	- 32,0	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Linked with Fleet</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net result for the year	40,0	- 6 796,7	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>EBITDA (p.e.) margin</i>	7 %	9 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>EBIT (p.e.) margin</i>	1 %	3 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Yield</i>	198	172	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total available seat kilometer [ASK] (in m)</i>	34 638	36 183	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total rev. passenger kilometer [RPK] (in m)</i>	30 880	32 495	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total seat load factor</i>	89 %	90 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total passengers (in m)</i>	8,8	9,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data (2017/18 and 2018/19 split for Fleet not available).

- (63) Table 3 shows that the operational and commercial restructuring measures and financial contributions will allow Condor to gradually alleviate the effects of the insolvency of TCG on its equity, part of which was still in its balance sheet at its exit from insolvency proceedings on 1 December 2020. In line with German insolvency law, Condor wrote off its full share capital, which left the company with negative book equity. Even though Condor would still have slightly negative equity of EUR [...] million by 2026 due to that exogenous effect, its equity base will improve

constantly and significantly during the restructuring period and will turn positive in 2027. In addition, Condor's long term financial liabilities, after reaching a peak of EUR [...] million in 2021 will decrease, reaching EUR [...] million by 2026. Moreover, according to that set of data, Condor's return on capital employed (ROCE) ⁽³⁹⁾ would be significantly positive at the end of the restructuring period in fiscal year 2023 as well as in the following years, with a ROCE of [...] % to [...] % (Table 4).

Table 4

Condor's balance sheet in the baseline scenario

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Assets	1 880,9	591,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current assets > 1year	1 293,4	309,8	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet (assets)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Current assets < 1year	587,5	281,6	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Cash and cash equivalents</i>	11,2	56,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Liabilities	1 880,9	591,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Equity	194,7	- 6 776,2	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current liabilities > 1year	760,6	3 706,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Longterm financial liabilities > 1year	181,2	156,1	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term liabilities < 1year	925,6	3 661,3	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term financial liabilities < 1year	37,8	47,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽³⁹⁾ Capital employed is defined as total assets less current liabilities.

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
<i>Thereof: Leases (liabilities)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
ROCE	2 %	- 2 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data (2017/18 and 2018/19 split for Fleet not available).

- (64) The enterprise valuation of Condor carried out in June 2021 by Rothschild in the context of the investor process as shown in Table 5 estimates, on the basis of conservative assumptions, Condor's equity to be in a range between EUR [...] million and EUR [...] billion by 2023, depending on the method (discounted cash flows or earnings before interest, taxes, depreciation and amortisation (EBITDA) multiples).

Table 5

Enterprise valuation of Condor

[...]

- (65) The valuation report by Rothschild includes a calculation of Condor's weighted average cost of capital (WACC). The WACC is the sum of multiplying the cost of debt and the cost of equity by the relevant weights. As a target capital structure, with the target weights for debt and equity, assuming [...] % equity, the cost of debt is calculated as [...] %, and the cost of equity as [...] %⁽⁴⁰⁾. Condor's WACC is calculated as [...] %. As of 1 January 2019, the sixteenth International Financial Reporting Standard ('IFRS 16') came into force, abolishing the different treatment of financial leases and operating leases. The same calculation was provided taking into account IFRS 16 and the resulting higher weight of debt due to the accounting of lease liabilities as financial liabilities. The increase in debt results in an assumed capital structure of [...] % equity and [...] % debt. In that scenario WACC is [...] %, as a result of the higher weight of debt.
- (66) The German authorities also provided a valuation of Condor's equity under the terms agreed with Attestor, relied upon by PWC, as mandatory for Germany for assessing the KfW loan conditions, and Rothschild, as independent expert establishing the company value in the investment process. PWC takes a conservative approach based on the lower-end planned EBIT of EUR [...] million and a multiplication factor of [...]. Based on those conservative assumptions, PWC concludes that Condor will have an equity value of approximately EUR [...] million in 2025, which Condor itself assessed at approximately EUR [...] million before the COVID-19 pandemic⁽⁴¹⁾. Based on the more conservative PWC valuation, in 2026, Condor would achieve a return on equity (ROE) of [...] %. That value is fully in line with the median ROE provided by a group of other airlines, which in 2017-2019 amounted to between 23,4 % and 25,3 %, as shown in Table 6. As can be seen in Table 6, European legacy airlines and US airlines had been performing more or less similarly, with the exception of 2019.

⁽⁴⁰⁾ The [...] % cost of debt consists of the [...] % interest rate of the existing KfW loans adjusted for the tax deductibility of interest. The cost of equity of [...] % is calculated using a capital asset pricing model and consists of (i) the risk free rate [...] %; (ii) a small-size company premium [...] %; and (iii) the company-specific risk premium, which is derived from the market risk premium [...] % multiplied by a Beta factor (1,2 based on peers), which for Condor, would be [...] %.

⁽⁴¹⁾ Federal Mandate PWC of 18.5.2021.

Table 6

Median return on equity of airlines 2017-2019 ⁽⁴²⁾

	2019	2018	2017
Legacy (Europe)	19,8 %	24,6 %	24,1 %
Low-cost (Europe)	12,8 %	15,1 %	11,1 %
USA	30,4 %	25,3 %	25,8 %
All	25,3 %	23,4 %	24,6 %

- (67) Moreover, according to the German authorities, the combined impact of Condor's restructuring plan, including several rationalisation measures and fleet renewal (see Table 2), which will result in significant staff and supply cost reductions as well as fuel and maintenance cost savings, and the fresh funding from Attestor will allow Condor to achieve profitability in line with the industry average. As shown in Table 3, Condor's EBIT margins ⁽⁴³⁾ are positive from the fiscal year 2023 onwards ([...] % in 2023 up to [...] % in 2026). Margins are significantly higher post-COVID-19 as compared to pre-COVID-19 levels ([...] % for the fiscal year 2018 and [...] % for the fiscal year 2019).
- (68) Table 7 also shows the pre-COVID-19 profitability of other airlines. According to the data provided by Germany, the EBIT margin of those other airlines, which include legacy and low-cost airlines such as Lufthansa and Ryanair, was on average 5,7 %, or 7,3 % as median. The performance of that group was highly divergent, with a spread of 18.8 percentage points between the highest value of 13,3 % and the lowest of – 5,5 %. Based on 2019 figures, Condor's passenger yield (income divided by the number of passengers) amounted to [...] ⁽⁴⁴⁾, as compared to an average of 141 for the other airlines, while Condor operated with [...] ASK, as compared to an average of 135 773 ASK for other airlines.

Table 7

Key indicator comparison with other airlines pre-COVID-19

	EBIT margin (%)	Yield (EUR)		Seat load factor (%)	Passengers (million)	Available seat capacity (million km)
Condor	[...]	[...]	[...]	[...]	[...]	[...]
Lufthansa	5,1	250,7		82,6	145,3	358 803
Norwegian	2,0	121,9		86,6	36,2	100 031
Eurowings	- 5,5	85,7		82,3	27,0	32 383
Ryanair	13,3	57,0		95,0	149,0	176 989
IAG	10,2	215,7		84,6	118,3	337 754
EasyJet	7,3	76,5		91,5	96,1	116 056
Wizz	13,0	69,0		93,6	40,0	69 973

⁽⁴²⁾ Commission Decision of 11.12.2020 C(2020) 9221 in case SA.58463 – Aide à la restructuration de Corsair (OJ C 41, 5.2.2021, p. 1), recital 23. The sample includes 15 airlines grouped in three categories: **Legacy** includes Air France KLM, Lufthansa, IAG, SAS, Aeroflot, TAP, Aegean and Finnair; **Low cost** includes Ryanair, Easy Jet and Air Europa and **USA** includes Delta Airlines, American Airlines, United Airlines and Southwest Airlines.

⁽⁴³⁾ EBIT margin based on sales revenue. The restructuring plan does not envisage other operating income.

⁽⁴⁴⁾ The yield is higher than shown in Table 3 due to the necessary comparability with the peers. As publicly available data for competitors is not as granular as Condor's internal data, the yield in Table 7 is defined as sales revenue per PAX, while the yield in Table 3 is defined as (sales revenue – freight sales – other sales) per PAX.

	EBIT margin (%)	Yield (EUR)		Seat load factor (%)	Passengers (million)	Available seat capacity (million km)
Swiss	11,1	238,9		83,9	21,5	63 321
Austrian	0,7	144,3		80,8	14,6	28 508
Brussels Airlines	- 2,2	143,2		81,5	10,3	21 994
Turkish Airlines	8,1	146,0		81,6	74,3	187 696
Average (incl. Condor)	5,5	143,8		86,2	61,8	127 474
Average (excl. Condor)	5,7	140,8		85,8	66,6	135 773
Median (incl. Condor)	6,2	143,8		84,3	38,1	85 002
Median (excl. Condor)	7,3	143,2		83,9	40,0	100 031

Source: KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/BGH, 16 June 2021, page 37; and own calculation.

(69) Moreover, Germany provided data on Condor's prospective cash flows for the baseline scenario, as shown in Table 8.

Table 8

Projected cash flows in baseline scenario

In EUR million	Restructuring-period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
EBITDA	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from operating activities (p.e.)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Exceptional items	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from investing activities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Changes in equity	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Changes in financial liabilities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Thereof: Financial liabilities KfW	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from financing activities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net de-/increase in cash and cash equiv.	[...]	[...]	[...]	[...]	[...]	[...]	[...]
At the beginning of the period	[...]	[...]	[...]	[...]	[...]	[...]	[...]
At the end of the period	[...]	[...]	[...]	[...]	[...]	[...]	[...]

In EUR million	Restructuring-period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Available Tranche B	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Trapped cash	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Available liquidity	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

- (70) The data provided by Germany show cash outflows from operations of EUR [...] million in fiscal year 2021. At the same time, the major contributors of cash inflow are exceptional items of EUR [...] million, which relate to the liquidation of TCG, the liquidity provided by the investment by Attestor and changes in the financial liabilities to KfW. After Attestor's contribution to Condor's equity, the available liquidity never falls below EUR [...] million.
- (71) The information provided shows that Condor faced a short-term liquidity crisis, combined with the negative solvency situation inherited from the liquidation of TCG (Figure 4).

Figure 4

Condor's short-term liquidity position

[...]

Source: Notification, KPMG restructuring assessment.

- (72) Germany provided a sensitivity analysis which shows how Condor's profit and loss and subsequently its balance sheet will vary from the baseline scenario reflected in Table 3 and Table 4, if fuel costs were to increase further than under the baseline scenario due to an increase in prices for emission allowances and offset credits and if the growth of yield per passenger⁽⁴⁵⁾ were also to be negatively affected by potential adverse market developments, that is increased competition, thus reducing the yield growth expected in particular because of the new long-haul aircraft. The result of that analysis is shown in Table 9 and Table 10.

Table 9

Projected profit and loss account in the adverse scenario

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Operating income	1 803,8	1 684,2	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating expenses	- 1 684,4	- 1 542,9	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet rental costs</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Depreciation and amortisation	- 96,4	- 93,9	[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽⁴⁵⁾ Sales revenue divided by total passenger volume.

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
<i>Thereof: Fleet depreciation</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating profit (EBIT) pre-exceptional	23,0	47,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Finance costs	- 29,6	- 32,0	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Linked with Fleet</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net result for the year	40,0	- 6 796,7	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>EBITDA (p.e.) margin</i>	7 %	9 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>EBIT (p.e.) margin</i>	1 %	3 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Yield</i>	198	172	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total available seat kilometer [ASK] (in m)</i>	34 638	36 183	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total rev. passenger kilometer [RPK] (in m)</i>	30 880	32 495	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total seat load factor</i>	89 %	90 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Total passengers (in m)</i>	8,8	9,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data (2017/18 and 2018/19 split for Fleet not available).

Table 10

Balance sheet in the adverse scenario

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Assets	1 880,9	591,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current assets > 1 year	1 293,4	309,8	[...]	[...]	[...]	[...]	[...]	[...]	[...]

In EUR million	Pre-restructuring		Restructuring-period				Post-restructuring		
	2017/18 ACT	2018/19 ACT	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
<i>Thereof: Fleet (assets)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Current assets < 1year	587,5	281,6	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Cash and cash equivalents</i>	11,2	56,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Liabilities	1 880,9	591,5	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Equity	194,7	- 6 776,2	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current liabilities > 1year	760,6	3 706,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Longterm financial liabilities > 1year	181,2	156,1	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term liabilities < 1year	925,6	3 661,3	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term financial liabilities < 1year	37,8	47,4	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>			[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net debt to EBITDA ratio	1,7	1,0	[...]	[...]	[...]	[...]	[...]	[...]	[...]
ROCE	2 %	- 2 %	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data (2017/18 and 2018/19 split for Fleet not available).

- (73) Under the assumptions of the adverse scenario, Condor's operational performance would slightly decrease, with an EBIT that is on average EUR [...] million lower than in the baseline scenario. However, Condor would remain profitable with an EBIT margin of [...] % at the end of the restructuring period, going up to [...] % at the end of the period covered by the forecasts, i.e. 2019/2020 until 2025/2026 ('the planning period').

- (74) On the balance sheet side, the impact of the adverse scenario is mostly on Condor's cash position and equity. In the adverse case, Condor has fewer cash assets and the negative equity does not diminish as rapidly as in the baseline scenario. In the adverse scenario, Condor will still have a negative equity of EUR [...] million at the end of the planning period. However, even in that case, a return to a positive equity in the year after the planning period would be achievable. As explained in recital (64), and visible from Table 5 and Table 9, Condor's enterprise and equity value estimated by Rothschild and PWC are already based on the negative assumptions of the adverse scenario, and thus remain valid.
- (75) The adjustments to the revenues and costs affect cash flows. Table 11 shows that the liquidity available to Condor is EUR [...] million lower at the end of the restructuring period in the fiscal year 2023 than in the baseline scenario. In 2026, the available liquidity is EUR [...] million lower, due to the accumulating effect of the lower cash flows from operations. On average, the positive cash flow from operations is around EUR [...] million lower. An additional positive cash flow into the equity partly offsets the effect in 2023.

Table 11

Projected cash flows in the adverse scenario

In EUR million	Restructuring-period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
EBITDA	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from operating activities (p.e.)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Exceptional items	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from investing activities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Changes in equity	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Changes in financial liabilities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Thereof: Financial liabilities KfW	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cash flow from financing activities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net de-/increase in cash and cash equiv.	[...]	[...]	[...]	[...]	[...]	[...]	[...]
At the beginning of the period	[...]	[...]	[...]	[...]	[...]	[...]	[...]
At the end of the period	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Available Tranche B	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Trapped cash	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Available liquidity	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

- (76) As explained in recital (63), based on the data provided by Germany, Condor's ROCE would be extraordinarily high with returns between [...] % and [...] %. That situation is mainly due to Condor's fleet renewal programme and the fact that Condor's audited accounts are produced under the German Commercial Code ('Handelsgesetzbuch' or HGB). Condor's fleet renewal also includes a shift away from owning or leasing aircraft under financial lease agreements towards leasing aircraft under operating lease agreements. In contrast to financial lease agreements, operating leases do not confer ownership rights on the lessee. Since IFRS 16 came into force, all leases are accounted on-balance sheet. However, that change does not apply to all national accounting standards. Because Condor produces its audited financial statements under the HGB, operating leases do not affect the balance sheet of the lessee, as they are accounted off-balance sheet and not capitalised ⁽⁴⁶⁾.
- (77) Condor's aircraft fleet represents a significant part of the capital and assets of airlines. Therefore, not accounting for aircraft leases on-balance sheet can significantly lower the size of the balance sheet. Not doing so affects key indicators such as ROCE, as assets that are used for operations, i.e. aircraft, are not taken into account in the calculation of the capital employed and therefore overstates the profitability based on the capital. Not accounting for aircraft leases also complicates meaningful comparisons across airlines, as the observed airline's financial performance depends on the choice of ownership of aircraft.
- (78) For those reasons, Germany provided Condor's financial reports including leases accounted on-balance sheet according to IFRS 16. Germany explained that while Condor's published and audited financial statements are produced under the HGB, Condor also regularly produced such alternative sets showing leases under IFRS 16 when it was a subsidiary of TCG. The transposition is made for each lease contract one by one. Although those statements are not audited, they are regularly reviewed by auditors (Ernst and Young) and produced in cooperation with auditors (KPMG).
- (79) Table 12 and Table 13 show the adjusted income statement and balance sheet under the baseline scenario. The impact in both scenarios is identical, as the adjustment solely concerns the accounting of the fleet and therefore is independent from the more adverse assumptions of the adverse scenario. The IFRS 16 compliant figures show a slightly higher EBIT but a lower net profit. Therefore, the EBIT margin also increases compared to the EBIT margin based on Table 3. At the end of the restructuring period the EBIT margin will be [...] %, going up to [...] % at the end of the planning period. The main impact is visible in the balance sheet. The total assets are around 2,5 times higher than under German accounting rules. That change results in ROCE being significantly lower, between [...] % and [...] % in the baseline scenario and [...] % to [...] % in the adverse scenario, respectively.

Table 12

Projected profit and loss account with capitalised leases in the baseline scenario

In EUR million	Restructuring-period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Operating income	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating expenses	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet rental costs</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Depreciation and amortisation	[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽⁴⁶⁾ For the merger and acquisition process and in reporting to KfW, Condor uses IFRS planning figures. For KPMG's restructuring assessment, IFRS figures were reconciled with HGB figures. Therefore, while the forecasted figures in the restructuring assessment are also in line with the IFRS, IFRS 16 was not used for the business plan.

In EUR million	Restructuring-period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
<i>Thereof: Fleet depreciation</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating profit (EBIT) pre-exceptional	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Finance costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Linked with Fleet</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net result for the year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBITDA (p.e.) margin	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBIT (p.e.) margin	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Yield	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total available seat kilometer [ASK] (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total rev. passenger kilometer [RPK] (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total seat load factor	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total passengers (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

Table 13

Balance sheet with capitalised leases in the baseline scenario

In EUR million	Restructuring -period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Assets	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current assets > 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet (assets)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Current assets < 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Cash and cash equivalents</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Liabilities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Equity	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current liabilities > 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Longterm financial liabilities > 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]

In EUR million	Restructuring -period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Short-term liabilities < 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term financial liabilities < 1year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
ROCE	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

Table 14

Projected profit and loss account with capitalised leases in the adverse scenario

In EUR million	Restructuring -period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Operating income	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating expenses	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet rental costs</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Depreciation and amortisation	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet depreciation</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operating profit (EBIT) pre-exceptional	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Finance costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Linked with Fleet</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Net result for the year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBITDA (p.e.) margin	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBIT (p.e.) margin	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Yield	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total available seat kilometer [ASK] (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total rev. passenger kilometer [RPK] (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total seat load factor	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total passengers (in m)	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

Table 15

Balance sheet with capitalised leases in the adverse scenario

In EUR million	Restructuring period				Post-restructuring		
	2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Assets	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current assets > 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Fleet (assets)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Current assets < 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Cash and cash equivalents</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Liabilities	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Equity	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Non-current liabilities > 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Long-term financial liabilities > 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term liabilities < 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Short-term financial liabilities < 1 year	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Thereof: Leases (liabilities)</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
ROCE	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Notification, Condor financial data.

- (80) Germany also provided amended cash flow statements adjusted to IFRS 16. However, the transposition only concerns a shift of cash flows between operating activities, investment activities and financing activities without any impact on the available liquidity.
- (81) Moreover, Germany also provided ROCE benchmarks for a group of European competitors. The benchmarks show that pre-COVID the average ROCE of the group was 6,9 %, or 11,8 % when calculated as median. ROCE was widely spread between – 20,3 % and plus 14,6 %, as shown in Table 16.

Table 16

ROCE of other airlines pre-COVID

	ROCE (%) 31 December 2019
Lufthansa	8,9
Norwegian	2,3
Eurowings	14,6
Ryanair	11,0

	ROCE (%) 31 December 2019
IAG	12,6
Easyjet	13,6
Wizz Air	12,7
Brussels Airlines	- 20,3
Average	6,9
Median	11,8

Source: Submission by Germany on 25 June 2021; data source: ORBIS database.

2.6. Measures to limit distortions of competition

(82) The German authorities committed to the following three measures to limit distortions of competition for the duration of the restructuring period until 30 September 2023:

- (a) Condor's own fleet would not exceed [...] aircraft and Condor would not produce more than [...] million seats per fiscal year; that limitation would be without prejudice of Condor's ability to [...], provided the following conditions would be met:
 - (1) [...]
 - (2) [...]
 - (3) [...]
 - (4) [...]
 - (5) Germany would notify⁽⁴⁷⁾ for authorisation to the Commission any reasoned request [...]. The Commission would authorise the request within a period not exceeding 15 working days from the provision of the requisite information or refuse the request, with reasons.
- (b) Condor would refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of Condor;
- (c) Condor would refrain from publicising State support as a competitive advantage when marketing its products and services.

2.7. The situation in the absence of restructuring aid

(83) Germany submitted that, in the absence of restructuring aid, Condor could not have exited insolvency proceedings. Indeed, the entry of a private investor was a central element of Condor's insolvency plan and the withdrawal of PGL caused a prolongation of the insolvency. Moreover, the investment agreement with the new investor Attestor, was conditional upon the restructuring of the KfW loans and would not have been signed in the absence of the aid. As a consequence, Condor would soon have run out of liquidity. This would have triggered the suspension and subsequent withdrawal of its operating licence, which would have deprived Condor of its main source of income and would have led to Condor's liquidation. It would also lead to the KfW loans not being reimbursed, the loss of over 4 000 jobs in an already economically distressed situation and a reduction of competition on the German leisure travel market.

⁽⁴⁷⁾ Germany has not notified any such request to the Commission during the restructuring period.

- (84) Germany submitted that Condor played a crucial role in the German leisure market, which in the event of Condor's market exit could not have been easily filled by any competitor. In particular, Condor occupied a unique position on that market. It was the only airline in Germany that provided flight services to approximately 2 500 independent tour operators and 11 000 travel agencies, many of which were SMEs. Germany submitted that Condor was one of the last airlines on the German market that was capable and willing to adapt flight plans and services at short notice to the specific needs of tour operators such as REWE, Alltours, Schauinsland and FTI. Germany stated that tour operators had written to the German authorities to stress the importance of Condor for their business and had indicated that they depended on Condor to carry out their flights ⁽⁴⁸⁾. According to Germany, Condor's role would be particularly important in the ramp-up phase after COVID-19, when small tour operators and travel agencies would depend upon a flight partner with market experience and the technical skills offered by Condor to get their business back on track after the pandemic.
- (85) Moreover, Condor's experience, technical infrastructure, network of routes and contacts in destination markets, as well as the trust it has gained from stakeholders, are all key factors that together fuelled Condor's ability to successfully develop and sell tourist destinations. Germany submitted that that conjunction of elements was not present in other airlines active on the German leisure travel market but had been built and developed by Condor over many years, including proprietary IT solutions developed by Condor. Germany thus submitted that Condor's market exit would also have implied a loss of valuable technical knowledge and expertise developed by Condor in the context of its unique business model, which is not readily available on the market.
- (86) In addition, Condor had a network of around 5 800 suppliers, all of which would have been significantly affected by the company's market exit, especially in the distressed economic situation that prevailed at the moment of granting the aid as a result of the COVID-19 pandemic. Condor also employed more than 4 000 people and its market exit would have been detrimental to specialised technical staff, especially in the then prevailing circumstances, where many European airlines were reducing capacity as a consequence of the effects of the COVID-19 pandemic on global air travel.
- (87) In addition, Germany submitted that Condor's market exit would have been detrimental to competition in the German air travel market. The market was already very consolidated and the Lufthansa group, which occupied a dominant position, was also expanding into the leisure travel market. Germany considered that Condor's market exit would lead to a further concentration of the market which would be detrimental to competition in leisure air travel, as it would reduce innovation and lead to higher prices.

2.8. Grounds for initiating the procedure

- (88) As a result of the annulment of the 2021 restructuring aid decision by the 2024 Condor judgment, the Commission raised doubts with regard to the compliance of the restructuring aid measure in the form of a debt write-off with point 67 of the R&R Guidelines.
- (89) First, the Commission expressed doubts on whether, following the write-off of the debt, a positive return for the State was still necessary or whether the risks of excessive risk taking or moral hazard of existing shareholders and subordinated creditors do not arise when there is no remaining equity of the company after losses have been accounted for. In this regard, the Commission, expressed doubts whether, having regard to the amount of (negative) equity remaining prior to the State intervention and the total write-down of shares by former shareholder TGC, it would be appropriate to consider that the expected amount, or even a zero amount, awarded a reasonable share of gains to the State in remuneration of the total amount of debt write-off that it granted, within the meaning of point 67 of the R&R Guidelines (see opening decision, recital 172). Second, in case a reasonable return of the State was still necessary, the Commission expressed doubts whether the earn-out mechanism set up for Condor's repayment of the junior tranche of loan 1 put forward by the German authorities would meet the requirement set in point 67 of the R&R Guidelines (see opening decision, recital 173).

⁽⁴⁸⁾ Germany submitted examples of letters from tour operators as Annex 13 to the notification.

- (90) Further, in view of the possible impact of a hypothetical non-compliance of the remuneration of the debt write-off with point 67 of the R&R Guidelines, the Commission also raised doubts with regard to the calibration of the measures to limit distortions of competition generated by the aid, as offered by Germany (opening decision, recital 189). As a result, the Commission had doubts on whether the restructuring aid could be declared compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

3. COMMENTS FROM INTERESTED PARTIES

3.1. Comments from Condor

- (91) In its observations submitted on 15 October 2024, registered on 16 October 2024, Condor considers that the restructuring aid at issue fully complies with point 67 of the R&R Guidelines and is fully compatible with the internal market. Namely, according to Condor, in circumstances such as those at stake: (i) point 67 of the R&R Guidelines does not require affording the State a share of future gains in value of the beneficiary; (ii) in any event, in this case, the restructuring package negotiated with Attestor and the earn-out mechanism comprised therein afford the State a share of future gains in value of Condor and that share is reasonable; and (iii) there is no reason to recalibrate the measures limiting competition distortions that were offered by Germany.
- (92) As regards the argument referred to in recital (91)(i), according to Condor, in this case, point 67 of the R&R Guidelines is satisfied if the share of future gains in value of the beneficiary afforded to the State amounts to zero and a share of a zero amount is reasonable under the circumstances of the case.
- (93) Firstly, this follows from the objective of point 67 of the R&R Guidelines, which under the circumstances of this case cannot justify requiring the German State to be afforded any share of future gains in value of Condor. Condor considers that there is no 'moral hazard' problem in this case and agrees with the Commission that a risk of moral hazard exists only in relation to *existing* shareholders and subordinated creditors. The shareholders and other creditors, none of which was a holder of subordinated debt, from the time before the aid was granted, have written off their shares or claims in full, or quasi-fully, as part of the insolvency proceedings ⁽⁴⁹⁾, in accordance with point 66 of the R&R Guidelines, and in Condor's view there is no more scope for achieving greater or further prevention of moral hazard or excessive risk taking. The debt write-off at stake hence does not benefit existing shareholders or creditors, but only future shareholders.
- (94) Also, Condor considers that there is no moral hazard problem regarding Attestor, as Attestor – as Condor's new shareholder – is not covered by the objective to prevent moral hazard under the R&R Guidelines. Likewise, SGL's involvement does not give rise to any moral hazard problem given that it had a purely fiduciary role, aimed at the entry of the new investor.
- (95) Condor submits that the package of measures agreed between the Federal Government and Attestor is part of a negotiated and balanced solution, and in such a setup, awarding additional remuneration to the State implies depriving Attestor of that remuneration and thus requiring a new investor to share the burden of excessive past risk taking by former share- or debt holders. Such a solution would deter private investors, as it would run counter to the objectives of minimising State aid and undistorted competition, and it would also run counter to the last part of point 66 of the R&R Guidelines, from which it follows that those who have injected fresh equity should not be disproportionately affected.

⁽⁴⁹⁾ In particular, the shares of the TCG in Condor were written down to zero in the insolvency proceedings. The TCG is in liquidation. It will in no way benefit from any upside of the successful restructuring of Condor. Also, Condor's other creditors accepted a quote of 0,1 % of their claims in the insolvency plan endorsed by the German insolvency court and thus also almost completely wrote off their claims.

- (96) Secondly, according to Condor, it also follows from the second part of point 67 of the R&R Guidelines ⁽⁵⁰⁾, that in this case, a State share of future gains in value of Condor of a zero amount is reasonable. This is so given that there is no capital injection (i.e. the amount of 'State equity injected' is zero) and given that there is no – or only negative – 'remaining equity of the company after taking losses into account' to which an assumed capital injection by the State could be set in relation to determining the reasonableness of the State's share of future gains in value of the beneficiary. Namely, Condor's equity is expected to remain negative until 2026, until the loans granted as aid are repaid in September 2026; it could only become positive after 2026. In Condor's view, despite being 'equity enhancing', debt write-offs must be distinguished from 'capital injections'.
- (97) As regards the argument referred to in recital (91)(ii), Condor submits that, in any event, in this case, point 67 of the R&R Guidelines is satisfied, because the State is afforded a share of future gains in value of Condor and that share is reasonable (a) due to competitive investor selection; and (b) due to the earn-out mechanism and other circumstances of the case.
- (98) Condor maintains that the reasonableness of the State share of future gains in value of Condor cannot be assessed on the basis of the criteria set out in the second part of point 67 of the R&R Guidelines. However, if it is nevertheless deemed necessary to afford the State a share of future gains in value of the beneficiary, the reasonableness of that share must be assessed on the basis of all the circumstances, such as, in this case, the earn-out mechanism, the entire restructuring package, including the procedure for selecting the investor, the burdens borne by the existing shareholders and creditors and the own contributions made by Attestor.
- (99) According to Condor, the reasonableness due to competitive bidding process stems from the fact that Attestor was selected from three bidders in a competitive procedure and Attestor's offer provided the best conditions for Condor and for the repayment of the State loans (in terms of the repayment of a high proportion of the outstanding loan amount, but also for an earn-out mechanism). Such a competitive bidding procedure ensures – in addition to the negotiated character of the terms agreed between the German Federal Government and Attestor – that the agreed State share of future gains in value of Condor corresponds to the best conditions achievable from investors on the market.
- (100) According to Condor, the reasonableness is further due to the earn-out mechanism ⁽⁵¹⁾ that applies to the [...]. According to Condor, in the best-case scenario, the entire amount of EUR [...] million will be paid back; the opening decision thus [...] million as being the State's share of future gains in the best-case scenario and the range of between EUR [...] million and EUR [...] million mentioned by Germany in the notification was an estimate that only served to quantify the aid element.
- (101) Finally, Condor points to the following other circumstances of the case that constitute further elements in favour of the reasonableness of the State's share of future gains in value of Condor:
- (a) the State receives the [...] regardless of Condor's future gains in value. This interest is payable even if no repayments are due under the earn-out mechanism;
 - (b) the package negotiated with Attestor considerably shortened the duration of the existing loans. The full remaining amount will be repaid already by September 2026, as opposed to December 2031 for the original tranche B of loan 1 and loan 2;
 - (c) without the entry of Attestor, Condor would have been insolvent. It would not have been able to fulfil its repayment obligations, nor to pay the interest on the loans.

⁽⁵⁰⁾ Pursuant to the second part of point 67 of the R&R Guidelines, the reasonableness of the share of future gains in value of Condor afforded to the State must be determined 'in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for'.

⁽⁵¹⁾ The earn-out mechanism as described by Germany (see recital (53)).

- (d) Condor's equity is expected to remain negative until the repayment of the loans in September 2026. Pursuant to point 67 of the R&R Guidelines, the reasonableness of the State's share of future gains in value of the beneficiary must be determined by considering the 'remaining equity of the company after losses have been accounted for'. If it is nevertheless deemed necessary to afford the State a share of future gains in value of Condor also in the case of negative equity, it must at least follow from the reference to the 'remaining equity of the company' that the lower this remaining equity is, the lower the State share of future gains in value of the beneficiary must be.

(102) As regards the argument referred to in recital (91)(iii), according to Condor there is no reason to recalibrate the measures offered by Germany to limit competition distortions generated by the aid, which are appropriate given that the restructuring aid at issue fully complies with point 67 of the R&R Guidelines and is fully compatible with the internal market.

3.2. Comments from Ryanair

(103) In its observations dated 16 October 2024, Ryanair supports the Commission's doubts on whether the debt write-off authorised by the 2021 restructuring aid decision granted the State a reasonable share of future gains in value of the beneficiary and the calibration of the measures to limit competition distortions, as offered by Germany. However, Ryanair voices several additional concerns.

(104) Ryanair considers, first, that the write-offs accepted by Condor's creditors are not a general measure, as wrongly held by the Commission, but result from a collective decision of the creditors.

(105) Ryanair also contends that disapplying point 67 of the R&R Guidelines, as suggested by the Commission, would contradict the principles of efficient public spending and the need to avoid wasting public resources. According to Ryanair, the facts that Condor's original shareholder lost all its shares and that Attestor was not previously a shareholder, are irrelevant, as it is the future shareholders that are entitled to value gains and they should share the burden with the State. Moreover, the fact that Condor has negative equity does not mean that no future gains may be expected; by injecting equity, Attestor has demonstrated that there is potential for future gains. Therefore, none of those points can justify a finding that zero remuneration would still afford the State a reasonable share in future value gains.

(106) Moreover, the repayment of the junior tranche of loan 1 is conditional upon future revenues, which might result in Condor not repaying that tranche, as its revenues will likely be insufficient due to the shortcomings of its restructuring plan. Ryanair thus claims that the earn-out mechanism is another advantage in favour of Condor and Attestor and not capable of granting a positive return to the State, regardless of hypothetical future payments. Ryanair also contends that the Commission's criteria for assessing the reasonableness of the remuneration are inadequate. This is because the evaluation of returns from the earn-out should be based on Condor's risk profile, not KfW's, for example bond yields of airlines with a credit rating below investment grade. Ryanair notes that the discount rate to be applied to cash flows, which is not specified, should reflect a risk level based on equity instruments and not debt instruments.

(107) Ryanair considers the Commission's position on the absence of new equity injected by the State and remaining equity after losses are accounted as set out in recital 166 of the opening decision to be in contradiction with paragraph 217 of the 2024 Condor judgment⁽⁵²⁾. Ryanair considers that Germany should have included a clause through which the written-off amounts would be recouped depending on Condor's future performance or converted the amounts to equity.

⁽⁵²⁾ *Ryanair v Commission*, Case T-28/22, paragraph 217 states that: 'In that regard, it should nevertheless be observed that the latter part of the sentence follows immediately on from the requirement that the State should be afforded a "reasonable share" of future gains in value of the beneficiary. Accordingly, it may be understood as an indication of what constitutes, quantitatively speaking, a "reasonable share", which is to be determined on the basis of the proportion that the amount paid by the State represents in comparison with the amount of the remaining equity of the beneficiary after losses have been accounted for. That interpretation would thus make it possible to reconcile the introductory and final parts of point 67 of the R&R Guidelines.'

- (108) On negative effects of the aid on competition and trade, Ryanair considers that by not affording an adequate share of future gains to the State despite the equity-enhancing nature of the support, the aid fails to mitigate moral hazard, which would provide an incentive to Condor's shareholders to engage in aggressive competition and make insufficient the notified measures to limit competition distortions. In addition, the remuneration not paid to the State would give Condor additional cash that it could use to expand and lower prices. Finally, Ryanair notes that the decision is silent on the extent to which the cap on the size of the fleet committed by Germany as part of the measures to limit competition distortions concerns aircraft that would have been phased out in any event to restore Condor's viability because they were too old.
- (109) In addition, Ryanair criticises the opening decision for (i) not containing allegedly crucial information; and (ii) limiting its scope to the two points on the basis of which the General Court annulled the 2021 restructuring aid decision.
- (110) Regarding the lack of information in the opening decision, Ryanair claims that its procedural rights have been violated by excessively redacting the text, in particular regarding Condor's financial data (EBIT margin, ROCE), the enterprise valuations by Rothschild and PWC, the level of remuneration of the aid with and without earn-out mechanism, as well as the fleet cap after phasing out of aircraft and exceptions to the cap. This would deprive Ryanair from the possibility to submit meaningful comments about those crucial parameters of Condor's restructuring plan.
- (111) Regarding the scope of the opening decision, Ryanair considers that by limiting its assessment to the two points on which the 2021 restructuring aid decision was annulled, the Commission risks missing out on other possible instances of incompatibility of the aid with the R&R Guidelines or on which Ryanair is only now in a position to comment. In this regard, Ryanair raises six issues relating to (i) indirect advantages that Attestor might have benefitted from; (ii) Condor's eligibility for the aid as a company being taken over by a large group; (iii) compliance of the aid with Section 3.1 of the R&R Guidelines; (iv) need for State intervention; (v) appropriateness of the aid; and (vi) proportionality of the aid. Those arguments in essence correspond to the pleas and items of evidence raised by Ryanair in its action for annulment in Case T-28/22, which the General Court rejected in the 2024 Condor judgment.
- (112) On the first point, Ryanair urges the Commission to broaden the scope of the investigation and to examine whether, through the framework surrounding the granting of the restructuring aid to Condor and the commitments made by Germany, Attestor could have benefitted from that aid although it was not eligible for restructuring aid. Ryanair considers that the aid may have allowed Attestor to acquire the airline Marabu in 2022.
- (113) Regarding the second issue, Ryanair considers that given Condor's financial difficulties and Germany's desire to sell off the company, as well as the likely absence of a tender procedure in line with point 84 of the Notice on the notion of State aid ⁽⁵³⁾, Attestor may have acquired Condor at a price below market value, which would, according to Ryanair, require the Commission to investigate Condor's eligibility for restructuring aid as a company being taken over by a larger business group.
- (114) On the third issue, Ryanair argues that contrary to the Commission's findings, Condor would not bundle demand to niche destinations for small tour operators nor offer them short-term flight plan flexibility, because Condor's advertised top destinations are operated by many other airlines and certain flights on Condor's website are on sale until November 2025. Moreover, Ryanair contends that the restructuring plan is not appropriate and does not restore Condor's long-term viability because, first it relies on an unrealistic assumption that from a pre-COVID underperformer (with for example EBIT margins of 1 % and 3 % as compared to peers' average and median of 5,7 %

⁽⁵³⁾ 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 C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

and 7,3 % respectively), Condor will have developed into outperforming peers by 2026, and second, point 51 of the R&R Guidelines expressly forbids that the aid would lead to the beneficiary outperforming the market. Ryanair also criticises the Commission's choice of peer group for benchmarking Condor's performance, as being composed of low-cost and full-service carriers and not comprising any airlines active in the long-haul leisure or charter segments. Furthermore, Ryanair considers that the Commission based its benchmarking on different peer groups for EBIT margin, ROCE and ROE, which would amount to cherry-picking the airlines needed, to prove a point.

- (115) With regard to the need for State intervention, Ryanair contends that Condor could have raised financing from the market, as other airlines such as American Airlines, Hawaiian Airlines, Azul and GOL did at that time, and which according to their credit rating were in a similar position as Condor, based on the Commission's category ⁽⁵⁴⁾ CCC, which means 'bad/financial difficulties'. According to Ryanair, the fact that Condor was then in insolvency proceedings has no bearing on the matter, as German insolvency law would rank lenders providing financing to companies in insolvency procedures above ordinary lenders in a subsequent insolvency and as several insolvent airlines (Norwegian Air, Delta Airlines, LATAM Airlines), managed to obtain market financing. Moreover, Condor's absence of credit rating, stemming from its participation in its former mother company's cash pool, would not be an obstacle to obtaining financing on the private market, where many companies do not have a rating.
- (116) Concerning the appropriateness of the aid, Ryanair criticises the opening decision for not comparing the aid solution with other options and for failing to check the remuneration of the aid, claiming that the decision merely states that the aid addresses Condor's solvency and liquidity issues. Ryanair considers that the possibility of a debt-to-equity swap, which would equally have improved Condor's solvency position, should have been assessed. According to Ryanair, this would not only have been less distortive than a debt write-off but would also have entitled Germany to a share in Condor's future gains, thus bringing the aid more in line with point 67 of the R&R Guidelines. Finally, Ryanair submits that it is impossible to comment on whether the aid was properly remunerated as the decision is silent on the level of remuneration if the earn-out mechanism is not triggered.
- (117) Regarding the proportionality of the aid, Ryanair claims, first, that the Commission was wrong to calculate the restructuring aid as the difference between the EUR 550 million KfW loan and the COVID-19 damage of EUR 249,02 million plus the EUR 20,2 million interest to be written off, resulting in a total of EUR 321,18 million. Ryanair considers that the Commission should have deducted only the amount of damage compensation aid approved by the Commission in the Condor I and Condor II decisions, namely EUR 204,1 million, resulting in restructuring aid of EUR 345,9 million. Moreover, according to Ryanair, Germany's reasoning on the amount of restructuring aid is flawed as it deducts the write-off which is the restructuring aid and deducts twice the amount written off under the Condor II decision. The Commission could therefore not use that fanciful amount for depicting its own estimate as conservative in the opening decision. Second, Ryanair contends that certain costs incurred by Condor during the restructuring period would already have been compensated by the damage compensation aid, which covers periods that overlap with the restructuring period. According to Ryanair, damage compensation contributes to cost coverage, as this is the very objective of such aid. As the opening decision indicates that the restructuring costs include uncovered operating costs, Ryanair finds it plausible that the restructuring aid covers at least some costs already compensated through the damage compensation aid, as for example the repayment of the rescue loan, which the opening decision lists as both one of the costs of restructuring and one of the purposes for which the damage compensation was used.
- (118) Ryanair concludes that thanks to the restructuring aid, Condor has been able to open new routes, acquire new aircraft and reinforce its market share at airports and if the Commission were to authorise the aid, Ryanair's competitive position would be affected on several routes. Ryanair therefore calls on the Commission to prohibit the aid and require Germany to recover it from Condor.

⁽⁵⁴⁾ As per the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

4. COMMENTS FROM GERMANY

4.1. Comments on the decision opening the formal investigation procedure

- (119) In its observations dated 27 September 2024, Germany considers that the restructuring aid is fully compatible with the internal market and was so at the time of the 2021 restructuring aid decision. The German authorities submitted that Germany supports the appeal by Condor against the judgment of the General Court annulling the 2021 restructuring aid decision ⁽⁵⁵⁾ and the comments presented in the present procedure are without prejudice to those appeal proceedings.
- (120) After the closure of the insolvency proceedings of Condor on 30 November 2020, during the investor search and when the restructuring aid was granted, there were no existing shareholders or subordinated creditors of Condor. The selection of the investor was carried out in a competitive, transparent, non-discriminatory and unconditional bidding process and Attestor's bid was selected from among three offers as the most advantageous for the continuity of Condor and for the reimbursement of the KfW loans, thereby minimising the contribution by the German State and the *Land* of Hesse, the guarantors of the loans. In the context of the package of measures agreed with the new investor Attestor, which is not covered by the purpose of the requirement of mitigating moral hazard set out in the R&R Guidelines, any further contribution by Condor to the State's profits would have been withdrawn from the new investor, leading to the failure of the solution that maintained Condor in (restructured) operation. The earn-out mechanism is part of that negotiated package and so, contrary to what Ryanair argues (see recital (106)), does not constitute an 'additional advantage' in favour of Condor.
- (121) Moreover, Germany observes that, in the case of Condor, when the measures were granted, there was no remaining (positive) equity, which is expected to remain negative until the repayment of the loans granted as aid, which is expected in September 2026. In Germany's view, no remuneration in the form of share of future gains in value of Condor would be reasonable in application of point 67 of the R&R Guidelines.
- (122) Even if any such remuneration needed to be positive, Germany considers that the earn-out mechanism would allow Germany to adequately participate in future gains in value of Condor. This mechanism provides that if the equity valuation of Condor – [...] – exceed EUR [...] million, an amount of cash [...] million, would be paid to Germany. This would be more than twice the EUR [...] million [...]. With amounts of valuation between EUR [...] million and EUR [...] million, the payment to Germany would be between [...] of the loan principal, so that even with a valuation well below the EUR [...] million invested by Attestor, the State would benefit from increases in the (equity) value of Condor.
- (123) With respect to the expectation of positive remuneration for the State, Germany provided a calculation that compares the remuneration for the State resulting from the earn-out mechanism with the 'equity enhancing' amount of the aid. Germany calculates the 'equity enhancing' part of the aid as being either EUR [...] million or EUR [...] million. The amount is based on (i) [...] ⁽⁵⁶⁾; (ii) [...]; (iii) [...]. At maximum (EUR [...] million) the earn-out would therefore represent in the best- case scenario [...] % of the 'equity enhancing' amount of the aid. Under conservative assumptions, i.e. the estimated payment of between EUR [...] and [...] million described in recital (50) of the opening decision, the payment under the earn-out mechanism would represent between [...] % and [...] % of the 'equity enhancing' amount of the aid.
- (124) Furthermore, regarding the interest savings, i.e. the EUR [...] million, Germany argues that Condor would not have been able to pay the interest at all in the absence of Attestor's involvement. Furthermore, a large part of the 'interest advantage' only arises from the significantly longer maturity of the original financing compared to the restructured financing. The interest conditions were the same. In addition, tranche B of Loan 1 of the initial financing was a revolving loan that would not necessarily have been drawn down to the maximum permissible amount until 2031, so significantly lower interest rates would also have been conceivable. Germany therefore considers an economic comparison to be of only limited significance. Moreover, KfW saved approximately EUR [...] million in refinancing costs thanks to the investment by Attestor.

⁽⁵⁵⁾ Case C-505/24 P, *Condor Flugdienst GmbH v Ryanair DAC*.

⁽⁵⁶⁾ The calculation is based on the following interest rates:
[...].

- (125) Finally, since the German State is afforded an appropriate remuneration related to future gains in value of the beneficiary, even where the necessary remuneration would be zero, Germany considers that the calibration of measures mitigating distortions of competition is appropriate.

4.2. **Comments on the observations of third parties**

- (126) On 18 November 2024, the German authorities informed the Commission that they would not submit any observations regarding the third-party comments submitted by Condor and Ryanair.

5. **ASSESSMENT OF THE AID**

5.1. **Existence of State aid**

- (127) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

- (128) The qualification of a measure as aid within the meaning of that provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

5.1.1. *State resources and imputability to the State*

- (129) As set out in recitals (137)-(139) of the Commission's Condor I decision, the decision to grant the initial EUR 550 million loans was taken by the German Federal Government. The loans were extended at subsidised interest rates via the public development bank KfW. The German Government imposed the granting of the loan on KfW, which is merely the vehicle of the Government for channelling the loans. KfW will not earn any interest nor bear any risk. The interest payments are passed on to the Government and the Government extends a guarantee to KfW for the repayment of the loan. The guarantees were issued by the Federal Government. The loans and the guarantees are inseparable, i.e. one would not exist without the other. The decision to grant the measure was thus imputable to the State and the measure was financed through State resources, since it was financed from the general budget of the State. The decision to restructure the KfW loans (see recital (52)) and to write off the interest on the over-compensation was equally taken by the German Federal Government, with effects on the resources of the State that are foregone, postponed for repayment and, in any event, involved.

- (130) The bid for the sale of Condor had been selected by Condor's Supervisory Board, whose shareholder members are representatives of the State (recital (37)). The implementation of the purchase agreement was necessary to ensure the repayment of the KfW loans. The implementation of the purchase agreement was conditional upon the loan restructuring and the interest write-off. The loan restructuring has been implemented through a framework contract, concluded at the request of the Federal Government, between KfW and Condor.

- (131) The Commission therefore concludes that the restructuring of the KfW loans and the interest write-off on the over-compensation involve State resources and the decision to grant the measures is imputable to the State.

5.1.2. *Advantage*

- (132) The notified measures helped Condor finance the continuation of its operations during the ramp-up phase after the COVID-19 pandemic and the implementation of its restructuring plan by giving it access to finance that Condor, given its specific situation and the circumstances prevailing at the moment of granting the aid, had not been able to obtain on the market. In that respect, Condor could not implement the purchase agreement with Attestor without the restructuring of the KfW loans or the waiver of the repayment of the interest on the over-compensation. The loans would not exist and would not have been arranged as they were if Germany had not granted the rescue aid and the damage compensation aid to Condor (recitals (2) and (3)). The capital investment and implementation of the leasing facility by Attestor were conditional upon the signature of the purchase agreement, which in turn is conditional upon the implementation of the loans restructuring.
- (133) Overall, the restructuring of the State-guaranteed KfW loans has various non-severable and interdependent components of deferrals, write-offs and conditionality of repayment of tranches that reduce or ease the overall remuneration due to the lender. The components are linked to one another to support the continuation of Condor's operations for reasons of public policy pursued by Germany. Moreover, Germany has waived its right to receive repayment of the interest on the over-compensation that results from the earlier granting of aid. Those aided components had the common object and effect of freeing financial resources that support Condor's restructuring plan and which Condor could not have borrowed or obtained all together on the market.
- (134) The Commission therefore concludes that the notified measures confer an economic advantage to Condor within the meaning of Article 107(1) TFEU.

5.1.3. *Selectivity*

- (135) The notified measures are granted solely for the benefit of Condor. As the Court of Justice has stated ⁽³⁷⁾, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective. This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. Whilst Germany has provided or may still provide State aid to other airlines competing with Condor, in any event, the loan restructuring and the interest waiver are not part of a broader measure of general economic policy to provide the same type of ad hoc support to undertakings, which are in a comparable legal and factual situation in light of the objective of such a general policy measure, active in the aviation sector or other economic sectors, but is made available only to Condor.
- (136) Therefore, the Commission concludes that the notified measures are selective within the meaning of Article 107(1) TFEU.

5.1.4. *Distortion of competition and effect on trade*

- (137) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States. Condor provides air transport services on routes from Germany to other Member States. The aviation sector is open to competition in the Union and service provision from one Member State to another takes place.
- (138) The notified measures are therefore liable to distort or threaten to distort competition and to affect trade between Member States.
- (139) In view of the above, the Commission concludes that the notified measures constitute State aid to Condor within the meaning of Article 107(1) TFEU.

⁽³⁷⁾ Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, Case C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

5.2. Lawfulness of the measures

- (140) By notifying the aid in the form of a restructuring and a write-off of debt and interest prior to its implementation, the German authorities had initially complied with their obligations under Article 108(3) TFEU.
- (141) Nevertheless, despite prior notification and Commission approval before granting, following the annulment of the 2021 restructuring aid decision by the General Court, to the extent the notified measures constitute State aid, they have become unlawful aid retroactively since the moment when they were granted, in so far as they are no longer covered by the Commission's approval.

5.3. Compatibility

- (142) Since the Commission concluded that the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market. As the measures constitute unlawful aid, their compatibility needs to be assessed in accordance with the legal provisions in force at the time the aid was granted at the end of July 2021.
- (143) Article 107(3), point (c), TFEU provides that aid to facilitate the development of certain economic activities may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (144) Thus, for the aid to be declared compatible, on the one hand, it must be aimed at facilitating the development of certain economic activities or of certain economic areas and, on the other hand, it must not adversely affect trading conditions to an extent contrary to the common interest.
- (145) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission balances the positive effects of the proposed aid for the development of the activities which the aid is intended to support against the negative effects that the aid may have on the internal market ⁽⁵⁸⁾.
- (146) In the R&R Guidelines, the Commission set out the criteria which it examines when assessing the compatibility of a company's restructuring aid with the internal market pursuant to Article 107(3), point (c), TFEU ⁽⁵⁹⁾. According to point 137 of those Guidelines, the Commission will examine the compatibility with the internal market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 108(3) of the Treaty on the basis of those Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union*. That is so in the case at hand.
- (147) It does not result from the notification that the restructuring aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. In particular, the Commission has not sent a reasoned opinion to Germany on a possible infringement of Union law that would bear a relation to this case and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it, or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law.
- (148) Germany considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (149) In view of the nature and aim of the State aid at stake and the claims of the German authorities, the Commission will assess whether the planned funding supporting the restructuring complies with the relevant provisions laid down in the R&R Guidelines.

⁽⁵⁸⁾ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission (Hinkley point (C))*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

⁽⁵⁹⁾ R&R Guidelines, point 38.

5.3.1. *The aid facilitates the development of an economic activity*

- (150) Under Article 107(3), point (c), TFEU, for State aid to be considered compatible with the internal market, it must facilitate the development of certain economic activities or certain economic areas.
- (151) In that regard, to show that restructuring aid is intended to facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure. In the specific context of restructuring aid, the Commission notes that, as acknowledged in point 43 of the R&R Guidelines, in fact, market exit is important to the wider process of productivity growth, thus merely preventing an undertaking from exiting the market does not sufficiently justify State aid. On the contrary, rescue and restructuring aid is among the most distortive types of State aid, as it interferes with the process of market exit. However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, also beyond the very activities carried out by the beneficiary. This is the case where in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is provided in point 44 of the R&R Guidelines.
- (152) Such situations occur, inter alia, where the aid avoids the risk of interruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in, or where the beneficiary plays an important systemic role in a region or sector from which its exit would have potential negative consequences⁽⁶⁰⁾. By enabling the beneficiary to continue its operations, the aid thus prevents such market failure or social hardship. In the case of restructuring aid, however, this is only true where the aid enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is premised on the implementation of a restructuring plan that restores the beneficiary's long-term viability.
- (153) The Commission, hence, will first assess whether Condor is eligible to restructuring aid (Section 5.3.1.1), whether the aid is intended to prevent a situation of market failure or social hardship (Section 5.3.1.2) and whether it is accompanied by a restructuring plan restoring the beneficiary's long-term viability (Section 5.3.1.3).

5.3.1.1. Eligibility: company in difficulty

- (154) In order to be eligible for restructuring aid, the beneficiary must be an undertaking in difficulty. An undertaking is considered to be in difficulty when it is practically certain that, in the absence of State intervention, it will be forced to abandon its activity in the short or medium term. In particular, a limited liability company is considered to be in difficulty where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when the deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital⁽⁶¹⁾.
- (155) In addition, an undertaking company which is part of a group may benefit from restructuring aid only if it can be shown that its difficulties are specific to it and are not the result of an arbitrary allocation of costs within the group, and that those difficulties are too serious to be resolved by the group itself⁽⁶²⁾.
- (156) As set out in Table 4, Condor has at present and had at the moment of granting of the aid negative equity and, accordingly, the cumulative amount of losses exceeds all of its subscribed share capital. This implies that all of its subscribed share capital has disappeared.

⁽⁶⁰⁾ Point 44(b) and (c) of the R&R Guidelines.

⁽⁶¹⁾ Point 20(a) of the R&R Guidelines.

⁽⁶²⁾ Point 22 of the R&R Guidelines.

- (157) The description of the ownership of Condor at the moment the aid was granted also shows that Condor was not part of a wider group. Condor's sole shareholder at that time, SGL, did not have other holdings in other undertakings. SGL was merely a trust company, created solely for the purpose of holding the shares since Condor's exit from insolvency proceedings in December 2020 and pending their sale to an investor. The purchase agreement deprived SGL of most of the rights of a shareholder. It follows that Noerr & Stiefenhofer, the ultimate parent of Condor, could not via SGL exercise meaningful ownership rights over Condor, so that it could not be considered to be part of a Noerr group either (see recital (26)). Attestor's purchase offer was conditional upon the loan restructuring and was implemented only on 28 July 2021, after the Commission had initially approved the restructuring aid. Accordingly, Condor's difficulties cannot be held to result from an arbitrary allocation of costs within a hypothetical wider group.
- (158) Moreover, Attestor's bid for Condor was selected at the issue of a competitive, transparent, unconditional and non-discriminatory bidding process by Condor's board as the best of among three offers received (see recitals (37) and (120)). Attestor's bid was also considered by the German Federal Government to offer the best conditions for the repayment of the KfW loans, so that the restructuring aid could be kept to a minimum. Contrary to what Ryanair contends (see recital (113)), there is no indication that the price paid by Attestor was affected by the German Government's alleged desire to sell Condor in a 'fire-sale'. In fact, over a year elapsed between the time when PGL withdrew from its bid for Condor in April 2020 (see recital (35)) and the time when the sales agreement with Attestor was signed in July 2021, after a bidding process which triggered bids from three interested acquirers (see recital (37)). The Commission therefore considers that Attestor paid a market price for Condor and that, as a result, Attestor did not benefit from any part of the restructuring aid granted to Condor.
- (159) For the sake of completeness, the Commission adds that Condor's former parent, TCG had entered compulsory liquidation in 2019, long before the granting of restructuring aid, and was being wound up, so that it could not resolve the difficulties of Condor either. In the rescue aid decision, the Commission had considered that Condor's difficulties did not result from an arbitrary allocation of costs within the former TCG group and could not be shouldered by that group, which was in liquidation. The General Court had endorsed that assessment in its judgment in Case T-577/20. That judgment has not been appealed.
- (160) The General Court assessed the compliance with this condition in the 2024 Condor judgment and concluded that the Commission was entitled to find that Condor's situation did not fall within the scope of the prohibition under point 22 of the R&R Guidelines (beneficiary belonging to or being taken over by a larger business group) ⁽⁶³⁾.
- (161) The Commission therefore concludes that Condor is eligible for restructuring aid.

5.3.1.2. Development of an economic activity

- (162) Since, in order to be compatible with the internal market, a State intervention must aim to facilitate the development of an economic activity, with regard to restructuring aid, the Member State must demonstrate, inter alia, that the aid avoids the risk of interruption of an important service which is difficult to replicate and which a competitor could not easily provide in place of the beneficiary.
- (163) For the reasons set out in recitals (84) and (85), the Commission considers that Condor plays an important role in the German leisure travel market, in that it provides unique flight services, consolidating demand, providing flexible schedules and customised IT booking systems, to thousands of independent travel agencies and tour operators, many of which are SMEs.
- (164) In particular, the Commission notes that Condor bundles the demand to niche destinations for small tour operators and offers them short-term flight plan flexibility. The schedules of legacy and low-cost airlines are locked-in for longer periods and they are thus not able to offer such flexibility. Condor's proprietary booking system allows tour operators to place flights for package travels and offers the necessary flexibility to adapt to changes in demand (see recital (84)). Contrarily to what Ryanair submits (see recital (114)), this is not put into question by the fact that Condor's flights can be booked in advance nor by the fact that Condor (also) flies to certain destinations which are served by other airlines. No airline could conduct its business efficiently and profitably without having a flight schedule and offering seats for booking a bit in advance to customers. Despite offering this service, Condor remains

⁽⁶³⁾ Case T-28/22, *Ryanair v Commission*, paragraphs 44 to 54.

more flexible than scheduled airlines, and its essential function as consolidator and facilitator for travel agencies and tour operators has been underlined by testimonies from the travel industry. In particular, in the course of the assessment of the rescue aid for Condor, according to the information provided by Germany in the notification, tour operators have written to the German authorities to stress that they depend on those services for part of their business and would suffer considerable losses in turnover in the absence of such services (see recital (84)). To replicate those systems, competitors would have to build up the necessary expertise, network of destinations and contact points, as well as IT systems and processes, which would take a considerable amount of time and resources and could not be achieved in the short to medium term.

(165) Moreover, Condor's IT landscape enables both charter and global distribution system (GDS) bookings ⁽⁶⁴⁾ on touristic routes and its commercial systems enable the use of real-time data from various services and access via multiple channels. Condor thus provides access to leisure flights to over [...] travel agencies that do not own an IATA licence, via various interfaces that legacy and low-cost carriers do not offer. Thus, the Commission considers that in the absence of Condor's interfaces, operators without an IATA licence would entirely depend on consolidators for access to tourist flights and would have to pay additional consolidator service fees. The technology needed to operate those interfaces has largely been developed by Condor, and because it is not available on the IT-market it could not be replicated in the short to medium term.

(166) It is thus highly unlikely that an existing legacy or low-cost carrier would be both willing and able to build, within a reasonable timeframe, the required expertise, networks and technology to take over Condor's role as facilitator and consolidator for around 11 000 independent travel agencies and tour operators on the German leisure travel market. It is even less likely that Condor's role could be replicated by several carriers, each individually devising and implementing certain services, without any coordination nor interoperability between services.

(167) Moreover, the Commission notes that Condor has gained considerable expertise in opening and developing tourist destinations and has built technical capacities with regard to consolidating demand and flexible bookings and flight schedules via proprietary, customised IT programmes and processes that it has developed in-house. Its market exit would cause the loss of that technical knowledge and expertise, which would take time and investments in IT development and networking to rebuild.

(168) In addition, Condor has a well-functioning business model, which has merely suffered from the negative effects of events outside its control such as the insolvency of TCG and the COVID-19 pandemic. Despite the distressed economic situation prevailing at the moment of granting the aid, Condor has been able to attract private investors willing to fund the company, based on its business forecasts. It is an established player in Germany and important for maintaining competition on the German leisure travel market which is currently already highly concentrated and dominated by the Lufthansa Group. Tour operators have voiced concerns to the German authorities regarding a possible loss of Condor's services. Moreover, the German competition authority opened an investigation pursuant to Article 102 TFEU into Lufthansa's possible abuse of its dominant market position at the expense of Condor. At the issue of that investigation, the competition authority prohibited Lufthansa from terminating certain long-term feeder agreements with Condor ⁽⁶⁵⁾ in order to stop Lufthansa from abusing its market position to the detriment of Condor and to prevent further harmful concentration of the market. As a matter of fact, the Commission notes that Condor is the only remaining competitor to Lufthansa on long-haul destinations operated out of Germany. Accordingly, the Commission considers Condor is important for preserving effective competition in the German leisure long-haul air travel market.

⁽⁶⁴⁾ A global distribution system (GDS) is a computerised network that enables transactions between travel industry service providers, mainly airlines, hotels, car rental companies, and travel agencies, using real-time data (e.g. number of hotel rooms or flight seats available). Travel agencies rely on GDS for services, products and rates in order to provide travel-related services to end consumers.

⁽⁶⁵⁾ B9-21/212 vom 29.8.2022, Deutsche Lufthansa AG, Kündigung der Special Prorate Agreement mit der Condor Flugdienst GmbH, <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Missbrauchsaufsicht/2022/B9-21-21.html>.

- (169) Finally, Condor's market exit would have had negative effects on its network of close to [...] suppliers and on its staff of over 4 000, which would have been significantly affected (recital (86)). The potential effects would have been severe, especially in the distressed economic situation at the moment of granting the aid, when many airlines were reducing capacities and dismissing employees, so that they would have been unlikely to either procure sufficient business to Condor's suppliers or absorb a significant portion of Condor's staff. This is especially so, as Condor has an above average portion of long-haul leisure destinations, for which it bundles demand from around 11 000 tour operators and travel agencies. It is highly unlikely that competitors could have replicated Condor's services on those destinations and thus have achieved a sufficient plane load factor to operate them profitably. In addition, there were no indications that any competitor would have been willing to develop such a system of cooperation with tour operators and travel agencies. As a matter of fact, tour operators had confirmed that they depended on Condor for those services and that a market exit of Condor would cause them severe losses (see recital (84)).
- (170) Therefore, while some of Condor's routes might be attractive for a competitor on a stand-alone basis, there were no indications that any competitor or a handful of competing carriers could have taken over the whole of Condor's services in that it would at the same time have filled Condor's role as intermediary and consolidator for 11 000 independent travel agencies and tour operators, possess Condor's technical knowledge, expertise, contact network and customised IT systems and have taken over Condor's employees, planes and slots, many of which are for specialised long-haul niche destinations only operated by leisure carriers. Condor's market exit would thus have been likely to trigger severe social hardship for its clients, staff and suppliers. Without the aid, Condor would have been unable to continue providing this important service.
- (171) The General Court assessed the requirement of point 44 of the R&R Guidelines in the 2024 Condor judgment and concluded that the applicant had not demonstrated that the Commission should have had doubts as to whether Condor provided an important service hard to replicate or whether it would be difficult for any competitor simply to step in, within the meaning of point 44(b) of the R&R Guidelines ⁽⁶⁶⁾.
- (172) The Commission therefore concludes that the aid contributes to the development of the economic activity of air leisure transport in that it helps to maintain an important service that could not be easily replicated in its entirety and without social hardship by competitors in the short to medium term.

5.3.1.3. Restructuring plan and return to long-term viability

- (173) According to the R&R Guidelines, restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability within a reasonable timescale, excluding any further aid beyond the one supporting Condor's restructuring plan. The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems ⁽⁶⁷⁾.
- (174) The results of the restructuring must be demonstrated in a variety of scenarios, in particular by identifying performance parameters and the main foreseeable risk factors. The return to viability of the beneficiary must result in an appropriate return on capital invested after covering costs, without depending on optimistic assumptions about factors such as variations of price or demand. Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges and is also able to compete in the marketplace on its own merits ⁽⁶⁸⁾.
- (175) In that respect, the restructuring plan includes a set of serious, consistent and mutually reinforcing measures (recitals (40) to (43)) that improve the efficiency of service provision and streamline the cost base of Condor. In particular, the complete renewal of Condor's oldest aircraft, namely its long-haul fleet, made possible by Attestor's EUR 250 million investment in a leasing facility (see recital (47)), coupled with the ambitious staff, contract and process restructuring programme that Condor was in the process of implementing at the time of granting of the aid (see recital (41)) would further enhance its competitiveness.

⁽⁶⁶⁾ Case T-28/22, *Ryanair v Commission*, paragraphs 61 to 93.

⁽⁶⁷⁾ Points 45, 47 and 48 of the R&R Guidelines.

⁽⁶⁸⁾ Points 50 to 52 of the R&R Guidelines.

- (176) The events that led Condor to insolvency combined and overlapped with the exceptional occurrence of the COVID-19 pandemic and a serious disturbance in the German economy in which Condor provides its services and in other Member States. These circumstances include notably the prolonged insolvency proceedings that Condor underwent, including the search of a new investor after PGL pulled away, the severance of corporate links with the former parent, and the concomitant COVID-19 pandemic which had serious impacts on airlines and potential investors. Those extraordinary circumstances had seriously constrained Condor's liquidity and ability to access market finance, whilst seriously affecting its balance sheet and equity position with lasting exogenous effects. In those circumstances, the causes of Condor's difficulties were not intrinsic to its business model and strategy and the restructuring plan should not be geared towards significantly modifying them, but rather at strengthening its economic and financial foundations.
- (177) Condor's restructuring period lasted for a total of four years since the granting of rescue aid in October 2019. This duration of the restructuring period corresponds to the lower end of durations in the Commission's decision practice notably with regard to airline restructurings carried out in the context of the COVID-19 pandemic. Condor was very reactive and did not delay necessary restructuring measures, all of which have been completed at the end of the restructuring period in September 2023. The duration of the restructuring plan is reasonable in the circumstances described in recital (176).
- (178) The Commission notes that Condor's forecasts in the baseline scenario concerning the recovery of operations, i.e. the recovery of Condor's performance back to 2019-level, were within industry forecasts by third parties. As is explained in recital (58) and shown in Figure 3, it was forecasted, for example by IATA in April 2021 concerning Revenue Passenger Kilometres (RPK), that the industry would be back at 2019 levels between 2023 and 2024. As can be seen in Figure 3, Condor was expected to reach its 2019 RPK level in the fiscal year [...]. The Commission also notes that an even faster recovery could be expected for touristic flights, and hence the Commission finds that the growth in revenue forecasted by Condor is plausible. As such, the plausibility of the assumptions in Condor's restructuring plan rests on industry forecasts by third parties and does not rely on comparing indicators with a group of other airlines, as Ryanair claims ⁽⁶⁹⁾.
- (179) The projections underpinning the restructuring plan in the baseline scenario demonstrated the ability of Condor to return to long-term viability so as to provide an appropriate projected return on capital after having covered all its costs. On the revenue side, Condor's load factor of [...] % from 2022/2023 onwards, can be considered plausible given the forecasted industry recovery and Condor's historic load factor before the COVID-19 pandemic. The forecasted yield per passenger of approximately EUR [...] in 2022/2023 was slightly higher compared to EUR [...] in 2018/2019. However, that higher level was explainable by Condor's overhaul of its fleet including new long-haul aircraft. The forecasted costs took due account of the impact of the restructuring measures (such as the reduction in staff and the renewal of the fleet, see recitals (41) and (43)), as for example the fleet renewal programme would result in lower fuel costs per ASK, but at the same time increase ownership costs due to the higher operating lease rates.
- (180) Condor's business plan showed that its return indicators would improve all along the restructuring period and would reach [...] % ROCE in 2023, up to [...] % in 2025, and [...] % in 2026, according to Table 16 ⁽⁷⁰⁾. The Commission notes that ROCE is calculated as EBIT/(total assets – current liabilities). As an alternative, since the objective is to compare ROCE with the WACC and since the latter is an after tax concept, the Commission calculated ROCE as Net

⁽⁶⁹⁾ With reference to Ryanair's argument in recital (111), the Commission notes that the data redacted in the non-confidential version of the opening decision is of commercially, financially or strategically sensitive nature whose publication is capable of causing serious harm to the beneficiary and was redacted on the basis of the Communication on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6). The opening decision is nevertheless clear on the description of the measures and in particular on the reasoning of the Commission and it allowed Ryanair to present its observations.

⁽⁷⁰⁾ Because of the more complete view of the company's financials that the balance sheet including an IFRS 16 compliant reporting of the operating aircraft leases provides, given the value of the aircraft fleet and that it represents a major part of capital, the Commission based its assessment on those figures and not on the balance sheet according to German accounting standards.

Operating Profit After Tax/average Capital Employed⁽⁷¹⁾. Using such a conservative approach, ROCE for Condor would be [...] % in 2023, [...] % in 2024, [...] % in 2025 and [...] % in 2026. As described in recital (65), Germany provided a calculation for Condor's weighted average cost of capital of [...] %. According to Germany's calculation, Condor's return on capital, as measured by ROCE, would constantly be above Condor's WACC from the end of the restructuring period in 2023 onwards. Therefore, Condor would operate at a premium and create value which is the sign of a viable company.

(181) In addition, under the Commission's calculation, Condor's ROCE would be above its WACC from 2023. Condor would still have net earnings after depreciation and financial charges and be able to compete in the marketplace even in the adverse scenario. For the sake of completeness, Condor's ROCE would be in line with or even above the pre-COVID-19 return on capital of other airlines, as shown in recital (81). Calculated as median, the ROCE of the other airlines in the group was 11,8 % before the COVID-19 pandemic and thus at a comparable level with Condor's return on capital at the end of the restructuring period in the fiscal year 2023⁽⁷²⁾.

(182) Concerning the WACC, as described in recital (65), Condor's assumed weighing of debt and equity was [...] % debt and [...] % equity. This corresponds to a debt-to-equity ratio of around [...], which the Commission considers to be a solid ratio with a reasonable level of leverage, aligned with industry standards. In addition, as a cross-check, the Commission has assessed the historical debt-to-equity ratio of a group of other airlines⁽⁷³⁾. The average debt-to-equity ratio of that group of airlines, calculated as median, was around 3, and around 4,3 as arithmetic average, in 2019⁽⁷⁴⁾. When using the median, this corresponds to a debt weight of 75 % and equity of 25 %. Condor's assumed capital structure with an equity share of [...] % was thus intrinsically justified and robust in itself and also in line with observations for the industry.

(183) Likewise, the review of the determination of the WACC shows that the estimated cost of equity follows a relatively standard approach of a capital asset pricing model with premia and parameter values that are derived from market information, adapted to Condor's characteristics, whereas the cost of debt is based on actual interest rates charged to Condor as well (recital (65) and footnote (39)). On that reasonable and objective basis, Condor's WACC when taking IFRS 16 into account was [...] % (see also recital (65)) and therefore significantly lower than its ROCE. Even in a scenario of a significantly higher WACC of 12 %, Condor's ROCE would still be higher than that WACC and thus Condor would provide a reasonable return on capital.

(184) Likewise, Table 3 shows that Condor's profitability, measured as EBIT margin, was expected to increase above its historical, pre-crisis, value of around [...] % of total revenue and would stand at between [...] % and [...] % as from 2023, the end of the restructuring period, until 2026. As shown in Table 7, the pre-COVID-19 profitability of the airlines in the group was 5,7 % (or 7,3 % as median)⁽⁷⁵⁾. Therefore, at the end of the restructuring period in 2023, and before the market was expected to fully recover, Condor would not underperform compared to other airlines

⁽⁷¹⁾ Calculated as $\text{EBIT} \times (1 - T) / \text{Average (Capital Employed}(t); \text{Capital Employed}(t-1))$, where the EBIT is the Earnings Before Interest and Tax; T is Condor's Corporate Tax rate; Capital Employed(t) and Capital Employed(t-1) are the Capital Employed in the current year and in the year prior to the current, respectively. The Capital Employed is defined as Equity plus Non-Current Liabilities (or Total Assets minus Current Liabilities).

⁽⁷²⁾ The Commission also re-calculated ROCE according to the method set out in footnote 70 for a group of airlines. Based on data available in Capital IQ, that group is composed of: Air France-KLM, Lufthansa, EasyJet, IAG, Ryanair, and Aegean. The average ROCE for that group of airlines in 2019 was 7 %, calculated as median, or 8 %, calculated as average.

⁽⁷³⁾ For the same group as the one described in footnote 71.

⁽⁷⁴⁾ In a longer time series, the ratio does not change drastically, as median the average was: 2,98 in 2016, 2,34 in 2017, and 2,38 in 2018; as arithmetic average: 4,87 in 2016, 3,64 in 2017, and 4,36 in 2018.

⁽⁷⁵⁾ Given the high divergence of the individual EBIT figures in that group, the Commission used the median as the measure for the average value, as it is more robust against statistical outliers compared to the arithmetic average.

pre-COVID-19 ⁽⁷⁶⁾. Once the market fully recovered, which was expected for 2026, three years after the end of the restructuring period, Condor would perform in line with the benchmark. In that regard, the Commission also notes that, when applying IFRS 16, Condor's EBIT margin would increase to [...] % in the fiscal year 2023 up to [...] % in the fiscal year 2026. That increased EBIT is mainly due to the fleet rental costs being a larger expense (in the accounting under German accounting standards) than the fleet depreciation when the fleet is capitalised. Furthermore, in the fiscal year 2023, Condor would generate a positive net result which feeds into decreasing the legacy negative equity. The positive forecasted development in net earnings would, thanks to the recovery of leisure travel, further increase in 2024, i.e. after the restructuring period, and would lead to profits turning the book equity positive after 2026.

(185) As regards its solvency indicators, as a result of the write-offs in Condor's books subsequent to and deriving from the insolvency of TCG, Condor would maintain a weak, albeit improving, equity position in accounting terms throughout the duration of its restructuring plan. However, the ability of the restructuring plan to return Condor to a path of long-term viability is sustained and corroborated by other meaningful indications, namely:

- (a) Condor's exhibited sustained and consistent profits on a stand-alone basis before the insolvency of its parent TCG. Between 2008 and 2019, Condor constantly earned profits of between EUR 43 million and EUR 76 million, except for two years. The total cumulated amount of profits and annual average were, respectively, EUR 530 million and EUR 44,1 million (see recital (32)), not including other free cash flow generated;
- (b) before the COVID-19 pandemic, Condor's assets and business model were attractive to an industry investor pledging EUR [...] million for the proposed acquisition in spring 2020. By then, the estimated equity value of Condor amounted to between EUR [...] and EUR [...] million (recital (35));
- (c) Condor's business plan and prospects have now attracted various market investors, with a winning bidder committing EUR 200 million in fresh capital for a 51 % shareholding, along with pledged equity for fleet renewal in the amount of further EUR 250 million (recitals (46) and (47)). Based on the assessment of the future equity value (recital (65)), from a shareholder's perspective, the expected increase in share value of Condor – whether channelled back through dividends or not – provides at least an annual prospective [...] % ROE for the private equity investment firmly committed ⁽⁷⁷⁾. The Commission notes that that prospective ROE is in line with 25,3 % median ROE of a sample of air carriers between 2017 and 2019 (recital (66)).

(186) As an alternative to the baseline scenario of the financial projections, the adverse scenario defined in the restructuring plan was also adequate and credible. The adverse scenario was credible because the necessary sustained efforts to reduce and stabilise Condor's operating cost base would be maintained throughout the restructuring period (recital (41)). Viability might be predominantly affected by exogenous factors and the adverse scenario thus took into account plausible variations in revenue and cost drivers such as lower commercial revenues combined with sizeable yet possible increases in the costs of fuel due to the price of CO₂ emission allowances and offset credits (recital (72)).

⁽⁷⁶⁾ The Commission notes that the group of airlines includes Wizz Air, which appears to not have prepared financial statements using IFRS 16 in 2019. Using IFRS 16 increases the EBIT of a company, if it is a lessee in operating lease agreements, as the lease payments are not part of operating costs but of financial costs. Therefore, a group that includes companies using IFRS 16 and companies not using IFRS 16 will underestimate the average EBIT margin of the group when compared to a company using IFRS 16, or overestimate it, when compared to a company not using IFRS 16. However, excluding Wizz Air would result in a lower average EBIT margin, given that Wizz Air's EBIT is above the median of the group.

⁽⁷⁷⁾ Rothschild assessed the value of Condor's equity by 2026 under the terms of the debt restructuring and investment discussed by the German authorities and Attestor firmly committing EUR 200 million for a 51 % shareholding. The assessment of the future equity value is based on prudent assumptions and widely accepted methods and amounts to EUR [...] million (recital (65)). The amount pledged for the 51 % ownership in 2021 impliedly values a full ownership of Condor, i.e. the right to appropriate – and sell – the expected enterprise value. The [...] % ROE is the annual increment of the value of the full shareholding between 2021 (EUR [...] million) and 2026 (EUR [...] million).

(187) In such an adverse scenario, the results of Condor would be affected but remain solid and sustainable, thus not compromising the return to viability. The expected net earnings after coverage of interest and depreciation costs would continue to be positive by 2022-2023 and thereafter as in the baseline scenario, whilst the EBIT margin would stand at [...] % in the fiscal year 2023 and increase to [...] % in 2025-2026 (that margin would be [...] % and increase to [...] % with accounting under IFRS 16). Likewise, the ROCE would remain above Condor's WACC, ranging from [...] % in 2023 to [...] % in 2026. In addition, available liquidity in cash flow projections would not fall below EUR [...] million at the lowest point of the restructuring period in 2020-2021 (recital (75)), thus preserving the continuation of operations with sufficient levels of cash and liquidity buffers required by the operating licence.

(188) Moreover, looking at other performance indicators, for example Condor's passenger yield, shows that on that count Condor's 2019 figures were, at [...], vastly better than other airlines' average of 144, and Condor's load factor was, at [...] %, outstanding, second only to Ryanair's at 95 % (see recital (68)). Thus, Condor's performance can be considered in line with that of other airlines and the fact that one or the other indicator is above or below the average of the benchmark does not make it an out- nor an underperformer. As shown in Table 7, the pre-COVID-19 profitability of the airlines in the group was 5,7 % (or 7,3 % as median). Therefore, at the end of the restructuring period in 2023, and before the market was expected to fully recover, Condor would not underperform compared to other airlines pre-COVID-19. Once the market fully recovered, which was expected for 2026, three years after the end of the restructuring period, Condor would perform in line with the benchmark.

(189) Contrary to what Ryanair contends (see recital (114)), Condor did not jump from a performance below the level of competitors in 2019 to one above that level after the restructuring. First, the claim referred just to two indicators, the EBIT margin and ROE, where Condor would reach a better position than a group of other airlines' average in 2026. This situates the performance at three years after the end of the restructuring period, so, at a moment which is not relevant anymore for the compatibility assessment under the R&R Guidelines. Further, in 2019, Condor's EBIT margin was [...] % against 5,7 % on average for the other airlines, and reached [...] % for Condor at the end of the restructuring period, in 2023, thus not fully reaching the other airlines' 2019 average.

(190) This performance, which brings Condor nearer to the average of the group of other airlines, is supported by a faster than expected recovery of the leisure travel market as compared to general travel (see recital (58), as well as the rationalisation programme undertaken by Condor in the context of its restructuring (see recital (41)). Condor's ROE is expected to grow a bit faster and attain a slightly higher value in 2026 than the median of a group of other airlines between 2017 and 2019 (see Table 6 and recital (65)). In that respect, the Commission notes that Condor had significant negative equity at the beginning of its restructuring plan for the reason explained in recital (63), so that from the outset, Condor's equity position was considerably lower than that of other airlines. As a consequence, Condor needed to grow its ROE faster than other airlines to reach comparable equity positions.

(191) Regarding the choice of airlines used for benchmarking, the Commission considered it relevant to compare Condor's performance with those of its actual competitors, whether they were labelled LCCs, legacy airlines, charter airlines or other, rather than limiting the comparison to solely charter airlines. Most charter airlines active in Europe – and certainly in Germany – are smaller and not comparable to Condor, which is a medium-size charter airline. Moreover, only very few charter airlines are active on the German market. Using only charter airlines as a benchmark would have been therefore less representative. As can be seen from Table 7 and Table 16, the performance of the various airlines examined was covering a wide range of positions, independently from their profile, which indicates that categories such as legacy, charter, etc. are of low importance for comparing financial and operational performance.

- (192) The airlines selected by PWC/KPMG and submitted by Germany contained a sufficient number of the main airlines active in Europe to constitute an appropriate benchmark for comparing with Condor's expected financial and operational performance. Except differences in business model, Ryanair provides no indication that those airlines' profile was too different from that of Condor to discard any such comparison for the assessment of long-term viability. It is therefore appropriate to compare with airlines which are viable and are not undergoing a restructuring plan or did not receive rescue or restructuring aid. Contrary to what Ryanair contends, the Lufthansa group company Eurowings is active in the long-haul leisure sector, which is thus represented in the comparison. Moreover, many of the airlines used for benchmarking also perform charter activities, some of them at a non-negligible scale (for example IAG advertises its high charter capacity, Norwegian Airlines and EasyJet provide charter flights for the TUI group, etc.).
- (193) With regard to Ryanair's contention, that the benchmarking with other airlines was based on cherry-picking by the Commission to prove a point (see recital (114)), the Commission underlines firstly that Condor's expected financial performance at the end of the restructuring period is satisfactory on a stand-alone basis and apt to support the finding that the restructuring plan is apt to restore Condor's long-term viability. Secondly, the Commission had no reason to doubt the appropriateness of the data submitted by Germany prepared by KPMG in order to cross-check various financial performance indicators of airlines against Condor's expected indicators. All samples are representative of the EU air travel market, and Condor's competitors on the German market, Lufthansa, Eurowings and Ryanair are included in all of them.
- (194) The projections underpinning the restructuring plan in the baseline scenario demonstrated the ability of Condor to return to long-term viability so as to provide an appropriate projected return on capital after having covered all its costs. On the revenue side, Condor's load factor of [...] % from 2022/2023 onwards, can be considered plausible given the forecasted industry recovery and Condor's historic load factor before the COVID-19 pandemic. The forecasted yield per passenger of approximately EUR [...] in 2022/2023 was slightly higher compared to EUR [...] in 2018/2019. However, that higher level was explainable by Condor's overhaul of its fleet including new long-haul aircraft. The forecasted costs took due account of the impact of the restructuring measures (such as the reduction in staff and the renewal of the fleet, see recitals (41) and (43)), as for example the fleet renewal programme would result in lower fuel costs per ASK, but at the same time increase ownership costs due to the higher operating lease rates.
- (195) The figures in Table 3 show that Condor's profitability, measured as EBIT margin, was expected to increase above its historical, pre-crisis, value of around [...] % of total revenue and would stand at between [...] % and [...] % as from 2023, the end of the restructuring period, until 2026. As shown in Table 7, the pre-COVID-19 profitability of the airlines in the group was 5,7 % (or 7,3 % as median). Therefore, at the end of the restructuring period in 2023, and before the market was expected to fully recover, Condor would not underperform compared to other airlines pre-COVID-19. Once the market fully recovered, which was expected for 2026, three years after the end of the restructuring period, Condor would perform in line with the benchmark. In that regard, the Commission also notes that, when applying IFRS 16, Condor's EBIT margin would increase to [...] % in the fiscal year 2023 up to [...] % in the fiscal year 2026. That increased EBIT is mainly due to the fleet rental costs being a larger expense (in the accounting under German accounting standards) than the fleet depreciation when the fleet is capitalised. Furthermore, in the fiscal year 2023, Condor would generate a positive net result which feeds into decreasing the legacy negative equity. The positive forecasted development in net earnings would, thanks to the recovery of leisure travel, further increase in 2024, i.e. after the restructuring period, and would lead to profits turning the book equity positive after 2026.
- (196) In the 2024 Condor judgment, the General Court assessed those requirements and concluded that the applicant had not demonstrated that the Commission should have had doubts that Condor's restructuring plan was realistic, coherent, far-reaching and likely to restore its long-term viability.

- (197) As a result, the Commission concludes that the restructuring plan partly financed by the aid is realistic, coherent and far-reaching and was therefore apt to restore Condor's long-term viability within a reasonable period of time and without relying on further State aid.

Positive effects of the aid outweigh the negative effects, in terms of distortions of competition and adverse effects on trade

5.3.1.4. Necessity of the aid and incentive effect

- (198) Under point 53 of the R&R Guidelines, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating that the development of the economic activities or areas sought by the aid, referred to in Section 3.1.1 of the R&R Guidelines will not be attained or would be attained to a lesser degree without the aid. Also, in order to demonstrate that restructuring aid has an incentive effect, Member States must show that, in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the intended objective of avoiding market failure or social hardship (point 59 of the R&R Guidelines).

- (199) As set out in recitals (34) to (36), the entry of a private investor was one of the central elements of Condor's insolvency plan. Condor's exit from insolvency proceedings was thus dependant on an investment agreement. Indeed, the withdrawal of PGL, that concluded an agreement with Condor in January 2020, prolonged the company's insolvency by seven months and required the organisation of another bidding process.

- (200) As set out in recitals (51) and (83), the investment agreement with Attestor, which was the best offer received in the bidding process, was conditional upon the granting of restructuring aid in the form of the restructuring of the KfW loans, which was a pre-condition for the conclusion of the agreement.

- (201) Thus, in the absence of the State aid measures notified by Germany, the investment agreement would not have been concluded and Condor would have remained in insolvency, with a series of negative consequences ultimately leading to Condor's liquidation (see also recitals (83) to (87). This risk was also emphasized in Condor's insolvency plan.

- (202) Without funding from a new investor, Condor would not have been able to replace its ageing fleet, which would have greatly handicapped its operations. Moreover, the continued insolvency proceedings would have caused further costs (as evidenced by the first prolongation, which triggered significant additional costs for which Condor was liable for EUR 23,7 million, see recital (36)).

- (203) The Commission considers that, absent the aid, Condor would have been unable to raise financing from the private market, even under the specific provisions of German insolvency law on privileged debt to which Ryanair refers (see recital (115)). For while it is true that certain undertakings without credit rating or certain undertakings in financial difficulties or certain undertakings in insolvency proceedings succeed in obtaining finance, this is not true for all undertakings in those circumstances. A fortiori, this is not the case for undertakings such as Condor that suffer from all three of those handicaps at the same time. It is highly unlikely that any private creditor would have lent money to an undertaking that, at the same time, was in continued insolvency proceedings since the entry into liquidation of its parent company in 2019, had no previous credit history or rating, had pledged all its assets of any value as collateral for the KfW loans and held significant negative equity, with liabilities by far exceeding its assets (see Table 4). This was also evidenced by the fact that Attestor's bid was conditional upon the debt restructuring.

- (204) In such a situation, Condor would have quickly run out of liquidity and even before this happened, it would not have been able to demonstrate that it could meet all of its obligations over the following year, as required by Regulation (EC) No 1008/2008 ⁽⁷⁸⁾. This would have most likely led to the suspension and subsequent withdrawal of its operating licence, which would have deprived Condor of its main source of income, leading ultimately to the liquidation of the company.
- (205) Condor's market exit would have caused a further reduction of competition in the already extremely concentrated German air travel market dominated by the Lufthansa Group, to the detriment of clients, and would have led to the KfW loans not being reimbursed at all, to the detriment of German taxpayers. Moreover, it would have triggered the loss of over 4 000 jobs in an already economically distressed situation and would have had a significant negative impact on the over 11 000 independent travel agencies and tour operators that relied on Condor's unique services, without there being a credible prospect of other carriers taking over the relationships with those employees and business partners without a disruption, notably in the context of the then-ongoing COVID-19 pandemic (see Section 2.7).
- (206) The objective of the restructuring aid is to avoid that Condor goes out of business, and thereby to avert a situation of market failure and social hardship which would inhibit the development of air transport services in Germany and endanger the survival of thousands of travel agencies and tour operators, mainly SMEs. That objective is achieved through the implementation of the restructuring plan, partially financed by the restructuring aid and partially by private investors. The restructuring plan shows that solvency issues of the beneficiary need to be addressed to solve its financial problems. Given Condor's situation in 2021, in particular the ongoing insolvency proceedings, the company was not able to ensure the continued provision of essential facilitator and connector services to tour operators and travel agencies, to comply with financial obligations or to have access to financial markets, unless the restructuring plan, which the aid supports and which is a condition of Condor successfully exiting the insolvency proceedings, is fully implemented. In the long term, in view of its significant negative equity position, which needs to be addressed by the restructuring plan, Condor, without the aid which is part of the investment agreement, would also be unable to fulfil its financial obligations.
- (207) In these circumstances, the Commission considers that the restructuring aid was necessary to implement Condor's restructuring plan and so prevent a situation of market failure or social hardship due to the market exit of an undertaking that provides an important role for German leisure travel by air, which is hard to replicate and where it would be difficult for any competitor to simply step in, as described in Section 5.3.1.2. The requirement of necessity of the aid laid down in points 38(b) and 53 of the R&R Guidelines is thus met.
- (208) On the basis of the above assessment, Commission also concludes that the aid has an incentive effect. Without the restructuring aid, Condor would exit the market in a manner that would be causing social hardship, harming thousands of SMEs active in the German leisure travel market and so hindering economic and social development, and leading to a further deterioration of competition in the already extremely concentrated air travel market in Germany to the detriment of clients, as described in Section 2.7. The requirement that the State intervention has an incentive effect, set out in points 38(d) and 59 of the R&R Guidelines, is thus met.

⁽⁷⁸⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3). According to Article 3 of that Regulation, no undertaking established in the Union may carry by air passengers in commercial transport without an operating licence. Pursuant to Article 9, the licensing authority shall suspend or withdraw the licence of an air carrier if it is no longer satisfied that it can meet its actual and potential obligations for a 12-month period. Nevertheless, the authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of the company provided that safety is not at risk, and there is a realistic prospect of a satisfactory financial reconstruction within that time period. Whenever insolvency proceedings are opened against a Union air carrier, the authority must assess the financial situation of a company within three months after the opening of insolvency proceedings and on the basis of the findings review the status of the operating licence, in compliance with Article 9.

5.3.1.5. Appropriateness of the aid

- (209) Restructuring aid will not be considered compatible with the internal market if other less distortive measures achieve the same objective; the aid must be adapted to the liquidity or solvency situation of the beneficiary ⁽⁷⁹⁾.
- (210) The restructuring aid takes the form of the reorganisation and partial write-off of some of the existing EUR 550 million KfW loans granted to Condor in 2020 and of a write-off of interest on over-compensation. This would relieve the company of certain short-term liabilities and free up liquidity for meeting operating expenses during the restructuring period. As depicted in recital (52)), a senior tranche of EUR 175 million would bear the same interest as that paid by Condor on the original tranche A of loan 1 (3-month EURIBOR increased by [...] bps and the refinancing costs), while a junior tranche of EUR 225 million would henceforth bear [...] ⁽⁸⁰⁾. The conditions of the loan restructuring had been negotiated between KPMG, as mandatory for Germany, Condor and Condor's strategic investor, Attestor. Attestor was chosen, because its bid offered the best conditions for the reimbursement of the KfW loan in that it not only would result in the repayment of a high portion of the outstanding loan amount but also included an earn-out mechanism that would modulate the final amount to be repaid according to Condor's future revenues, so that the more the company earned, the higher the repayment it would make (see recitals (37) and (53)). The conditions of the purchase agreement and of the loan restructuring thus constitute a package geared towards maximising the benefits for Attestor as well as optimising the reimbursement of the loan to KfW, and are dependent on each other. Moreover, the duration of the existing loans has been considerably shortened, as the full remaining amount will be repaid by September 2026, as opposed to December 2031 for the original tranche B of loan 1 and loan 2. Therefore, while the overall interest amount due on the restructured loan is lower than that of the original loan, it is part of a negotiated package aiming to maximise the return for Attestor as well as for the German government, including an earn-out mechanism, and can thus be considered to constitute an appropriate remuneration of the aid.
- (211) Moreover, since the rescue loan had been granted in October 2019, Condor had exited insolvency proceedings and had attracted a private investor that was willing to invest a minimum of EUR 450 million in the company. In addition, with an increasing number of vaccinations dispensed all over Europe, air transport markets had started to recover and European airlines were ramping up their business, with a faster than average recovery expected for the leisure market, where Condor is active. Those were indicators that pointed to improved market environment and operations of Condor since the granting of the original KfW loans. Finally, the restructured loan is expected to be fully repaid in 2026. The loan will be paid back within a relatively short time period, which will further reduce its negative impact on competition. The planned restructuring aid is thus appropriately remunerated.
- (212) As shown in Table 4 and Table 8, Condor faced a liquidity crisis combined with an unsustainable solvency situation. The restructuring aid measures combined with the investment by Attestor addressed both issues. The restructuring of the public loans, as described in recitals (51) and (52), would free liquidity in the shorter term period, thanks to the deferral of interest and repayment, as well as reducing Condor's debt position, thanks to the KfW loan write-off. It therefore complements the EUR 200 million fresh capital that remedied Condor's imminent liquidity crisis and improved Condor's equity position. The restructuring aid was thus adapted to the liquidity and solvency situation of Condor.
- (213) In its 2024 Condor judgment, the General Court assessed the appropriateness of the aid and found that the applicant had not demonstrated that the Commission should have had doubts about the appropriateness of the aid ⁽⁸¹⁾.

⁽⁷⁹⁾ Points 38(c) and 58 of the R&R Guidelines.

⁽⁸⁰⁾ For a full description of the original loan conditions, see recital (51).

⁽⁸¹⁾ Case T-28/22, *Ryanair v Commission*, paragraphs 191 to 195.

(214) In these circumstances, the Commission concludes that the restructuring aid is appropriate.

5.3.1.6. Proportionality, own contribution and burden-sharing

(215) The R&R Guidelines provide that the own resources of the aid beneficiary, its shareholders or creditors, the group to which it belongs or new investors contribute to the restructuring costs in a manner comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. The contributions must be real, i.e. effective, which excludes potential profits, involve no aid and should amount to at least 50 % of the restructuring costs ⁽⁸²⁾.

(216) As described in recital (219) (a) and (b), the own contribution addresses both, Condor's solvency and liquidity problems and is as such comparable to the aid granted (see also recital (212)). Moreover, as is visible from recitals (46) to (48), (219) and (220), only a very minor amount of the own contribution concerns new loans (EUR [...] million out of a total own contribution of EUR [...] million) and hence the equity enhancing instruments included in the own contribution far exceed the aid granted by the German State (this would still be the case even if one would disregard the EUR [...] million of equity leasing financing). In addition, it is Attestor and not the German State which is providing funding in cash to the plan, well in excess of the aid contribution by Germany. Therefore, the own contribution is in line with point 62 of the R&R Guidelines.

(217) As noted in recital (54), a portion of the KfW loans served to pay for exceptional costs of up to EUR 249,02 million that Condor had had in the context of the COVID-19 pandemic and thus do not amount to restructuring costs included in the restructuring plan. As set out in recital (117), Ryanair considered in its action for annulment of the 2021 restructuring aid decision that only the amount of aid approved under the Condor I and Condor II decisions, namely EUR 204,1 million, should have been deducted from the total amount of the loans. That reasoning is unfounded, as Condor's total COVID-19 damage amounted to EUR 249,02 million and the corresponding portion of the loan served to absorb that damage, meaning that only the remaining amount of EUR 300,98 million was available for financing the restructuring. Under Article 107(2), point (b), TFEU, Condor was entitled to receive compensation for the total damage suffered. The fact that the Commission took the view that only EUR 204,1 million of the loans granted amounted to State aid within the meaning of Article 107(1) TFEU does not change these facts. This damage was incurred by Condor due to the extraordinary circumstances of the COVID-19 pandemic and gave rise to a compensation, corresponding to the damage caused by the pandemic. This is unrelated to the funding needs of the restructuring plan, which would have existed also absent that damage.

(218) The restructuring has thus been funded from the remaining portion of EUR 300,98 million of the loans that would be restructured, to which EUR 20,2 million of interest written-off was added. It follows that EUR 321,18 million constitutes the amount of restructuring aid, the proportionality of which this Decision assesses, notwithstanding the two alternative estimates of aid amounts presented by Germany which would both result in lower amounts of restructuring aid (recitals (55) to (57)).

⁽⁸²⁾ Points 61 to 64 of the R&R Guidelines.

(219) The Commission needs to verify whether the various sources of funding to the plan presented by Germany, which combined with the restructuring aid, were, at the moment when the aid was granted, free of aid and real, that is, sufficiently certain to materialise, excluding future expected profits. The financing would be provided through permanent cost savings achieved in the process of Condor's restructuring programme, debt write-offs resulting from the insolvency plan and financing provided by Attestor, broken down as follows:

- (a) the commitment of a new private investor, Attestor, for the amounts of EUR 200 million providing share capital to Condor and EUR 250 million financing committed to Condor's fleet renewal is firm and binding as set out in notary acts (recitals (46) and (47)); of them, the aircraft lessor [...] committed to provide a USD [...] million (around EUR [...] million at the time of granting the aid) credit facility to Condor for pre-delivery payments on aircraft (see recital (47)); Attestor's commitment is set out in a purchase agreement which is firm and binding so that the funding has a high degree of probability attached to its release. Whilst the commitment from Attestor to provide financing for fleet renewal was firm and binding, the same was not true with regard to future additional financing of aircraft leases up to an additional amount of EUR [...] million which was not firmly committed and thus not real and actual (recital (47)). Therefore, at the time when the aid was granted, only the EUR 250 million financing committed to Condor's fleet renewal amounted to a real and actual own contribution from Attestor;
- (b) Condor's creditors accepted to write off claims amounting to EUR 630,8 million in the context of Condor's insolvency plan. The write-offs are endorsed by the insolvency court (see recital (35)) and, thus final and binding; the write-offs are free of aid since they result from the German insolvency law, which lay down general and abstract conditions applicable to insolvency proceedings; as set out in recital (48), Condor's insolvency plan sets out seven groups of creditors, among them several groups comprising solely private creditors; according to German insolvency law, to approve the insolvency plan, a majority of creditors with voting rights is required in every group. In the case at hand it can be excluded that Condor's public creditors could have outvoted private creditors and so channelled State aid to Condor in the form of a very low quote in the insolvency plan, as they could not have influenced the vote in the groups composed of solely private creditors (notably in the groups for employees, former group companies); the write-off is thus applicable to all categories of creditors alike, was approved with the required majority of creditors and is implemented in application of the binding provisions of general insolvency law applicable to all undertakings in the same factual and legal situation in Germany (see recitals (34), (35) and (48));
- (c) in the context of its rationalisation programme, Condor achieved permanent cost reductions of EUR [...] million per year during the implementation of the restructuring plan, deriving from adaptation of leasing contracts, renegotiation of supplier contracts and adjustment of collective agreements (recital (41)); those savings result from binding agreements already in place and are thus sufficiently certain to be deemed actual; they have the same financial effect as the write-off of debt in the insolvency proceedings except that the effect is spread over years and is not one-off.

(220) The combined amount of firmly committed financing, which includes the share capital increase, the credit facility and the write-off of creditors' claims, is EUR [...] million and constitutes real and actual sources of own contribution from investors and creditors to the restructuring. The own contribution from those two sources includes a very substantial portion of fresh funding of up to EUR 450 million and, with regard to EUR 321,18 million restructuring aid, amounts to around 77 % of the funding of the total restructuring costs of EUR [...] million of the plan. Even without considering the debt write-off by creditors and considering only the fresh financing provided by Attestor, that financing is higher than the full amount of restructuring aid granted to Condor. It follows that the own contribution exceeds the minimum of 50 % of the restructuring costs set out in the R&R Guidelines.

- (221) In that setting, the question whether permanent cost reductions of EUR [...] million per year achieved by Condor after renegotiations with suppliers, lessors or staff represent a real and actual contribution to covering restructuring costs incurred or envisaged in implementation of the plan can be left open since, even without that amount, the amount of own contribution remains substantial and already fulfils the requirement of the R&R Guidelines.
- (222) In this regard, the General Court found in the 2024 Condor judgment that the requirement laid down in point 64 of the R&R Guidelines with respect to the own contribution of the beneficiary was satisfied ⁽⁸³⁾.
- (223) The Commission thus concludes that Condor's own contribution to the costs of restructuring exceeds 50 % of the restructuring costs and is thus in line with the requirement of point 64 of the R&R Guidelines.
- (224) As regards the sharing of the burden of the restructuring between the State and Condor's former shareholders and subordinated creditors, it is apparent that the sole former shareholder of Condor, TCG, is wound up and being liquidated, whilst the shares of Condor were written down to zero and new shares were issued to a trust (recitals (26) and (34)). TCG lost all the value of its shareholding and debt instruments and will in no way benefit from any upside of the successful restructuring of Condor. Likewise, Condor's creditors (among whom there were no subordinated creditors) wrote off almost all their claims in the insolvency procedure (recital (48)), and thus substantially contribute to the financing of the restructuring plan. The write-off contribution of the creditors exceeds the amount of the restructuring aid both in terms of partial write-off and continuation of restructured KfW loans made available to Condor by the State.
- (225) It follows that former shareholders and creditors of Condor effectively contribute to the restructuring, thus diminishing the amount of State aid that could have been otherwise needed, for instance, to repay debt or to remunerate the shareholding. The sequence and terms at which Germany supports the restructuring of Condor through a partial write-off of debt also averts the risk of moral hazard with regard to the shareholder and creditors at issue in this case, where no risky or unsustainable strategy of Condor is discerned, but rather the consequences of its belonging to TCG and the circumstances of air transport in 2020 and 2021. The shareholder and existing creditors practically lost the entire value of their investment in Condor and in no way whatsoever benefit from the improvement of its solvency caused by the partial debt write-off decided by Germany. More generally, and beyond the case at hand, other shareholders or subordinated creditors in the internal market that would have fostered failed strategies of other airlines can also not infer from the restructuring aid granted in this case that Germany or other Member States would alleviate with restructuring aid the consequences of their investment choices.
- (226) The Commission therefore concluded in the 2021 restructuring aid decision that the restructuring aid involved appropriate burden-sharing.
- (227) However, the General Court annulled the 2021 restructuring aid decision as it considered that the Commission should have harboured doubts on whether the debt write-off by the State (i) fell within the scope of point 67 of the R&R Guidelines; and (ii) complied with the requirements set out in point 67 of those guidelines.
- (228) Point 67 of the R&R Guidelines provides that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share in future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.

⁽⁸³⁾ Case T-28/22, *Ryanair v Commission*, paragraph 201.

(229) The General Court held that point 67 of the R&R Guidelines forms part of Section 3.5.2.2 of those Guidelines concerning burden sharing, where, according to the General Court, the requirements of point 67 are additional to those of points 65 and 66. The General Court considered that while point 66 concerns the absorption of losses by existing shareholders and subordinated creditors and takes place before the State intervention, point 67 refers to a situation in the future, namely that of future gains in value of the beneficiary. Therefore, according to the General Court, points 66 and 67 of the R&R Guidelines lay down autonomous requirements, that relate to different points in time. Moreover, the provisions on burden sharing aim to prevent moral hazard, as set out in point 65, which also provides that where State support is given in a form that enhances the beneficiary's equity position, such as grants, capital injections or debt write-offs, this can have the effect of protecting shareholders and subordinated creditors from the consequences of their choices to invest in the beneficiary. The General Court pointed out that, as is apparent from point 9 of the R&R Guidelines, the risk of moral hazard consists in the fact that undertakings, anticipating their being rescued or restructured, may embark in excessively risky and unsustainable business strategies. In that context, both the requirements in point 66 of the R&R Guidelines, concerning the absorption of losses by existing shareholders and subordinated creditors, and those of point 67 of the R&R Guidelines, awarding the State a share of future profits, contribute to reducing incentives to take excessive risks in order to generate more profits. When assessing the arguments that the Commission raised, the General Court found in particular that the Commission did not refer to any element that is capable of showing that the risk of moral hazard arises only where a Member State injects capital into the beneficiary, but not where it writes off its debt or provides it with a grant and that no part of the R&R Guidelines allowed to draw such a conclusion. On the contrary, according to point 65 of the R&R Guidelines, such a risk arises for any State support given in a form that enhances the beneficiary's equity position, such as grants, injections of capital and debt write-offs. According to the General Court, it follows that the requirements of awarding a reasonable share in future gains of point 67 should apply not only to capital injections by the State but also to any other form of aid enhancing the beneficiary's equity position, such as debt write-offs or grants. The General Court concludes that as a result, 'the Commission was not entitled, without having any doubts, to find that the measure at issue' (the debt write-off) 'did not fall within the scope of that point' (point 67 R&R Guidelines) 'and fail to examine whether that measure complied with the requirements set out in that point' ⁽⁸⁴⁾.

(230) Following the opening of the formal investigation and the observations received from Germany and third parties, the Commission will re-examine whether the debt write-off by Germany (i) fell within the scope of point 67 of the R&R Guidelines; and (ii) complied with the requirements set out in such point in light of the Court's guidance.

(231) The Commission notes that point 67 of the R&R Guidelines aims, as the other provisions of Section 3.5.2.2 of those guidelines, to address the issues of excessive risk-taking and moral hazard of existing shareholders and subordinated creditors of the beneficiary. That risk does not arise when there are no existing shareholders or subordinated credit holders that might benefit from equity enhancing measures. Thus, contrary to what Ryanair claims (see recital (105)), point 67 of the R&R Guidelines is not applicable to future shareholders. Further, as the General Court found, nothing in the R&R Guidelines allows to conclude that such a risk arises only when the State injects capital and not when the State grants other equity enhancing aid. Therefore, debt write-off measures may be covered by point 67 in the R&R Guidelines. As a result, the Commission interprets the notion of remuneration of the State aid in point 67 of the R&R Guidelines as a means of reducing the risk of moral hazard by depriving existing shareholders or subordinated debt holders of part of the future profits of the restructured undertaking by partly attributing them to the State in consideration of the funding or write-off that enhances its equity. When interpreting teleologically point 67 of the R&R Guidelines, it results that it was not meant to provide a positive revenue to the State under all circumstances, as illustrated by the second part of point 67, which refers to the amount of State equity injected 'in comparison with the remaining equity of the company after losses have been accounted for'. That means that from the burden-sharing perspective, equity enhancing aid measures and the need for remuneration in this case must be weighed against the existence and amount of equity still held by or attributable to present or past – but not future – shareholders. There are situations like the one at stake where, despite the existence of State aid that enhances the beneficiary's equity position, the reasonable share of future gains for the State can be very low or even equivalent to zero. The reasonableness of any return hence depends on a case-by-case assessment. Against this background, for the avoidance of doubt, the Commission will apply this interpretation to the present and future similar cases. The Commission will assess below whether a positive return for the State was necessary following the write-off of debt in this case.

⁽⁸⁴⁾ Case T-28/22, *Ryanair v Commission*, paragraph 233.

- (232) For the purposes of assessing whether the return for the State is reasonable in this case, the Commission takes into account the circumstances set out in the following recitals.
- (233) The Commission notes first that in this case, the existing shareholder (TCG), has lost the full value of its shareholding, which was entirely written down during Condor's insolvency proceedings, and is in the process of being liquidated (see recitals (33), (34) and (63)).
- (234) Second, Condor had no subordinated debt, and the shareholder debt that was qualified as subordinated in insolvency, was fully written down (recital (48)). In any event, its existing (non-subordinated) creditors accepted a quote of 0,1 % of their claims in the insolvency plan endorsed by the German insolvency Court and hence lost almost all their claims (see recital (48)). The measures described in recital (21) did not form part of that claim reduction by creditors, but were in addition to and implemented after that claim reduction.
- (235) Third, the limited number of Condor's new shares existing at the time of granting the aid were held by SGL, a trustee without operational activities, without decision-making capacity regarding Condor's operations and whose only function was to hold the shares pending their transfer to a new, private shareholder (see also recital (25)).
- (236) Fourth, Condor's new shareholder, Attestor, was not involved in any prior business transaction of the beneficiary (see recital (38)) and – contrary to what Ryanair argues (see recital (105)) – is thus not targeted by the provisions of Section 3.5.2.2 of the R&R Guidelines regarding the prevention of excessive risk taking and moral hazard of existing shareholders and subordinated debt holders. Moreover, the package of measures agreed between the German State and Attestor was the result of a negotiation ensuring a balanced outcome, where each party was pursuing their best interest. In such a set-up, awarding additional remuneration to the State would have been the equivalent of depriving Attestor of that remuneration and thus requiring a new investor to share the burden of excessive past risk-taking by former share- or debt holders.
- (237) Fifth, as regards the second part of point 67 of the R&R Guidelines ('the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for'), the Commission notes that in this case, the equity remains negative as described in recital (63); it adds that there were no subordinated creditors of Condor either (see recital (120)).
- (238) Sixth, the Commission notes that, after the application of point 66 of the R&R Guidelines, the aim of limiting moral hazard and excessive risk-taking has been completely achieved with regard to existing shareholders and creditors. The fact that existing shareholders lost all their rights on Condor's (negative) equity and existing creditors lost everything except 0,1 % of their claims already during the insolvency procedure does not leave any scope for achieving greater or further prevention of moral hazard or excessive risk-taking.
- (239) The six factors set out in recitals (233) to (238) show that in the case at stake, in which there is no remaining equity after the loss absorption under point 66 of the R&R Guidelines from which existing investors in Condor could have benefitted, the reasonable share of future gains for the State can be equivalent to zero, for the purposes of point 67 of the R&R Guidelines. This is because under point 67 of the R&R Guidelines, the 'reasonable share of future gains in value of the beneficiary' that equity-enhancing aid should afford to the State, is calibrated in relation to 'the remaining equity of the company after losses have been accounted for' and those two terms of point 67 have to be applied together. As regards specifically the writing-off of the EUR 90 million of debt and the waiving of the EUR 20,2 million of interest on the over-compensation, the Commission notes that those elements have no specific consideration attached to them, notwithstanding the fact that they form part of a negotiated package of measures. However, in the circumstances of this case, the Commission holds that point 67 of the R&R Guidelines is to be applied in such a way that the write-off without specific consideration or remuneration is considered to be made at terms that afford the State a reasonable share of future gains in value of the beneficiary, for there is no remaining equity of the company after losses have been accounted for or, as the case may be, after cancellation of all shares and in the absence of subordinated debt instruments that could benefit from equity-enhancing aid instruments such as debt write-off.

- (240) The Commission takes note of Germany's and Condor's arguments that the earn-out mechanism would provide Germany with a reasonable share in the future gains in value of Condor (see recitals (100), (122), and (123)). However, as the Commission holds that, in this case, point 67 of the R&R Guidelines is complied with even in absence of a specific consideration or remuneration for the debt write-offs, it is no longer necessary to assess the validity of the arguments raised concerning the earn-out mechanism.

5.3.1.7. 'One time, last time' principle and limitation of distortions of competition

- (241) To ensure that the negative effects of the aid are limited in order to avoid undue effects on competition and trade and to ensure that the overall balance is positive ⁽⁸⁵⁾, aid must be granted to undertakings in difficulty in accordance with the 'one time, last time' principle limiting such aid for a period of 10 years. In addition, measures to limit distortions of competition need to be taken ⁽⁸⁶⁾.
- (242) The Commission allows restructuring aid in support of only one restructuring operation and provided, if appropriate, that more than 10 years have elapsed after an earlier granting of restructuring aid or after the restructuring plan came to an end or was halted ⁽⁸⁷⁾. The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation ⁽⁸⁸⁾.
- (243) The restructuring aid to Condor supported only one restructuring operation starting in 2019. As submitted by Germany (recital (25)) and confirmed by the Commission's verification of its own records, Condor (including its past and present controlling shareholders and any of the entities it controls) did not receive restructuring aid in the past 10 years. A continuum also exists with the rescue aid approved and granted for six months until April 2020 in a single restructuring operation within the meaning of point 72(a) of the R&R Guidelines. Condor first tried to attract and negotiate with an interested investor capable of supporting the continuation and restructuring of its operations (recital (34)). Condor did not refrain from restructuring its operations before and after the negotiations eventually failed (recitals (41) to (43) and Table 2).
- (244) In that respect, the compensation aid granted to Condor under Article 107(2), point (b), TFEU in the circumstances of the exceptional occurrence of the COVID-19 pandemic does not amount to rescue or to restructuring aid ⁽⁸⁹⁾. The aid in question compensates the damage directly caused by the COVID-19 pandemic as a result of the travel restrictions prompted by that exceptional occurrence. In particular, costs incurred by Condor since 17 March 2020 as a result of government restrictions not amounting to travel bans/or air travel restrictions as well as reduced demand stemming from the serious economic disturbance of the German economy in 2020, were excluded from compensation. The latter costs, the costs arising from the Condor I decision as claw-back and interest, as well as other restructuring costs arising from the implementation of the restructuring plan are covered by the restructuring aid, from operating revenues of Condor and from additional financing provided by investors, lessors or creditors.
- (245) As set out in detail in recital (82), Germany committed that Condor would take the following measures limiting distortions of competition which would apply until the end of the restructuring plan as 30 September 2023: (i) cap on the aircraft fleet not exceeding a maximum of [...] aircraft; (ii) advertising ban of received State aid; and (iii) acquisition ban.

⁽⁸⁵⁾ Point 38(f) of the R&R Guidelines.

⁽⁸⁶⁾ Points 76 to 93 of the R&R Guidelines.

⁽⁸⁷⁾ Points 70 and 71 of the R&R Guidelines.

⁽⁸⁸⁾ Point 72(a) R&R Guidelines.

⁽⁸⁹⁾ Point 15 of the Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

- (246) According to the R&R Guidelines, the assessment of measures limiting distortions of competition depends on the size and nature of the aid provided to Condor, the conditions and circumstances under which it was granted, the size and the relative importance of Condor in the market and the characteristics of the market concerned. Likewise, greater degrees of own contribution and burden sharing than those required, by limiting the amount of aid and moral hazard, may reduce the necessary extent of measures to limit distortions of competition. Competition measures should not compromise the prospects of the return to viability, nor should they come at the expense of consumers and competition ⁽⁹⁰⁾.
- (247) The restructuring aid to Condor under Article 107(3), point (c), TFEU was granted in circumstances of a serious economic disturbance of the economy of the Member States referred to in Article 107(3), point (b), TFEU. The economic effects of the COVID-19 pandemic since March 2020 have been particularly acute on supply and demand for air transport, leisure travel and related activities ⁽⁹¹⁾.
- (248) Those extraordinary circumstances weakened the operation of Condor which, in contrast to recurrent profits prior to the COVID-19 pandemic, was expected to post EUR [...] million negative earnings before tax between September 2019 and September 2021. The net losses related to reduced demand for leisure travel that exceeded the combined amount of the EUR 550 million KfW loans granted to Condor whether as compensation of damage or as restructuring aid needed to be absorbed and limited the ability of Condor to withstand divestments or further withdrawals of capacity.
- (249) In the implementation of its restructuring plan, Condor had significantly reduced the size of its fleet and capacity as measured in aircraft and available seats compared to the situation in 2019, before the plan. From [...] aircraft and [...] million seats in 2019, Condor operated [...] aircraft offering [...] million seats at the time of granting the aid. The reduction of capacity in relative terms would remain appreciable by September 2023 according to the restructuring plan: Condor would by then operate a fleet of a smaller size ([...] aircraft) compared to the period before restructuring, [...]. The Commission has not received any such notification from Germany. Condor's fleet thus remained at [...] aircraft throughout the full restructuring period, which ended in September 2023. Contrarily to what Ryanair contends, the phasing out of old aircraft is unrelated to the voluntary limitation of the number of aircraft operated by Condor during the restructuring period. In the normal course of business, airlines phasing out old aircraft would replace it with aircraft they can operate, otherwise they would need to reduce and eventually cease operations. Moreover, through the investment agreement with Attestor, Condor has the financial means of renewing its fleet as needed. Therefore, the fleet size cap must be considered an appreciable limitation on Condor's operational capacity throughout the restructuring period.
- (250) Furthermore, under the 2021 restructuring aid decision Condor also had to refrain from acquiring shares in any company during the restructuring period, except where needed to ensure the long-term viability of Condor. That imposed a further limit on Condor's growth through external acquisitions of competitors or suppliers of products or services complementary to its own until the end of the restructuring plan, unless indispensable to ensure its long-term viability. In that latter case, Germany would have had to notify the planned acquisition to the Commission, substantiate the indispensability of it and refrain from implementation until the Commission confirmed that the acquisition was necessary to support the long-term viability of Condor. The Commission has not received any such notification from Germany and the acquisition ban has thus been observed during the full restructuring period, which ended in September 2023. Condor had thus not expanded through acquisitions made possible indirectly by the restructuring aid. Finally, Condor also had to refrain from publicising State support as a competitive advantage when marketing products and services for the duration of the restructuring period. That commitment by Germany under the 2021 restructuring aid decision was equally respected.

⁽⁹⁰⁾ Points 87 to 90 and 92 of the R&R Guidelines.

⁽⁹¹⁾ Points 1 to 4 of the Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended.

- (251) With its relatively small aircraft fleet, Condor had a limited share of [...] % on the German overall air transport market; Condor was far behind the biggest service provider, which was the Lufthansa group, and more or less equal to Ryanair, which had a share of 5 %. Considering only the leisure segment of the German overall air transport market, Condor's and Ryanair's shares were [...] % each, followed by the 9 % share of TUIfly, and remained far lower than the share of 31 % of the Lufthansa Group, which was nearly double that of Condor's. Finally in terms of market presence, at the moment of granting the aid, Condor did not hold any important or noticeable position exceeding [...] % in any of the German airports from which it operates, except in relatively minor ones (recitals (30) and (31)).
- (252) Condor underwent a reduction of fleet capacity easing possible excess supply on the German air travel market where it will mainly be active, to an extent which is appropriate in light of its relatively limited position therein. In effect, with a reduced and capped aircraft fleet, Condor would be in a position to serve customers and limit the reduction of its market share on leisure air travel and withstand competition from airlines not subject to similar limitations, such as Eurowings and TUIfly, only if it could use the aircraft more efficiently, with higher load factors and with a higher frequency. The measure effectively limits the distortion of competition caused by the restructuring aid on a market where competition is distorted by the State aid received by competing airlines, such as Lufthansa and TUI with, in those two cases, sizeable public recapitalisations (see footnotes 22 and 23).
- (253) In such a situation, Condor ought to have been able to react to market demand to a certain extent, [...]. That mechanism, while it provided Condor with limited flexibility to adapt to changing market situations in clearly defined circumstances, would still maintain Condor's fleet during the restructuring period below the pre-COVID-19 level of [...] planes. In a concentrated market, as is the case in Germany, which is moreover distorted by substantial amounts of aid granted to competitors, the calibration of the measure needed to avoid coming at the expense of competition.
- (254) Moreover, the extent of measures to limit distortions of competition can be lower in the case of Condor than in cases where the aid incentivises moral hazard (see recital (246)). To that effect, the extent of own contribution and burden sharing from shareholders, past and future, and creditors limit the amount of restructuring aid. The own contribution is above 70 % of the restructuring costs and the debt write-offs by creditors exceed the amount of aid in the form of restructured KfW loans and the write-off that Germany provides. Moreover, as set out in recital (216), the own contribution addresses Condor's liquidity shortage and solvency issues, and so both, the aid and the own contribution contribute to solving the weaknesses that caused Condor's problem. In addition, most of the funding of the plan comes from own contribution which, unlike the aid, also include fresh money in cash. The former shareholder of Condor has lost all its investment. Condor's creditors – whether secured or unsecured and among whom there were no subordinated creditors – nearly lost their entire investment or claims and will therefore not benefit from the expected upside of the restructuring, or indeed be repaid of Condors' liabilities above the 0,1 % recovery of the claims. Therefore, the aid does not induce the belief that the German State will support the restructuring of airlines having had a risky commercial or financial behaviour benefitting their shareholders or creditors. All other things being equal, the extent of measures to limit distortions of competition applicable to Condor could, therefore, be limited also because the aid did not incentivise moral hazard or inconsiderate risk taking, whilst being adequately remunerated.
- (255) It follows that the measures proposed by Germany in order to mitigate the distortions of competition created by the restructuring aid are appropriate.

5.3.1.8. Transparency

- (256) In keeping with point 96 of the R&R Guidelines, the German authorities undertake to meet transparency requirements on the website www.bmw.de (recital (23)).

6. CONCLUSION

(257) The Commission finds that, in light of the annulment of the 2021 restructuring aid decision by the General Court in Case T-28/22, the restructuring aid that Germany implemented in favour of Condor retroactively became unlawful and must be considered as granted in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the restructuring aid meets the conditions laid down in the R&R Guidelines and therefore, contributes to the development of the economic activity of leisure air transport without adversely affecting trade conditions in the internal market to an extent contrary to the common interest of the Union. Therefore, the aid is compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

(258) The Commission had reached the same conclusion and raised no objections to the restructuring aid in its 2021 restructuring aid decision annulled in Case T-28/22. This Decision is adopted to comply with the judgment in Case T-28/22. However, the Commission recalls that that judgment is under appeal in Case C-505/24 P. It is therefore necessary, for the purposes of legal certainty, to clarify the legal effects produced by this Decision in the event that the 2021 restructuring aid decision, following the appeal before the Court of Justice, were to produce legal effects. In such a case, the analysis of the restructuring aid in question in this Decision would be rendered redundant. It is therefore appropriate for this Decision to produce legal effects only to the extent that the 2021 restructuring aid decision does not produce legal effects,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Condor Flugdienst GmbH and its controlled subsidiaries, amounting to EUR 321,18 million, is compatible with the internal market pursuant to Article 107(3), point (c), of the Treaty on the Functioning of the European Union.

Article 2

This Decision shall only produce legal effects to the extent that Commission Decision C(2021) 5729 final of 26 July 2021 in case SA.63203 (2021/N) – Germany – Restructuring of Condor does not produce legal effects.

Article 3

This Decision is addressed to the Federal Republic of Germany.

If the decision contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent electronically to the following address:

European Commission
Directorate-General Competition
State Aid Greffe
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Stateaidgreffe@ec.europa.eu

Done at Brussels, 28 April 2025.

For the Commission
Teresa RIBERA
Executive Vice-President