



C/2023/1433

18.12.2023

Appeal brought on 20 July 2023 by Deutsche Lufthansa AG against the judgment of the General Court (Tenth Chamber, Extended Composition) delivered on 10 May 2023 in Joined Cases T-34/21 and T-87/21, Ryanair and Condor Flugdienst v Commission (Lufthansa; COVID-19)

(Case C-457/23 P)

(C/2023/1433)

Language of the case: English

Parties

Appellant: Deutsche Lufthansa AG (represented by: H.-J. Niemeyer, C. Wilken, J. Burger and C. Sielmann, Rechtsanwälte)

Other parties to the proceedings: Ryanair DAC, Condor Flugdienst GmbH, European Commission, Federal Republic of Germany, French Republic

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal and dismiss the applications brought by Ryanair in case T-34/21 and by Condor in case T-87/21;
- order Ryanair and Condor to jointly pay the costs on appeal and Ryanair to pay the costs of the proceedings at first instance regarding case T-34/21 and Condor regarding case T-87/21.

Pleas in law and main arguments

In support of the appeal, the appellant relies on six pleas in law.

First plea in law alleging that the General Court erred in law in its interpretation of point 49(c) of the Temporary Framework⁽¹⁾ by requiring the European Commission to assess whether a beneficiary can obtain non-negligible parts of its liquidity needs on the market and by ignoring the Court's *Tempus* case law⁽²⁾, as the European Commission was not required to seek and examine additional information on the appellant's financing availabilities at the time.

Second plea in law alleging that the General Court erred in law by applying a wrong legal standard when assessing the alternative mechanism to that of a step-up mechanism. The General Court disregarded the overall, combined effects of the recapitalisation and erred that an alternative mechanism must always have a dynamic *ex-post* incentive element. As the underlying questions concern a deeply economical assessment, the General Court encroached on the European Commission's broad discretion and put forward a wrong legal characterisation of the facts.

Third plea in law alleging that the General Court erred in law when it found that the European Commission was not entitled to accept an alternative conversion price to the one set out in point 67 of the Temporary Framework. The General Court disregarded the European Commission's broad discretion in accepting alternative methodologies against the fact that a Theoretical Ex-Rights Price pursuant to point 67 of the Temporary Framework was not applicable.

⁽¹⁾ Communication from the Commission of 19 March 2020 entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (OJ 2020 C 91 I, p. 1), as amended on 3 April 2020 (OJ 2020 C 112 I, p. 1) and 8 May 2020 (OJ 2020 C 164, p. 3).

⁽²⁾ Judgment of 2 September 2021, *Tempus v Commission*, C-57/19 P, EU:C:2021:663.

Fourth plea in law alleging that the General Court overstepped the limits of its judicial review and erred when it found that it was incumbent on the European Commission to consider additional factors (e.g. market shares, frequencies) when assessing the existence of SMP (Significant Market Power) (Temporary Framework 72) and that, based on the criteria it applied, the European Commission could not properly find that Deutsche Lufthansa AG did not hold SMP at Düsseldorf and Vienna airports.

Fifth plea in law alleging that the General Court substituted its own assessment for that of the European Commission when it found that it was not appropriate to exclude competitors already based at Frankfurt and Munich airports from the slot divestiture. When assessing the effects on preserving effective competition, it contradicted itself with its findings on the efficacy of the slot commitments.

Sixth plea in law alleging that the General Court erred when it found that the European Commission failed to fulfil its obligation to state reasons as regards the remuneration of the slot divestiture package.
