Dziennik Urzędowy
Unii Europejskiej

PL
Seria C

C/2024/5533

16.9.2024

POMOC PAŃSTWA – NIEMCY

Pomoc państwa SA.63203 (2024/C) – Pomoc na restrukturyzację przedsiębiorstwa Condor

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej

(Tekst mający znaczenie dla EOG)

(C/2024/5533)

Pismem z dnia 29 lipca 2024 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Niemcy o swojej decyzji o wszczęciu postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej dotyczącego wyżej wspomnianego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat środka pomocy, w odniesieniu do którego Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i towarzyszącego mu pisma na następujący adres lub numer faksu:

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

Faks +32 22961242

Stateaidgreffe@ec.europa.eu

Otrzymane uwagi zostaną przekazane Niemcom. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

TEKST STRESZCZENIA

Condor Flugdienst GmbH („Condor”) jest niemiecką czarterową linią lotniczą z siedzibą w Kelsterbach (Hesja), która świadczy usługi transportu lotniczego na rzecz klientów indywidualnych i organizatorów wycieczek ze swoich portów lotniczych w Niemczech, przede wszystkim na rynku podróży wypoczynkowych. W następstwie niewypłacalności byłej spółki dominującej Thomas Cook Group, Condor został przejęty przez prywatny fundusz inwestycyjny wspierający kontynuację i biznesplan przedsiębiorstwa Condor.

26 lipca 2021 r. Komisja podjęła decyzję o niewnoszeniu zastrzeżeń wobec pomocy na restrukturyzację w wysokości 321,18 mln EUR na rzecz przedsiębiorstwa Condor. Pomoc miała na celu wsparcie restrukturyzacji i kontynuacji działalności przedsiębiorstwa Condor i miała pomóc w trudnościach związanych z niewypłacalnością byłej spółki dominującej Thomas Cook.

Wyrokiem z dnia 8 maja 2024 r. (Ryanair DAC/Komisja, T-28/22, EU:T:2024:301) Sąd stwierdził nieważność decyzji Komisji i uznał, że Komisja powinna była powziąć wątpliwości co do zgodności pomocy z rynkiem wewnętrznym. Sąd stwierdził, że Komisja nie oceniła, czy pomoc zapewniła Niemcom słuszny udział w przyszłym wzroście wartości Condora, co z kolei mogłoby wpłynąć na ocenę tego, czy zakłócenia konkurencji zostały należycie złagodzone.

Unieważniona decyzja uniemożliwiła zainteresowanym stronom ustosunkowanie się do kwestii, które powinny były wzbudzić wątpliwości. Niniejsza decyzja wszczyna formalne postępowanie mające na celu zbadanie w szczególności, czy pomoc na restrukturyzację zapewniłaby Niemcom słuszny udział w przyszłym wzroście wartości Condora i w związku z tym, czy zakłócenia konkurencji zostały należycie złagodzone.

PISMO

The European Commission wishes to inform the Federal Republic of Germany that, following the judgment by the General Court of 8 May 2024 in case T-28/22 *Ryanair v. Commission* [1] annulling the Commission Decision C (2021)5729 final of 26 July 2021 on the aid referred to above and having re-examined the information supplied by your authorities on the matter, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union („TFEU").

1. **PROCEDURE**

(1) Following pre-notification contacts [2], by SANI notification of 23 July 2021 completed on 25 July 2021, Germany notified its intention to grant restructuring aid to Condor Flugdienst GmbH („Condor") pursuant to Article 108(3) TFEU.

(2) On 14 October 2019, the Commission had approved on the basis of Article 107(3)(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") [3]. The rescue aid took the form of a EUR 380 million 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 [4].

(3) On 26 April 2020, the Commission had approved prospective damage compensation that Condor was expected to incur in the period from 17 March 2020 to 31 December 2020 on the basis of Article 107(2)(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 [5]. Condor used part of the loan to reimburse the rescue loan within six months from the date of disbursement of the first instalment. On 9 June 2021, the General Court annulled the damage compensation decision of April 2020 and suspended the effects of the annulment for two months pending the adoption of a new decision by the Commission [6].

(4) The Commission reassessed the damage compensation in light of the judgment of 9 June 2021 and adopted on 26 July 2021 a new decision regarding the damage compensation for the period from 17 March 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 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 on 27 July 2021.

(5) Ryanair DAC brought an action for annulment of that decision, and in 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 annulled the 2021 restructuring aid decision for that reason.

[1] Judgment of the General Court of 8 May 2024 in case T-28/22, *Ryanair v Commission*, ECLI:EU:T:2024:301. („the 2024 Condor judgment")

[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] OJ C 249, 31.7.2014, p. 1.

[4] Commission Decision of 14.10.2019 C(2019)7429 final in case SA.55394 (2019/N) – Germany –Rescue aid to Condor (OJ C 294, 4.9.2020, p. 1) („the rescue aid decision").

[5] Commission Decision of 26.4.2020 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. Following the annulment of that decision by the General Court, the Commission adopted a new decision, see footnote 7.

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

[7] Commission decision of 26.7.2021 in case SA.56867 (OJ C 177, 29.4.2022).

[8] Commission decision of 26.7.2021 in case SA.63617 (OJ C 169, 22.4.2022).

[9] Commission decision C 2021)5729 final of 26 July 2021 in case SA.63203 (2021/N).

(6) In the Condor I decision, the Commission had assessed Condor's damage during the period from 17 March to 31 December 2020 based on ex post figures of actual damage and concluded that Condor had suffered a damage within that period of EUR 175,35 million. In the Condor II decision, the Commission had 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 from 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 had approved aid, which Condor was subsequently granted, to compensate prospective damages 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 91,74 million. In addition, Condor had to pay interest for the advantage it got through the overcompensation 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) The 2021 restructuring aid decision had approved Germany's plans to support the restructuring plan of Condor by means of the following measures: (i) a modification to the terms and a partial further write-off of the 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 overcompensation and of interest still due, based on the initial loan agreement, which Condor would have had to reimburse (see recital (7)). The decision had found that the measures involved restructuring aid in the amount of EUR 321,18 million, consisting in the part of the EUR 550 million loan not representing COVID-19 damage, namely EUR 300,98 million, plus the EUR 20,2 million of interest written-off mentioned in point (ii). 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) Germany exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ([10]), and to have the present decision adopted and notified in English.

2. **DESCRIPTION OF THE MEASURES**

2.1. **The annulment of the 2021 restructuring decision**

(10) The present decision assesses the compatibility of State aid involved in two measures notified by Germany and approved by the 2021 restructuring aid decision, which was subsequently annulled by the General Court.

(11) Ryanair's action for annulment of that decision relied on 10 pleas in law, alleging, in essence: (i) that the measure at issue falls 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, respectively, the need for State intervention and its incentive effect, that the restructuring plan is realistic, coherent and far-reaching and is suitable to restore Condor's long-term viability, and the appropriateness or 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 its procedural rights; and (x) breach of the duty to state reasons.

([10]) Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

(12) The General Court dismissed pleas (i) to (viii) as inadmissible, finding that Ryanair had not demonstrated that it was individually concerned by the contested 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 the applicant was a party concerned for the purposes of Article 108(2) TFEU and an interested party within the meaning of Article 1(h) of Council Regulation (EU) 2015/1589 and that it therefore had standing to bring proceedings in order to protect its procedural rights. Within that plea, the applicant 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 showed that serious doubts as to the compatibility of the measure with Article 107 TFEU persisted and should have prompted the Commission to open the formal investigation procedure under Article 108(2) TFEU.

(13) The General Court recalled that, according to settled case law, when the Commission's preliminary examination of an aid measure has not enabled it to overcome the serious difficulties involved in assessing the compatibility of that measure, 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 the applicant's pleas (i) to (v), as unfounded. Among others, the General Court confirmed the Commission's view that 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. The General Court held in particular in paragraph 133 of the 2024 Condor judgment 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".

(14) The General Court then examined the applicant's pleas (vi) and (vii), challenging 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 those guidelines. According to the General Court, these doubts rendered the Commission's preliminary examination incomplete and insufficient, which in turn constituted evidence of the existence of serious difficulties.

(15) 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 to annul the 2021 restructuring aid decision on 8 May 2024. Finally, the General Court held that it was not necessary to examine the item of evidence 8 presented by Ryanair, nor its plea (x).

(16) The Commission did not appeal the General Court's judgment and is now reassessing the measures in light of that judgment.

2.2. **The measures**

(17) In the following section, the measures and their context are described at the time when they were granted (i.e. 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. 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.

(18) The first measure consists in the modification of the conditions - described in recitals (44) and (45) - 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 support Condor's restructuring plan and are not compensating it for damages related to COVID-19 (Measure 1). 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 (Measure 2).

(19) 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.

2.3. **The beneficiary**

2.3.1. *Corporate structure, ownership and activities*

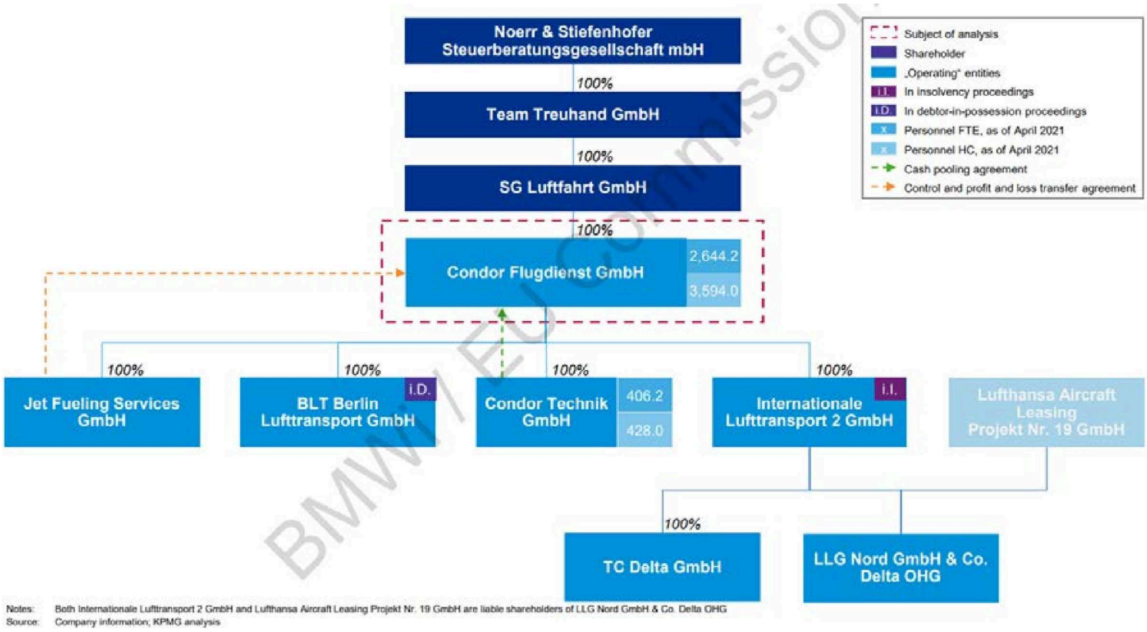
(20) The beneficiary of the measures is Condor and its controlled subsidiaries (see recital (33)). Condor is a German charter airline, headquartered in Kelsterbach (Hessen). It provides air transport services to individual clients and tour operators from its airports in Germany, with a focus on the leisure travel market, to 126 destinations all over the world. In 2019, its turnover was EUR 1,7 billion, with a balance sheet total of EUR 7,2 billion and it had 4 022 employees ([11]).

(21) At the time of the notification, SG Luftfahrt GmbH (SGL) was the sole shareholder of Condor. SGL is a holding company without operational activities. It held Condor's shares in trust since Condor exited insolvency proceedings in December 2020 (see recital (29)), pending its sale to a strategic investor ([12]). SGL is wholly owned by Team Treuhand GmbH, which is in turn wholly owned by Noerr & Stiefenhofer. SGL has been created solely to hold the shares of Condor pending its sale to Attestor and will be liquidated once all shares are sold (see recital (33)). According to the (draft) purchase agreement SGL is prohibited until the day of enforcement of the agreement from acting in a way that a majority shareholder could normally act when exercising his 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 (*AktG*) ([13]), 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 footnote 14 and recitals (32) and (33)).

([11]) KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/ BGH, 16 June 2021, p. 5.
([12]) 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 (33) and (34).
([13]) Such company agreements include domination agreements, as well as profit transfer agreements.

Figure 1

The structure of the Condor group



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

(22) 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 ([14]).

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

(23) 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 ([15]). Some routes operated by Condor are also operated by Eurowings, the low cost carrier of the Lufthansa group ([16]), 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.

(24) 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, out of which 35 long-haul destinations. On 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.

([14]) Scheduled airlines consist of legacy carriers (or full service network carrier), such as Lufthansa, and low cost carriers, such as Ryanair.

([15]) 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 4.1.2021 in case SA.59812 – Recapitalisation of TUI (OJ C 169, 22.4.2022).

([16]) 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(20204353 final of 25.6.2020, in case SA.57153 – Aid to Lufthansa (OJ C 397, 20.11.2020, p. 1)).

(25) In 2019, Condor's fleet included […] aircraft – two of which were operated by Brussels Airlines - in total. Condor carried out around 45 400 flights carrying around 9,4 million passengers, with a total of available seats per kilometre („ASK") of […] 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 %.

(26) In 2019, Condor operated charter flights at nine German airports with four core airport bases in Hamburg, Düsseldorf, Munich and Frankfurt ([17]). Considering the whole German air transport passenger business, Condor holds 3 % in terms of frequencies, 4 % of capacity and 6 % of ASK. In terms of frequencies, among the individual airports it serves, Condor exceeds 10 % only in the airport of Leipzig. The second highest proportion is 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 is 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 are not congested and where there is no shortage of available slots for airlines using them. In all other airports it serves, Condor has often less than 5 % of share of the total frequencies, capacity and ASK ([18]).

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

(27) 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 past twelve years (Table 1) ([19]). Condor has thus *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
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

([17]) The other five airports are Hanover, Nuremberg, Stuttgart, Leipzig and Sylt, see notification, Annex 26.
([18]) In none of the remaining airports (Hamburg, Munich, Düsseldorf, Frankfurt, Stuttgart, Nuremberg and Sylt), does 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 has a higher than 5 % in ASK ([…] %, […] %, […] %, […] % and […] %, respectively), see notification Annex 26.
([19]) See annulled damage compensation decision, recital 17.

(28) 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 ([20]). 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 ([21]).

(29) On 1 December 2019, the Insolvency Court Frankfurt am Main 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 of 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 issued to a trustee (SGL, see recital (21)), whose purpose was to hold them until a new investor was found.

(30) 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 ([22]). 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 support from the Polish Government ([23]).

(31) 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 around EUR […] million ([24]). 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.

([20]) 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.

([21]) See also rescue aid decision, recitals 14 to 20.

([22]) Recital 20 of the annulled damage compensation decision.

([23]) Commission Decision of 22.12.2020 C(2020)9606 final in case SA.59158 COVID-19 – Aid to Lot Polish Airlines (OJ C 260, 2.7.2021, p. 1).

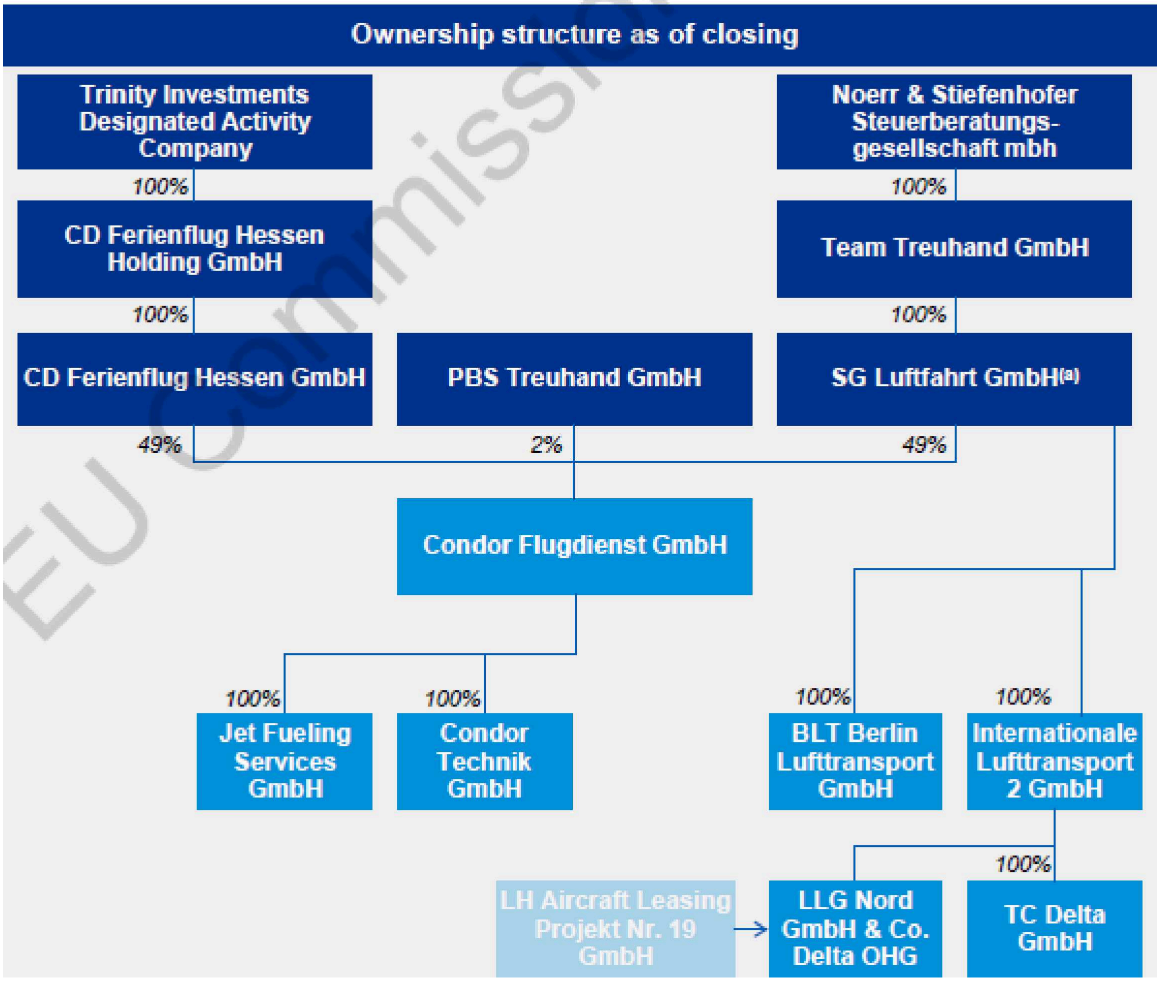
([24]) The General Court annulled the damage compensation decision of April 2020 because the Court found that the Commission had not established to the requisite standard that there was a direct link between the losses suffered by Condor as a result of the restrictions imposed to prevent the spread of 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 […] million.

(32) Condor continued searching for an investor and underwent another bidding process. Among the three offers received, 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), has 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.

(33) 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 an 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 (40). 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 (44) and (45). 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 S 6/BGH, 16 June 2021, p. 51

2.5. **Condor's restructuring plan**

(34) 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*

(35) 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) […] % staff reduction by May 2021, comprising in particular a reduction of ground staff workforce […] 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.

(36) The operational restructuring measures 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.

(37) Condor had an ageing fleet, which in summer 2019 included […] planes, of which […] operated directly. In particular, the […] Boeing 767-300 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 of fuel consumption and CO2 emission. 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/100k km/passenger in the long-haul segment alone, where it is replacing […] Boeing 767-300.

Table 2

Condor's restructuring measures

Measure	Implementation
Staff reductions	Reduction 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
Move to less costly headquarters	— Negotiations in April-May 2020 — Move completed in July 2021
Fleet renewal	Gradual renewal starting in Q3 2022, […] new long-haul aircraft expected to be in place by 2023;

Source: Notification, Annex 13

(38) 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*

(39) The restructuring costs include the costs of Condor's fleet renewal as well as its uncovered operating costs during the restructuring period. As such, they include 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 […] million of insolvency costs (recital 31). The restructuring costs are being and will be 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 […] million. The financing from non-public resources will be provided through funds from Attestor and supported by permanent cost savings and debt write-offs resulting from the insolvency plan, broken down as follows.

(40) 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.

(41) In addition, Attestor committed EUR [0-250] million for Condor's fleet renewal as well as a credit line of USD [50-100] million (around EUR [50-100] million), which Condor can draw on in several tranches, without revolving, for pre-delivery payments on aircraft. In particular, [company of the Attestor group] provided a leasing facility to Condor and its subsidiaries, committing directly or via one or more special purpose vehicles equity leasing financing of EUR [0-250] 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.

(42) Moreover, Condor's creditors have accepted to write-off claims amounting to EUR […] million in the context of the insolvency procedure. The proceedings were governed by the obligatory legal provisions of standard German insolvency law which explicitly provides for different groups of creditors and their treatment. Within each group, creditors were treated the same. Germany explains that Condor's creditors' committee could choose between a liquidation of Condor or accepting an insolvency quote of [under 1] % on claims amounting to EUR […] million in total and several creditors voted against the plan. However, 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.

(43) 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 (35). They affect the profit and loss account of Condor and reduce the need for external funding.

(44) 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. The KfW loans have the following conditions ([25]):

(a) Loan 1, with a total amount of EUR 529,8 million, is 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.

([25]) See annulled damage compensation decision, recitals 25-27.

(1) Tranche A of loan 1 has a maturity on 30 June 2026; it is to be reimbursed in quarterly instalments of EUR […] million starting on 30 June 2021; and a one-off payment of all outstanding amounts on 30 June 2026; the interest rate is composed of a base rate equivalent to 3-month EURIBOR + [600-700] basis points (bps) per year + KfW's refinancing costs;

(2) Tranche B of loan 1 is a revolving credit facility with an end-maturity on 31 December 2031; the interest rate is composed of a base rate equivalent to 1-month EURIBOR + [600-700] bps per year + KfW's refinancing costs; amounts drawn from tranche B are to be repaid at the end of each interest period, plus any interest accrued up to that date but not yet paid; amounts repaid may be drawn again within the availability period provided that doing so does not exceed the total loan amount available for tranche B; from 30 June 2026, the total loan amount for tranche B will 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, has an interest rate composed of a base rate equivalent to 3-month EURIBOR + [600-700] bps + KfW's refinancing costs; loan 2 is secured by […] in favour of KfW.

(c) If Condor is sold by way of a share deal, the contractual arrangements provide for a hierarchy of repayments of the various tranches: First of all, loan 2 will be repaid, subsequently tranche A followed by tranche B. In addition, in the case of other sales of assets of Condor, tranche A will also be reduced before tranche B. In the case of a disposal of the collaterals, a similar order of priority will be applied to the repayment of tranches. In the case of proceeds from other collaterals, tranche A will take precedence over tranche B, i.e. the proceeds will be transferred first to tranche A and then to tranche B.

(45) According to the notification and the draft agreements submitted by Germany, Germany will contribute 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 under 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 the current 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 (currently June 2026 for tranche A and 31 December 2031 for tranche B and loan 2); (ii) […]

— A EUR 204,8 million junior tranche with the following conditions: (i) interest rate: […]; (ii) type of debt: […]; (iii) collateral: as previously; (iv) 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 […].

(46) Germany confirmed that the draft agreements have been implemented as described above.

(47) Germany granted the KfW loans to Condor to partly make good 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 has found that Condor suffered a damage of EUR 175,355 million during the period from 17 March to 31 December 2020 ([26]) and a damage of EUR 73,66 million during the period from 1 January to 31 May 2021 ([27]), 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. Ryanair had challenged the correctness of that amount in its action for annulment, claiming 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. However, the GC rejected that argument as inadmissible, having been raised for the first time at the hearing ([28]).

(48) Germany submits two evaluations of the aid element contained in the restructuring of the loans.

(49) 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.

(50) 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. For the junior tranche of EUR 204,8 million and loan 2 of EUR 20,2 million, Germany considers that the earn-out mechanism will trigger an estimated repayment of between EUR […], so that a default risk of EUR […] million and the interest rate difference on the remaining EUR […] million constitute a conservative valuation of the aid element. 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*

(51) 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 summer 2021. Germany submits that travel is strongly correlated to GDP, 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 progressively lift. Leisure travel was expected to recover faster than general travel and return to pre-crisis levels about a year earlier than general travel ([29]).

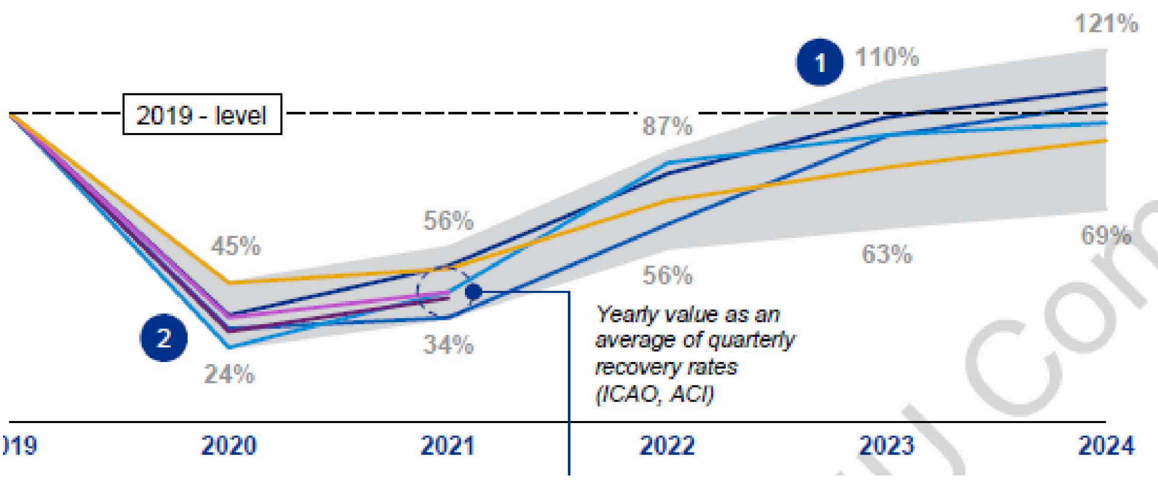
([26]) See Condor I decision, recital 203
([27]) See Condor II decision, recital 112
([28]) See 2024 Condor judgment, paragraphs 140 and 141.
([29]) Notification, KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/ BGH, 16 June 2021, p. 27.

(52) 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 ([30]). Several expert studies covering forecasts of passengers (PAX), RPK (revenue passenger kilometres) ([31]), IFR (instrument flight rules) ([32]) movements and numbers of passengers expected a recovery to the 2019 level in 2023 as a best-case scenario ([33]) for the air travel sector. A first increase was expected in the third and fourth quarters of 2021 if travel restrictions end and vaccinations progress. Those forecasts are used to assess the plausibility of the underlying assumptions of Condor's business plan.

(53) 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 2024/25 in the worst case scenario. As shown in Table 3, it is expected that the recovery of key performance indicators („KPIs") PAX, RPK, and IFR will reach 2019-levels around 2023/24. However, those forecasts concern the entire airlines sector. The same forecasts also point to a faster recovery for tourist flights.

Table 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

(54) 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.

([30]) 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).

([31]) RPK or „revenue passenger kilometres" means the number of paying passengers carried multiplied by the distance flown.

([32]) 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.

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

(55) 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 4), Condor is expected to become profitable and cover interest charges and depreciation at the end of the restructuring period in September 2023 with net result of EUR […] million and […] % EBIT margin ([34]). 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 4

Profit and loss account for Condor in the baseline scenario

In EUR million	Pre-restructuring 2017/18 ACT	Pre-restructuring 2018/19 ACT	Restructuring-period 2019/20 ACT	Restructuring-period 2020/21 FC	Restructuring-period 2021/22 PLAN	Restructuring-period 2022/23 PLAN	Post-restructuring 2023/24 PLAN	Post-restructuring 2024/25 PLAN	Post-restructuring 2025/26 PLAN
Operating income	1 803,8	1 684,2	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating expenses	– 1 684,4	– 1 542,9	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet rental costs			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation and amortisation	– 96,4	– 93,9	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet depreciation			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT) pre-exceptional	23,0	47,5	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Finance costs	– 29,6	– 32,0	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Linked with Fleet			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net result for the year	40,0	– 6 796,7	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA (p.e.) margin	7 %	9 %	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT (p.e.) margin	1 %	3 %	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Yield	198	172	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total available seat kilometer [ASK] (in m)	34 638	36 183	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total rev. passenger kilometer [RPK] (in m)	30 880	32 495	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total seat load factor	89 %	90 %	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total passengers (in m)	8,8	9,4	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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

([34]) 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.

(56) Table 4 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) ([35]) will 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 5

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**	**581,5**	**535,4**	**476,0**	**492,0**	**562,5**	**671,5**	**798,6**
Non-current assets >1year	1 293,4	309,8	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet (assets)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Current assets <1year	587,5	281,6	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Cash and cash equivalents	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 liablities >1year	181,2	156,1	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term liabilities <1year	925,6	3 661,3	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term financial liabilities <1year	37,8	47,4	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
ROCE	*2 %*	*-2 %*	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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

([35]) Capital employed is defined as total assets less current liabilities.

(57) The enterprise valuation of Condor carried out in June 2021 by Rothschild in the context of the investor process on the basis of conservative assumptions estimates Condor's equity in a range between EUR […] million and EUR […] billion by 2023, depending on the method (discounted cash flows or EBITDA multiples) (see Table 6).

Table 6

Enterprise valuation of Condor

[…]

(58) 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 […] ([36]). 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.

(59) The German authorities also provided a valuation of Condor's equity under the terms agreed with Attestor, relied upon by PWC, as mandatory of 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 around EUR […] million before the COVID-19 pandemic ([37]). 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 2019 amounted to 25,3 %, as shown in Table 7.

Table 7

Median return on equity of airlines 2017-2019 ([38])

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

(60) Moreover, according to the German authorities, the combined impact of its restructuring programme and the fresh funding from Attestor will allow Condor to achieve profitability in line with the industry average. As shown in Table 4, Condor's EBIT margins ([39]) 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).

([36]) 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 […] %.

([37]) Federal Mandate PWC of 18.5.2021.

([38]) Commission decision of 11.12.2020 C(2020)9221 in case SA.58463 Aide à la restructuration de Corsair, recital 23 (OJ C 41, 5.2.2021, p. 1). 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.

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

(61) Table 8 also shows the pre-COVID-19 profitability of other airlines. According to the data provided by Germany, the EBIT margin in the peer group, which is composed by a mix of legacy and low-cost airline and includes for example Lufthansa and Ryanair, was on average 5,7 %, or 7,3 % as median. Peer group performance 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 […] ([40]), as compared to an average of 141 for its peer group, while Condor operated with […] ASK, as compared to an average of 135 773 ASK for its peer group.

Table 8

Key indicator comparison with peer group pre-COVID-19

	EBIT margin (%)	Yield (EUR)	Seat load factor (%)	Passengers (million)	Available seat capacity (million km)
Condor	[…]	[…]	[…]	9,4	[…]
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
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

(62) Moreover, Germany provided data on Condor's prospective cash flows as shown in Table 9 for the baseline scenario.

([40]) The yield is higher than shown in Table 2 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 6 is defined as sales revenue per PAX, while the yield in Table 2 is defined as (sales revenue – freight sales – other sales) per PAX.

Table 9

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	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Available Tranche B	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Trapped cash	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Available liquidity	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Notification, Condor financial data

(63) 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.

(64) The information provided shows that Condor faced a short-term liquidity crisis, however combined with the negative solvency situation inherited from the liquidation of TCG (Table 10).

Table 10

Condor's short-term liquidity position

[…]

Source: Notification, KPMG restructuring assessment

(65) 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 Tables 4 and 5, 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 ([41]) were also to be negatively affected by potential adverse market developments, i.e. higher competition, thus reducing the yield growth expected in particular because of the new long-haul aircraft. The result of the analysis is shown in Tables 11 and 12.

Table 11

Projected profit and loss account in the adverse scenario

	Pre-restructuring		Restructuring-period				Post-restructuring		
In EUR million	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			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation and amortisation	– 96,4	– 93,9	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet depreciation			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT) pre-exceptional	**23,0**	**47,5**	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Finance costs	– 29,6	– 32,0	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Linked with Fleet			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net result for the year	**40,0**	**– 6 796,7**	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA (p.e.) margin	*7 %*	*9 %*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT (p.e.) margin	*1 %*	*3 %*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Yield	*198*	*172*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total available seat kilometer [ASK] (in m)	*34 638*	*36 183*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total rev. passenger kilometer [RPK] (in m)	*30 880*	*32 495*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total seat load factor	*89 %*	*90 %*	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total passengers (in m)	*8,8*	*9,4*	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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

([41]) Sales revenue divided by total passenger volume.

Table 12

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**	**581,5**	**535,4**	**476,0**	**489,5**	**545,6**	**638,8**	**748,9**
Non-current assets >1year	1 293,4	309,8	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet (assets)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Current assets <1year	587,5	281,6	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Cash and cash equivalents	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 liablities >1year	181,2	156,1	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term liabilities <1year	925,6	3 661,3	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term financial liabilities <1year	37,8	47,4	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
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)*

(66) 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. 2019/20 until 2025/26 („the planning period").

(67) 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 (58), 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.

(68) The adjustments to the revenues and costs affect cash flows. Table 13 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 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 13

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

(69) As explained in recital (56), 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 ([42]).

([42]) 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.

(70) Their 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.

(71) 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).

(72) Tables 14 and 15 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 4. 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 14

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

	Restructuring-period				Post-restructuring		
In EUR million	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	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet rental costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation and amortisation	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet depreciation	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT) pre-exceptional	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Finance costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Linked with Fleet	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net result for the year	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA (p.e.) margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT (p.e.) margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Yield	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total available seat kilometer [ASK] (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]

In EUR million	Restructuring-period 2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	Post-restructuring 2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
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 baseline scenario

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

Source: Notification, Condor financial data

Table 16

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

In EUR million	Restructuring-period 2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	Post-restructuring 2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Operating income	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]

In EUR million	Restructuring-period 2019/20 ACT	2020/21 FC	2021/22 PLAN	2022/23 PLAN	Post-restructuring 2023/24 PLAN	2024/25 PLAN	2025/26 PLAN
Thereof: Fleet rental costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Depreciation and amortisation	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet depreciation	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT) pre-exceptional	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Finance costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Linked with Fleet	[…]	[…]	[…]	[…]	[…]	[…]	[…]
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 17

Balance sheet with capitalised leases in the adverse scenario

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

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	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
ROCE	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Notification, Condor financial data

(73) 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.

(74) Moreover, Germany also provided ROCE benchmarks for a peer group of competitors. The benchmarks show that pre-COVID the average ROCE of the peer 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 18.

Table 18

ROCE of peer group pre-COVID

	ROCE (%) 31 December 2019
Lufthansa	8,9
Norwegian	2,3
Eurowings	14,6
Ryanair	11,0
IAG	12,6
Easyjet	13,6
Wizz	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**

(75) 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) […], or

(2) […], or

(3) […], and

(4) […];

(5) Germany would notify ([43]) for authorisation to the Commission any reasoned request […]. The Commission may 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, and

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**

(76) Germany submitted that, in the absence of restructuring aid, the investment agreement with Attestor, which is conditional upon the restructuring of the KfW loan, would not be signed and Condor would soon run out of liquidity. There would then follow the suspension and subsequent withdrawal of its operating licence, which would deprive it of its main source of income and would lead 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.

(77) Germany submitted that Condor plays a crucial role in the German leisure market, which in the event of Condor's market exit could not be easily filled by any competitor. In particular, Condor occupies a unique position on that market. It is the only airline in Germany that provides flight services to around 2 500 independent tour operators and 11 000 travel agencies, many of which are SMEs. Germany submitted that Condor is one of the last airlines on the German market that is 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 ([44]). 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.

(78) 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 fuel Condor's ability to successfully develop and sell tourist destinations. Germany submitted that that conjunction of elements is not present in other airlines active on the German leisure travel market but has 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 imply 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.

(79) Moreover, Condor has a network of around [5000-6000] suppliers, all of which would be significantly affected by the company's market exit, especially in the distressed economic situation that prevailed at the moment of granting the aid due to the COVID-19 pandemic. Condor also employs more than 4 000 people and its market exit would be detrimental to specialised technical staff, especially in the then prevailing circumstances, where many European airlines were reducing capacity due to the effects of the COVID-19 pandemic on global air travel.

([43]) Germany has not notified any such request to the Commission during the restructuring period.
([44]) Germany submitted examples of letters from tour operators as Annex 13 to the notification.

(80) In addition, Germany submitted that Condor's market exit would be detrimental to competition in the German travel market. The market is already very consolidated and the Lufthansa group, which occupies a dominant position, is also expanding in leisure travel. 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.

3. ASSESSMENT OF THE MEASURES

3.1. Existence of State aid

(81) 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".

(82) 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.

3.1.1. *State resources and imputability to the State*

(83) As set out in recitals 47 and 48 of the Commission's annulled compensation decision, the initial EUR 550 million loans backed by a 100 % State guarantee had been granted to Condor by the German public development bank KfW, at the request of the German Federal Government and thus involve State resources granted by a decision imputable to the State. The decision to restructure the KfW loans and to write-off the interest on the overcompensation 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.

(84) The bid for the sale of Condor had been selected by Condor's Supervisory Board, whose shareholder members are representatives of the State (recital (32)). 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.

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

3.1.2. *Advantage*

(86) 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 overcompensation. The loans would not exist and would not have been arranged as they were if Germany had not granted the rescue aid and the compensation aid to Condor (recitals (2) and (3)). The capital investment and implementation of the leasing facility were conditional upon the signature of the purchase agreement, which in turn is conditional upon the implementation of the loan restructuring.

(87) 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 which reduce or ease the overall remuneration due to the lender. The components associate 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 overcompensation that results from earlier granting of aid, which is tantamount to a grant. Those aided components had the common object and effect of freeing financial resources which support Condor's restructuring plan and which Condor could not have borrowed or obtained altogether on the market.

(88) The Commission therefore concludes that the notified measure confers an economic advantage to Condor within the meaning of Article 107(1) TFEU.

3.1.3. *Selectivity*

(89) The notified measures are granted solely to the benefit of Condor. As the Court has stated ([45]), 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 the measures, active in the aviation sector or other economic sectors, but is made available only to Condor.

(90) Therefore, the Commission concludes that the notified measures are selective within the meaning of Article 107(1) TFEU.

3.1.4. *Distortion of competition and effect on trade*

(91) 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.

(92) The notified measures are therefore liable to distort or threaten to distort competition and to affect trade between Member States.

(93) In view of the above, the Commission preliminarily concludes that the notified measures constitute State aid to Condor within the meaning of Article 107(1) TFEU.

3.2. **Lawfulness of the measures**

(94) By notifying the aid in the form of a restructuring and write-off of debt and interest prior to its implementation, the German authorities had initially complied with their obligations under Article 108(3) TFEU.

(95) 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 since the moment when they were granted, in so far as they are no longer covered by the Commission's approval .

([45]) Case C-15/14 P, *Commission* v *MOL*, ECLI :EU:C:2015:362, paragraph 60.

3.3. **Compatibility**

(96) Since the Commission preliminarily 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 when the aid was granted, i.e. on 28 July 2021.

(97) Article 107(3)(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.

(98) 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.

(99) 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 ([46]).

(100) 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)(c) TFEU ([47]).

(101) 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.

(102) Germany considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.

(103) 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.

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

(104) State intervention to support the restructuring of an undertaking must target a situation in which the aid can bring about a significant improvement that the market is unable to produce itself, and have an incentive effect, since in the absence of the aid the beneficiary would have been restructured, sold or liquidated in a form that would not have achieved the intended objective or only to a lesser extent in a credible scenario without State aid ([48]).

([46]) Judgment of 22 September 2020, *Austria* v *Commission (Hinkley Point C)*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.
([47]) R&R Guidelines, point 38.
([48]) Point 38 (b) and (d) and point 59 of the R&R Guidelines.

(105) In that regard, since, in order to be compatible with the internal market, a State intervention must aim to facilitate the development of an economic activity, 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 the place of the beneficiary. The Member State may also demonstrate that the beneficiary plays an essential systemic role in a region or sector from which its exit would have potential negative consequences, or alternatively serious social difficulties ([49]).

(106) Because of the reasons provided in recitals (77) and (78), 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.

(107) 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. 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. To replicate those systems, competitors would have to build up the needed 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 a matter of months.

(108) Moreover, Condor's IT landscape enables both charter and GDS bookings ([50]) 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 [several thousand] 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.

(109) 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.

(110) 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.

([49]) Point 44 (b), (c) and (g) of the R&R Guidelines.

([50]) 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.

(111) 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. As set out in recital (107), tour operators have voiced concerns towards 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. That procedure aimed 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.

(112) Finally, Condor's market exit would have had negative effects on its network of close to [5 000-6 000] suppliers and on its staff of over 4 000, which would have been significantly affected (recital (79)). 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 (66)).

(113) So, while some of Condor's routes might be attractive for a competitor on a stand-alone basis, there were no indications that any competitor 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 [around 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.

(114) The General Court assessed the requirement of point 44 of the R&R Guidelines in paragraphs 61 to 93 of the 2024 Condor judgment and concurred with the Commission's view that Condor provides and important service hard to replicate or where it would be difficult for any competitor simply to step in, within the meaning of point 44(b) of the R&R Guidelines.

(115) The Commission therefore preliminarily 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.

3.3.1.1. Eligibility: company in difficulty

(116) In order to be eligible for restructuring aid, the beneficiary must be a firm in difficulty. A firm 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 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 ([51]).

([51]) Point 20 (a) of the R&R Guidelines.

(117) In addition, a 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 ([52]).

(118) As set out in recital (28) and table 5, Condor has at present 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.

(119) The description of the ownership at the moment when the aid was assessed 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 is 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 deprives SGL of most of the rights of a shareholder. It follows that Noerr & Stiefenhofer, the ultimate parent of Condor, cannot via SGL exercise meaningful rights over Condor, so that it cannot be considered to be part of a Noerr group either (see recital (21)). Attestor's purchase offer was conditional upon the loan restructuring and was implemented only on 28 July 2021, after the Commission had approved initially the restructuring aid. Accordingly, Condor's difficulties cannot be held to result from arbitrary allocation of costs within a hypothetical wider group.

(120) Condor's former parent, TCG is now insolvent and being wound-up, so that it cannot resolve the difficulties of Condor either. The Commission considered in the rescue aid decision that Condor's difficulties resulted from the insolvency of its parent company, TCG ([53]). As set out in recital (28), because Condor had always received intra-group financing, it had no own bank funding and was unable to finance its liquidity needs on the market. Moreover, the company had to write-off a significant amount of receivables against TCG resulting from the cash-pool that was no longer enforceable because of the latter's liquidation. A cash pool always benefits the company that is earning less, and it is not known in advance which group company this will be. It is thus by definition the opposite of an arbitrary cost allocation but instead a legitimate system to direct the cash towards the place where it is needed. Condor's difficulties thus did not result from an arbitrary allocation of costs within the former TCG group.

(121) The General Court assessed the compliance with this condition in paragraphs 44 to 54 of 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).

(122) The Commission therefore preliminarily concludes that Condor is eligible for restructuring aid.

3.3.1.2. Restructuring plan and return to long-term viability

(123) 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 in 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 ([54]).

([52]) Point 22 of the R&R Guidelines.
([53]) Commission decision of 14 October 2019 in case SA.55394.
([54]) Points 45, 47 and 48 of the R&R Guidelines.

(124) 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 ([55]).

(125) The nature and chronology of the events that led Condor to enter insolvency proceedings, combined and overlapped with the exceptional occurrence of the COVID-19 pandemic and a serious disturbance of the economy of Germany and of other Member States in which Condor provides its services. Those extraordinary circumstances had seriously constrained its liquidity and ability to access market finance. Likewise, those events had seriously affected its balance sheet and equity position with lasting exogenous effects. However, 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.

(126) In that respect, the restructuring plan includes a set of serious, consistent and mutually reinforcing measures (recitals (35) and (37)) that improve the efficiency of service provision and streamline the cost base of Condor. In particular, the complete renewal of Condor's ageing long-haul fleet, made possible by Attestor's EUR 250 million investment in a leasing facility (see recital (41)), coupled with the ambitious staff, contract and process restructuring programme that Condor was in the process of implementing at the time of granting the aid (see recital (35)) would further enhance its competitiveness.

(127) 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 (52) and shown in Table 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 Table 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.

(128) 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 2022/23 forward, seemed plausible given the forecasted industry recovery and Condor's historic load factor before the COVID-19 pandemic. The forecasted yield per passenger of around EUR […] in 2022/23 was slightly higher compared to EUR […] in 2018/19. 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 (35) and (37)), 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.

([55]) Points 50 to 52 of the R&R Guidelines.

(129) The figures in Table 4 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 8, the pre-COVID-19 profitability of peer airlines was 5,7 % (or 7,3 % as median) ([56]). 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 peers pre-COVID-19 ([57]). Once the market fully recovered, Condor would actually outperform 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.

(130) Moreover, 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 15 ([58]). 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 required return rate for capital (WACC) and since the latter is an after tax concept, the Commission calculated ROCE as Net Operating Profit After Tax/average Capital Employed ([59]). Using such a conservative approach, ROCE for Condor would be […] % in 2023, […] % in 2024, […] % in 2025 and […] % in 2026. As described in recital (58), 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.

(131) 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. Moreover, Condor's ROCE would be in line or even above the pre-COVID-19 return on capital of a peer group, as shown in recital (74). On average, as calculated as median, the ROCE of the peer group was 11,8 % before the outbreak of COVID-19 and thus at a comparable level with Condor's return on capital at the end of the restructuring period in the fiscal year 2023 ([60]).

([56]) Given the high divergence of the individual EBIT figures in the peer 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.

([57]) The Commission notes that the peer group includes one airline, namely Wizz Air, that 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 peer 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 peer group.

([58]) 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.

([59]) Calculated as EBIT*(1-T)/Average (Capital Employed(t); 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).

([60]) The Commission also calculated ROCE for the peer group, for which the average ROCE for 2019 was 7 %, calculated as median, or 8 %, calculated as average.

(132) Concerning the WACC, as described in recital (58), Condor's assumed weighing of debt and equity was […] % debt and […] % equity. This corresponds to a debt-to-equity ratio of around […]. The Commission has assessed the historical debt-to-equity ratio of a peer group of Condor [61]. The average debt-to-equity ratio of that peer group, as calculated as median, was around 3, and around 4,3 as arithmetic average, in 2019 [62]. 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 in line with observations for the industry.

(133) As described in recital(130), Condor's WACC when taking IFRS 16 into account was […] % (see recital (58)) and therefore significantly lower than its ROCE. Even in a scenario of a significantly higher WACC with 12 %, Condor's ROCE would still be around that level and thus Condor would have an acceptable return on capital.

(134) Further, the Commission's analysis shows that in 2023 Condor was projected to achieve a Return on Assets [63] (ROA) of […] %. That figure is above the 2019 average (5 %) and median (5 %) ROA of its peers [64].

(135) 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 (27)), 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 acquisition in spring 2020. By then, the estimated equity value of Condor amounted to between EUR […] and EUR […] million (recital (30)).

c) Condor's business plan and prospects have now attracted various market investors, with a winning bidder committing EUR 200 million fresh capital for a 51 % shareholding, along with pledged equity for fleet renewal in the amount of further EUR 250 million (recitals (40) and (41)). Based on the assessment of the future equity value (recital (58)), 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 [65]. That prospective ROE is in line with 25,3 % median ROE of a sample of air carriers between 2017 and 2019 (recital (58)).

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[61] Based on data available in Capital IQ, the peer group is composed of: Air France-KLM, Lufthansa, EasyJet, IAG, Ryanair, and Aegean.

[62] 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.

[63] The Commission calculates the ROA as: EBIT*(1-t)/Average (Total Assets(t); Total Assets(t-1)), where the EBIT is the Earnings Before Interest and Tax; t is Condor's Corporate Tax rate; Total Assets(t) and Total Assets(t-1) are the Total Assets in the current year and in the year prior to the current, respectively.

[64] For data source, see footnote 63.

[65] 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 (58)). 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).

(136) 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 (36)). 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 CO_2 emission allowances and offset credits (recital (65)).

(137) 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 2022-23 and thereafter as in the baseline scenario, whilst the EBIT margin would stand at […] % in the fiscal year 2023 and increase to […] % in 2025-26 (that margin would be […] % and increase to […] % with accounting under IFRS 16). Likewise, the ROCE would remain within the performance of the peer group and 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 2020-21 (recital (68)), thus preserving the continuation of operations with sufficient levels of cash and liquidity buffers required by the operating licence.

(138) In the 2024 Condor judgment, the General Court assessed these requirements in paragraphs 128-142, 145-150, 154-161, 165-175 and 178-183 and concluded in paragraphs 184 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.

(139) As a result, the Commission preliminarily 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 without relying on further State aid within a reasonable period of time.

3.3.2. *Positive effects of the aid on the development of economic activities outweigh the negative effects, in terms of distortions of competition and adverse effects on trade*

3.3.2.1. Appropriateness of the aid

(140) 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 [66].

(141) 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 overcompensation. 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 (45)), 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 + [600-700] bps + the refinancing costs), while a junior tranche of EUR 225 million would henceforth bear […] [67]. The conditions of the loan restructuring had been negotiated between KPMG, as mandatory of the German Government, Condor and Condor's strategic investor, Attestor. As set out in recital (19), 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 would be the repayment it would make. In the best case scenario, that mechanism would trigger a repayment of around EUR […] million instead of around EUR […] million in the worst case (see recitals (45) and (50)). The conditions of the purchase

[66] Points 38 (c) and 58 of the R&R Guidelines.
[67] For a full description of the original loan conditions, see recital (44).

agreement and of the loan restructuring thus constitute a package geared to maximising the benefits for Attestor as well as optimising the reimbursement of the loan to KfW and depend 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. So, 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.

(142) 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. They 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.

(143) As shown in Tables 5 and 9, 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 (44) and (45), 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.

(144) In its 2024 Condor judgment, the General Court assessed the appropriateness of the aid in paragraphs 191 to 195 and found that the Commission was entitled to conclude that the aid was appropriate.

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

3.3.2.2. Proportionality, own contribution and burden-sharing

(146) 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. 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 ([68]).

(147) As noted in recital (46), a portion of the KfW loans served to pay for exceptional costs of up to EUR 249,02 million that Condor has 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 (47), 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)(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.

([68]) Points 61 to 64 of the R&R Guidelines.

(148) The restructuring has thus been funded from the remaining portion of EUR […] million of the loans that will be restructured, to which EUR 20,2 million of interest written-off is added. It follows that EUR 321,18 million constitutes the amount of restructuring aid, the proportionality of which the present decision assesses, notwithstanding the two alternative estimates of aid amounts presented by Germany which would both result in lower amounts of restructuring aid (recitals (48) to (50)).

(149) The Commission needs to verify whether the various sources of funding to the plan presented by Germany (recital (42)), which combine with the restructuring aid, are free of aid and real, that is, sufficiently certain to materialise, excluding future expected profits. The financing will 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 (32) and (33)); of them, the aircraft lessor […] committed to provide a USD [50-100] million (around EUR [50-100] million at the time of granting the aid) credit facility to Condor for pre delivery payments on aircraft (see recital (41)); 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 is firm and binding, the same is not true with regard to future additional financing of aircraft leases up to an additional amount of EUR […] million which is not firmly committed and thus not real and actual (recital (41). Therefore, at this stage, only the EUR 250 million financing committed to Condor's fleet renewal amounts to a real and actual own contribution from Attestor.

b) Condor's creditors accepted to write-off claims amounting to EUR […] million in the context of Condor's insolvency plan. The write-offs are endorsed by the insolvency court (see recital (31)) and, thus final and binding; the write-offs are free of aid since they result from a general measure which dictates conditions applicable to insolvency proceedings and are not specifically favouring Condor; the write-off is applicable to all categories of creditors alike 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.

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 (35)); 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.

(150) 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.

(151) 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.

(152) In this regard, the General Court found in paragraph 201 of 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.

(153) The Commission thus preliminarily 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.

(154) As regards sharing the burden of the restructuring by 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 have been written-down to zero and new shares issued to a trust (recitals (21) and (29)). TCG loses all the value of its shareholding and will in no way benefit from any upside of the successful restructuring of Condor. Likewise, Condor's creditors write off almost all their claims in the insolvency procedure, and thus substantially contribute to the financing of the restructuring plan. The write-off contribution exceeds the amount of the restructuring aid both in terms of partial write-off and continuation of restructured KfW loans made available to Condor. Former shareholders and creditors of Condor effectively contribute to the restructuring, thus diminishing the need for State aid and reducing moral hazard.

(155) The Commission therefore concluded in the 2021 restructuring aid decision that the restructuring aid involved appropriate burden-sharing.

(156) However, the General Court annulled the 2021 restructuring aid decision for its failure to assess, in that respect, 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.

(157) 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.

(158) The General Court held that point 67 forms part of section 3.5.2.2 of the R&R Guidelines concerning burden sharing, where, according to the General Court, the requirements of point 67 are additional to those of points 65 and 66. While point 66 concerns the absorption of losses by existing shareholders and creditors and takes place before the State intervention, point 67 would kick-in after the granting of aid and concerns the future remuneration of the aid. 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 are aiming 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, awarding the State a share of future profits, contribute to reducing incentives to take excessive risks in order to generate more profits. 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."

(159) The Commission will therefore reexamine 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 such point in light of the Court's guidance.

(160) The Commission notes that point 67 of the R&R Guidelines aims, as the other provisions of section 3.5.2.2, to address the issues of excessive risk taking and moral hazard of existing shareholders and subordinated creditors of the beneficiary. 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. The Commission notes, that that risk does not arise when there are no existing shareholders or subordinated credit holders that might benefit from equity enhancing measures. In that context, 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 drafting point 67 of the R&R Guidelines that notion 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 there are situations, 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 also depends on a case-by-case assessment. At this stage, for the avoidance of doubt, the Commission will apply that 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 the present case.

(161) For the purposes of assessing a reasonable return for the State in the present case, the Commission takes into account the following circumstances.

(162) The Commission notes first that in the case at hand, the existing shareholder (the Thomas Cook Group), 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 (28), (29) and (56)).

(163) Second, Condor's creditors, none of which were subordinated debt holders, have accepted a quote of [under 1] % of their claims in the insolvency plan endorsed by the German insolvency Court and have lost almost all their claims (see recitals (30) and (42)). Note that the measures described in recital (18) did not form part of that claim reduction by creditors, but were in addition to that claim reduction.

(164) Third, the limited amount 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.

(165) Fourth, Condor's new shareholder, Attestor, was not involved in any prior business transaction of the beneficiary and is thus not targeted by the provisions of section 3.5.2.2 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 from that remuneration and thus requiring a new investor to share the burden of excessive past risk taking by former share- or debt holders.

(166) 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 the present case neither element of that reasoning is present. The State is not injecting any new equity into Condor as part of the measure and the remaining equity of the company after losses have been accounted for is essentially non-existent (in fact the equity remains negative as described in recital (56) and (118)) and a quote of [under 1] % of the claims remains, see recital (163)). Therefore, both of these aspects relevant for the logic of point 67, make it questionable whether any positive return for the State is necessary.

(167) 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 seems to have been achieved with regard to existing shareholders and creditors and as no existing shareholder or subordinated debt holder held any rights on Condor's (negative) equity and existing creditors lost everything except [under 1] % of their claims already during the insolvency procedure, this did not seem to leave any scope for achieving greater or further prevention of moral hazard or excessive risk taking.

(168) The above six enumerated circumstances play a role for assessing the reasonable return of the State on the following measure. The package negotiated between the German State and Attestor comprises a debt write-off by the German State in favour of Condor (EUR 90 million debt write-off plus the waiver and write-off of EUR 20,2 million interest, as described in recital (18)). That measure dispenses Condor from its obligation to repay part of the loans granted by KfW and so reduces Condor's liabilities and thus improves its equity position, albeit to the benefit of future shareholders. As such, the debt write-off constitutes an equity enhancing measure within the meaning of the first part of point 67 of the R&R Guidelines.

(169) According to paragraph 231 of the 2024 Condor judgment, the General Court considers that the State could in any event benefit from future gains „by stipulating, for example, where there has been a partial write-off of debt such as that in the present case, that there be a variable rate of interest on the portion of its claim that has not been written off that increases in line with a rise in the value or profits of the beneficiary."

(170) With regard to a partial debt write-off and benefits on the remaining debt, the package negotiated between the German State and Attestor contains an earn-out mechanism, as part of the repayment conditions of the junior tranche of EUR 204,8 million of the restructured part of loan 1 (see recital (45)). According to the submission by Germany, that earn-out mechanism would result in repayments of between EUR […] million and EUR […] million, depending on Condor's future earnings (see recital (50)). In other words, Germany argues that the more profits Condor will make, the higher will be the amount of the loan that it will repay to the State on the remaining part of the debt. The maximum amount to be repaid under the mechanism is thus […].

(171) By linking the final amount to be repaid by Condor to its future earnings, the German State considers that it would participate in the expected increase in Condor's profits stemming from the restructuring measures partly financed with aid and would thus obtain a share of future gains amounting in the best case scenario as submitted by Germany to EUR […] million over five years (from the granting of the aid in July 2021 until the underlying exit date of September 2026).

(172) However, the Commission notes that Germany has not provided any information with regard to the question whether the expected remuneration described in recital (170) or even a zero amount could be reasonable. The Commission does not exclude that in the context of the circumstances described in recitals (162) and (165), point 67 of the R&R Guidelines could be applied in such a way that the write-off without specific consideration or remuneration could be considered to be still made at terms that afford the State a reasonable share of future gains in the value of the beneficiary. That is because there is still negative equity in the company after losses have been accounted for. Moreover, in the present case, the earn-out mechanism […] provides a return dependent on future gains in value of the beneficiary. In this context, the Commission wonders whether the remuneration ([69]), whether in isolation for the tranche of loan outstanding or in aggregate together for the nominal amount of loan written-off would be reasonable in form and in amount if it exceeds, in aggregate, the funding costs of the aid grantor, e.g. the 10-year bond yield of KfW.

([69]) To calculate the remuneration rate, the NPV of the amount distributable to the State from (i) the earn-out mechanism, and (ii) the difference between the interest payable for the loans before the loan restructuring (see recital (44)) and the interest payable after the loan restructuring (see recital (45)) may be taken into account. The nominal amount for the calculation would include the nominal amount of the write-offs described in recital (18). This would be discounted at a reasonable discount rate.

(173) While the package negotiated referred to in recitals (165), and (170), should in principle lead to maximising the loan repayment for the German State on the part of the debt that was not waived, the Commission has doubts on the assessment of the earn-out mechanism set up for Condor's repayment of the junior tranche of loan 1 put forward by the German authorities and whether, having regard to the amount of (negative) equity remaining prior to 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 award 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.

3.3.3. *„One time, last time" principle and limitation of distortions of competition*

(174) 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 ([70]), aid must be granted to undertakings in difficulty in accordance with the „one time, last time" principle limiting such aid for a period of ten years. In addition, measures to limit distortions of competition need to be taken ([71]).

(175) The Commission allows restructuring aid in support of only one restructuring operation and provided, if appropriate, that more than ten years elapsed after an earlier granting of restructuring aid or after the restructuring plan came to an end or was halted ([72]). The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation ([73]).

(176) The restructuring aid to Condor supported only one restructuring operation starting in 2019. Condor (including its past and present controlling shareholders and any of the entities it controls) did not receive restructuring aid in the past ten years. A continuum also exists with the rescue aid approved and granted for six months until April 2020 in a single restructuring operation. Condor first tried to attract and negotiate with an interested investor capable of supporting the continuation and restructuring of its operations (recital (30)). Condor did not refrain from restructuring its operations before and after the negotiations eventually failed (recitals (35) and (36) and Table 2).

(177) In that respect, the compensation aid granted to Condor under Article 107(2)(b) TFEU in the circumstances of exceptional occurrence of the COVID-19 pandemic does not amount to rescue or to restructuring aid ([74]). 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 in the implementation of the restructuring plan are covered from the restructuring aid, from operating revenues of Condor and from additional financing provided by investors, lessors or creditors.

(178) As set out in detail in recital (75), 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.

([70]) Point 38 (f) of the R&R Guidelines.
([71]) Points 76 to 93 of the R&R Guidelines.
([72]) Points 70 and 71 of the R&R Guidelines.
([73]) Point 72 a) R&R Guidelines.
([74]) 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 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 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 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

(179) 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 ([75]).

(180) The restructuring aid to Condor under Article 107(3)(c) TFEU was granted in circumstances of a serious economic disturbance of the economy of the Member States referred to in Article 107(3)(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 ([76]).

(181) Those extraordinary circumstances weakened the operation of Condor which, in contrast to recurrent profits until 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 damages or as restructuring aid needed to be absorbed and limited the ability of Condor to withstand divestments or further withdrawals of capacity.

(182) In 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 compared to the period before restructuring of […] aircraft, […]. 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.

(183) 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.

(184) With its relatively small aircraft fleet, Condor had a limited share of […] % on the German overall air transport market; Condor is far behind the biggest service provider, which is the Lufthansa group, and more or less equal with Ryanair, which has a share of 5 %. Considering only the leisure market segment, Condor's and Ryanair's shares are […] % each, followed by 9 % of TUIfly, and remain far lower than the share of 31 % of the Lufthansa Group, which is 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 (recital (26)).

([75]) Points 87 to 90 and 92 of the R&R Guidelines.
([76]) Points 1 to 4 of the Temporary Framework.

(185) 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 17 and 18).

(186) 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.

(187) 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 (154)). 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. Former shareholders and creditors of Condor lose near all their investment and will therefore not benefit from the expected upside of the restructuring, so that 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.

(188) However, in the 2024 Condor judgment, the General Court took the view that the Commission's failure to assess point 67 of the R&R Guidelines with regard to burden sharing and appropriate remuneration of equity enhancing aid (see recitals (156) to (159)) necessarily had an impact on its assessment of the competition measures as that assessment takes into account the degree of burden sharing and limitation of moral hazard.

(189) As a result, the Commission has therefore also to re-assess the evaluation of the appropriateness of the competition measures in light of the outcome of the reassessment of burden sharing and remuneration of the debt write-off, as specified in recital (173). The Commission has doubts whether the calibration of the competition measures is appropriate taking into account the extent of burden sharing and limitation of moral hazard .

3.3.3.1. Transparency

(190) In keeping with point 96 of the R&R Guidelines, the German authorities undertake to meet transparency requirements on the website www.bmwi.de.

3.4. **Conclusion on compatibility**

(191) In light of the annulment of the 2021 restructuring aid decision by the 2024 Condor judgment as well as the above preliminary assessment, the Commission concludes that at this stage of the procedure, it has doubts with regard to the compliance of the debt write-off with point 67 of the R&R Guidelines as specified in recital (173) and – in view of the possible impact of that non-compliance on the calibration of compensatory measures – also with regard to the appropriateness of the competition measures offered by Germany, as specified in recital (189), and thus whether the restructuring aid could be declared compatible with the internal market pursuant to Article 107(3)(c) TFEU.

4. **CONCLUSION**

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests Germany to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. The Commission would in particular invite Germany to submit information on the earn-out mechanism set up for the repayment of the junior tranche of loan 1 to KfW and on whether that mechanism or even a remuneration amounting to zero would provide an appropriate remuneration to the German State for the partial debt write-off granted to Condor as restructuring aid. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Germany that Article 108(3) of the TFEU has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission informs Germany that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.