



Brussels, 14.10.2019
C(2019)7429 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.55394 (2019/N) – Germany – Rescue aid to Condor

Excellency,

The European Commission (“the Commission”) wishes to inform Germany that, having examined the information supplied by your authorities on the State aid referred to above, it has decided not to raise any objections, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”).

1. PROCEDURE

- (1) On 25 September 2019, Germany notified a project to grant a rescue loan backed by a public guarantee to the German airline Condor Flugdienst GmbH. On 27 September, 2, 3, 4, 5 and 8 October 2019, the Commission sent requests for information, to which Germany replied on 28, 29, 30 September and 1, 2, 3, 4, 5, 6, 7 and 9 October 2019.
- (2) On 1 October 2019, Germany agreed that the present decision may be adopted and notified in English.

2. THE BENEFICIARY

- (3) [End of](*) September 2019, Condor Flugdienst GmbH (hereafter “Condor”), a German subsidiary of Thomas Cook plc (hereafter “the Thomas Cook Group” or

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* Confidential information

“the parent company”) applied for a rescue loan from the German government to meet urgent liquidity needs due to its parent company’s insolvency.

- (4) Condor is a German charter airline, headquartered in Kelsterbach (Hessen), with hubs only in Germany, in Frankfurt, Düsseldorf, Munich and Hamburg. It operates 59 planes and provides air transport services to individual clients and tour operators from its hubs, with a focus on the leisure travel market to 126 destinations all over the world. Condor currently has 4 895 employees, with a turnover of around EUR 1 800 million in 2018/19. It has three subsidiaries: Condor Berlin GmbH, Condor Technik GmbH and Jet Fuel Services GmbH, as well as one sister company, LLG Nord GmbH & Co Delta OHG. Only Condor will be the beneficiary of the notified measure. The structure of the Condor group is shown in Figure 1 below.

Figure 1: The structure of the Condor group

[...]

- (5) As a charter airline, Condor provides services to tour operators and travel agencies. Besides selling seats to tour operators and travel agencies, Condor also sells so called dry seats (seats sold directly to end customers, for example via the internet). Condor serves long-haul and short-haul routes alike and serves airports that are not served by scheduled airlines.¹ Based on the information provided, dry seat sales represent the minority of Condor’s business as sales to tour operators account for around [a majority] of its passengers.
- (6) Concerning charter companies, Condor mainly faces competition from TUIfly² (the airline of the TUI group) on routes from Germany to tourist destinations, such as Southern Europe, the Caribbean or Mexico.
- (7) Taking a broader view, some routes operated by Condor are also operated by Lufthansa, Eurowings, or Ryanair. However, Condor potentially competes with such airlines only as regards its dry seat sales on charter flights to certain destinations served also by such airlines, as further explained in recital (91).
- (8) As described below in recital (34) the loan to Condor is backed by a guarantee to the bank providing the loan (Kreditanstalt für Wiederaufbau). That guarantee is issued by the German Federal Government, which is then backed at 50% by the guarantee of the Land Hessen. In accordance with sections 2.2 and 2.3 of the 2008 Guarantee Notice³, the Commission considers that the borrower, Condor, is the beneficiary of the guarantee part of the measure. This is because, with the benefit of the State guarantee, Condor can at the very least obtain lower interest

¹ Scheduled airlines are comprised of legacy carriers (or full service network carrier), such as Lufthansa, and low cost carriers, such as Ryanair.

² TUI Group, like the Thomas Cook Group, includes the airline and tour operators. In contrast to Condor that serves also independent tour operators, TUIfly only serves tour operators of the TUI Group.

³ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155 of 20.6.2008, p. 10–22

rates and/or offer less security for its loan. More importantly, in its present financial situation, Condor would not, without a State guarantee, find a financial institution prepared to grant it a loan on any terms.

- (9) There are no indications that the guarantee would confer an advantage to the lender and thus constitute State aid in its favour.⁴

Ownership of Condor

- (10) The legal predecessor of Condor was founded in 1955 as Deutsche Flugdienst GmbH, of which Lufthansa became the sole shareholder in 1960. In 1961, Deutsche Flugdienst took over its rival Condor-Luftreederei (which had been founded in 1957 by Oetker), subsequently changing its name to Condor Flugdienst GmbH. From 2000 onwards, the Condor shares held by Lufthansa were gradually acquired by the Thomas Cook Group until the Thomas Cook Group reached 100% ownership.
- (11) [Ownership structure of Condor within the Thomas Cook Group] This was done to avoid that a non-German entity could become the majority owner of Condor and thus put at risk certain of Condor's flight permissions. The control over the operation of Condor fully remains with the Thomas Cook Group, whereas the trustee is the legal majority owner and exercises the voting rights. This set up is still in place today to ensure the German flight permissions.

Bankruptcy of the parent company

- (12) The Thomas Cook Group has been in a difficult financial situation for years, with negative consequences on the group's liquidity position. According to Germany, there are several reasons for the Thomas Cook Group's difficulties, among which a very high indebtedness stemming from acquisitions and operating losses, weak business in the UK home market reinforced by BREXIT discussions and negative press around the group's restructuring, as well as structural deficits in the organisation of the group.
- (13) The Thomas Cook group, listed on the London and Frankfurt stock exchanges, ceased trading with immediate effect on 23 September 2019 and entered compulsory liquidation with a debt of around GBP 1.7 billion (around EUR 1.91 billion).

Condor's financial situation

- (14) According to information provided by Germany, Condor generates some [15-25]% of its turnover directly from the Thomas Cook Group. Despite the difficulties of the parent company, Condor could generate positive EBIT in its last two financial years⁵.

⁴ In particular, none of the criteria of section 2.3 of the 2008 Guarantee Notice conditions are met. The State guarantee is not given ex post in respect of the loan but is simultaneous with it and the guaranteed loan is not used to pay back another, non-guaranteed loan to the same credit institution.

⁵ The financial year of the Thomas Cook group runs from 1 October until 30 September of the following year.

- (15) According to Germany, Condor's current financial difficulties stem from its close economic and financial ties with the Thomas Cook Group. When the Thomas Cook Group entered liquidation, Condor had significant amounts of receivables and payables against the Thomas Cook Group amounting to a net position of EUR [...] in favour of Condor. The receivables mostly originate from the group cash-pool. Condor has had joint liability for the debt of the Thomas Cook Group; therefore, a large portion of the liquidity Condor has earned in recent years has been channelled towards the parent company via its participation in the group cash-pooling.
- (16) Due to its participation in the group cash-pool Condor did not have independent bank funding. Because of the Thomas Cook Group's entering into liquidation, intra-group financing is no longer available to Condor. Consequently, Condor's financial means are barely sufficient to finance its short-term business. Without external support, it would very soon be unable to meet its liabilities. This is so especially at the approach of the winter season, when income from the tourism business is traditionally low.
- (17) According to Germany, Condor's financial difficulties are thus not the result of an arbitrary allocation of costs within the Thomas Cook group (meaning that the Condor part would be artificially weakened while the entire group overall would be financially strong). Instead, they stem from the entry into liquidation of its parent company and the latter is manifestly unable to support Condor and currently rather represents a burden for it. Condor was equally unable to shoulder the entire debts of the Thomas Cook group and prevent its insolvency. Condor's difficulties are thus intrinsic and a consequence of the parent company's entry into liquidation.
- (18) Following the entry into liquidation of the Thomas Cook Group, Condor's equity turned negative due to the write off of receivables from its parent company, as shown in the below table with key financial figures from Condor since the financial year 2016/2017.

Table 1: Key unconsolidated financials of Condor Flugdienst GmbH according to IFRS

In EUR million	2016/2017	2017/2018	2018/2019*
Revenue	[approx. 1 800]	[approx. 2 000]	[approx.. 1 800]
EBIT	[...]	[...]	[...]
Share capital	71.6	71.6	71.6
Equity	[...]	[...]	[...]

*Unaudited figures includes estimates;

- (19) As stated in recital (14) above, Germany states that Condor made a positive EBIT in the last two financial years despite the difficulties of the Thomas Cook Group.

This statement is based on the financial performance of the Condor group, i.e. Condor and its subsidiaries and sister company. If viewed in isolation, Condor alone also made a profit from its operations in the financial years 2017/18 and 2018/19; The latest pre-audited figures of Condor's EBIT for the current financial year (EUR [...]) show that, despite the negative impact of Thomas Cook Group's entry into liquidation, Condor is generating a positive result from its operations, which indicates that Condor's difficulties are not systemic.

- (20) As shown in table 1, Condor had growing equity in 2017/2018. The significant negative equity in the current financial year is the result of the write-off of its EUR [...] net balance to the Thomas Cook Group, which is treated as an extraordinary item after the EBIT.

Insolvency of Condor

- (21) Condor filed for insolvency on 25 September 2019 in Germany under self-administration. None of Condor's subsidiaries, nor its sister company have currently filed for insolvency. They are mainly providing services to Condor or managing aircraft leases and have no or little operational business beyond the group.
- (22) According to § 270 of the German insolvency law⁶ (Insolvenzordnung), a company filing for insolvency has the option to apply for self-administration ("debtor in possession" regime / *Eigenverwaltung*). Self-administration allows a company to continue carrying out its business without the court appointing an insolvency administrator. Therefore, the management board of the company remains competent to manage the company under the supervision of a creditors trustee (*Sachwalter*).
- (23) On 25 September 2019, the Amtsgericht Frankfurt am Main, the competent German court, placed Condor in preliminary insolvency proceedings and authorised preliminary self-administration, according to § 270a of the Insolvency Law.
- (24) The court also appointed a preliminary creditors trustee and a preliminary creditors committee. Moreover, the court has ordered a moratorium (Schutzschirmverfahren) of three months, in line with § 270b of the Insolvency Law. Under the moratorium, creditors are prevented from enforcing claims while the company is working out a settlement agreement with its creditors (Insolvenzplan). This effectively protects Condor's assets from claims of the Thomas Cook group and / or its creditors.
- (25) The preliminary creditors' trustee is charged with assessing the economic situation of the company and evaluating whether a restructuring could be successful. Moreover, the trustee has the duty to preserve the creditors' interests and must inform the creditors committee if a continuation of the self-administration could lead to a disadvantage for the creditors.
- (26) Negotiations for the sale of the company to a private investor are currently ongoing and are planned to be completed within the next three to six months.

⁶ Insolvenzordnung (InsO) vom 5. Oktober 1994, BGBl I, 1994, Nr. 70 vom 18.10.1994, S. 2866

Since Condor filed for insolvency, it has received [...] bids from interested investors. Moreover, the company is also in contact with [...] investors that had voiced an interest in Condor during talks initiated in February 2019 regarding the potential sale of parts of the Thomas Cook Group. [...]. The potential bidders are European airlines, private equity investors and tour operator groups. The successful bidder will be required to comply with the provisions of Article 4f) of Regulation EC 1008/2008⁷ regarding ownership and control of EU air carriers. The sales process is monitored by the preliminary creditors' committee.

Need for rescue loan

- (27) According to Germany, Condor's continued operation in insolvency under self-administration would not have been possible without the notified measure. Indeed, as set out in recitals (15) to (17), the bad results and subsequent entry into liquidation of its parent company has left Condor without funding resources. The severe liquidity crisis would not only jeopardise current operations but may even put Condor at risk of losing its operating licence.
- (28) According to Article 3 of Regulation EC 1008/2008, no undertaking established in the EU may carry by air passengers in commercial transport without an operating licence. Pursuant to Article 9, the licensing authority shall suspend or withdraw the licence of an air carrier if it is no longer satisfied that it can meet its actual and potential obligations for a 12-month period. Nevertheless, the authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of the company provided that safety is not at risk, and there is a realistic prospect of a satisfactory financial reconstruction within that time period. Whenever insolvency proceedings are opened against an EU air carrier, the authority must assess the financial situation of a company within three months after the opening of insolvency proceedings and on the basis of the findings review the status of the operating licence, in compliance with Article 9 of Regulation EC 1008/2008.

Market impact of Condor's exit

- (29) According to Germany, Condor has currently close to [200 000-300 000] passengers in holiday destinations abroad, with a significant part in [approx. 30] different long-haul destinations. Moreover, over [2-2.5] million passengers have booked flights with a departure date after 23 September, to [120-130] destinations, and have made advance payments of around EUR [...].
- (30) According to Germany, the transport of these passengers could not be taken over by or replaced by other companies at short notice. In particular, the German authorities note that (i) the grounding of the Boeing 737MAX has led to a global increase of the demand for wet-lease aircraft that is not matched by a comparable increase in supply, (ii) the repatriation of Thomas Cook passengers to the UK uses a significant amount of the available capacity in wet-lease aircraft, (iii) recent insolvencies of airlines such as Adria Airlines and Aigle Azur have further

⁷ Regulation (EC) N 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293 of 31.10.2008, p. 3.

reduced supply, (iv) due to the current holiday period in Germany (30 September – 30 October, exact weeks differ for individual *Länder*) there is little spare capacity, and (v) the repatriation of Condor's [20 000-30 000] passengers in long-haul destinations would require specific long-haul capacities.

- (31) Germany sets out that, beyond Condor, a large number of other companies in the value chain would be affected by its insolvency, in particular its around [5 000-6 000] suppliers, towards whom Condor has currently around EUR [...] outstanding liabilities. Condor provides flight services to around [more than 2 000] tour operators and [more than 8 000] travel agencies.

3. THE NOTIFIED MEASURE

- (32) On 25 September 2019, the German Federal Government decided to grant a rescue loan of EUR 380 million backed by two public guarantees (together “the notified measure”) to Condor. The loan is granted solely to Condor, i.e. the Condor Flugdienst GmbH. Neither Condor's subsidiaries, its sister company, or any other entity in the “Condor group” are recipients.
- (33) The loan will be provided by the German Public Development Bank “Kreditanstalt für Wiederaufbau” (KfW). The national legal basis for granting the loan is the Bundeshaushaltsordnung (federal budget law). The German State will provide a 100% guarantee on the loan on the basis of Article 3(1)(5) of the Haushaltsgesetz 2019.
- (34) The decision to grant the loan is imposed upon KfW according to paragraph 2(4) of the KfW law (*Gesetz über die Kreditanstalt für Wiederaufbau*⁸). In this type of transaction, KfW is the Government's vehicle for extending a loan. However, KfW does not bear any risk and does not reap any rewards, as interest payments are forwarded to the German Federal Government. The guarantee is issued by the German Federal Government, which is then backed at 50% by the guarantee of the Land Hessen, to relieve KfW from any risk in the transaction. The loan and the guarantee are inseparable. One would not exist without the other.
- (35) The loan will have the status of a so-called *Massedarlehen*. Under the German insolvency law, a *Massedarlehen* is a special form of insolvency loan that is senior to all other debt of a company and thus will be satisfied first in case of liquidation.
- (36) The objective of the notified measure is to enable Condor to continue operations while it builds sufficient own liquidity reserves to be able to operate independently from the Thomas Cook Group. It is provided in order to (i) maintain orderly air transport and (ii) limit the negative consequences for Condor, its passengers and staff caused by the liquidation of its parent.
- (37) The loan will allow Condor to continue operating until it reaches a settlement with its creditors and the sale of the company is realised. During this time, Condor will continue to operate normally and process payments for services that are necessary for its operation, including to other group companies. According to

⁸ Gesetz über die Kreditanstalt für Wiederaufbau vom 5. November 1948 (WiGBl. S. 123)

the loan agreement, amounts drawn from the loan can be paid to other Condor group companies, i.e. its subsidiaries and its sister company, only on the basis of existing service or leasing contracts and only if the payment is market conform.

- (38) According to the loan agreement the loan can be drawn for a duration of six months only. Reimbursement is due at the end of the six months, with the possibility for [...].
- (39) The loan is collateralised by (i) guarantees and indemnification obligations by [...] ⁹ (ii) a pledge on [...], (iii) a pledge on [...], (iv) a pledge on [...], (v) a [...], and (vi) a pledge on [...]. The value of the collateral amounts to an estimated minimum of EUR [...] million. The minimum estimation only includes the potential [...]. [...]. A valuation report will be conducted to further assess the value of the collateral. KfW has the right to ask for further collateralisation.
- (40) In addition, the loan bears a basis interest rate of a 1-year EURIBOR plus a risk margin of [500-700] basis points. According to the loan agreement, the interest rate can be adapted if the valuation report finds that the quality of the collateral has changed. However, the interest rate cannot be lower than the minimum interest rate provided in point 56 of the Rescue and Restructuring Guidelines of 2014¹⁰ (the “R&R Guidelines”).
- (41) The loan will be paid out in instalments, according to duly justified liquidity needs. According to the loan agreement, loan tranches can be disbursed by KfW only if the following conditions are fulfilled: (i) the proceeds expected to be achieved from the insolvency mass cover the repayment of the loan including interest, fees and costs and there are no indications that the opening or continuation of the insolvency procedure could be refused for a lack of mass; (ii) Condor shall present concrete proof of liquidity needs and use of all amounts drawn (on a weekly basis) and proof that it does not have other free liquidity at its disposal that exceeds EUR [...] and other liquidity sources are fully exhausted; (iii) none of the circumstances that permit the lender to terminate the loan contract have arisen; (iv) the requested liquidity payments shall not exceed the maximum total amount of EUR 380 million, (v) the information in the liquidity plan is judged by the lender to be reliable, based on clear and plausible assumptions.
- (42) The loan agreement does not include any direct or indirect conditions concerning the identity of a potential buyer of Condor as a whole, or of its assets. The sales negotiations are carried out by Condor under the monitoring of the creditor trustee and the preliminary committee of creditors. The Federal Government is not part of this process. However, Germany has a guest status (via KfW) in the preliminary creditor committee and has the right (via KfW) to be regularly informed on the progress in the sale process.
- (43) The 100% guarantee by the Federal Government has the objective of relieving KfW from the risk of default on the loan. Given the fact that the interest income

⁹ [Ownership structure of Condor within the Thomas Cook Group]

¹⁰ Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1).

on the loan will be transferred to the Federal Government, there is no guarantee premium attached. Moreover, the *Land* Hessen will provide the Federal Government with a counter guarantee on 50% of the loan, i.e. EUR 190 million., and in return the Federal Government will split the interest income with the Land Hessen.

- (44) Germany provided a liquidity plan, demonstrating Condor's liquidity needs over the next six months, showing a liquidity shortage of EUR [360-380] million. The plan is based on historical data and includes forecasts for the future, taking into account the liquidation of the Thomas Cook Group and the insolvency of Condor itself. In particular, the plan incorporates the expected impact from the loss of internal financing by the parent company and an expected drop in revenues due to possibly reduced bookings or cancellations, not only from other Thomas Cook group companies but also from Condor's own business. For the period beginning of October 2019 to beginning of April 2020, the liquidity plan envisages total inflows of EUR [...] million and outflows of EUR EUR [...] million. Inflows are mainly generated from the sales of dry seats and sales to tour operators (around [75-95]% of total inflows). Inflows from dry seats account for around EUR [...] million ([...]% of total inflows) and inflows from sales to tour operators for EUR [...] million ([...]% of total inflows), which means that around [...]% of Condor's inflows from sales of seats and sales to tour operators will be generated by sales to tour operators. No income is envisaged to be generated from business with Thomas Cook tour operators. On the outflows, the main factors are (i) fuel costs (EUR [...] million), (ii) personnel costs (EUR [...] million) and (iii) landing costs (EUR [...] million). Other operating costs directly attributable to the operation of an aircraft, such as leasing, maintenance, handling, etc., total up to EUR [...] million. Additional ancillary costs for the payment of Air Passenger Duty, catering and ancillary sales input costs, repayments for delays, IT infrastructure and rent total EUR [...] million.
- (45) To date, no credit / guarantee agreements have been signed.

4. THE COMPLAINT

- (46) The Commission has received a complaint from Ryanair in relation to the proposed rescue aid.
- (47) Ryanair alleges that the EUR 380 million rescue loan to Condor and the State guarantee to KfW would artificially enable Condor to maintain its presence in the market. The natural course of events would lead the company to exit the market (similarly to airlines such as Cyprus Airways, Malév and Spanair, where the spare capacity created by their market exit was easily filled by competitors). Ryanair further alleges that the aid would allow Condor to charge predatory prices to the detriment of its competitors.
- (48) Ryanair also alleges that the rescue loan and guarantee to Condor constitutes incompatible State aid. Ryanair considers that the measure does not serve a well-defined objective of common interest as preventing or delaying the exit of a company from the market deters other companies from stepping in. Moreover, the liquidation of Condor would not lead to social hardship since the employees will be taken over by other companies in the aviation sector. Furthermore, Ryanair alleges that Condor's insolvency would not lead to any market failure as competitors could provide the same services without substantial delay. In this

regard, Ryanair provides the examples of the Budapest and Barcelona airports, the home base airports of the former Malév and Spanair airlines.

- (49) Ryanair further alleges that the aid granted to Condor would indirectly benefit Lufthansa as the potential future buyer of Condor assets.
- (50) Lastly, Ryanair alleges that the rescue aid would be in contradiction with the principle of freedom to provide services as it negatively affects the ability of other airlines to commence or expand the provision of aviation services in Germany.

5. GERMANY'S COMMENTS ON THE COMPLAINT

- (51) Germany sets out that the measure has been notified to the Commission. The granting of the loan and the related State guarantees are subject to the Commission's approval under EU State aid rules.
- (52) Germany indicates that the loan bears interest and is only granted to the extent it is necessary for maintaining flights, in a situation where Condor is faced with acute liquidity needs due to the insolvency of its mother company. It has to be paid back after a maximum of six months. There is therefore no risk that the measure will have any influence on Condor's ticket prices. Condor, as many airlines, is customarily offering a certain amount of seats at reduced prices, in order to stimulate demand towards below-average booked flights and achieve high capacity utilisation. Lufthansa, Eurowings, Ryanair, Easyjet and others are doing the same. These offers will continue over the next months and are part of normal business.
- (53) According to Germany, it has an interest in maintaining a minimum level of competition among German airlines, so as to avoid a monopoly by Lufthansa. After the insolvencies of several German airlines, such as Air Berlin, Niki, Germania, etc., Condor plays an important role in the market. This is in particular true for long-haul tourist destinations, as after the market exit of Air Berlin, the Lufthansa subsidiary Eurowings and Condor are the only competitors left in this segment.
- (54) Germany states that due to the above mentioned insolvencies, the offer of leisure flights has dropped significantly. If Condor exits the market without being taken over, existing demand from tour operators could not be satisfied in the short-term. Consumers would suffer price increases, at least in the short-term, and a reduced offer.
- (55) According to Germany, Condor's market exit would negatively affect 5 000 direct employees and raise the challenge of bringing back a large number of tourists from their destinations abroad. In addition, it would have an impact on employees on other levels of the value chain.
- (56) The complainant's claim that the German Government's ultimate objective is to prepare Condor's sale to Lufthansa is unfounded and incorrect. Germany sets out that the complainant has adduced no evidence to back this claim. Condor is in contact with several interested parties and there is no plan to favour any one among them. Moreover, any acquisition would have to be cleared by the

competent competition authorities and would be blocked if it were to create or strengthen a dominant market position.

- (57) The complainant claims that the aid would allow Condor to artificially maintain its presence on the market. Germany explains however that, as shown by its financial reports, Condor is profitable on a stand-alone basis. Its cash shortage is not due to inefficient trading or low competitiveness but to financial arrangements that obliged it to pay large sums to its parent company and the latter's subsequent insolvency. Thus, Condor's liquidity position has been artificially depleted by forcing it to contribute large amounts of cash to its loss making parent company. Condor's market exit would allow competing carriers, such as Ryanair, to increase prices and restrict consumer choice for air transport from Germany to certain tourist leisure destinations.
- (58) The complainant contends that after Condor's market exit, the spare capacity would immediately be filled by other airlines. Germany asserts that this would not be the case because Condor's business model is based on trading with large tour operators, especially on long-haul routes and niche destinations in [...]. Its services could not be replicated by traditional low-cost carriers because Condor is the only German provider that has a sufficiently broad sales mix and sufficient strength in the tour operator and group business.
- (59) According to Germany, this is supported by the fact that [25-30]% of short to medium haul tourist destinations served from Germany have not been fully filled since Air Berlin's market exit in 2017, followed by Germania's insolvency in 2018. Four of Air Berlin's and Germania's destinations, i.e. Mytilini/Lesbos and Karpathos I Greece as well as, Porto Santo in Portugal and Almeria in Spain, remain entirely unserved from Germany. Others, such as Faro (Portugal) and Malaga and the Canary Islands (Spain) offer between [10-20] and [20-30]% less seats in summer 2019 on the routes from Germany as compared to summer 2017, when Air Berlin and Germania were still flying, although the complainant is also active on these routes. Moreover, Germany sets out that in many main German airports, the number of seats flown to tourist destinations is significantly lower in 2019 as compared to 2017, for example - [35-45]% in Bremen, - [50-60]% in Erfurt, -[50-60]% in Friedrichshafen, - [45-55]% in Rostock-Laage or - [15-25]% in Nürnberg.

6. ASSESSMENT OF THE MEASURE

6.1. Existence of State aid

- (60) 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".
- (61) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions 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.

- (62) Prior to examining if the notified measure involves State aid pursuant to Article 107(1) TFEU, the Commission notes that Germany does not dispute the State aid character of the measure.
- (63) The decision to grant the notified measure was taken by the German Federal Government. The loan will be extended via the public development bank KfW. As set out in recital (34), the loan and the guarantee are inseparable because of their specific nature. The German Government imposed the granting of the loan on KfW, which is merely the vehicle of the Government for channelling the loan. KfW will not earn any interest nor bear any risk. Indeed, the interest payments are passed through to the Government and the Government extends a guarantee to KfW for the repayment of the loan. The latter will be backed by a 50% guarantee by the Land Hessen in favour of the Federal Government. The Commission concludes that the notified measure involves State resources and is imputable to the State.
- (64) The notified measure will be issued to the benefit of Condor, for an amount of EUR 380 million determined by reference to its specific liquidity needs during the time of the insolvency proceedings and its planned sale. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective¹¹. This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, the loan is not part of a broader measure of general economic policy to provide support to undertakings in a comparable legal and economic situation, active in the aviation sector or other economic sectors, but is extended only to Condor.
- (65) The State guarantees will be issued to KfW to relieve the development bank from the risk of a potential default of the loan. The guarantee is provided to secure solely the rescue loan to Condor. Therefore, the Commission concludes that the notified measure is selective within the meaning of Article 107(1) TFEU.
- (66) The notified measure allows Condor to finance its liquidity gap for the continuation of its operations during the insolvency proceedings and the sales process by giving it access to finance that Condor, given the unexpected entry into liquidation of its parent, would not have been able to obtain on the market. According to German regulatory provisions, Condor would have had to provide a restructuring report (*Sanierungsgutachten*) prior to being eligible for funding by financial institutions. Because of the pressing liquidity needs, it was not feasible to wait until such a report was prepared and assessed. Thus, Condor could not raise the required funds on the market.
- (67) Without the State guarantees KfW would bear the risk of issuing the loan to Condor. Bearing the risk but not the rewards of the loan, KfW would not have granted the loan without the State guarantee. Before issuing a guarantee, any financial institution would have had to do a risk assessment with regard to the potential default of the underlying loan. As stated in recital (66) above, there was

¹¹ See judgment of 4 June 2015 *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

no time for the preparation and assessment of a restructuring report of the company. Hence, a financial institution would not have issued such a guarantee.

- (68) Given all the above, the Commission concludes that the notified measure confers an economic advantage to Condor within the meaning of Article 107(1) TFEU.
- (69) If aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.¹²
- (70) The aviation market is open to competition in the EU. Condor operates routes within Europe and overseas. It is in direct competition with other EU providers. The notified measure is therefore liable to distort or threaten to distort competition and to affect trade between Member States.

6.2. Conclusion on the existence of aid

- (71) In light of the above, the Commission concludes that the notified measure in favour of Condor involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

6.3. Lawfulness of the aid

- (72) The Commission notes Germany's commitment that the notified measure will be granted to Condor in observance of the standstill obligation laid down in Article 108(3) TFEU. Thus, the notified measure does not constitute unlawful State aid.

6.4. Compatibility of the aid

- (73) Under Article 107(3)(c) TFEU, the Commission can authorize aid if it is granted to promote the development of certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of the nature and aims of the State aid at stake, the Commission will assess whether the State guarantee complies with the provisions on rescue aid laid down in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹³ (“R&R Guidelines”).

6.4.1. Eligibility

- (74) In order to be eligible for rescue aid, an undertaking must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20 from letter a) to d) of the R&R Guidelines occurs.

¹² See, in particular, judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, 730/79, EU:C:1980:209, paragraph 11; judgment of 22 November 2001, *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)*, C-53/00, EU:C:2001:627, paragraph 21; judgment of 15 December 2005, *Italy v Commission*, C-66/02, EU:C:2005:768, paragraph 44.

¹³ Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1).

- (75) As described in recitals (21) to (25) above, Condor filed for insolvency on 25 September 2019 and the competent court placed the company in preliminary insolvency proceedings and appointed a preliminary creditors' trustee¹⁴ on the same day. Thus, Condor is currently subject to collective insolvency proceedings.
- (76) Furthermore, according to the information provided by Germany, Condor has around EUR [...] million of receivables against other companies of the Thomas Cook Group (excluding Condor's subsidiaries). Because of the liquidation proceedings against the Thomas Cook Group in the UK and liquidation proceedings and insolvency proceedings against a number of its subsidiaries across Europe, Condor's receivables against group companies that are part of insolvency or liquidation proceedings have lost their value and have to be written off. The write-off of receivables against group companies results in negative equity for Condor of around EUR [...] million.
- (77) The company thus qualifies as a firm in difficulty pursuant to points 20(a) and 20(c) of the R&R Guidelines.
- (78) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. Condor is not a newly created undertaking, as it was established in 1955 (see recital (10)).
- (79) Furthermore, according to point 22 of the R&R Guidelines, a company belonging to a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (80) As described in recitals (15) to (17) above, Condor's acute liquidity needs are a result of the liquidation proceedings against its parent Thomas Cook Group and the previously operated intragroup financing arrangements. Condor had no or relatively little connection to the credit markets. More important, Condor has negative equity due to the write-off of a significant amount of receivables that are not enforceable anymore because of the liquidation of the Thomas Cook Group and a number of its subsidiaries. Hence, Condor's difficulties do not result from an arbitrary allocation of costs within the group. Therefore, the Commission concludes that the requirements of point 22 of the R&R Guidelines are met.

6.4.2. *Contribution to an objective of common interest*

- (81) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In this respect, the Member State must demonstrate that the aid aims to prevent social hardship or address a market failure. According to point 44 of the R&R Guidelines, this is in particular the case when one of the circumstances listed from letter a) to g) are met.

¹⁴ The preliminary creditors' trustee (*vorläufiger Sachwalter*) is recognised as insolvency practitioner in the meaning of Regulation (EU) 2015/848 Article 2(5). Thus, the preliminary insolvency proceedings form part of collective insolvency proceedings within the meaning of the R&R Guidelines.

- (82) The German authorities set out that Condor provides an important service which it would be difficult for competitors to replicate. In particular, Condor's insolvency would result in the immediate need to repatriate around [200 000-300 000] passengers.
- (83) The German authorities also provide that Condor has an important systemic role as provider of air travel services to small and medium sized tour operators. The exit of Condor would have negative impact on those operators. Furthermore, the German authorities argue that the closure of Condor would have adverse effects on the credit market, as the liquidation of the Thomas Cook group and the default of a significant amount of loans would result in a reduction in the quantity of loans offered by the affected financial institutions.
- (84) The notified measure has the purpose to prevent the disruption of Condor's flight operations that would be caused by the loss of its operating license and the resulting grounding of its airplanes. According to Germany, [200 000-300 000] passengers are currently abroad and over [2-2.5] million passengers have booked flights with Condor with a departure date after 23 September (see recital (29)).
- (85) As set out in recital (30), Germany states that the capacity lost in case of Condor's planes being grounded could not be replicated in the short term due to the grounding of all Boeing 737MAX, the repatriation of Thomas Cook passengers to the UK, recent airline insolvencies and the autumn holidays in Germany.
- (86) The Commission notes that, according to Boeing¹⁵, 387 Boeing 737MAX aircraft had been delivered before the grounding. These 387 planes are thus currently not operating. In addition, Boeing had produced around 282 aircraft since the grounding took effect in March 2019 that could not be delivered¹⁶. That means that a total of around 669 aircraft of that type are not operated and thus having a negative impact on the capacity of the airlines that operated/ordered them, or generated the need to wet-lease aircraft, reducing the availability of wet-lease aircraft in the market¹⁷.
- (87) The Commission observes that the repatriation of passengers of Thomas Cook airlines to the UK has ended on 7 October 2019. According to the UK Civil Aviation Authority, it was the largest peacetime repatriation. Around 140 000 passengers were repatriated. The entire operation encompassed two weeks and involved 746 flights of 50 airlines to 55 destinations.¹⁸ The Commission notes that a repatriation of the Condor passengers to Germany would encompass approximately [200 000-300 000] passengers, in more than [50-150] destinations and would take around 1 000 to 1 500 flights. Even if the entire capacity that was

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<http://active.boeing.com/commercial/orders/displaystandardreport.cfm?cboCurrentModel=737&optReportType=AllModels&cboAllModel=737&ViewReportF=View+Report>

¹⁶ As of August 2019; estimated production rate March-May 52 aircrafts per month and June-August 42 aircrafts per month, according to the monthly production rate as stated in: <https://dsm.forecastinternational.com/wordpress/2019/07/16/airbus-and-boeing-report-june-2019-commercial-aircraft-orders-and-deliveries/>

¹⁷ A report found that until August 2019 nearly 41 million seats have been lost so far due to the aircraft's grounding. (Source: <https://www.forbes.com/sites/tedreed/2019/08/10/new-report-puts-impact-of-boeing-737-max-grounding-at-41-billion/#7aae3b381fdf>)

¹⁸ <https://www.caa.co.uk/News/CAA-confirms-Operation-Matterhorn-concludes-today-as-final-flight-heads-to-UK/>

used by the UK authorities for the repatriation operation would be available on short notice for the repatriation of Condor passengers, which would have to start with immediate effect, this capacity would not be enough due to the difference in size of the operation to avoid a disruption. Moreover, the repatriation would have an added complexity as it also concerns [20 000-30 000] Condor passengers in around [approx. 30] long-haul destinations, which is significantly more than in the UK operation. The pool of available aircraft for a repatriation from long-haul destination is limited to long-haul aircraft, which are fewer in number and may not be available on short notice if the destination is not already served by another airline that has spare capacities.

- (88) Furthermore, the capacity of the four German airports served by Condor also constrains any repatriation operation, in particular during the Autumn holidays. In this context, the repatriation of Thomas Cook passengers to the UK included Thomas Cook's 10 airport bases in the UK. For example, the airports of Berlin expect alone for Wednesday 9 October 2019 a passenger volume of above 110 000 passengers.¹⁹ This significantly exceeds the yearly daily average passenger volume of around 95 100 passengers.²⁰
- (89) Furthermore, some of Condor's services are designed so as to specifically satisfy the demands of tour operators and travel agencies, many of which are SMEs, and either cannot be duplicated by scheduled airlines²¹, or scheduled airlines are unwilling to do so.²²
- (90) As described in recital (5) above, the Commission notes that around [a majority] of Condor's revenues stem from sales to tour operators. Moreover, Condor operates as a charter company and not as a scheduled airline. Germany refers to the Decision of the Commission in the Airtours/First Choice merger. Indeed the Commission noted in its market definition that "*Charter airlines exist primarily to serve tour operators, particularly in the most popular sectors of the foreign holiday market, [...] Their operations have a number of characteristics distinguishing them from those of scheduled airlines. Charter airlines operate (generally non-stop) between the country of origin and the airports closest to major holiday destinations. The choice of routes and the frequency of flights is dictated by demand from tour operators and charter airlines will change flying patterns to reflect changes in demand for foreign package holidays to particular destinations. Charter airlines generally expect a tour operator to buy blocks of seats for at least a holiday season.*"²³ The Commission further concluded that "[...] though scheduled airlines are a source of marginal capacity to tour operators, they are not likely to replace more than a small proportion of charter supply [...]"²⁴

¹⁹ <https://www.rbb24.de/wirtschaft/beitrag/2019/10/flughaefen-berlin-herbstferien-ansturm.html>

²⁰ Calculation based on 2018 passenger volume (source: <https://de.statista.com/statistik/daten/studie/5805/umfrage/passagieraufkommen-an-den-flughafen-berlin-seit-1991>)

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

²² For example, tour operators require flight plan flexibility even on short notice, where legacy and low-cost carriers have long locked in their schedules.

²³ See Decision in case M.1524 AIRTOURS/FIRST CHOICE, recital 35

²⁴ See Decision in case M.1524 AIRTOURS/FIRST CHOICE, recital 40

- (91) The Commission concluded in the Ryanair / Aer Lingus III decision that (i) sales of package holidays offered by charter companies and tour operators are not in the same market as scheduled air transport services, and (ii) the wholesale of seat packages to tour operators is not in the same market as scheduled air transport services for end-customers²⁵. However, the Commission left open the question if sales of dry seats are part of the same relevant market as scheduled point-to-point air transport services²⁶. Therefore, the services provided by Condor to tour operators and travel agencies in Germany cannot be easily replicated, at least in the short-term, by scheduled airlines.
- (92) The Commission also notes that Condor's main competitor in the sales to tour packages, TUIfly, is fully vertically integrated and solely serves tour operators of the TUI group. Moreover, the Commission notes that the other charter airlines competing in the German medium-haul and short-haul market are either relatively small (Sundair that has only 5 aircraft), or focus on a very limited geographic area (Sun Express that mainly serves destinations in Turkey) and have combined approximately [50-65]% of the passenger volume of Condor. Concerning long-haul destinations, Condor is the sole provider of flight services for tour operators for a majority of Condor's long-haul destinations. It is plausible that an immediate disruption in the services of Condor would have a significant negative impact on tour operators and travel agencies in Germany that are independent and not part of the TUI group.
- (93) As set out in recital (59), Germany submitted figures regarding the sale of dry seats to tourist destinations from Germany before and after the market exit of Air Berlin and Germanaia. The figures indicate that, two years after Air Berlin's market exit, many German airports still sell significantly less seats to tourist destinations than before. The offer of seats to several important tourist destinations that had been served by Germanaia and Air Berlin is between [10-20]% and [20-30]% less than the levels prior to those companies exiting the market, although many airlines are competing on these routes. Four of their former destinations remain entirely unserved from Germany. Moreover, a majority of long-haul destinations served directly from Germany by Condor, are not directly served by scheduled airlines. In light of these figures, it appears highly unlikely that the capacity in dry seats lost through Condor's insolvency could be replicated in the short term.
- (94) As set out in recital (5), Condor's main activity is the sale of services to tour operators. These services cannot be easily replaced by scheduled airlines (see recitals (90) and (91)). The market exit of the scheduled airlines Air Berlin and Germanaia show that even for easily replicable services scheduled airlines did not fully compensate for the capacity loss in the short-term (see recital (93)). It is plausible that, given the differences in the majority of services between Condor, as a charter airline providing majorly services to tour operators, and scheduled airlines, the loss of Condor's capacity would not be filled by scheduled airlines in the short-term.
- (95) On the basis of the information provided by the German authorities, the Commission finds that, in line with point 44(b) of the R&R Guidelines, there is a

²⁵ See recitals 407 and 410 of the Decision in case M.6663 Ryanair/Aer Lingus III

²⁶ See recital 419 of the Decision in case M.6663 Ryanair/Aer Lingus III

concrete risk of disruption of (i) passenger flight services in Germany with an immediate adverse effect on the [200 000-300 000] passengers abroad and (ii) of the provision of services to tour operators in Germany, other than the TUI Group, that cannot be replicated in the short-term by scheduled airlines with an immediate risk to independent tour operators and travel agencies in Germany.

- (96) Germany has also argued that the liquidation of Condor would have an adverse effect on the credit market. Condor was mainly financed by the treasury of the Thomas Cook Group. The liquidation of the Thomas Cook Group may have an impact on the credit market. However, whether or not this is the case, is not of substance for this decision. Since no financial institution has significant exposure in case that Condor is liquidated, as Condor is not financed on the credit market, the Commission cannot accept this argument, based on the requirements of point 44(e) of the R&R guidelines.
- (97) Therefore, the Commission concludes that the information provided by the German authorities demonstrates that by averting an imminent and potentially disruptive liquidation process, the notified measure contributes to a well-defined objective of common interest.

6.4.3. Appropriateness

- (98) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 from letter a) to e) and 56 of the R&R Guidelines.
- (99) The planned rescue aid is a loan to Condor of up to EUR 380 million backed by two State guarantees and is to be used to cover liquidity needs for a period of maximum six months, as set out in the liquidity plan provided by the German authorities (see recital (44)).
- (100) As stated in recital (40), the loan initially bears an interest rate of EURIBOR plus [500-700] basis points. According to the loan agreement, the interest rate can be adapted according to the quality of the collateral, without however falling below EURIBOR + 400 basis points. The guarantee does not bear a premium. The remuneration of the notified measure is thus not less than the reference rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) and complies with the provisions of point 56 of the R&R Guidelines.
- (101) Germany also undertakes to communicate to the Commission not later than six months after the notified measure has been authorised either proof that the loan has been reimbursed in full, or a restructuring plan, or a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.
- (102) Finally, the Commission notes that the loan will only be used to cover the operating costs specified in the liquidity plan (see recital (44)). Therefore, Condor will not use the rescue aid to finance structural measures or other activities than carrying out flights.

- (103) In view of the information provided by the German authorities, the Commission concludes that the notified measure meets the conditions laid down in points 38(c) and 55 of the R&R Guidelines and therefore the form of the aid allows rescuing Condor in the least distortive way.

6.4.4. Proportionality of the aid / aid limited to the minimum

- (104) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission uses the outcome of the calculation based on the formula set out in Annex I of the R&R Guidelines. The Commission will authorise aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.
- (105) The German authorities provided the Commission with the calculation according to Annex I of the R&R Guidelines. According to the calculation, the maximum amount of rescue aid that could be granted to Condor is approximately EUR [400-500] million.
- (106) The Commission notes that the provided financial data is not audited. The reason for this is that Condor's accounting period is not the calendar year but rather a financial year ending on 30 September. The most current financial statements thus cannot have been audited. The Commission, however, has no reason to question the validity of the provided financial data. Compared to previous audited statements, revenue is lower compared to the financial year 2017/18, which can be explained by the uncertain situation of the Thomas Cook Group and the impact of Condor's insolvency on individual customers' trust in the airline. Operating expenditure items such as personnel costs, depreciation, and directly attributable costs are in a similar range compared to 2017/18 and 2016/17. Moreover, there are no manifest discrepancies in other operating revenue and other operating expenditure.
- (107) The Commission also notes that the largest impact on the calculation stems from the write-off of receivables and payables to companies of the Thomas Cook Group that amount to a net effect of EUR [...] million.²⁷
- (108) As stated in recital (44), Germany has also provided a liquidity plan for Condor for the time period from 16 September 2019 to 3 April 2020 that demonstrates that the amount of the rescue loan does not exceed the liquidity needs of the company for the six months. The cash flow estimates provided by Germany show that Condor requires around EUR [360-380] million to cover its liquidity needs until 3 April 2020.

²⁷ Receivables and payables to the subsidiaries of Condor and to LLG Nord GmbH & Co Delta OHG were not written off, as they are currently unaffected by the insolvency proceedings in the UK against the Thomas Cook Group.

- (109) The cash flow estimate provided by Germany shows that Condor can expect limited operating revenues entirely insufficient to meet its operating costs. This is caused by the insolvency of the Thomas Cook Group, which results in the loss of the entire business with Thomas Cook Group tour operators and also in a reduction of sales of individual seats. Furthermore, in order to continue operations, Condor is in discussions on [...]. The assumptions of the liquidity plan seem to be plausible. In particular, it takes due account of the expected reduction in bookings and does not overestimate the costs when compared to similar historic time periods (the 1st and 2nd quarter of Condor's financial year).
- (110) The Commission therefore concludes that the notified measure is indeed proportionate and restricted to a minimum amount, in line with point 60 of the R&R Guidelines.

6.4.5. Negative effects

- (111) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.
- (112) The Commission notes the declaration provided by the German authorities that Condor, or any entity controlled by it, has not received any notified rescue aid, restructuring aid or temporary restructuring aid in the last ten years and the German authorities confirm no such aid has been granted. Consequently, the Commission concludes that "one time, last time" principle as required in section 3.6.1. points 71 and 74 of R&R Guidelines, is respected.

6.4.6. Transparency

- (113) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the German authorities must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Germany undertakes to respect those obligations. The relevant information shall be made available on the website: www.bmwi.de

6.5. Conclusion on the compatibility of the aid

- (114) In the light of the findings above, the Commission concludes that the notified measure meets the conditions of compatibility with the internal market set out in the R&R Guidelines. The Commission therefore considers that the notified measure provided to Condor is compatible with the internal market.
- (115) In addition, the Commission reminds the German authorities of their obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.
- (116) The Commission reminds the German authorities to notify a restructuring or a liquidation plan for Condor if the rescue aid cannot be reimbursed by Condor within six months.

7. ASSESSMENT OF THE COMPLAINT

- (117) Contrary to the allegations made, the Commission notes that the notified measure is limited to the liquidity needs for the time until 3 April 2020 (see recital (108)) and thus cannot be used by Condor to introduce predatory pricing.
- (118) The complainant alleges that the notified measure does not contribute to an objective of common interest. The Commission notes that the complaint refers to the development in the number of annual passengers of the Budapest and Barcelona airport and thus takes a long-term view on the ability of the aviation market to absorb the exit of an airline. The long-term view is irrelevant in this case, as the notified measure has to contribute to an objective of common interest in the time period under assessment, that is, the period ending 3 April 2020. The Commission has assessed the contribution to an objective of common interest in section 6.4.2 of this Decision.
- (119) Furthermore, the complainant alleges that the aid granted to Condor would indirectly benefit Lufthansa, as potential buyer of Condor. Firstly, the Commission notes that there is currently no indication that Lufthansa is preparing a bid for Condor. Secondly, the sale process is not relevant for assessing the compatibility of the rescue aid. However, should there be indications that State aid was provided to a potential buyer in the sale process, the complainant may file a complaint at that later stage.
- (120) Finally, the complainant contends that by granting aid to Condor, the notified measure would make it more difficult for other airlines to enter or expand in the German market, in breach of the freedom to provide services. Any State aid granted in the Internal Market gives a company an advantage. However, the State aid rules, in this case the fulfilment of the R&R Guidelines' compatibility criteria, ensure that any undue negative effect on the Internal Market is avoided. The complainant does not advance any specific argument, how the notified measure would, beyond the generic advantage that every State aid provides by definition to the beneficiary, affect the freedom to provide services in the Internal Market.

8. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union

This decision is without prejudice to an examination of possible State aid to possible buyer(s) of Condor assets in the case of a sale not carried out under market conditions.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission