EUROPEAN COMMISSION

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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 […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.63203 (2021/N) – Germany - Restructuring aid for Condor

Excellency,

The European Commission has the honour to inform you that, on the basis of the following considerations, it raises no objections under Article 107(3)(c) of the Treaty on the Functioning of the European Union to the State aid notified by the Federal Republic of Germany for the restructuring of Condor Flugdienst GmbH.

Seiner Exzellenz Herrn Heiko MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
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1. PROCEDURE

(1) Following pre-notification contacts[1], 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) of the Treaty on the Functioning of the European Union (‘TFEU’).

(2) On 14 October 2019, the Commission 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”)[2]. 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[3].

(3) On 26 April 2020, the Commission 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 aid instruments were two loans from KfW for a total amount of EUR 550 million backed by a State guarantee[4]. Condor used part of the loan funding to reimburse the rescue loan within the period of 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[5].

(4) The Commission reassessed the damage compensation in light of the judgment of 9 June 2021 and adopted today a new decision regarding the damage compensation for the period from 17 March to 31 December 2020[6]. The Commission has also adopted today another decision regarding damage compensation for Condor for the period from 1 January to 31 May 2021[7].

(5) In the Condor I decision, the Commission assesses Condor’s damage during the period from 17 March to 31 December 2020 based on ex post figures of actual damage and concludes that Condor had suffered a damage of EUR 175.355 million. In the Condor II decision, the Commission finds that Condor has suffered a damage of EUR 73.66 million during the period from 1 January 2021 to 31 May 2021 and approves 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

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1 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.

2 OJ C 249, 31.7.2014, p. 1.

3 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”).

4 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 (“the annulled damage compensation decision”). Following the annulment of that decision by the General Court, the Commission adopted a new decision, see footnote 6.

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

6 Commission decision of 26.7.2021 in case SA.56867 (“the Condor I decision”), not yet published in the OJ.

7 Commission decision of 26.7.2021 in case SA.63617 (“the Condor II decision”), not yet published in the OJ.

in the Condor I and Condor II decisions, results in the aggregate actual damage amount of EUR 249.02 million

(6) In the annulled damage compensation decision, the Commission had approved aid, which Condor was subsequently granted, in order 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 amounts to 91.745 million. In addition, Condor has to pay interest for the advantage it got from 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 decision will be implemented based on the ex post calculation of the damage.

(7) Germany plans to support the restructuring plan of Condor by means of the notified measures examined in the present decision. They involve (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 (6)). The assessment of the compatibility with the internal market of the restructuring measures is separate from the assessment of the damage compensation measures, based on different legal bases and eligible costs.

(8) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958[8], and to have the present decision notified and adopted in English.

2. DESCRIPTION OF THE MEASURES

2.1. The measures

(9) The present decision assesses the compatibility of State aid involved in two notified measures. The first measure consists in the modification of the conditions - described in recitals (35) and (36) - 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).

(10) 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.

** Confidential information

8 Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2.2. The beneficiary

2.2.1. Corporate structure, ownership and activities

(11) 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. Condor has at present 4 022 employees[9].

(12) SG Luftfahrt GmbH (SGL) is the sole shareholder of Condor. SGL is a holding company without operational activities. It holds Condor's shares in trust and has done so since Condor exited insolvency proceedings in December 2020, pending its sale to a strategic investor. 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 a private investor and will be liquidated once the shares are sold. 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 exercising his rights. The prohibition includes actions such as the [...][10]. Figure 1 shows the current structure of the Condor group.

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

(13) 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[11].

2.2.2. Competition on the markets Condor is active on and position therein

(14) 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[12]. Some routes operated by Condor are also operated by Eurowings, the low cost carrier of the Lufthansa group[13], or Ryanair. However, Condor potentially competes

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

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

12 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, not yet published in the OJ).

13 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).

with such airlines only as regards its dry seat sales on charter flights to certain destinations that those airlines also serve.

(15) 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 [...] of the routes, while [...]% were served by Condor and one other airline, and on [...]% more than two airlines were present. In the short and medium haul segment, Condor was the sole supplier on [...]% of the routes it served in summer 2019; on [...]% of them two airlines were present and [...]% of those routes were served by more than two airlines.

(16) In 2019, Condor's fleet included [...] aircraft – [...] of which were operated by Brussels Airlines - in total. Condor carried out around [...] flights carrying around 9.4 million passengers, with a total of available seats per kilometre ("ASK") of [...] million and a load factor of [...]% of the aircraft operated. In summer 2019, Condor had a market share of air passenger transport in Germany of [...]%, 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 [...]% each, followed by TUIfly with 9%, SunExpress with 7% and EasyJet with 4%.

(17) In 2019, Condor operated charter flights at nine German airports with four core airport bases in Hamburg, Düsseldorf, Munich and Frankfurt[14]. Considering the whole German air transport passenger business, Condor holds [...]% in terms of frequencies, [...]% of capacity and [...]% of ASK. In terms of frequencies, among the individual airports it serves, Condor exceeds [...]% only in the airport of Leipzig. The second highest proportion is in Hanover, with [...]% of frequency, [...]% of capacity and [...]% 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 [...]% of share of the total frequencies, capacity and ASK[15].

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

(18) The financial performance of Condor on a stand-alone basis was positive before the COVID-19 outbreak. Condor mainly earnt 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)[16]. Condor has thus *prima facie*

[14] The other five airports are Hanover, Nuremberg, Stuttgart, Leipzig and Sylt, see notification, Annex 26.

[15] 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.

[16] See annulled damage compensation decision, recital 17.

a functioning and profitable business model.

Table 1: Condor's profits / losses from 2008 to 2019

Financial year	Profit in EUR
01.10.2008-30.09.2009	54 901 000
01.10.2009-30.09.2010	61 471 000
01.10.2010-30.09.2011	79 184 000
01.10.2011-30.09.2012	45 180 000
01.10.2012-30.09.2013	56 898 000
01.10.2013-30.09.2014	62 849 000
01.10.2014-30.09.2015	76 463 000
01.10.2015-30.09.2016	-16 916 000
01.10.2016-30.09.2017	[…]
01.10.2017-31.12.2017	[…]
01.01.2018-30.09.2018	[…]
01.10.2018-30.09.2019	[…]
TOTAL CUMULATED	529 957 743

(19) However, Condor's financial situation was and remains 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[17]. 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[18].

(20) 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 were transferred to a trust, whose purpose was to hold them until a new investor was found.

(21) 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

[17] 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 market. 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.

[18] See also rescue aid decision, recitals 14 to 20.

purchase price of EUR [...] million[19]. 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 agreement as it experienced financial and economic difficulties related to the COVID-19 outbreak, resulting in LOT Polish Airlines requiring approximately EUR 650 million support from the Polish Government[20].

(22) 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[21]. 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.

(23) 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 KfW loans), has selected the private investment fund Attestor. Attestor offers 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 records the planned purchase.

(24) According to the draft purchase agreement, Condor's shares in its subsidiaries [...] and [...] would be sold to the holding company SGL, Attestor would take over [...]% of Condor's shares from SGL, while [...]% would be held by a trust company on behalf of Attestor. Attestor would have an option to acquire the remaining [...]%. 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 (35) and (36). After the transaction, the ownership structure of Condor would be as 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

[19] Recital 20 of the annulled damage compensation decision.

[20] 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.

[21] 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.

2.4. Condor's restructuring plan

(25) Condor began implementing the restructuring plan in October 2019, when Condor started a rationalisation and restructuring programme that will run 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.

2.4.1. Operational and organisational restructuring

(26) 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. The programme should generate cost and productivity gains as follows: (i) [...]% staff reduction by May 2021, comprising in particular a reduction of ground staff workforce by [...]% 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 results in over EUR [...] million of permanent cost reductions per year.

(27) 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 outbreak. Their implementation will ensure Condor's competitiveness through further cost reductions and the necessary fleet renewal with modern fuel-efficient aircraft.

(28) Condor has an ageing fleet, which in summer 2019 included [...] planes, of which [...] it operated directly. In particular, the 16 Boeing 767-300 it uses on long-haul routes are on average [...] years old, which is above the industry average. The fleet restructuring, which is planned to take place within the next [...] years for long-haul aircraft and the next [...] years for short- and medium-haul aircraft, will lead to reductions of fuel consumption and CO_2 emission. Based on the current offers at hand, Condor expects annual savings in fuel costs of around EUR [...] million in the long-haul segment alone, where it will replace [...] Boeing 767-300. Depending on the model chosen, Condor expects to save between 15-25% in CO_2 emissions and reduce average fuel consumption to below [...]/100 km/passenger in the long-haul segment.

Table 2: Condor's restructuring measures

Measure	Implementation
Staff reductions	[...]
Reduction in staff costs	[...]
Renegotiations of	[...]

supply contracts	
Move to less costly headquarters	[...]
Fleet renewal	[...]

Source: Notification, Annex 13

(29) Moreover, the entry of the strategic investor will create a stable corporate framework. In particular, the sale of part of Condor's shares to Attestor is 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 will ensure that Condor has sufficient financing in the coming years and will enable the company to strengthen its equity base.

2.4.2. Capital and financial restructuring and financing of restructuring plan

(30) 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 (6), and EUR [...] million of insolvency costs (recitals (4) and (22)). 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.

(31) Attestor is to provide EUR 200 million of equity to Condor, in the form of a EUR [...] million injection into the company's capital reserve, and a EUR [...] million deposit on a notary's escrow account available to Condor if required for operations.

(32) In addition, Attestor commits EUR [...] million for Condor's fleet renewal as well as a credit line of USD [...] million (around EUR [...] million), which Condor could draw on in several tranches, without revolving, for pre-delivery payments on aircraft. In particular, [...] would provide a leasing facility to Condor and its subsidiaries, committing directly or via one or more special purpose vehicles equity leasing financing of EUR [...] million for the acquisition of aircraft to be leased to Condor. The aircraft financing would be completed with external financing expected to cover, in line with trade practice, between [...]% of the total expenditure for aircraft acquisition. The draft leasing commitment would thus enable Condor to lease aircraft worth up to EUR [...] million for a minimum of [...] years.

(33) 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 [...]% 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.

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

(35) 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[22]:

(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.

(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

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

over tranche B, i.e. the proceeds will be transferred first to tranche A and then to tranche B.

(36) 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 (5)) 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 [...].

(37) 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 current 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[23] and a damage of EUR 73.66 million during the period from 1 January to 31 May 2021[24], 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 (5) and (7)) 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.

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

(39) 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

[23] See Condor I decision, recital 203
[24] See Condor II decision, recital 112

144.1 million, which would result in a nominal amount of restructuring aid of EUR 255.9 million.

(40) 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 [...] million, 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.

2.4.3. Operational and financial trajectory of restructuring and return to viability

(41) Germany submits that until the COVID-19 outbreak 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 will start to pick up in summer 2021. Germany submits that travel is strongly correlated to GDP, which is 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 suggests that there will be strong consumer spending as restrictions progressively lift. Leisure travel is expected to recover faster than general travel and return to pre-crisis levels about a year earlier than general travel[25].

(42) 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[26]. Several expert studies covering forecasts of passengers (PAX), RPK (revenue passenger kilometres)[27], IFR (instrument flight rules)[28] movements and numbers of passengers expect a recovery to the 2019 level in 2023 as a best-case scenario[29] for the air travel sector. A first increase is 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.

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[25] Notification, KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/ BGH, 16 June 2021, p. 27.

[26] 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).

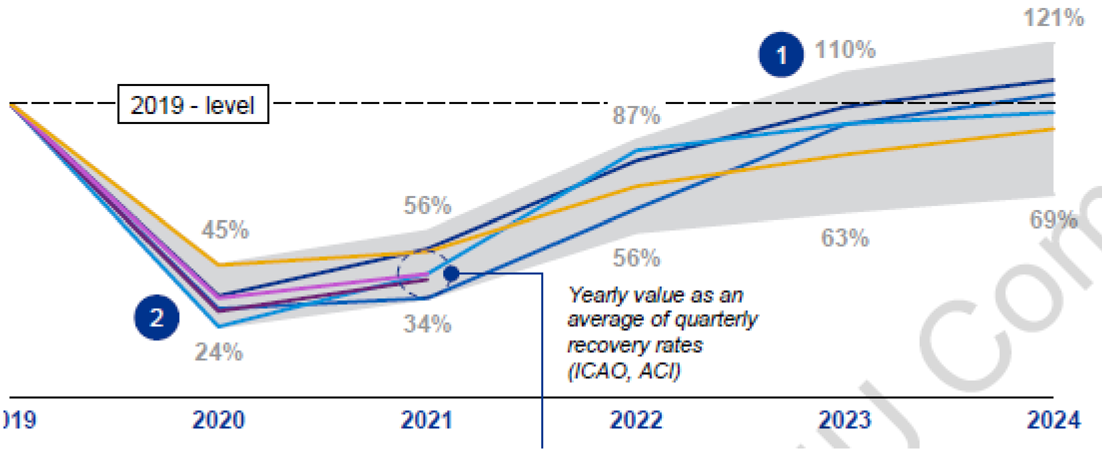
[27] RPK or "revenue passenger kilometres" means the number of paying passengers carried multiplied by the distance flown.

[28] 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.

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

(43) 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 is 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 domestic flights and 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

(44) The main operating costs of Condor 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.

(45) 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 2), 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[30]. 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

	Pre-restructuring		Restructuring-period				Post-restructuring		
In EUR million	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26

[30] 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.

	ACT	ACT	ACT	FC	PLAN	PLAN	PLAN	PLAN	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)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total rev. passenger kilometer [RPK] (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total seat load factor	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total passengers (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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

(46) 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)[31] 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	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Non-current assets >1year	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

31 Capital employed is defined as total assets less current liabilities.

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 *(2017/18 and 2018/19 split for Fleet not available)*

(47) 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

[...]

(48) 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 [...][32]. 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.

(49) 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

[32] 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 […]%.

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 outbreak[33]. 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[34]

	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%**

(50) 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 2, Condor's EBIT margins[35] 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).

(51) Table 6 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 [...][36], 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.

33 Federal Mandate PWC of 18.5.2021.

34 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.

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

36 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 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

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

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

(53) 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.

(54) 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

(55) 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 2 and 3, 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[37] 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	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating expenses	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Fleet rental			[…]	[…]	[…]	[…]	[…]	[…]	[…]

[37] Sales revenue divided by total passenger volume.

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 *(2017/18 and 2018/19 split for Fleet not available)*

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	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
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)			[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net debt to EBITDA ratio	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
ROCE	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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

(56) Under the assumptions of the adverse scenario, Condor's operational performance would slight decrease, with an EBIT that is on average EUR [...] million lower than in the baseline scenario. However, Condor will 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").

(57) 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 (48), 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.

(58) 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

(59) As explained in recital (46), 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.[38]

(60) 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.

(61) 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).

(62) 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	[…]	[…]	[…]	[…]	[…]	[…]	[…]

38 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.

Net result for the year	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
EBITDA (p.e.) margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT (p.e.) margin	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Yield	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total available seat kilometer [ASK] (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total rev. passenger kilometer [RPK] (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total seat load factor	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total passengers (in m)	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Notification, Condor financial data

Table 15: Balance sheet with capitalised leases in the baseline scenario

In EUR million	**Restructuring-period**				**Post-restructuring**		
	2019/20 ACT	**2020/21 FC**	**2021/22 PLAN**	**2022/23 PLAN**	**2023/24 PLAN**	**2024/25 PLAN**	**2025/26 PLAN**
Assets	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Non-current assets >1year	[…]	[…]	[…]	[…]	[…]	[…]	[…]
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

	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)	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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**				**Post-restructuring**		
	2019/20 ACT	**2020/21 FC**	**2021/22 PLAN**	**2022/23 PLAN**	**2023/24 PLAN**	**2024/25 PLAN**	**2025/26 PLAN**
Assets	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Non-current assets >1year	[…]	[…]	[…]	[…]	[…]	[…]	[…]
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)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term liabilities <1year	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Short-term financial liabilities <1year	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Thereof: Leases (liabilities)	[…]	[…]	[…]	[…]	[…]	[…]	[…]
ROCE	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Notification, Condor financial data

(63) 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.

(64) Moreover, Germany also provided ROCE benchmarks for a peer group of competitors. The benchmark 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

2.5. Measures to limit distortions of competition

(65) The German authorities commit 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 will not exceed […] aircraft and Condor will not produce more than […] million seats per fiscal year; that limitation is without prejudice of the ability to […], provided the following conditions are met:

(1) […], or

(2) […], or

(3) […], and

(4) […];

(5) Germany notifies 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 will 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 will refrain from publicising State support as a competitive advantage when marketing its products and services.

2.6. The situation in the absence of restructuring aid

(66) Germany submits 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.

(67) Germany submits 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 [more than 2 000] independent tour operators and [more than 8 000] travel agencies, many

of which are SMEs. Germany submits 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 states that tour operators have written to the German authorities to stress the importance of Condor for their business and have indicated that they depend on Condor to carry out their flights[39]. According to Germany, Condor's role will be particularly important in the ramp-up phase after COVID-19, when small tour operators and travel agencies will 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.

(68) 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 submits 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 submits 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

(69) Moreover, Condor has a network of around [5 000-6 000] suppliers, all of which would be significantly affected by the company's market exit, especially in the current distressed economic situation due to the COVID-19 outbreak. Condor also employs more than 4 000 people and its market exit would be detrimental to specialised technical staff, especially in the current circumstances, where many European airlines are reducing capacity due to the effects of the COVID-19 pandemic on global air travel.

(70) In addition, Germany submits 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 considers 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

(71) 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*".

(72) 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

[39] Germany submitted examples of letters from tour operators as Annex 13 to the notification.

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

(73) 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.

(74) The bid for the sale of Condor has been selected by Condor's Supervisory Board, whose shareholder members are representatives of the State (recital (23)). The implementation of the purchase agreement is necessary to ensure the repayment of the KfW loans. The implementation of the purchase agreement is conditional upon the loan restructuring and on the interest write-off. The loan restructuring will be implemented through a framework contract to be concluded at the request of the Federal Government between KfW and Condor.

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

3.1.2. Advantage

(76) The notified measures will help Condor finance the continuation of its operations during the ramp-up phase after the COVID-19 outbreak and the implementation of its restructuring plan by giving it access to finance that Condor, given its specific situation and the current circumstances, has 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 is conditional upon the signature of the purchase agreement, which in turn is conditional upon the implementation of the loan restructuring.

(77) 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 have the common object and effect of freeing financial resources which support Condor's restructuring plan and which Condor could not borrow or obtain altogether on the market.

(78) 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

(79) The notified measures will be granted solely to the benefit of Condor. As the Court has stated[40], 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.

(80) 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

(81) 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 another takes place.

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

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

3.2. Lawfulness of the measures

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

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

3.3. Compatibility

(85) 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.

(86) Thus, in order 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.

(87) 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[41].

(88) 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 [42].

(89) 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.

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

(91) 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

(92) 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[43].

(93) 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

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[41] Judgment of 22 September 2020, *Austria* v *Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, paragraph 19.

[42] R&R Guidelines, point 38.

[43] Point 38 (b) and (d) and point 59 of the R&R Guidelines.

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[44].

(94) Because of the reasons provided in recitals (67) and (68), 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.

(95) 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 without them. In order 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 could not be achieved in a matter of months.

(96) Moreover, Condor's IT landscape enables both charter and GDS bookings[45] 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.

(97) 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.

(98) 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

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

45 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.

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.

(99) 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 outbreak. Despite the distressed economic situation, 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 (95), tour operators have voiced concerns towards the German authorities regarding a possible loss of Condor's services. Moreover, the German competition authority has 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 aims to maintain Condor as a competitor to Lufthansa 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 believes Condor is important for preserving effective competition in the German leisure long-haul air travel.

(100) Finally, Condor's market exit would have negative effects on its network of close to [5 000-6 000] suppliers and on its staff of over 4 000 headcount, which would be significantly affected (recital (69)). The potential effects would be severe, especially in the current distressed situation, where many airlines are reducing capacities and dismissing employees, so that they would be 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 replicate Condor's services on those destinations and thus achieve a sufficient plane load factor to operate them profitably. In addition, there are no indications that any competitor would be willing to develop such a system of cooperation with tour operators and travel agencies. As a matter of fact, tour operators have confirmed that they depend on Condor for those services and that a market exit of Condor would cause them severe losses (see recital (66)).

(101) So, while some of Condor's routes might be attractive for a competitor on a stand-alone basis, there are no indications that any competitor could take over the whole of Condor's services in that it would at the same time fill 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 take 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 be likely to trigger severe social hardship for its clients, staff and suppliers.

(102) The Commission therefore concludes that the aid contributes to the development of the economic activity of air leisure transport in that it helps to maintain an

important service that could not be easily replicated in its entirety and without social hardship by competitors in the short to medium term.

3.3.1.1. Eligibility: company in difficulty

(103) 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[46].

(104) 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[47].

(105) As set out in recital (22), 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.

(106) The description of the current ownership also shows that Condor is not part of a wider group at present. Condor’s current shareholder SGL does 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 (12)). Accordingly, Condor’s difficulties cannot be held to result from arbitrary allocation of costs within a hypothetical wider group.

(107) 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[48]. As set out in recital (19), 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 of a significant amount of receivables against TCG resulting from the cash-pool that were 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.

(108) The Commission concludes that Condor is eligible for restructuring aid.

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

[47] Point 22 of the R&R Guidelines.

[48] Commission decision of 14 October 2019 in case SA.55394.

3.3.1.2. Restructuring plan and return to long-term viability

(109) 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.[49]

(110) 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 [50].

(111) The nature and chronology of the events that led Condor to enter insolvency proceedings, combines and overlaps with the exceptional occurrence of the COVID-19 outbreak and a serious disturbance of the economy of Germany and of other Member States in which Condor provides its services. Those extraordinary circumstances have seriously constrained its liquidity and ability to access market finance. Likewise, those events have seriously affected its balance sheet and equity position with lasting exogenous effects. However, in those circumstances, the causes of Condor's difficulties are 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.

(112) In that respect, the restructuring plan includes a set of serious, consistent and mutually reinforcing measures (recitals (26) and (28)) 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 (32)), coupled with the ambitious staff, contract and process restructuring programme that Condor is in the process of implementing (see recital (26)) will further enhance its competitiveness.

(113) 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, is within industry forecasts by third parties. As is explained in recital (42) and shown in Table 3, it is forecasted, for example by IATA in April 2021 concerning Revenue Passenger Kilometres (RPK), that the industry will be back on 2019 levels between 2023 and 2024. As can be seen in Table 5, Condor will reach its 2019 RPK level in the fiscal year [...]. The Commission also notes that an even faster recovery could be expected for domestic flights and touristic flights, and hence the Commission finds that the growth in revenue forecasted by Condor is plausible.

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[49] Points 45, 47 and 48 of the R&R Guidelines.

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

(114) The projections underpinning the restructuring plan in the baseline scenario demonstrate 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, seems plausible given the forecasted industry recovery and Condor's historic load factor before the COVID-19 outbreak. In addition, the yield per passenger of around EUR [...] in 2022/23 is slightly higher compared to EUR [...] in 2018/19. However, that higher level is explainable by Condor's overhaul of its fleet including new long-haul aircraft. The forecasted costs take due account of the impact of the restructuring measures (such as the reduction in staff and the renewal of the fleet, see recitals (26) and (28)), as for example the fleet renewal programme results in lower fuel costs per ASK, but at the same time increase ownership costs due to the higher operating lease rates.

(115) The figures in Table 2 show that Condor's profitability, measured as EBIT margin, is expected to increase above its historical, pre-crisis, value of around [...]% of total revenue and will stand at between [...]% and [...]% as from 2023, the end of the restructuring period, until 2026. As shown in Table 6, the pre-COVID-19 profitability of peer airlines was 5.7% (or 7.3% as median).[51] Therefore, at the end of the restructuring period in 2023, before the market is expected to fully recover, Condor would not underperform compared to peers pre-COVID-19.[52] And with the market fully recovered, Condor will actually outperform the benchmark. In that regard, the Commission also notes that, when applying IFRS 16, Condor's EBIT margin increases 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 will generate a positive net result which feeds into decreasing the legacy negative equity. The positive forecasted development in net earnings will, due to the recovery of leisure travel, further increase in 2024, i.e. after the restructuring period, and will lead to the profits turning the book equity positive after 2026.

(116) Moreover, Condor's business plan shows that its return indicators will improve all along the restructuring period and will reach [...]% ROCE in 2023, up to [...]% in 2025, and [...]% in 2026, according to Table 13[53]. 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

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51 Given the high divergence of the individual EBIT figures in the peer group, the Commission uses the median as the measure for the average value, as it is more robust against statistical outliers compared to the arithmetic average.

52 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.

53 Due to 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 bases its assessment on those figures and not on the balance sheet according to German accounting standards.

calculated ROCE as Net Operating Profit After Tax/average Capital Employed[54]. Using such a conservative approach, ROCE for Condor would be [...]% in 2023, [...]% in 2024, [...]% in 2025 and [...]% in 2026. As described in recital (48), 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 from the end of the restructuring period in 2023 onwards be above Condor's WACC. Therefore, Condor would operate at a premium and create value which is the sign of a viable company.

(117) 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 able to compete in the marketplace even in the adverse scenario. Moreover, Condor's ROCE is in line or even above the pre-COVID-19 return on capital of a peer group, as shown in recital (64). 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.[55]

(118) Concerning the WACC, as described in recital (48), Condor's assumed weighing of debt and equity is [...]% 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[56]. 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[57]. 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 [...]% is thus in line with observations for the industry.

(119) As described in recital (118), Condor's WACC when taking IFRS 16 into account is [...]% (see recital (48)) 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 would have an acceptable return on capital.

(120) Further, the Commission's analysis shows that in 2023 Condor is projected to achieve a Return on Assets[58] (ROA) of [...]%. That figure is above the 2019 average (5%) and median (5%) ROA of its peers.[59]

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[54] 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).

[55] The Commission also calculated ROCE for the peer group as defined in footnote 46, for which the average ROCE for 2019 was 7%, calculated as median, or 8%, calculated as average.

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

[57] 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.

[58] 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.

[59] For data source, see footnote 55.

(121) 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 will 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 (18)), not including other free cash flow generated.

b) Before the COVID-19 outbreak, 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 (21)).

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 (recital (31) and (32)). Based on the assessment of the future equity value (recital (48)), 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[60]. That prospective ROE is in line with 25.3% median ROE of a sample of air carriers between 2017 and 2019 (recital (48)).

(122) As an alternative to the baseline scenario of the financial projections, the adverse scenario defined in the restructuring plan is also adequate and credible. The adverse scenario is credible because the necessary sustained efforts to reduce and stabilise Condor's operating cost base will be maintained throughout the restructuring period (recital (27)). Viability might be predominantly affected by exogenous factors and the adverse scenario thus takes into account plausible variations in revenue and cost drivers such as lower commercial revenues combined with sizeable yet possible increases in the costs of fuel due to the price of CO2 emission allowances and offset credits (recital (55)).

(123) In such an adverse scenario, the results of Condor are affected but remain solid and sustainable, thus not compromising the return to viability. The expected net earnings after coverage of interest and depreciation costs 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 ([...]% and increase to [...]% with accounting under IFRS 16). Likewise the ROCE remains within the performance of the peer group and above Condor's

[60] 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 (48)). 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).

WACC, with [...] % in 2023 to [...]% in 2026. In addition, available liquidity in cash flow projections does not fall below EUR [...] million at the lowest point of the restructuring period in 2020-21 (recital (58)), thus preserving the continuation of operations with sufficient levels of cash and liquidity buffers required by the operating licence.

(124) It follows that the restructuring plan partly financed by the aid is realistic, coherent and far-reaching and is 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

(125) 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[61].

(126) 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 will relieve the company of certain short-term liabilities and free up liquidity for meeting operating expenses during the restructuring period. As depicted in recital (36)), a senior tranche of EUR 175 million will 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 will now bear [...][62]. The conditions of the loan restructuring have been negotiated between PwC, 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. The conditions of the purchase agreement and of the loan restructuring are thus a package geared to maximising the benefits for Attestor as well as optimising the reimbursement of the loan 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 and can thus be considered to constitute an appropriate remuneration of the aid.

(127) Moreover, since the rescue loan was granted in October 2019, Condor has exited insolvency proceedings and has attracted a private investor that is 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 have started to recover and European airlines are ramping-up their business, with a faster than average recovery expected for the leisure market, where Condor is active. They are indicators that point to improved market environment and operations of Condor since the granting of the original KfW

[61] Points 38 (c) and 58 of the R&R Guidelines.
[62] For a full description of the original loan conditions, see recital (35).

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.

(128) As shown in Tables 3 and 8, Condor faces a liquidity crisis combined with an unsustainable solvency situation. The aid measure combined with the investment by Attestor addresses both issues. The restructuring of the public loans, as described in recitals (35) and (36), will free liquidity in the shorter term period, due to the deferral of interest and repayment, as well as reducing Condor's debt position, due to the KfW loan write-off. It therefore complements the EUR 200 million fresh capital that remedies Condor's imminent liquidity crisis and improves Condor's equity position. The planned restructuring aid is thus adapted to the liquidity and solvency situation of Condor.

(129) In these circumstances, the Commission considers that the restructuring aid is appropriate.

3.3.2.2. Proportionality, own contribution and burden-sharing

(130) 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, do not involve aid and should amount to at least 50% of the restructuring costs[63].

(131) As noted in recital (37), a portion of the KfW loan served to pay for exceptional costs of up to EUR 249.02 million that Condor has had in the context of the COVID-19 outbreak and thus do not amount to restructuring costs included in the restructuring plan. The restructuring has thus been funded from the remaining portion of EUR [...] million 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 (38) to (40)).

(132) The Commission needs to verify whether the various sources of funding to the plan presented by Germany (recital (33)), 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 (23) and (24)); of them, the aircraft lessor [...] committed to provide a USD [...] million (around EUR [...] million) credit facility to Condor for pre delivery payments on aircraft (see recital (32)); Attestor's commitment is set out in a purchase agreement which is firm and binding so that the funding has with a high degree of probability attached to its release.

[63] Points 61 to 64 of the R&R Guidelines.

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 (recital (32). 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 (22)) 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 (26)); 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.

(133) The combined amount of Attestor's commitments, which includes the credit facility and the write-off of claims is EUR [...]million, and constitutes real and actual sources of own contribution from shareholders and creditors to the restructuring. The own contribution from those two sources includes a very substantial portion of fresh funding up to EUR 450 million and, with regard to EUR 321.18 million restructuring aid, amounts to around 77% of the funding of the plan. It follows that the own contribution exceeds the minimum of 50% of the restructuring costs set out in the R&R Guidelines.

(134) 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.

(135) As regards sharing the burden of the restructuring by former shareholders and subordinated creditors, it is apparent that the former controlling shareholder of Condor, TCG, is wound-up and being liquidated, whilst the shares of Condor have been transferred to a trust (recitals (12) and (19)). 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 contribute to 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.

(136) The Commission therefore concludes that the restructuring aid is proportionate and involves appropriate burden-sharing.

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

(137) 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[64], 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[65].

(138) 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[66]. The Commission permits exceptions to that rule where restructuring aid follows rescue aid as part of a single restructuring operation[67].

(139) The restructuring aid to Condor supports 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 (21)). Condor did not refrain from restructuring its operations before and after the negotiations eventually failed (recitals (26) and (27) and Table 2).

(140) 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 outbreak does not amount to rescue or to restructuring aid[68]. The aid in question compensates the damage directly caused by the COVID-19 outbreak and covers costs that Condor would not have incurred in the absence of 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 are 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.

(141) As set out in detail in recital (65), Germany commits that Condor will take the following measures limiting distortions of competition which will apply until the end of the restructuring plan as 30 September 2023: (i) cap on the aircraft

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

65 Points 76 to 93 of the R&R Guidelines.

66 Points 70 and 71 of the R&R Guidelines.

67 Point 72 a) R&R Guidelines.

68 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).

fleet not exceeding a maximum of […] aircraft; (ii) advertising ban of received State aid and (iii) acquisition ban.

(142) 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[69].

(143) The restructuring aid to Condor under Article 107(3)(c) TFEU is planned to be granted in circumstances of a serious economic disturbance of the economy of the Member States of the Union referred to in Article 107(3)(b) TFEU. The economic effects of the COVID-19 outbreak since March 2020 have been particularly acute on supply and demand for air transport, leisure travel and related activities[70].

(144) Those extraordinary circumstances weaken the operation of Condor which, in contrast to recurrent profits until the COVID-19 outbreak, is 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 exceed the combined amount of the EUR 550 million KfW loans granted to Condor whether as compensation of damages or as restructuring aid need to be absorbed and limit the ability of Condor to withstand divestments or further withdrawals of capacity.

(145) In implementation of its restructuring plan, Condor has 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 currently operates [...] aircraft offering [...] million seats. The reduction of capacity in relative terms will 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, […].

(146) Furthermore, Condor will also refrain from acquiring shares in any company during the restructuring period, except where needed to ensure the long-term viability of Condor. The German authorities have not presented any planned acquisition that would meet the condition of being indispensable at this stage. Therefore, Condor will be prevented from expanding by acquisitions which would indirectly be made possible by the restructuring aid. Condor will also refrain from publicising State support as a competitive advantage when marketing products and services.

(147) 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

[69] Points 87 to 90 and 92 of the R&R Guidelines.
[70] Points 1 to 4 of the Temporary Framework.

remain far lower than 31% of the Lufthansa Group, which is nearly double that of Condor's. Finally in terms of market presence, Condor does not hold any important or noticeable position exceeding [...]% in any of the German airports from which it operates, except in relatively minor ones (recital (17)).

(148) Condor undergoes 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 can 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 12 and 13).

(149) In such a situation, Condor ought to be able to react to market demand to a certain extent, […]. That mechanism, while providing Condor with limited flexibility to adapt to changing market situations in clearly defined circumstances, still maintains Condor's fleet during the restructuring period below the pre-COVID-19 level […]. 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 needs to avoid coming at the expense of competition.

(150) 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 (135)). 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 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 can, therefore, be limited also because the aid does not incentivise moral hazard or inconsiderate risk taking.

(151) Likewise, Condor will be further limited regarding 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 case, Germany will have to notify the planned acquisition to the Commission, substantiate the indispensability of it and refrain from implementation until the Commission confirm that the acquisition is necessary to support the long-term viability of Condor.

(152) Therefore, the Commission considers that the measures to limit the restrictions of competition are appropriate for reducing the negative effects of the restructuring aid.

3.3.2.4. *Transparency*

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

3.3.2.5. *Balancing positive and negative effects*

(154) A carefully designed State aid measure must ensure that the overall balance of the effects of the measure is positive by avoiding adversely affecting trading conditions to an extent contrary to the common interest.

(155) In the R&R Guidelines, the Commission laid down the criteria that it examines when assessing the compatibility of restructuring aid with the internal market, ensuring that the development of the economic activity in question does not adversely affect trading conditions to an extent contrary to the common interest. The restructuring aid to Condor fulfils the conditions set out in the R&R Guidelines in that it is appropriate, necessary, proportionate, enables the beneficiary to return to long-term viability, respects the principles of one time, last time and transparency, while being accompanied by measures that limit the negative effects on competition.

(156) In addition, the Commission takes into account other considerations relevant to its assessment of the effect on competition and trade between Member States of the Union, namely that Condor will replace its ageing fleet with new, efficient aircraft, which will result in reductions of fossil fuel consumption and CO2 emissions (see recital (28)) which contribute to the objectives of the EU Green Deal and in particular to the European Climate Law's target of reducing CO2 emissions by 55% by 2030 as compared to 1990 levels[71].

(157) In light of the above, the Commission concludes that the negative effects of the restructuring aid on the air transport sector are limited.

(158) Consequently, the positive impact of the restructuring aid on the development of the economic activity in question outweighs the potential negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest.

3.4. Conclusion on compatibility

(159) In its overall assessment, the Commission concludes that the restructuring aid complies with Article 107(3)(c) TFEU as it facilitates the development of air transport activities and does not distort competition to an extent contrary to the common interest.

(160) The Commission also recalls Condor's obligation to fully implement the restructuring plan[72], as well as the measures limiting the distortions of competition set out in recital (141).

(161) Furthermore, the Commission considers it necessary for Germany to provide regular biannual reports on the implementation of the restructuring plan every six months until the end of the restructuring period. Those reports will specify, in particular, the dates of the actual disbursement of the funding committed by Attestor, and related leasing agreements, the developments on the aircraft and

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[71] Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM/2020/80 final.

[72] Point 122 of the R&R Guidelines.

capacity of Condor's fleet, any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of cost reductions from the restructuring measures and net earnings, and the corrective measures envisaged or taken by Germany or Condor where appropriate.

4. CONCLUSION

In view of the above, the Commission has decided not to raise objections to the restructuring aid to Condor Flugdienst GmbH on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

The full text of this letter, with any confidential information or business secrets removed, will be published at the following Internet address:

http://ec.europa.eu/competition/elojade/isef/index.cfm .

Yours faithfully

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION