



EUROPEAN COMMISSION

Brussels, 14.12.2021

C(2021) 9606 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: Decision correcting Decision C(2020) 4372 final of 25 June 2020 concerning State Aid SA.57153 (2020/N) – Germany – COVID-19 – Aid to Lufthansa

Excellency,

1 PROCEDURE

- (1) On 25 June 2020 the Commission adopted Commission decision C(2020) 4372 final in case SA.57153(2020/N) – Germany – COVID-19 – Aid to Lufthansa (the “initial Decision”).
- (2) In its submission of 7 June 2020, Germany had indicated that Hannover airport is not a coordinated airport, and the Commission adopted the initial Decision on that basis. Following the adoption of the initial decision, on 22 November 2021, Germany indicated to the Commission that Hannover airport, at which Lufthansa Group (“LH Group”) operated a base during Summer 2019 IATA Season and Winter 2019/2020 IATA Season, is a coordinated airport. Germany submitted additional information on 29 November and 1 December 2021.

Seiner Exzellenz Herrn Heiko Maas
Bundesminister des Auswärtigen - Werderscher Markt 1D-11017 Berlin

- (3) As a consequence of the error in the level of coordination of Hannover airport, the initial Decision does not identify Hannover airport as a market relevant for the purposes of the application of point 72 of the Temporary Framework¹ and does not contain an assessment of LH Group's position at that airport.
- (4) It is therefore necessary to correct recital (173) and footnote 98 in light of the factual error that occurred in the text.
- (5) Moreover, it is also necessary to add a new sub-section on Hannover airport in the airport-by-airport assessment of LH's Group market power set out in section 3.3.6.4 of the initial Decision. Based on the data submitted by Germany after adoption of the initial Decision, the Commission assessed if LH Group had significant market power on the market for the provision of passenger air transport services to and from Hannover airport. As indicated in recital (9) of the present decision, the Commission finds that LH Group did not have significant market power on the market for the provision of passenger air transport services to and from Hannover airport.
- (6) It is therefore necessary to correct recital (219) of the initial Decision to add Hannover airport to the list of relevant airports at which LH Group does not have significant market power and for which, consequently, there is no requirement for Germany to propose additional measures in light of point 72 of the Temporary Framework.
- (7) The factual error on the level of coordination of Hannover airport needs to be corrected retroactively in order to properly explain the reasons for which no additional measures are required to preserve effective competition at Hannover airport under point 72 of the Temporary Framework. At the same time, this correction does not affect the conclusions of the initial Decision. The retroactive effect attached to the present decision therefore does not undermine the principle of legal certainty. Nor does it have harmful effects on the rights or legitimate expectations of third parties or stakeholders.
- (8) Recital (173) is corrected as follows:
 - a. Recital 173 is replaced by the following:

“(173) In its reply of 7 June 2020 and in its subsequent submissions, Germany explained that LH Group operated a base at 15 airports in the Union during the Summer 2019 IATA Season or Winter 2019/2020 IATA Season.⁹⁷ Of those 15 airports, ten are coordinated airports.⁹⁸ For the purposes of assessing LH Group's position at those coordinated airports, it is necessary to consider whether they are substitutable with other airports in view of their overlapping catchment areas.”
 - b. Footnote 98 is replaced by the following:

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1 and by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3..

“⁹⁸ They are: Berlin Tegel airport, Brussels airport, Düsseldorf airport, Frankfurt airport, Hamburg airport, Hannover airport, Munich airport, Palma de Mallorca airport, Stuttgart airport, and Vienna airport.”

- (9) A new sub-section is added after recital (215):

“3.3.6.4.7bis Hannover airport

IATA Season	LH Group’s average slot holding	LH Group’s three highest slot holdings	Airport’s average congestion rate	Airport’s three highest congestion rates
Summer 2019	[5-10]%	[10-15]% (hour band: 7:00-7:59 UTC) [10-15]% (hour band: 17:00-17:59 UTC) [10-15]% (hour band: 8:00-8:59 UTC)	[15-20]%	[25-30]% (hour band: 11:00-11:59 UTC) [25-30]% (hour band: 8:00-8:59 UTC) [25-30]% (hour band: 10:00-10:59 UTC)
Winter 2019/2020	[5-10]%	[10-15]% (hour band: 7:00-7:59 UTC) [10-15]% (hour band: 19:00-19:59 UTC) [10-15]% (hour band: 13:00-13:59 UTC)	[15-20]%	[25-30]% (hour band: 9:00-9:59 UTC) [20-25]% (hour band: 13:00-13:59 UTC) [20-25]% (hour band: 17:00-17:59 UTC)

Conclusion on LH Group’s market power

(215bis) Given (i) LH Group's limited slot holding position at Hannover airport in both IATA Seasons ([5-10]% on average), and (ii) the available slot capacity at Hannover airport in both IATA Seasons, the Commission finds that, for the purposes of this Decision, LH Group does not have significant market power on the market for the provision of passenger air transport services to and from Hannover airport.”

- (10) Recital (219) is replaced by the following:

“(219) For the other relevant airports (i.e., Düsseldorf, Vienna, Brussels, Stuttgart, Hamburg, Hannover, Berlin Tegel and Palma de Mallorca), considering LH Group’s lack of significant market power, the Commission considers that there is no requirement for Germany to propose additional measures in light of point 72 of the Temporary Framework.”

- (11) By letter of 2 December 2021, Germany exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958², and to have this Decision adopted and notified in English.

2 CONCLUSION

The Commission has accordingly decided to correct the initial Decision as stated above, with effect from 25 June 2020.

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

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.