EUROPEAN COMMISSION

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C(2022) 659 final

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.63946 (2021/N) – Germany
COVID-19: aid to Flughafen Berlin-Brandenburg

Excellency,

1. PROCEDURE

(1) On 5 July 2021, the German authorities pre-notified to the Commission aid in favour of Flughafen Berlin-Brandenburg ("FBB" or "the company"), an unlisted state-owned company which currently owns, operates and develops the Berlin-Brandenburg airport in Berlin ("BER"), Germany.[1]

[1] Following exchanges with the Commission, Germany submitted additional information on 7 and 11 October 2021, 9, 10 and 12 November 2021.

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(2) On 28 December 2021, the German authorities notified aid in the form of a recapitalisation of FBB ("the TF Recapitalisation" or "the Measure")[2].

(3) The aid was notified under section 3.11 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 pandemic, as amended ("the Temporary Framework" or "TF")[3].

(4) 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 1/1958[4], and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(5) The Measure is granted in favour of FBB, the operator of BER that started its operations in November 2020. BER's predecessor airports, which were also operated by FBB, were Tegel and Schönefeld ("the predecessor airports")[5]. Any reference in this decision to FBB's airports relates to the company's predecessor airports and BER together.

(6) The Measure follows the grant by Germany to FBB[6] of EUR 98.8 million as damage compensation and of EUR 753.2 million in the form of subsidised interest loans (of which in total EUR 531 million was disbursed) under the Federal Framework for aid to airports (*"Bundesrahmenregelung Beihilfen für Flugplätze"* hereinafter *"the Airport Scheme"*)[7].

2.1. The impact of the COVID-19 pandemic

(7) According to the German authorities, the COVID-19 pandemic and the related travel restrictions that led to a significant fall in air traffic severely hit FBB's operations of the airports.

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[2] Germany submitted additional information on 6 January 2022, 26 January 2022 and 27 January 2022.

[3] 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), C(2021) 564 (OJ C 34, 1.2.2021, p.6), and C(2021) 8442 (OJ C 473, 24.11.2021, p.1).

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

[5] Tegel stopped its operations in November 2020 but was kept in stand-by-mode for 6 months after its closure so that it could be reactivated in case of an emergency. Schönefeld's terminal facilities are part of BER (BER is an extension of the previous airport Schönefeld) and as such Schönefeld stopped operating as a separate airport as of November 2020. Its terminal was used as terminal 5 of BER until it was temporarily closed on 23 February 2021 as part of a cost reduction program (see recital (15)). It is currently only available as reserve capacity.

[6] See recitals (20) and (85).

[7] Commission Decision C(2020) 5615 of 11 August 2020 in case SA.57644 (OJ C 277, 21.8.2020, p.1) as amended by Commission Decisions C(2020) 8743 of 3 December 2020 in case SA.59408 (OJ C 439, 18.12.2020, p.1) and C(2021) 1895 of 16 March 2021 in case SA.62099, not yet published.

2.1.1. *Travel restrictions and containment measures linked to the COVID-19 pandemic*

2.1.1.1. Travel restrictions adopted by Germany

(8) On 27 January 2020, Germany registered its first COVID-19 case. In response to the sharp increase in the number of new infections and hospitalisations as of mid-February 2020, Germany adopted several containment measures to prevent the spread of the COVID-19 virus. On 20 February 2020, the Robert-Koch-Institute ("RKI")[8] issued the recommendation not to travel to risk areas, avoid unnecessary contacts and stay at home to reduce the spread of the corona virus. Furthermore, Germany[9] adopted *inter alia* two lockdown decisions in March and November 2020, ordering the temporary closure of certain business activities in significant parts of the economy and cultural life[10]. Those two lockdown decisions included accommodation bans that prevented tourist travelling to Germany; those bans were in place from March to May 2020 and from November 2020 to May 2021[11].

(9) As regards travel restrictions, the Ministry of Foreign Affairs issued travel warnings on 17 March 2020 for non-essential travel to all countries due to the extensive spread of the COVID-19 virus[12]. Persons entering the country from abroad had to quarantine for 14 days. Air traffic for passenger transport had thus come to a virtual standstill. While Germany maintained the worldwide travel warning as regards countries outside the EEA, Switzerland and the United Kingdom until 30 September 2020, it lifted those general travel warnings for countries in the EEA, Switzerland and the United Kingdom as of 30 June 2020. Since the lifting of the general travel warnings, the Ministry of Foreign Affairs applies a differentiated system for all destinations with the possibility to adjust the list of applicable travel warnings at short notice according to the prevalence of the virus in the regions concerned[13]. Until 18 December 2021, the travel warnings

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8 The Robert Koch Institute (RKI) is the leading biomedical research institution of the German federal government. The central task of the RKI is public health care.

9 "Germany" or "the German authorities" refer in this context to the Federal Government and the governments of the *Länder*. The so-called lockdown decisions are orders of the *Länder* based on the Infection protection law ("Infektionsschutzgesetz").

10 The first lockdown decision by the Federal Government together with the heads of the governments of the *Länder* were taken on 16 March 2020 and extended on 22 March 2020, on 15 April 2020 and 30 April 2020 and lifted by decision of 6 May 2020. The second lockdown decision was taken on 28 October 2020 and was prolonged on 25 November 2020, 2 December 2020 (expanding the sectors concerned on 13 December 2020), 5 January 2021, 19 January 2021, 10 February 2021, 3 March 2021 and 22 March 2021 until 24 April 2021. On 24 April 2021, a nationwide measure was put into force, the so-called "emergency break", with generally applicable closing and opening rules for undertakings depending on local and/or regional incidence values. The duration of the lockdown and the affected activities varied between the individual ordinances taken by the *Länder* due to the regional infection rate and the necessary regional circumstances.

11 The exact duration of the accommodation ban varied between the *Länder* due to the regional infection rate and other regional circumstances.

12 The general travel warning covered around 130 countries outside the EEA, Switzerland and the United Kingdom.

13 The travel warnings differentiate between two types of risk areas: areas of variants of concern (areas at particularly high risk of infection due to widespread occurrence of specific variants of the SARS-CoV-2 virus) and high-risk areas (areas at particularly high risk of infection due to a particularly high incidence of spread of coronavirus SARS-CoV-2). Persons who spent time in one of the risks areas

changed 97 times and, overall, encompassed 63 countries worldwide[14]. BER has been affected by those travel warnings because the destinations are either connected by a direct flight[15] or by feeder flights to the corresponding hubs such as Frankfurt, Munich, Amsterdam, Paris, London, etc. The travel warnings from the German Ministry of Foreign Affairs are the sharpest measure available to the German government if it seeks to limit travel, as an outright travel ban cannot be issued by the State under the German constitutional order. Those travel warnings entail consequences for customers as well as for travel operators: for the customers, a lack of travel insurance and no systematic assistance in the countries concerned by such a travel warning, and for travel operators an obligation to reimburse the costs of the entire booking to customers cancelling their booking, without a cancellation fee.

2.1.1.2. Travel restrictions recommended by the European Union and implemented by other Member States

(10) At Union level, on 16 March 2020, the Commission invited Member States to apply a coordinated restriction on non-essential travel from third countries to the Union for an initial period of 30 days to contain the spread of the coronavirus[16]. The Commission subsequently extended its recommendation twice until 15 June 2020[17]. On 11 June 2020, the Commission further recommended to prolong the travel restrictions, with a perspective for re-allowing travel to and from certain third countries as of 1 July 2020[18]. The Commission recommendations were directed to the "EU+" States (30 States in total)[19].

(11) Most Member States reopened their borders with other Member States and the Schengen Associated States as of mid-June 2020,[20] thereby following the recommendation of the Commission to lift the internal borders controls and restrictions on free movement within the Union by 15 June 2020[21].

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within the 10 days prior to entering Germany must follow specific rules. In particular, they must generally quarantine for 14 days.

14 The list of travel warnings about areas of variants of concern and high-risk areas encompasses also countries in the EEA, Switzerland, the United Kingdom and the overseas departments and overseas territories of the Netherlands and France. The current list is available on the Website of the RKI:

https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Transport/Archiv_Risikogebiete/EN-Tab.html

15 During 2021, more than 30 countries directly served by BER were affected by travel warnings issued by the Ministry of Foreign Affairs.

16 COM(2020) 115, 16 March 2020.

17 COM(2020) 148, 8 April 2020; COM(2020) 222, 8 May 2020.

18 COM(2020) 399 final.

19 The "EU+ area" includes all Schengen Member States (as well as Bulgaria, Croatia, Cyprus and Romania), as well as the four Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland). It also includes Ireland and the UK if they decide to align.

20 This was the case on 10 June 2020 for Slovakia, Latvia and Cyprus; 12 June 2020 for Portugal; 13 June 2020 for Romania and Poland; 15 June 2020 for Austria, Belgium, Croatia, Germany, France, Germany, Greece, the Netherlands, Czechia and Sweden; on 17 June 2020 for Bulgaria; on 21 June 2020 for Spain and on 27 June 2020 for Denmark.

2.1.2. *Direct impact of the travel restrictions and containment measures on FBB*

(12) Air traffic at the predecessor airports started to decrease significantly due to travel restrictions to and from China issued by the Chinese Tourism Association on 26 January 2020, which lead to the cancellation of all flights to China as of February 2020. Moreover, due to the various restrictive measures taken both at national level in Germany and in other countries in relation to the free movement of people domestically and internationally, the airlines operating at the predecessor airports gradually reduced their scheduled flights as of the beginning of February 2020. The regulations for major events in Berlin were tightened at the end of February 2020 to such an extent that virtually all public events had to be cancelled. At times during 2020, no leisure flights were operated by airlines at FBB's airports. As a result of the containment measures, passenger traffic at FBB's airports dropped by 74.5% in 2020[22] and by approximately 72% in 2021 at BER (compared to the passenger levels in 2019 at the predecessor airports). For 2022, 2023 and 2024, a passenger drop at BER of respectively [50-55]%[*], [25-30]% and [10-15]% is expected as compared to the passenger levels in 2019 at the predecessor airports. In 2020, FBB registered in absolute terms only 9.1 million passengers travelling through its airports, which is approximately 26.5 million less compared to 2019[23]. In 2021, 9.9 million passengers were travelling through BER and [10-20] million passengers are expected for 2022. It is expected that the 2019 passenger numbers will not be reached again until 2025[24].

(13) The travel restrictions had no impact on flights performed by State aircraft, freight and mail transport, flights ensuring humanitarian or emergency medical services, as well as non-commercial technical landings.

(14) As regards the non-aviation sector, which concerns in particular the sectors rentals/parking/advertising and rental/real estate, the lockdown measures and the travel restrictions together led to the closure of significant parts of the retail area of FBB's airports (e.g. closure of restaurants, non-essential shops, etc.). However, even if it had been allowed to remain open, it would have recorded virtually no turnover due to the lack of passengers. While according to the initial projections pursuant to the pre-COVID-19 Business Plan 2020 – 2038 ("BP 2020"), the non-aviation segment and in particular the increase in usable space and higher space productivity were expected to lead to a significant increase in turnover, such increase could not be realised due to the COVID-19 pandemic; on the contrary, the COVID-19 pandemic has led to significant losses in sales.

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[*] Parts of this text have been redacted so as not to divulge confidential information; those parts are enclosed in square brackets.

[21] Communication of 11 June 2020 from the Commission to the European Parliament, the European Council and the Council on the third assessment of the application of the temporary restriction on non-essential travel to the EU, COM/2020/399 final.

[22] The passenger numbers in 2020 include the passengers at Tegel and Schönefeld from January to October and the passengers at BER from November 2020.

[23] The passenger numbers for 2019 of the predecessor airports were 35.6 million.

[24] The expected passenger numbers at BER are [20-30] million for 2023 and [30-40] million for 2024.

(15) According to Germany, FBB implemented several measures to mitigate its losses. FBB amongst others temporarily closed BER's Terminal 5, did not open Terminal 2 and temporarily shifted operations to only one runway until December 2021. It also introduced a savings programme, including a recruitment-freeze. Moreover, FBB set-up an expense committee ("*Ausgabenboard*") consisting of FBB senior management. The expense committee holds weekly meetings to oversee any spending above EUR 25.000 for the operation of BER. The savings programme led to an operating cost reduction of around EUR 80 million in 2020 as compared to 2019; those savings do not take into account the short-time working allowance[25]. The savings and optimisation efforts were continued in 2021[26]. However, Germany explained that FBB cannot reduce its costs further by adopting measures beyond those described above since BER is subject to an operating and maintenance obligation pursuant to paragraph 45 of the Air Traffic Licensing Regulation ("Luftverkehrszulassungsordnung" or "LuftVZO"). The operation obligation means that during the operating times specified in the authorization, FBB must offer all facilities and services necessary to allow airlines to operate (enable aircrafts to take off, land and park, ground handling, security, etc.).[27] The maintenance obligation requires FBB to maintain the airport facility in such a way that flight operations can be carried out safely at all times. The company is therefore not in a position to temporarily shut down uneconomical operations of the airport or to significantly reduce operating costs. FBB's liquidity needs are thus necessarily higher than those of other companies, which, in the event of comparable revenue losses, are able to reduce operating costs significantly by adjusting the scope of their operations.

(16) Prior to the COVID-19 pandemic, FBB had forecasted a total EBITDA of EUR [900-1000] million for the period 2021 – 2023, based on its BP 2020. However, due to the COVID-19 pandemic, the BP 2020 needed to be updated and in its adjusted Business Plan 2021 – 2039 ("BP 2021"), the projections for the total EBITDA for the period 2021 – 2023 decreased to EUR [100-200] million. FBB does not plan a return to net profits before 2026.

[25] In Germany, companies have the possibility to apply for short-time work allowance ("Kurzarbeitergeld") so that workers affected by unavoidable work reduction for a short period of time do not have to be laid off. The short-time work ("Kurzarbeit") must be based on economic reasons or an unavoidable event (§ 96 SGB III). Those are, for example, a lack of work due to a reduced order intake, a decline in exports due to a lack of transport possibilities as a result of a pandemic or a company closure due to government protection measures. The maximum period of entitlement to short-time work allowance was originally 12 months but this period was later extended to 24 months by statutory order due to the exceptional circumstances of the COVID-19 pandemic.

[26] In its BP 2021, FBB planned a new (lower) cost level for operating BER, leading to an operation cost reduction between the pre-COVID-19 BP 2020 and the adjusted BP 2021 of approximately EUR 90 million per year.

[27] On the basis of the operating obligation, FBB is subject to a contracting obligation which it must fulfil in a non-discriminatory manner. This means that FBB must provide the airport services for all air carriers and persons authorised to fly and may not treat them differently, either directly or indirectly, without objective justification.

Table 1: FBB's EBITDA 2020-2026 (in million EUR)

	2020	2021	2022	2023	2024	2025	2026
EBITDA	-145.6	-[…]	-[…]	[…]	[…]	[…]	[…]

Source: FY20 actual figure based on FBB's FY20 Annual Report (p.29) and FY21 – FY26 projections based on FBB's BP 2021.

2.2. Objective and necessity of the Measure

(17) The Measure aims at restoring FBB's equity position and its access to liquidity, to ensure that the disruptions caused by the COVID-19 pandemic do not undermine FBB's viability and airport operations. The losses of FBB principally result from the containment measures adopted by governments to prevent the spread of the COVID-19 virus, as explained in recitals (8) to (11), that led to a significant fall in air traffic and corresponding revenue as explained in recitals (12) and (14).

(18) Germany submits that it is in the common interest to intervene as BER plays an essential role in the German economy and in connecting the Berlin-Brandenburg region to national and international air transport. *First*, Germany's "government" airport (*Regierungsflughafen*)[28] is dependent on the infrastructure of BER and the operational efficiency of FBB, e.g. using the same runway and all connected operational facilities. *Second*, the Berlin-Brandenburg region is an important location for research and science institutions[29], tourism and major international events and trade fairs such as the International Tourism Fair (ITB), the Internationale Funkausstellung (IFA), the Berlin Film Festival and the International Athletics event (ISTAF)[30]. The trade fairs and congresses generate total revenue of over EUR 2 billion, around 6.5 million overnight stays and secure over 33.500 jobs. An interruption or permanent stop of operations of BER would have a significant negative impact on all of these sectors given that alternative airport connections are practically non-existent[31]. Finally, as regards employment, according to Germany, the airport directly creates or secures over 2.200 jobs at FBB and about 20.000 at BER (at airlines, handling/maintenance/technique, security, authorities, gastronomy/catering, retail) and indirectly about 40.000 jobs in the region. According to a study commissioned by FBB[32], the number of jobs directly or indirectly dependent on BER could rise to around 60.000 to 70.000 in the next 15 years. Due to the airport as a job multiplier and the companies based at the airport, as well as the companies benefiting from the economic links in Berlin and Brandenburg, the study arrives at an overall economic effect of the airport of around EUR 3 billion per year. Germany submits that an interruption or permanent stop of

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28 The "government airport" is an airport solely used for protocol flight operations.

29 The Berlin-Brandenburg Area hosts 7 universities, over 50 universities of applied sciences and more than 100 non-university research institutions.

30 For example, in 2019, Berlin was one of the most important congress cities in the world with around 66.850 events and 9.4 million participants.

31 The two airports closest by are Dresden and Leipzig/Halle at more than 160 km or 90-120 minutes driving time from BER.

32 Study of 17 January 2020 by the market research institute Conoscope and the Competence Centre for Public Economy, Infrastructure and Services of General Interest at the University of Leipzig.

operations at BER would therefore have a huge impact on the labour market and the regional development.

(19) Due to its level of indebtedness, FBB has not been and is currently not capable of accessing the capital market without support of its public shareholders (which own 100% of FBB's shares). This has been confirmed by the assessment of the financing advisor […] dated 18 June 2020. Although the assessment dates from mid-2020, Germany explained that its conclusions are still valid. According to Germany, it is unrealistic that FBB will be able to obtain any other type of debt capital during the COVID-19 pandemic as long as the company does not have a stable net debt level of less than 5 times its EBITDA[33]. With a negative equity ratio on 31 December 2021 of –[5-10]% (and a negative EBITDA in 2020-2022), FBB has therefore no access to the capital market without recapitalisation and is currently not able to find financing on the market at affordable terms.

(20) Germany also explained that the existing horizontal measures already adopted by Germany to mitigate the impact of the COVID-19 pandemic are not sufficient to cover the needs of FBB. In particular, Germany adopted specific measures for the air transport sector under its State aid Airport Scheme, which the Commission approved in its decision of 11 August 2020. Under this scheme, FBB received an amount of EUR 98.8 million in direct grants to compensate for COVID-19 damages in the period from 4 March 2020 to 30 June 2020. It also received subsidized interest loans of in total EUR 531 million[34] which were paid out in 2020 and 2021 (EUR 201.2 million in 2020 and EUR 330 million in 2021) in order to cover FBB's liquidity needs until the end of 2021[35]. Germany explained that, while those measures covered part of FBB's liquidity needs, they were insufficient in light of FBB's negative equity and solvency issues to restore FBB's balance sheet position. In 2020, FBB recorded a loss of EUR 1.058 million, resulting in an equity of EUR 38.3 million at 31 December 2020 while based on BP 2021 and FBB's estimates on net losses of 2021 and 2022, FBB is expected to record a loss of EUR [300-400] million[36] and EUR [300-400] million respectively, resulting in a negative equity of [200-300] million by the end of 2022. The objective of the Measure is to remedy that situation by restoring the equity of FBB.

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33 According to Germany, as a general rule, banks do not grant loans to service other loans if the cash flow available for debts does not cover the existing loan obligations. In addition, FBB's net debt-to-EBITDA ratio for 2020 was 35, which is well above the threshold of 5.

34 On 25 September 2020, FBB submitted applications for the granting of subsidized interest loans under Section 5 of the Federal Framework for aid to airports to cover FBB's liquidity needs for the 12 months after the conclusion of the first loan agreement. For budgetary reasons, the granting authorities concluded separate contracts for the loan amounts which were disbursed in 2020 and 2021. In November 2020, FBB concluded the subsidized interest loan agreements for 2020 for a total amount of EUR 201.2 million which were disbursed in November and December 2020. In December 2020, FBB concluded the subsidized interest loan agreements for the remaining part of the 12-month period for a total amount of EUR 552 million for which disbursement requests could be made until 9 November 2021. Out of that amount of EUR 552 million, subsidized interest loans of EUR 330 million were disbursed to FBB. Therefore, FBB received in total EUR 531 million in subsidized interest loans. It should be noted that in FBB's BP 2021, out of the EUR 552 million authorized loan, FBB expected to use only EUR 287 million in 2021, which was lower than the EUR 330 million actually disbursed.

35 Together with a shareholder loan of EUR 108 million granted in 2018 (pre-COVID) but disbursed in 2021.

36 This estimate does not take into account year-end negative adjustments such as impairments.

(21) In light of the above considerations, Germany considers that a recapitalisation (in the form of an equity injection) of EUR 1.7 billion is necessary to help FBB meet its financial obligations and address the liquidity shortage (resulting from the considerable losses recorded in 2020 and projected until 2022) that is severely eroding its financial situation.

2.3. Nature and form of aid

(22) The Measure provides aid in the form of a recapitalisation for a total amount of EUR 1.7 billion, by means of a capital injection into the capital reserve of the company pursuant to paragraph 272 (2) of the German Commercial Code ("*Handelsgesetzbuch*", HGB). The capital reserve is attributed to the equity of the company.

2.4. Legal basis

(23) The legal basis of the measure is the shareholder resolution of 10 December 2021, pursuant to paragraph 272 (2) HGB, together with paragraph 48 of the Law on Limited Liability Companies ("*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*", GmbHG), in conjunction with the budget laws of the Land Berlin, the Land Brandenburg and the Federal Government. The shareholder resolution stipulates that the granting of the TF Recapitalisation is conditional on the Commission's approval.

2.5. Administration of the Measure

(24) The Measure will be granted and managed by the Senate Department for Finance (*Senatsverwaltung für Finanzen*) of the Land Berlin, the Ministry of Finance and Europe of the Land Brandenburg and the Federal Ministry of Digital and Transport of the Federal Republic of Germany.

2.6. Budget and duration of the Measure

(25) The budget of the Measure is EUR 1.7 billion.

(26) The Measure will be financed from the general budgets of the Land Berlin and the Land Brandenburg and the budget of the Federal Republic of Germany.

(27) Aid can be granted under the Measure no later than 30 June 2022. The German authorities confirm that the notified aid will only be granted after the notification of the present decision.

2.7. Beneficiary

(28) The beneficiary of the Measure is FBB.

(29) FBB is a company, founded in 1991, which owns, operates and develops BER. FBB's shareholders are the Land Berlin and the Land Brandenburg (each with 37% of the shares) and the Federal Republic of Germany (with 26% of the shares). The nearest airports are Dresden airport and Leipzig-Halle airport, located more than 160 km and 90-120 min travelling time away from BER.

(30) On 9 December 2021, FBB submitted a written request for the aid to its shareholders, which was accepted by a corresponding shareholder resolution dated 10 December 2021.

(31) FBB was not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[37] on 31 December 2019. FBB's subscribed share capital amounts to EUR 11 million. The equity capital amounted to EUR 1.1 billion on 31 December 2019. The subscribed share capital was therefore not lost[38]. FBB was not subject to insolvency proceedings and did not fulfil the criteria for being placed in such proceedings. FBB has received neither rescue aid nor restructuring aid in the past. FBB's book debt to equity ratio was 3.7 on 31 December 2019. FBB's liabilities amounted to EUR 4.1 billion and its equity to EUR 1.1 billion. The EBITDA interest coverage ratio at group level decreased from 1.2 on 31 December 2018 to 1.02 on 31 December 2019 but remains above 1.0 despite the increased financing volume and the interest expenses. EBITDA in 2019 amounted to EUR 108.4 million (2018: EUR 118.7 million) and the financial result to EUR - 106 million (2018: EUR - 102.3 million).

2.8. Basic elements of the TF Recapitalisation

2.8.1. Valuation of FBB

(32) According to point 60 of the Temporary Framework: "*A capital injection by the State, or an equivalent intervention, shall be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection. If the beneficiary is not a publicly listed company, an estimate of its market value should be established by an independent expert or by other proportionate means*".

(33) As FBB is an unlisted state-owned company, Germany submitted a valuation performed by the auditing firm [...] of the company's equity market value on 31 December 2021 based on the company's BP 2021. The BP 2021 has been reviewed and validated by [...]. Germany confirms that the underlying data and assumptions of the BP 2021 and the valuation report, which was performed in the spring of 2021, remain valid at the time of the notification of the Measure.

2.8.1.1. Key assumptions retained by the BP 2021

Passenger traffic

(34) FBB's projections for the years 2021 – 2025 on the number of passengers of BER airport are in line with industry forecasts[39] that predict that the pre-COVID 2019 traffic volume will resume in 2025. More specifically, in 2019, FBB handled 35.6 million passengers. In 2020, due to the COVID-19 pandemic, passenger volume declined to 9.1 million (74.4% decrease) and is expected to reach pre-COVID levels of 35.7 million by 2025. After that, FBB anticipates an average increase of

[37] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

[38] In the analysis, capital injections included in the capital reserves have been taken into account.

[39] "COVID-19 & AIRPORTS - Traffic Forecast & Financial Impact – Revised 2021 & Medium-Term Forecast, 21 April 2021" report by Airports Council International (ACI Europe).

[1.5-2]% p.a. for years 2026 – 2039, which is considered reasonable and in line with IATA projections.

Revenues

(35) Aviation revenues (i.e. passenger charges, take-off and landing fees, etc.) are mainly driven by passenger volume. FBB assumes that charges to airlines will […]. In […], a […] will be applied in order to […] and from […] onwards, a further […] is expected. In the long-term, aviation revenues are assumed to increase by […] % p.a. for years […]. Non-aviation revenues related to rent, parking and advertising are expected to increase in line with aviation revenues in the long-term (approximately […]% of aviation revenues). Non-aviation revenues related to real estate are assumed to increase mainly in years 2026 and 2034 due to the planned sale of land.

Costs

(36) On the costs' side, operating expenses are expected to increase in line with revenues (approximately on average […]% of revenues for the period 2025 – 2039), taking also into account cost efficiencies resulting from the shut-down of the predecessor airport Tegel and the implementation of technically advanced systems in BER.

Profitability

(37) Based on the above, FBB assumes that EBITDA will turn positive in 2023 (with EBITDA margin at [30-35]%), but that it will not record net profits before 2026. From 2026 onwards, FBB's profitability margins are expected to increase and in the long-term to be in line with its peers' average historical margins.

2.8.1.2. Market valuation of FBB

(38) In order to calculate the value of the company on 31 December 2021, [...] used the method based on discounted future cash flows. The discounted cash flow approach is based on the anticipated future cash flows generated by the business. The projected future cash flows, together with the terminal value of the company, are discounted at the company's Weighted Average Cost of Capital[40] ("WACC"), taking into account the risks associated with the business.

(39) According to [...]'s report, a rolling WACC has been applied as more appropriate, i.e. a WACC that changes over time, which better reflects FBB's year-on-year future changes in its capital structure (debt-to-equity).

(40) The aggregate value of the discounted cash flows is estimated to be EUR [2.500-3.000] million for the forecast period running from 2022 to 2050[41] and the terminal value of FBB is estimated at EUR [1.500-2.000] million. As a result, the Valuation

[40] The weighted average cost of capital (WACC) is a calculation of a firm's cost of capital in which each category of capital is proportionately weighted. Investors often use WACC as an indicator of whether or not an investment is worth pursuing. Put simply, WACC indicates the minimum acceptable rate of return at which a company yields returns for its investors.

[41] The detailed planning period of FBB's BP 2021 ends in year 2039, but for valuation purposes, the future cash flows are projected until 2050 in order to take into account the full effect of tax losses carried forward.

Report sets FBB's total Enterprise Value ("EV") at EUR [4.000-4.500] million on 31 December 2021.

(41) Considering that the net debt position on 31 December 2021 would amount to EUR [3.500-4.000] million, the Valuation Report established the equity value of FBB at EUR [500-600] million.

2.8.2. Proportionality of the recapitalisation

(42) The TF Recapitalisation amounts to EUR 1.7 billion; FBB's pre-recapitalisation value is set at EUR [500-600] million on the basis of the above valuation analysis (see section 2.8.1.2). As a result, and since FBB is 100% state-owned, Germany's participation resulting from the TF Recapitalisation will consist of [75-80]% of FBB's shares ("the COVID-19 shares"); the remaining [20-25]% of the shares correspond to Germany's pre-recapitalisation participation.

2.8.3. Sale of the State's equity stake

(43) Germany does not intend to sell its equity stake in FBB. Since FBB is wholly state-owned, the redemption of the recapitalisation will be made in accordance with point 64bis of the Temporary Framework. In that regard, Germany committed to ensure that all conditions set in point 64bis of the Temporary Framework will be met before redemption of the recapitalisation takes place.

2.8.4. Governance and prevention of undue distortion of competition

(44) Germany stated that it will observe the criteria regarding governance and competition set out in section 3.11.6 of the Temporary Framework.

(45) In particular, as long as at least 75% of the total value of the TF Recapitalisation has not been redeemed, FBB will be prevented from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations.

(46) Furthermore, as long as the TF Recapitalisation has not been fully redeemed, FBB will not make dividend payments or non-mandatory coupon payments, or buy back shares, other than in relation to the participation acquired by the State under that measure. Germany confirmed that, pursuant to point 77bis of the Temporary Framework, FFB has not used hybrid capital instruments in the past and will not use them before the TF Recapitalisation has been fully redeemed.

(47) FBB will not increase the remuneration of the members of the management beyond their fixed remuneration on 31 December 2019, before at least 75% of the total value of the TF Recapitalisation has been redeemed. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the fixed remuneration of the members of the management with the same level of responsibility on 31 December 2019.

(48) Germany confirmed that FBB will not engage in aggressive commercial expansion financed by the TF Recapitalisation or take excessive risks, as long as the TF Recapitalisation has not been fully redeemed.

(49) FBB will also not advertise the TF Recapitalisation for commercial purposes, as long as the TF Recapitalisation has not been fully redeemed.

(50) In addition, Germany confirmed that the TF Recapitalisation will not be used to cross-subsidise group companies which, on 31 December 2019, were undertakings in difficulty as defined in the GBER, having recourse, if necessary, to separation of accounts, as long as the TF Recapitalisation has not been fully redeemed.

(51) Lastly, in line with point 72 of the Temporary Framework, Germany committed that FBB will comply with the following measures to preserve effective competition:

- FBB will not grant lower discounts of any kind or nature other than those provided in the schedule of charges at BER in force at the date of adoption of the present decision for as long as the TF Recapitalisation has not been fully redeemed in line with point 64bis of the Temporary Framework;
- FBB will not expand its business through the construction of new terminals or the extension of the current terminals T1, T2 and T5 at BER for as long as the TF Recapitalisation has not been fully redeemed in line with point 64bis of the Temporary Framework.

2.8.5. Exit strategy of the State

(52) The TF Recapitalisation is conditional upon the obligation for FBB to demonstrate a credible exit strategy for the COVID-19 recapitalisation of Germany, unless the State's intervention is reduced below the level of 25% of equity within 12 months from the date of the granting of the aid. That exit strategy will lay out the elements contained in point 80 of the Temporary Framework and will be prepared and submitted to Germany within 12 months after the aid is granted and will be endorsed by Germany.

(53) Germany informed the Commission that the State intends to have recourse to the procedure defined in point 64bis of the Temporary Framework to exit from the COVID-19 recapitalisation to the extent that the valuation of FBB, performed by an entity independent from that beneficiary and from the State, will establish a positive market value of the imputed COVID-19 shares. Germany will also submit this independent valuation to the Commission for review and prior approval.

(54) Germany confirmed that FBB will report to Germany on the progress in the implementation of the repayment schedule and the compliance with the conditions concerning its governance and the prevention of undue distortions of competition within 12 months of the schedule's presentation, and thereafter periodically every 12 months. In addition, Germany will report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions set out in section 3.11.6 and point 54 of the Temporary Framework.

(55) It also confirmed that, as long as the TF Recapitalisation has not been fully redeemed, FBB will, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this will include information on how its use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transition, including the EU objective of climate neutrality by 2050.

(56) Germany further committed that, if seven years after the TF Recapitalisation the State's intervention resulting from such recapitalisation has not been reduced below 15% of FBB's equity, a restructuring plan in accordance with the Rescue and Restructuring Guidelines will be notified to the Commission for approval. The actions envisaged by the restructuring plan will ensure FBB's viability in accordance with the Rescue and Restructuring Guidelines and with a view of EU objectives and national obligations linked to the green and digital transition and the exit of Germany without adversely affecting trade to an extent contrary to the common interest.

2.9. Cumulation

(57) Germany confirmed that the TF Recapitalisation aid may be cumulated with aid under the de minimis Regulation[42] or the GBER provided the provisions and cumulation rules of those Regulations are respected.

(58) Germany confirmed that the TF Recapitalisation may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

2.10. Monitoring and reporting

(59) Germany confirmed that it will respect the monitoring and reporting obligations specific to the Measure laid down in section 4 of the Temporary Framework. In particular:

i. It will publish relevant information on the TF Recapitalisation granted by Germany to FBB on the comprehensive State aid website or Commission's IT tool within three months from the moment of recapitalisation.

ii. It will submit annual reports to the Commission, in line with points 84 and 104 of the Temporary Framework.

iii. It will ensure that detailed records regarding the granting of aid under the measure (including all information necessary to establish that the relevant conditions have been observed) are maintained for ten years upon granting of the aid and are provided to the Commission upon request.

3. ASSESSMENT

3.1. Lawfulness of the Measure

(60) By notifying the Measure before putting it into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

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42 Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

3.2. Existence of State aid

(61) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(62) The Measure is imputable to the State, since the Measure is granted and administered by the Senate Department for Finance of the Land Berlin, the Ministry of Finance and Europe of the Land Brandenburg and the Federal Ministry of Digital and Transport of the Federal Republic of Germany. It is financed through State resources, since it is financed from the general budgets of the Land Berlin and the Land Brandenburg and the budget of the Federal Republic of Germany.

(63) The Measure confers an advantage on its beneficiary FBB in the form of a recapitalisation. It provides FBB with funds that would not be available to it on market terms and thus relieves FBB of costs, which it would have had to bear under normal market conditions.

(64) The advantage granted by the Measure is selective, since the Measure is awarded only to one undertaking, FBB. The Measure therefore favours FBB over other airports or undertakings active in the aviation sector and in sectors outside aviation.

(65) The Measure is liable to distort competition, since it strengthens the competitive position of FBB. The Measure also affects trade between Member States, since FBB is active in sectors in which intra-Union trade exists.

In view of the above, the Commission concludes that the Measure constitutes aid within the meaning of Article 107(1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility of the TF Recapitalisation

(66) Since the Measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it is compatible with the internal market.

(67) Pursuant to Article 107(3)(b) TFEU, the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(68) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability*".

(69) Section 3.11 of the Temporary Framework deals with recapitalisation measures. It sets out the criteria under which Member States may provide public support in the

form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 pandemic, aiming to ensure that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before that pandemic.

3.3.1. Applicability

(70) Point 46 of the Temporary Framework states that: "*The following conditions shall apply to recapitalisation schemes and individual recapitalisation measures of Member States for non-financial undertakings (collectively referred to as "COVID-19 recapitalisation" measures) under this Communication, which are not covered by section 3.1 of this Communication. They apply to COVID-19 recapitalisation measures for large undertakings and SMEs*".

(71) The TF Recapitalisation aims at easing FBB's liquidity constraints, strengthening the equity of FBB and restoring the capital structure of the company to the one predating the COVID-19 pandemic, i.e. the capital structure of FBB on 31 December 2019.

(72) The TF Recapitalisation takes the form of an injection into FBB's capital reserve, which forms part of FBB's equity, as further explained in recital (22). The TF Recapitalisation thus amounts to a recapitalisation within the meaning of point 46 of the Temporary Framework.

(73) The Commission observes that the TF Recapitalisation concerns the recapitalisation of a large non-financial undertaking, FBB, as a result of the COVID-19 pandemic. Hence, the TF Recapitalisation can be qualified as a COVID-19 recapitalisation to remedy a serious disturbance in the economy of the Member State.

(74) Point 48 of the Temporary Framework states that COVID-19 recapitalisation measures may not be granted later than 30 June 2022. The Commission notes that Germany committed to grant the TF Recapitalisation no later than 30 June 2022 (see recital (27)).

(75) Therefore, in the following sections, the Commission will assess the compatibility of the TF Recapitalisation under section 3.11 of the Temporary Framework.

3.3.2. Eligibility and entry conditions

(76) According to point 49 of the Temporary Framework, a COVID-19 recapitalisation measure must fulfil the following conditions:

(a) "*without the State intervention the beneficiary would go out of business or would face serious difficulties to maintain its operations. Such difficulties may be shown by the deterioration of, in particular, the beneficiary's debt to equity ratio or similar indicators;*

(b) *it is in the common interest to intervene. This may relate to avoiding social hardship and market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company, the risk of disruption to an important service, or similar situations duly substantiated by the Member State concerned;*

***(c)** the beneficiary is not able to find financing on the markets at affordable terms and the horizontal measures existing in the Member State concerned to cover liquidity needs are insufficient to ensure its viability; and*

***(d)** the beneficiary is not an undertaking that was already in difficulty on 31 December 2019 (within the meaning of the General Block Exemption Regulation[43])*".

3.3.2.1. Without the State intervention, the beneficiary would go out of business or would face serious difficulties to maintain operations

(77) In the present case, the Commission first notes that FBB has been severely impacted by the substantial decrease of air services operated domestically and internationally at its airports due to the COVID-19 pandemic and the governmental restrictions[44]. With only 9.1 million passengers travelling through its airports in 2020 and 9.9 million passengers at BER in 2021[45], FBB's revenues dropped to EUR 177.1 million in 2020 and to EUR [200-300] million in 2021 (which is only 36% (2020) and [35-40]% (2021) of the revenues projected for those years before the COVID-19 pandemic). Consequently, FBB has registered substantial losses despite the introduction of the 2020 savings programme and FBB's optimisation efforts (see recital (15)). Those circumstances put the company's liquidity position in distress and are ultimately eroding its equity structure.

(78) According to FBB's BP 2021, FBB will have a negative equity ratio of –[5-10]% on 31 December 2021. For the years 2022 to 2030, the BP 2021 foresees liquidity needs in the range of EUR 2.5 bn. The Commission therefore considers that FBB's financial structure does not allow it to obtain the necessary financial resources on the capital market and hence FBB has to resort to the injection of capital by the shareholders.

(79) It follows that without the aid, FBB would face serious difficulties to maintain its operations, in accordance with point 49(a) of the Temporary Framework.

3.3.2.2. It is in the common interest to intervene

(80) BER plays an essential role in the German economy and in connecting the Berlin-Brandenburg region to national and international air transport. Before the COVID-19 pandemic, FBB welcomed 35 million passengers at the predecessor airports. As indicated by Germany, a good functioning and fast air connection to the Berlin-Brandenburg region is essential for Germany's public administration, its research and science community and its tourism and event sector. Overall, FBB directly creates or secures over 2.200 jobs at FBB itself and about 20.000 at BER (at airlines, handling/maintenance/technique, security, authorities, gastronomy/catering, retail) and indirectly creates or secures currently about 40.000

43 As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

44 See section 2.1.2.

45 Compared to 35.6 million passengers in 2019 at the predecessor airports, there was a decrease of 74% in 2020 and 72% in 2021.

jobs in the region. An interruption or permanent stop of operations of BER would therefore have a huge impact on the labour market and the regional development.

(81) The Commission observes that, should FBB exit the market at a time where the effects of the COVID-19 pandemic remain present, that circumstance would further aggravate the serious disturbance affecting the regional and German economy. Given that no other airport would be available to adequately take over FBB's traffic during the recovery period of the German economy as the two airports closest by (Dresden and Leipzig-Halle) are at more than 160 km or 90-120 minutes driving time from BER and their infrastructure is not capable of hosting international traffic, an exit of FBB from the market would seriously risk causing disruption of connectivity and essential air services in that region.

(82) It follows that it is in the common interest to intervene in favour of FBB to maintain the connectivity of Berlin and of the Brandenburg region with the rest of Germany and abroad through the functioning of BER and avoid any further deterioration of the regional development and economy in the context of the COVID-19 pandemic.

(83) The Commission therefore considers that point 49(b) of the Temporary Framework is met.

3.3.2.3. Absence of alternative funding on the market and insufficiency of other horizontal aid schemes

(84) Due to FBB's level of indebtedness, the company has not been and is not capable of accessing the capital market without support from its public shareholders (which own 100% of FBB's shares). This has been confirmed by an assessment of the financing advisor […] dated 18 June 2020. Although the assessment dates from mid-2020, Germany established that its conclusion is still valid. As explained in recital (19), with a negative equity ratio on 31 December 2021 of –[5-10]%[46], negative EBITDA in 2020-2022[47] and a net debt-to-EBITDA ratio far above the threshold of 5[48], it is unrealistic that FBB will be able to obtain any other type of debt capital in the current situation or the near future.

(85) As regards the possibility to cover FBB's liquidity needs under the horizontal State aid schemes put in place by Germany in the context of the COVID-19 pandemic, the Commission observes that FBB already received EUR 98.8 million in direct grants to compensate for COVID-19 damages in the period from 4 March 2020 to 30 June 2020 and EUR 531 million in subsidized interest loans to cover for FBB's liquidity needs until the end of 2021 under the Airport Scheme as described in recitals (6) and (20). However, the aid granted to FBB could only partially compensate the capital consumption caused by the COVID-19 pandemic. With a negative equity ratio of –[5-10]% as of 31 December 2021, FBB's financial needs

[46] Equity ratio in 2019 was 20.2% and in 2020 0.8%.

[47] Actual EBITDA of EUR -145.6 million in 2020, a planned EBITDA of EUR –[…] million in 2021 and a planned EBITDA of EUR –[…] million in 2022.

[48] FBB's net debt-to-EBITDA ratio for e.g. 2020 was 35.

exceed the thresholds provided for in the Airport Scheme approved by the Commission[49].

(86) It follows from the above that the horizontal State aid measures put in place by Germany have been insufficient to ensure FBB's liquidity needs and that FBB has not been able to find alternative financing on the market at affordable terms to cover its liquidity needs.

(87) The Commission therefore considers that the conditions set out in point 49(c) of the Temporary Framework are met.

3.3.2.4. The beneficiary was not an undertaking already in difficulty on 31 December 2019

(88) Based on the information submitted by Germany (see recital (31)), the Commission considers that FBB was not an undertaking already in difficulty on 31 December 2019 within the meaning of the GBER. Therefore, the Commission concludes that the Measure is in line with point 49(d) of the Temporary Framework.

3.3.2.5. Request for aid under section 3.11 of the Temporary Framework

(89) Pursuant to point 50 of the Temporary Framework, when Member States notify COVID-19 individual recapitalisation measures, they must provide evidence of a written request for such aid by the prospective beneficiary undertaking as part of the notification to the Commission. The Commission takes note that the German notification included such a written request dated 9 December 2021 (see recital (30)). The Commission concludes that point 50 of the Temporary Framework is therefore fulfilled.

3.3.2.6. Conclusion

(90) Based on the above, the Commission concludes that the TF Recapitalisation fulfils the eligibility and entry conditions as set out in section 3.11.2 of the Temporary Framework.

3.3.3. Amount of the recapitalisation

(91) According to point 54 of the Temporary Framework, *"[i]n order to ensure proportionality of the aid, the amount of the COVID-19 recapitalisation must not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, i.e. the situation on 31 December 2019. In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak shall be taken into account*".

(92) The proportionality test set out in point 54 has two cumulative conditions. On the one hand, the COVID-19 recapitalisation must not exceed the minimum needed to ensure the viability of the beneficiary, that is, it cannot go beyond the minimum

[49] Under the Airport Scheme the subsidized interest loan amount could not exceed twice the annual wage bill for 2019, 25% of the annual turnover of 2019, or the specific liquidity needs of a beneficiary for the next 12 months.

amount of recapitalisation aid needed to restore the company's access to the capital markets (and be in a position to get debt and/or equity financing at affordable terms from the markets). On the other hand, the COVID-19 recapitalisation cannot go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 pandemic.

(93) *First*, in order to assess whether the aid corresponds to the minimum needed to ensure the viability of FBB, the Commission will consider what is the minimum amount of State aid needed to restore FBB's access to capital markets. To that end, the Commission will analyse the liquidity position of the company, as well as the following (forecasted) two indicators:

- The debt-to-equity ratio of FBB compared to other airports. The debt-to-equity ratio is typically considered by rating agencies when assessing the creditworthiness of companies. In particular, the Commission will compare the debt-to-equity ratio of the beneficiary after the Measure with a benchmark debt-to-equity ratio of other European airports predating the COVID-19 pandemic, i.e. the situation on 31 December 2019. The Commission considers the debt-to-equity ratio of the third quartile of comparable companies a useful and appropriate benchmark;
- The level of the net debt-to-EBITDA ratio, which is an indicator that rating agencies use to determine a company's creditworthiness[50]. In particular, the Commission will assess whether the net debt-to-EBITDA ratio after the COVID-19 recapitalisation remains above a 3.0-3.5 threshold. That is a conservative test, because it is common practice to consider a net debt-to-EBITDA ratio higher than 3.5 as a signal of poor creditworthiness. Even though actual credit ratings depend on a number of factors, companies with those values (3.0-3.5 or higher) of net debt-to-EBITDA ratio do not normally have an investment grade rating, which means that they find it difficult and expensive to access private capital markets[51].

(94) *Second*, in order to assess whether the aid corresponds to the minimum needed to restore the capital structure of the beneficiary to the one before the COVID-19 pandemic, the Commission will take into account the financial projections concerning (i) the equity position of the beneficiary and (ii) the debt-to-equity ratio of the beneficiary after the COVID-19 recapitalisation at the end of 2022. The Commission will compare the value of those indicators with those predating the COVID-19 pandemic, i.e. the situation on 31 December 2019, in order to assess whether the aid restores the capital structure of FBB without further improving it.

(95) The Commission will conduct that analysis on the basis of the financial projections of FBB that Germany submitted and that the Commission has reviewed. Those projections, as well as the overall business plan, have been subject to an independent business review by [...]. That business review, which the Commission has examined, contains an analysis of FBB's projections as well as of historical industry trends. Overall, based on the independent business review of [...] and the

[50] The net debt-to-EBITDA ratio is a debt ratio that shows how many years it would take for a company to pay back its debt if net debt and EBITDA are held constant.

[51] The applicability of the value of net debt-to-EBITDA of 3.0-3.5 as an indicator of minimum viability for the beneficiary was further confirmed by an analysis of net debt-to-EBITDA values of peers at the end of 2019 (before the COVID-19 crisis), which demonstrated that the third quartile of the individual airports' values fell in the interval of 3.0-3.5.

Commission's own analysis of that review and of the relevant assumptions and variables, the Commission takes the view that FBB's financial projections appear in line with the latest industry consensus.

(96) More specifically, the Commission will conduct the proportionality assessment on the basis of the latest available actual financial results and the business plan projections. Germany submitted three scenarios, namely: (i) the "Base case scenario" (COVID-19 recovery in 2025), (ii) the "Good case" scenario (COVID-19 recovery in 2023) and (iii) the "Bad case" scenario (COVID-19 recovery in 2027). The Commission will assess the proportionality of the aid granted to FBB by using the financial projections in the Base case scenario, as this is considered to be more realistic and in line with industry forecasts[52].

3.3.3.1. Whether the public support is limited to the minimum needed to ensure the viability of the beneficiary

(97) As mentioned, to assess whether the TF Recapitalisation corresponds to the minimum needed to ensure the viability of FBB, the Commission will assess what is the minimum amount of the State recapitalisation needed to restore FBB's access to capital markets, taking into account: (i) the liquidity position of the company; (ii) FBB's debt-to-equity ratio vis-à-vis its peers (benchmark); and (iii) its net debt-to-EBITDA ratio (using a 3.0-3.5 threshold).

(98) *First*, according to its financial projections, without the TF Recapitalisation, FBB would run out of liquidity in the course of 2022 and FBB would have a negative cash position forecast of EUR [300-400] million on 31 December 2022. With the Measure, FBB's forecasted cash is enhanced so that FBB can meet its obligations in the near future.

(99) In this respect, Germany adequately demonstrated that FBB would not be able to raise the required amount of capital in the near future on the equity capital markets. That conclusion holds true today as FBB's financial situation has worsened in recent months (e.g. negative EBITDA in 2020 and expected to remain negative until 2022 accompanied with high indebtedness and poor liquidity position) and banks are not willing to provide further financing (see recitals (19) and (84)). In that context, the Commission considers that the TF Recapitalisation is needed to bring the liquidity level of FBB to a level that no longer jeopardizes its viability.

52 The Commission considered the assumptions under the "Good case" scenario not realistic and overly optimistic. More specifically, under that scenario, the number of passengers, which is the main value driver of BER, is expected to increase more rapidly compared to consensus forecasts (e.g. FBB assumes to reach 2019 level of passengers in 2023 while IATA & ACI expect that EU traffic will not recover before 2024). In addition, based on FBB's initial projections in BP 2021 under the "Base case" scenario, passengers in 2021 would amount to [10-20] million, while based on most recent data, this estimate has been adjusted downwards to 9.9 million passengers. For these reasons, FBB's "Good case" scenario will not be taken into account under the proportionality assessment. Likewise, the assumptions under the "Bad case" scenario are highly pessimistic, i.e. FBB's expected passenger number would return to its pre-COVID level (2019) in 2027, which is considered remote based on industry expectations. In addition, FBB's projection for 2021 under the "Bad case" scenario was at [1-10] million passengers which was well below the actual 9.9 million passengers. For the proportionality assessment, since under the "Bad case" scenario, FBB's losses would be higher and subsequently, capital needs would be higher, it means that the recapitalisation amount based on the BP 2021/"Base case" scenario would still be proportionate.

(100) *Second*, the Commission has compared FBB's projected debt-to-equity ratio after the Measure to the same ratio of its peer airports on 31 December 2019, including peers that have a credit rating between BBB and AA-[53]. This is considered a conservative approach, as rated peers have a rating either below or very close to the investment grade threshold (i.e. BBB), which is normally considered as the minimum rating allowing a company to easily get access to market financing. Hence, the Commission concludes that FBB's projected debt-to-equity ratio after the Measure, i.e. [4.5-5] (see also Table 2) is well above the third quartile of its peers' distribution of the same ratio predating the COVID-19 pandemic, i.e. 1.2[54].

(101) *Third*, the Commission has assessed whether FBB expects the net debt-to-EBITDA ratio to fall below the 3-3.5 thresholds after the Measure. It is common market practice to consider companies with a net debt-to-EBITDA ratio above those thresholds as highly risky. Hence, companies with those high net debt-to-EBITDA ratios (above 3-3.5) find it particularly difficult, if not impossible, to access private capital markets.

(102) The financial projections of FBB with the Measure show a negative net debt-to-EBITDA ratio on 31 December 2022 (due to a forecasted negative EBITDA), meaning that FBB will be in a worse position than with a net debt-to-EBITDA ratio of 3-3.5. Hence, as of 31 December 2022, the Measure is not higher than the amount needed to ensure the viability of FBB, and is actually far from that threshold.

(103) For the period 2023-2025, the net debt-to-EBITDA ratio is expected to turn positive and to decrease over time but to remain largely above the 3-3.5 thresholds (below which a company can get access to capital markets on its own). Those dynamics indicate that the Measure will only help FBB to mitigate to a certain extent the negative effects of the COVID-19 pandemic but is not expected to regain full access to the capital markets before at least 2026. Therefore, while the Measure helps FBB remain viable in the short and medium terms, it does not go beyond what is necessary.

(104) It follows from the above that the TF Recapitalisation does not go beyond the minimum to ensure the viability of FBB.

3.3.3.2. Whether the public support is limited to the minimum needed to restore the capital structure of the beneficiary

(105) As explained above, to assess whether the aid corresponds to the minimum needed to restore FBB's pre-COVID-19 capital, the Commission will review financial projections concerning: (i) its debt-to-equity ratio; and (ii) its equity position. The

[53] The sample of peer airports includes: Aena S.M.E., S.A., Aeroports de Paris SA, Flughafen Wien Aktiengesellschaft, Flughafen Zürich AG, Fraport AG, Aeroporto Guglielmo Marconi di Bologna S.p.A., Københavns Lufthavne A/S, Malta International Airport p.l.c., Toscana Aeroporti S.p.A., Gatwick Airport Limited, Royal Schiphol Group N.V., daa plc, Aeroporti di Roma S.p.A., Swedavia AB, Finavia Oyj & Flughafen Köln/Bonn GmbH. Peers that have a credit rating are: Aeroports de Paris SA, Flughafen Zürich AG, Royal Schiphol Group N.V., daa plc & Aeroporti di Roma S.p.A. The median of peers' debt-to-equity on 31.12.2019 was 0.7 and their third quartile was 1.2 (Source: Capital IQ).

[54] By using *net* debt-to-equity, FBB's ratio after the Measure (i.e. [3-3.5]) is still above the third quartile of its peers' distribution of the same ratio pre-COVID-19 (i.e. 1.0).

Commission will compare the value of those indicators with those predating the COVID-19 pandemic, i.e. the situation on 31 December 2019.

(106) Table 2 illustrates the relationship between the recapitalisation aspects of the Measure and the capital structure of FBB predating the COVID-19 pandemic, i.e. the situation on 31 December 2019.

Table 2 – FBB's equity indicators

Description	**EUR million, unless ratios**
TF recapitalisation amount	1.717
A. Equity position (31.12.2019)	1.096
B. Equity position after recap (31.12.2022)	1.096
Proportionality indicator I: B – A ≤ 0	-
C. Debt/Equity ratio (31.12.2019)	3.6
D. Debt/Equity ratio after recap (31.12.2022)	[4.5-5]
Proportionality indicator II: C – D ≤ 0	-[0.9-1.4]

Source: FBB's BP 2021, Commission's analysis

(107) *First*, according to Table 2, FBB's equity position after the recapitalisation (on 31.12.2022)[55] will be the same compared to that on 31.12.2019, i.e. EUR 1.096 million. This means that based on FBB's business plan projections, the accumulated net losses of years 2020 – 2022, which would erode its equity position, would be covered by the recapitalisation[56, 57].

(108) *Second*, FBB's debt to equity ratio for 2022 after the recapitalisation will be worse than that at the end of 2019 (i.e. [4.5-5] > 3.6) and will remain higher until 2024[58, 59]. Also, it should be noted that in the above calculations, the shareholder loans

[55] The grant for damages for the period March – June 2020 (EUR 98.8 million) was included in FBB's equity on 31.12.2020, hence it is also included in its equity position on 31.12.2022.

[56] The net loss of 2020 includes an impairment of EUR 767 million due to the expected permanently lower fair value of BER's assets (FBB's Annual Report 2020, p.48, 51).

[57] This is a conservative approach, since the recapitalisation amount is based on the net losses of 2020 – 2022. The net loss of 2021 does not take into account any year-end negative adjustments such as impairment, which would increase total loss.

[58] Subsidized interest loans of 2020 (EUR 201.2 million) are included in FBB's total debt. Also, based on BP 2021, out of the total authorized loan of EUR 552 million, FBB had estimated to withdraw EUR 287 million in 2021, while it actually used EUR 330 million (recital (20)). The above calculations are based on BP 2021 where 2021 figures are estimates, hence the Debt position on 31.12.2022 includes subsidized interest loans of a total of EUR 488 million (i.e. actual 2020 EUR 201 million plus estimated 2021 EUR 287 million). Based on the above, the proportionality calculations are considered conservative, since if the actual 2021 higher debt would be used, the debt-to-equity ratio after recapitalisation (31.12.2022) would also be higher and the test would still be met.

[59] Based on the Commission's analysis, by using also the *net* debt to equity ratio to measure FBB's capital structure, the results are not materially different. More specifically, the net debt to equity ratio on 31.12.2019 was 3.5 and compared to the same ratio after the recapitalisation is increased to [3.5-4] (2023) and [4.5-5] (2024).

have been included in debt[60], as per FBB's balance sheet, and if these were to be included in equity, the proportionality test would still be met (FY19 debt to equity ratio 1.3 < [1.5-2] FY22 debt to equity ratio). In this respect, the TF Recapitalisation thus enables restoring FBB's capital structure to an acceptable level without going beyond that objective.

(109) Based on the above, the Commission considers that the aid does not go beyond restoring the pre-COVID capital structure of FBB.

3.3.3.3. Conclusion on proportionality

(110) In light of the above, the Commission concludes that the TF Recapitalisation does not exceed the minimum to ensure the viability of FBB and does not go beyond restoring its capital structure on 31 December 2019. Therefore, the TF Recapitalisation complies with point 54 of the Temporary Framework.

3.3.4. Valuation, remuneration, and exit of the State

(111) According to the general principles of the remuneration and exit of the State outlined in points 55 to 59 of the Temporary Framework, the Member State must receive appropriate remuneration for the investment and must put a mechanism in place that gradually incentivises redemption.

(112) According to point 57 of the Temporary Framework, "*[t]he remuneration of the COVID-19 recapitalisation measure should be increased in order to converge with market prices to provide an incentive to the beneficiary and to the other shareholders to redeem the State recapitalisation measure and to minimise the risk of distortions of competition*". Point 58 of the Temporary Framework clarifies that the purpose of point 57 is that the recapitalisation measures "*contain appropriate incentives for undertakings to redeem the recapitalisation and look for alternative capital when market conditions permit, by requiring a sufficiently high remuneration for the recapitalisation*".

(113) With particular regard to the remuneration, point 59 of the Temporary Framework allows Member States to "*notify schemes or individual measures where the remuneration methodology is adapted in accordance with the features and seniority of the capital instrument provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration*".

(114) The Commission will assess compliance of the TF Recapitalisation with those general principles, taking into account the applicable rules set out by the Temporary Framework depending on the type of recapitalisation instrument and on the fact that in the present case the State is the only existing shareholder.

3.3.4.1. Valuation of FBB

(115) Pursuant to point 60 of the Temporary Framework: "*A capital injection by the State, or an equivalent intervention, shall be conducted at a price that does not exceed*

[60] FBB had received a shareholder loan of EUR 1.1 billion in 2016, which the Commission considered as a quasi-equity instrument and MEO conform (*State aid SA.41342 (2016/N) – Germany. Financing of Berlin Brandenburg Airport*).

the average share price of the beneficiary over the 15 days preceding the request for the capital injection. If the beneficiary is not a publicly listed company, an estimate of its market value should be established by an independent expert or by other proportionate means".

(116) The condition in point 60 of the Temporary Framework, to have a valuation report of an independent expert in order to establish the market value of the beneficiary and to determine the share price for the capital injection, ensures that the State's capital contribution is reflected in a market-based shareholding for the State and correspondingly a market-based dilution for existing shareholders following the recapitalisation.

(117) The Commission has reviewed the Valuation Report submitted by Germany (see section 2.8.1). It has examined both the numerical calculations and the key assumptions underlying the valuation (in particular for passenger traffic projections).

(118) The Commission considers the business model and the assumptions considered in the Valuation Report credible. In particular, it notes the following points:

i. The forecasted revenues and expenses are in line with the industry trend and any discrepancies have been justified on the basis of FBB's specific characteristics;

ii. The estimation of the terminal value is reasonable and based on FBB's business model;

iii. The components of the Weighted Average Cost of Capital (WACC) used are justified.

(119) Therefore, based on the above, the Commission considers that the market value of FBB appears credible and demonstrates an ability to generate profits in the future.

(120) FBB is 100% state-owned and the Valuation Report provided by Germany established a value of FBB of EUR [500-600] million at the moment of recapitalisation. As a result, the State's participation resulting from the TF Recapitalisation (EUR 1.7 billion) will consist of [75-80]% of FBB's shares (the COVID-19 shares); the remaining [20-25]% corresponds to its pre-recapitalisation participation (of a value of EUR [500-600] million).

(121) Thus, the amount of COVID-19 shares that the State received from the TF Recapitalisation is commensurate to the market value of FBB and, therefore, point 60 of the Temporary Framework is complied with.

3.3.4.2. Remuneration and exit of the State

(122) The State will receive an appropriate remuneration as a result of the following mechanisms and guarantees put in place by the German authorities.

(123) Germany explained that the State is bound by national law to keep a 100% shareholding ownership in FBB. Hence, it indicated that the redemption of the TF Recapitalisation will be made in accordance with point 64bis of the Temporary Framework and it committed to ensure that all conditions set in point 64bis of the Temporary Framework will be met. In particular, two years after the TF Recapitalisation, Germany will conduct a valuation of FBB performed by an entity

independent from the beneficiary and from the State. If that independent valuation establishes a positive market value, the State is deemed to have exited from the COVID-19 recapitalisation, even if the beneficiary remains state-owned. Nevertheless if the positive market value is less than the nominal amount of the recapitalisation increased by annual interest remuneration pursuant to point 63 of the Temporary Framework, the governance rules (see section 3.3.5) continue to apply until 4 years after the grant of the TF Recapitalisation[61]. In addition, Germany will submit the independent valuation of FBB to the Commission for review and prior approval (see recital (53)).

(124) The Commission considers that the step-up mechanism set out in point 61 of the Temporary Framework is not necessary in the case at hand. The step-up mechanism has the objective to increase the remuneration of the State, to incentivise the beneficiary to buy back the State capital injection. The step-up mechanism and the exit of the State are closely linked. However, if the State is the only existing shareholder, point 64bis of the Temporary Framework applies and exit may take place in line with the requirements laid down therein. In a scenario where the beneficiary would not buy back the COVID-19 shares, a step-up mechanism would not be relevant. Under point 64bis of the Temporary Framework, the State is deemed to have exited from the COVID-19 recapitalisation, if an independent valuation of the beneficiary establishes a positive market value. Such valuation would not depend on the exact percentage of the COVID-19 shares. Therefore, the Commission considers that no step-up mechanism is required in the present case.

(125) The Commission thus concludes that the TF Recapitalisation is in line with points 60 and 64bis of the Temporary Framework.

3.3.5. Governance and prevention of undue distortions of competition

(126) As detailed in this section, FBB will respect the conditions referred to in section 3.11.6 of the Temporary Framework ("Governance and prevention of undue distortions of competition").

3.3.5.1. Measures to preserve effective competition in situations of significant market power

(127) According to point 72 of the Temporary Framework, if the beneficiary of a COVID-19 recapitalisation measure above EUR 250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. The Measure concerns a recapitalisation aid of EUR 1.7 billion in favour of FBB. As the recapitalisation amount exceeds EUR 250 million, the Commission will examine the application of point 72 of the Temporary Framework in the present case.

- Identification of the relevant markets

(128) According to Germany, FBB operates the following activities: the provision of airport infrastructure to airlines, the contracting of ground-handling services, and the provision or contracting of associated commercial services at the airport or in

[61] The exit can also take place at a later point in time. The necessary increase in value will be calculated according to the table in point 66 of the Temporary Framework.

its immediate surroundings (such as car parking services, leasing of advertising space, concession contracts for retail space, leasing of office space, etc.).

(129) In line with the Commission's decisional practice under point 72 of the Temporary Framework,[62] the relevant markets that the Commission must identify to assess the need for additional measures to preserve effective competition are the markets on which the aid may have undue effects on competition[63].

(130) In the present case, the Commission considers that the market in which FBB operates that is relevant for the purposes of assessing any potential undue distortions of competition induced by the Measure is the market for the provision of airport infrastructure services, for the following reasons[64].

(131) *First*, the Measure aims at preserving the overall ability of FBB to manage and operate the infrastructure of BER, notably ensuring the preservation of its assets in the medium/long term. As indicated in section 2.2, FBB would exit the market in the absence of the Measure. Germany intends to intervene in the common interest, which is to preserve the connectivity of Berlin and of the Brandenburg region with the rest of Germany and abroad through the functioning of BER.

(132) *Secondly*, FBB does not operate itself ground-handling activities at BER[65]. Nor does FBB operate most of the associated commercial activities at BER itself. For example, FBB does not operate car park services, but grants concession agreements to third parties on the basis of public and open tenders. Similarly, FBB leases office, retail and advertising space on the airport site through concession agreements awarded *via* tenders. For the associated commercial services that FBB operates

[62] See notably Commission decision of 25 June 2020 on SA.57153 – Germany – *COVID-19 – Aid to Lufthansa*, OJ C 397, 20.11.2020, p. 2, recitals 165-170 and cases referred to therein; Commission decision of 9 June 2020 on SA.57410 – Finland – *COVID-19: Recapitalisation of Finnair*, OJ C 310, 18.9.2020, p. 6; Commission decision of 3 July 2020 on SA.56943 – Latvia – *COVID-19: Recapitalisation of airBaltic*, OJ C 346, 16.10.2020, p. 2; Commission decision of 5 April 2020 on SA.59913 – France – *Recapitalisation of Air France and the Air France – KLM Holding*, OJ C 240, 18.6.2021, p. 27.

[63] As recalled in footnote 1 of Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5–13), the purposes of the definition of the relevant markets under State aid and merger control rules differ: "*The focus of assessment in State aid cases is the aid recipient and the industry/sector concerned rather than identification of competitive constraints faced by the aid recipient. When consideration of market power and therefore of the relevant market are raised in any particular case, elements of the approach outlined here might serve as a basis for the assessment of State aid cases*". See also Case T-162/10, *Niki Luftfahrt* v *Commission*, EU:T:2015:283, paragraph 142 and Case T-712/16, *Deutsche Lufthansa AG* v *Commission*, EU:T:2018:269, paragraphs 145 and 148. Point 72 is part of section 3.11.6 of the Temporary Framework, entitled "governance conditions and *prevention of undue distortions of competition*".

[64] The provision of airport infrastructure services includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport structures as well as the coordination and control of the activities performed on these infrastructures.

[65] The Ground Handling Service Ordinance ("Bodenabfertigungsdienst-Verordnung", BADV), which implements Directive 96/67/EC, regulates access to the airport infrastructure for ground-handling service providers and self-handlers. The BADV regulates the maximum number of self-handlers and third party-handlers admitted for ramp and baggage handling (maximum 3 operators at BER). With regard to all other services, FBB is obliged to grant access if the providers fulfil certain formal requirements. The awarding of the services takes place after a call for tenders in the Official Journal of the EU and is limited to a maximum of seven years.

itself (such as the construction of the water and electricity network as well as the supply of water and energy to BER), they are all limited to the BER site and its immediate surroundings. Without the Measure, those adjacent activities, which highly depend on the existence of the airport infrastructure,[66] would very likely disappear altogether or, at the very least, considerably downsize given that FBB faces serious difficulties to maintain its business. Therefore, the Measure does not have undue distortive effects on competition in those markets.[67]

(133) *Lastly*, as for the market for the contracting of airport infrastructure services (i.e. the market where undertakings compete for the management of airports), the Commission notes that FBB is bound by its statutes to operate only BER. In any event, although the Measure could potentially prevent potential competitors from taking over the management of BER infrastructure from FBB if the latter would exit the market, that relevant market is at least EU-wide, if not worldwide.[68] Therefore, in view of the large number of airports existing in the Union and worldwide, FBB does not hold *prima facie* any market power on that specific market.

(134) The Measure may however induce undue distortions of competition on competitors of FBB on the relevant market for the provision of airport infrastructure services on which the latter operates, as those competitors could, if not for the Measure, benefit from the transfer of passengers and airlines deriving from a disruption of BER and an exit of FBB from the market.

(135) The Commission notes that the Guidelines on State aid to airports and airlines[69] refer, for the assessment of the effects of aid measures to airports, to the concept of the catchment area of the airport that the aid recipient operates[70]. That catchment area corresponds to the geographic boundary that is normally set at around 100 km or around 60 minutes travelling time by car, bus, train or high-speed train. The size and shape of the catchment area varies from airport to airport, and depends on various characteristics of the airport, including its business model, location and the destinations it serves[71].

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[66] Recital 1 of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p.11–16) (the ‘Airport Charges Directive’) indicates that “*the main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide air transport services*”.

[67] In its merger enforcement practice, the Commission has considered that those markets (provision of ground-handling services and associated commercial services) are geographically limited to the airport site and its immediate surroundings. See Case M.9270 – Vinci Airports / Gatwick Airport, paragraphs 12-13; Case M.7398 – Mirael / Ferrovial / NDH1, paragraphs 22-23; Case M. 7008 – AENA Internacional / AXA PE/LLAGL, paragraph 12. Therefore, the Measure may not have undue negative effects on ground-handling operators or undertakings active in associated commercial services operating at other airports.

[68] See for example Case M. 6862 – VINCI / Aeroportos de Portugal, paragraphs 27-29.

[69] Communication from the Commission — Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3 (the “Aviation Guidelines”).

[70] *Ibid*, points 25, 131 and 132.

[71] *Ibid*, point 25.

(136) The Commission further observes that, in its decisional practice under the merger rules, the Commission has considered the definition of the relevant geographic markets based on the catchment area of the airport.[72] For example, in the case of the London airports, while the Commission left open the exact scope of the geographic relevant market for airport infrastructure services, it considered that such geographic market could be limited to a specific area, a wider area comprising all airports in a specific city or the catchment area of individual airports, which was considered no larger than 300 kilometres for international airports or 100 kilometres for regional airports[73].

(137) Therefore, the Commission takes the view that, for the purposes of assessing the potential undue effects induced by the Measure on competition, pursuant to point 72 of the Temporary Framework, the relevant market for the provision of airport infrastructure services will be considered as geographically limited to the catchment area of BER airport.

(138) As explained in recital (29), the nearest regional airports (Leipzig-Halle and Dresden airports) are located more than 160 km or 90-120 min travelling time away from BER. In that regard, the Commission in previous State aid decisions found that Berlin-Brandenburg airport was not competing with other airports in a radius of 100 km, and not even in a radius of at least 300 km[74]. The Commission also considered in other decisions that Dresden and Leipzig-Halle airports followed different business models from FBB and the size of their airport infrastructures (in terms of volume of traffic that can be hosted) were not comparable with BER's predecessor airports[75].

(139) In particular, Leipzig-Halle airport is focused on cargo flights,[76] hosting for example the international cargo hub of DHL International GmbH,[77] while for FBB, cargo traffic represents less than 5% of its total activities. As for Dresden airport, it is mostly a regional airport (an average of 1.7 million passengers before the COVID-19 pandemic) connecting the Dresden region mostly with the rest of Germany whereas BER (more than 25 million passengers before the COVID-19 pandemic) largely serves international destinations in addition to domestic traffic.

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72 See Case M.9270 – Vinci Airports / Gatwick Airport, paragraph 11; Case M.7398 – Mirael / Ferrovial / NDH1, paragraph 21-23; Case M. 7008 – AENA Internacional / AXA PE/LLAGL, paragraph 14; Case M. 6862 – VINCI / Aeroportos de Portugal, paragraph 20.

73 See Case M.9270 – *Vinci Airports / Gatwick Airport,* paragraph 11. The delimitation of the catchment area is used to assess the relevant geographic market in which an airport operates, and in particular the substitutability of airports from the point of view of the passengers or of the airlines. See also, regarding such substitutability, Commission decision of 5 April 2020 on SA.59913 – France – Recapitalisation of Air France and the Air France – KLM Holding, OJ C 240, 18.6.2021, p. 27, recitals 203-207.

74 See recitals 87-91 of the Commission decision of 13 May 2009 on SA.28141 – Germany - Finanzierung des Flughafens Berlin Brandenburg International, O.J C 179, 1.8.2009, p. 5

75 See recitals 44-52 of the Commission decision of 24 March 2009 on SA.26208 – Germany - Dresden Airport, O.J 125, 5.6.2009, p. 3 and recitals 345-351 of the Commission decision of 23 July 2014 on SA.30743 – Germany – Financing of infrastructure projects at Leipzig/Halle airport, O.J L 232, 4.9.2015, p. 1.

76 With freight volumes of more than 1.6 million tonnes per annum, Leipzig/Halle is Germany's second-largest cargo airport and one of Europe's busiest cargo airports.

77 DHL is an undertaking active in the logistics industry and specialized in international shipping, courier services and transportation.

Furthermore, BER is a coordinated airport for the whole season (winter and summer), i.e. demand exceeds capacity and there exists consequently a slot allocation process to arrange traffic at the airport. Dresden and Leipzig-Halle airports are not congested, as they are classified as Level 2 airports (Scheduled facilities) for the entire season (summer and winter)[78].

(140) Therefore, BER does not compete with other airports in its catchment area[79]. BER is also not a hub airport (i.e. airport with transfer facilities in the terminal buildings for passengers and luggage) and therefore does not compete with other such airports outside the catchment area.

- Assessment of the market power held by FBB

(141) As indicated in recitals (138) to (140), FBB does not face competition from any other airport in the catchment area of BER for the provision of airport infrastructure services. The Commission is not aware, at the date of adoption of the present decision, of any potential entry of a new operator providing airport infrastructure services in the catchment area of BER. The construction of a new airport would likely take a considerable amount of time before its actual operations, and so would a possible shift in the business models of airports that are located within a radius of more than 100 km from BER airport, such as Dresden or Leipzig-Halle airports.

(142) In those circumstances, the Commission concludes on the basis of the above analysis that FBB is deemed to constitute an undertaking with significant market power with reference to the Measure under examination on at least one of the relevant markets in which it operates, namely the market for the provision of airport infrastructure services in the catchment area corresponding to BER's operations. That finding is made exclusively for the purposes of the application of point 72 of the Temporary Framework to the present case and is without prejudice to the application of other legal instruments and any assessment that might have to be carried out under those instruments.

(143) The Commission observes that, as indicated, the market for the provision of airport infrastructure services on which FBB operates is already characterised by the absence of effective competition. In those specific circumstances, the Measure may ultimately have none or only very limited effects on competition, even if FBB is deemed to hold significant market power for the purposes of the application of point 72 of the Temporary Framework in the present case.

(144) Further, in any event, Germany has proposed measures (see recital (145) and following) that would adequately favour entry of potential competitors in the market for the provision of airport infrastructure services on which FBB operates (which, as noted, is geographically limited to BER's catchment area).

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78 Level 2 airports are airports where there is potential for congestion at some periods of the day, week or year. At such so-called scheduled facilitated airports, temporary congestions are amenable to resolution by voluntary cooperation between air carriers and airports (see website of the German airport coordinator: Level 2 Flughäfen - Fluko).

79 This finding is further confirmed by two merger decisions, in which the Commission limited its review of the effects of the transaction to the "Berlin catchment area" that it considered to comprise only Berlin Tegel and Berlin Schönefeld airports. See Case M.5335 – *Lufthansa / SN Airholding*, paragraphs 205-206 and Case M.8633 – *Lufthansa / Certain Air Berlin Assets*, paragraphs 62-70.

- Assessment of the additional measures to preserve effective competition

(145) As explained in recital (51), Germany committed that FBB will implement the following measures:

- FBB will not grant lower discounts of any kind or nature other than those provided for in the schedule of charges at BER in force at the date of adoption of the present decision for as long as the TF Recapitalisation has not been fully redeemed in line with point 64bis of the Temporary Framework.
- FBB will not expand its business through the construction of new terminals or the extension of the current terminals T1, T2 and T5 at BER for as long as the TF Recapitalisation has not been fully redeemed in line with point 64bis of the Temporary Framework.

(146) The Commission considers that the scope of the commitments offered by Germany is appropriate and effective to preserve potential competition in the market for airport infrastructure services in the catchment area of BER.

(147) As regard, first, the commitment that FBB will not offer lower discounts to airlines, that commitment ensures that the TF Recapitalisation cannot be used to unduly distort competition with other potential competitors of FBB in the relevant market for the provision of airport infrastructure services limited to BER's catchment area.

(148) The Commission also observes that FBB is already subject to the Airport Charges Directive, which applies to specific airports.[80] The objectives of that directive are to provide greater transparency about how airport charges are calculated in airports; to ensure that airports do not discriminate among airlines in the application of airport charges; to establish regular consultations between airports and airlines and, lastly, to establish an independent supervisory authority in each Member State charged with settling disputes between airports and airlines over airport charges[81]. It follows that FBB is prohibited from setting the airport charges on an arbitrary and discriminatory basis, and there exists an independent supervising body that ensures the correct application of the measures to FBB taken to comply with the Airport Charges Directive.

(149) As regard, second, the commitment not to expand BER, the Commission notes that this commitment ensures that FBB does not attract more airlines through the construction or extension of terminals to the detriment of potential competitors.

(150) Those measures are adequate and sufficient in the circumstances at stake. Further measures do not appear relevant or necessary given the absence of actual and potential competitors in the relevant market for airport infrastructure services on which FBB operates, which is geographically limited to the catchment area of BER airport.

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[80] According to Article 1(2) of the Airport Charges Directive, the latter applies to any airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over five million passenger movements and to the airport with the highest passenger movement in each Member State.

[81] Germany transposed that directive into national law through the *Vierzehntes Gesetz zur Änderung des Luftverkehrsgesetzes* act (*Bundesgesetzblatt Teil 1 (BGB 1)).*

(151) Accordingly, the Measure complies with point 72 of the Temporary Framework.

3.3.5.2. Other governance conditions and prevention of undue distortions competition

(152) According to point 71 of the Temporary Framework, the beneficiary of a COVID-19 recapitalisation should not engage in aggressive commercial expansion and excessive risk taking. Germany confirmed that FBB will be subject to that requirement (see recital (48)).

(153) In that regard, the Commission also verified the business plan assumptions of FBB. As highlighted in recital (34), the Commission considers that those traffic assumptions are reasonable and prudent. In addition, the Commission notes that the net sales per passenger are forecasted to grow at a constant annual rate of [1-1.5]%, while the costs per passengers are also expected to increase at a constant annual rate of [0.5-1]% over the period 2024-2035. Both indicators are in line with FBB's pre-COVID-19 growth and show that FBB does not plan to aggressively expand nor to implement an aggressive pricing policy. Such a reasonable and prudent growth is compliant with point 71 of the Temporary Framework.

(154) Point 73 of the Temporary Framework requires that: "*Beneficiaries receiving a COVID-19 recapitalisation measures are prohibited from advertising it for commercial purposes*". Germany committed to ensure that the beneficiary complies with that requirement, as confirmed in recital (49).

(155) Point 74 of the Temporary Framework states that: "*As long as at least 75% of the COVID-19 recapitalisation measures have not been redeemed, beneficiaries other than SMEs shall be prevented from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations*". The Commission observes that Germany committed to comply with this point, as detailed in recital (45).

(156) The Commission also notes that Germany confirmed that FBB will not use the TF Recapitalisation to cross-subsidise group companies which, on 31 December 2019, were undertakings in difficulty as defined in the GBER and that, if necessary, it would put a clear account separation in place. It thereby abides by the terms and conditions set out in point 76 of the Temporary Framework regarding the granting of State aid to undertakings in difficulties on 31 December 2019, as explained in recitals (31), (50) and (88).

(157) Point 77 of the Temporary Framework states that: "*As long as the COVID-19 recapitalisation measures have not been fully redeemed, beneficiaries cannot make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the State*" (dividend ban). The Commission observes that Germany confirmed that FBB will comply with this point, as noted in recital (46).

(158) Point 78 of the Temporary Framework states that "*[a]s long as at least 75% of the COVID-19 recapitalisation measures has not been redeemed, the remuneration of each member of the beneficiaries' management must not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the lowest fixed remuneration of any of the members of the management on 31 December 2019. Under no circumstances, bonuses, other variable or comparable*

remuneration elements shall be paid". The Commission observes that Germany committed to respect this requirement (see recital (47)).

3.3.6. Exit of the State from the participation resulting from the recapitalisation

(159) Pursuant to point 79 of the Temporary Framework, "*beneficiaries other than SMEs that have received a COVID-19 recapitalisation of more than 25% of equity at the moment of intervention must demonstrate a credible exit strategy for the participation of the Member State, unless the State's intervention is reduced below the level of 25% of equity within 12 months from the date of the granting of the aid*".[82] Pursuant to point 80 of the Temporary Framework, the exit strategy must lay out the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the State, including a repayment schedule and the measures that the beneficiary and the State will take to abide by the repayment schedule. Pursuant to point 81 of the Temporary Framework, the exit strategy must be prepared and submitted to the Member State within 12 months after aid is granted and must to be endorsed by the Member State.

(160) Germany commits to receive and endorse a credible exit strategy within 12 months after the aid is granted, unless the State's intervention is reduced below the level of 25% of equity by that deadline, as explained in recital (52). The Commission concludes that the conditions set out in points 79 to 81 of the Temporary Framework are thus satisfied.

(161) In addition, Germany confirmed that FBB will report to Germany on the progress in the implementation of the repayment schedule in compliance with point 82 of the Temporary Framework (see recital (54)). FBB and Germany will comply respectively with the publication and reporting obligations set out in points 83 to 84 of the Temporary Framework (see recitals (54) and (55)).

(162) Finally, in line with point 85 of the Temporary Framework, Germany committed to notify a restructuring plan should the State's equity intervention not be reduced below 15% of the beneficiary's equity within 7 years after the recapitalisation (see recital (56)).

3.3.7. Section 4 of the Temporary Framework

(163) Germany confirmed that it will comply with the reporting and monitoring obligations contained in section 4 of the Temporary Framework as explained in recital (59).

3.3.8. Conclusion

(164) It follows from the above elements that the TF Recapitalisation is in line with sections 3.11 and 4 of the Temporary Framework.

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[82] In line with footnote 52 of the Temporary Framework, hybrid instruments granted by the State should be counted as equity.

3.4. Conclusion on compatibility of the Measure

(165) It follows from the above elements that the Measure constitutes State aid that is compatible with the internal market pursuant to Article 107(3)(b) as applied in section 3.11 of the Temporary Framework.

4. CONCLUSION

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

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