State aid: Commission approves up to €4 billion French measure to recapitalise Air France

Brussels, 6 April 2021

The European Commission has approved French plans to grant up to €4 billion for the recapitalisation of Air France through its Holding company. The measure was approved under the State aid Temporary Framework.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: *"France will contribute up to €4 billion to reinforce Air France's equity and help the airline face financial difficulties resulting from the coronavirus outbreak. At the same time, the public support will come with strings attached, in particular to ensure the French state is sufficiently remunerated, and further measures to limit distortions of competition. In particular, Air France has committed to make available slots at the congested Paris Orly airport, where Air France hold significant market power. This gives competing carriers the chance to expand their activities at this airport, ensuring fair prices and increased choice for European consumers*."

The French recapitalisation measure

Air France is a major network airline operating in France. It is owned by the Air France-KLM Holding company, in which the French state holds a 14.3% participation. With a fleet of over 300 planes, Air France plays a very important role in the French economy, in terms of employment and connectivity for many French regions including those overseas (Départements et Régions d'outre-mer "DOM-TOM").

In 2019, the Air France-KLM airline group reported an annual operating profit of approximately €750 million. However, as a result of the travel restrictions introduced by France and by many destination countries to limit the spread of the coronavirus, Air France and its Holding company have suffered a significant reduction of their activities, leading to major operating losses.

In this context, France notified to the Commission under the Temporary Framework a recapitalisation of up to €4 billion of Air France and its Holding company. The recapitalisation by France, which is part of the first step of the recapitalisation plan of the group, comprises:

(i) the conversion of the €3 billion State loan already granted by France (approved by the Commission in May 2020 under case number SA.57082) into a hybrid capital instrument; and

(ii) a capital injection by the State , through the subscription of new shares in a share capital increase opened to existing shareholders and the market, in a limit of EUR 1 billion depending on the size of this operation.

KLM, the other strategic subsidiary of the Air France-KLM group, will not benefit from the aid. Among others, this is ensured by (i) the specific features of the aid instruments; (ii) the corporate and governance structure of the Air France-KLM group; and (iii) a commitment that relationships between Air France and its Holding, on the one hand, and KLM, on the other hand, will continue to be based on market terms.

The Commission found that the French measure is in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework. In particular, as regards:

- **Conditions on the necessity, appropriateness and size of intervention:** The capital injection will not exceed the minimum needed to ensure the viability of Air France and its Holding company, and will not go beyond restoring their capital positions compared to before the coronavirus outbreak.
- **Conditions on the State's entry in the capital of companies and remuneration**: The recapitalisation aid will prevent an insolvency of Air France and its Holding company, which would have serious consequences on French employment, connectivity and foreign trade. The French State will receive an appropriate remuneration for the investment and there are additional mechanisms in place to incentivise Air France and its Holding company to buy back

the State's equity participation obtained as a result of the recapitalisation.

- **Conditions regarding the exit of the State from the capital of the companies concerned**: France committed to work out 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 then. If six years after receiving the recapitalisation aid, the State's shareholding in the Holding is not significantly reduced in line with the Temporary Framework, a restructuring plan for Air France will be notified to the Commission.
- **Conditions regarding governance**: Until 100% of the recapitalisation is redeemed , Air France and its Holding company are subject to bans on dividends, non-mandatory coupon payments and share buybacks. Moreover, until at least 75% of the recapitalisation is redeemed (in line with the conditions under the Temporary Framework), a strict limitation of the remuneration of their management, including a ban on bonus payments, is applied. These conditions also aim at incentivising Air France, its Holding company and its owners to buy back the State's equity participation obtained as a result of the recapitalisation as soon as the economic situation allows.
- **Prohibition of cross-subsidisation and acquisition ban**: To ensure that Air France and its Holding company do not unduly benefit from the recapitalisation aid by the State to the detriment of fair competition in the Single Market, they cannot use the aid to support economic activities of integrated companies that were in financial difficulties prior to 31 December 2019. Moreover, until at least 75% of the recapitalisation is redeemed, Air France and its Holding company are in principle prevented from acquiring a stake of more than 10% in competitors or other operators in the same line of business.
- **Commitments to preserve effective competition**: Air France will benefit from a recapitalisation measure above €250 million and holds a significant market power in Paris Orly airport, where Air France has a large presence. That airport is structurally highly congested, meaning that airlines cannot get access to the landing and take-off slots that they request for their operation at the airport. Therefore, in line with requirements of the Temporary Framework, additional measures to preserve effective competition are necessary. These consist in Air France making available up to 18 slots per day at Paris Orly airport to a competing carrier. These measures will enable the lasting entry or expansion of a competing carrier at this airport, to the benefit of consumers. In addition, these measures require that the competing carrier obtaining Air France's slots bases its aircraft and crews at Paris Orly airport, in compliance with national and EU labour laws.
- **Public transparency and reporting:** Air France and its Holding company will have to publish information on the use of the aid received, including on how the use of the aid received supports the companies' activities in line with EU and national obligations linked to the green and digital transformation.
- **Monitoring:** A trustee, who will have to be appointed by Air France and its Holding before 5 May 2021, will monitor and ensure, under the Commission's instructions, compliance with the different commitments. The trustee will report periodically to the Commission.

The Commission concluded that the recapitalisation measure will contribute to manage the economic impact of the coronavirus outbreak in France: the measure aims at restoring the balance sheet position and liquidity of Air France and its Holding company in the exceptional situation caused by the coronavirus pandemic, while maintaining the necessary safeguards to limit competition distortions. It is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in Temporary Framework.

On this basis, the Commission approved the measure under EU State aid rules.

Background

The Commission has adopted a Temporary Framework to enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the coronavirus outbreak. The Temporary Framework, as amended on 3 April, 8 May, 29 June, 13 October 2020 and 28 January 2021, provides for the following types of aid, which can be granted by Member States:

(i) **Direct grants, equity injections, selective tax advantages and advance payments** of up to €225,000 to a company active in the primary agricultural sector, €270,000 to a company active in the fishery and aquaculture sector and €1.8 million to a company active in all other sectors to address its urgent liquidity needs. Member States can also give, up to the nominal value of €1.8 million per company zero-interest loans or guarantees on loans covering 100% of the risk, except in the primary agriculture sector and in the fishery and aquaculture sector, where the limits of €225,000 and €270,000 per company respectively, apply.

(ii) **State guarantees for loans taken by companies** to ensure banks keep providing loans to the customers who need them. These state guarantees can cover up to 90% of risk on loans to help businesses cover immediate working capital and investment needs.

(iii) **Subsidised public loans to companies (senior and subordinated debt)** with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.

(iv) **Safeguards for banks that channel State aid to the real economy** that such aid is considered as direct aid to the banks' customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.

(v) **Public short-term export credit insurance** for all countries, without the need for the Member State in question to demonstrate that the respective country is temporarily "non-marketable".

(vi) **Support for coronavirus related research and development (R&D)** to address the current health crisis in the form of direct grants, repayable advances or tax advantages. A bonus may be granted for cross-border cooperation projects between Member States.

(vii) **Support for the construction and upscaling of testing facilities** to develop and test products (including vaccines, ventilators and protective clothing) useful to tackle the coronavirus outbreak, up to first industrial deployment. This can take the form of direct grants, tax advantages, repayable advances and no-loss guarantees. Companies may benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid.

(viii) **Support for the production of products relevant to tackle the coronavirus outbreak** in the form of direct grants, tax advantages, repayable advances and no-loss guarantees. Companies may benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid.

(ix) **Targeted support in the form of deferral of tax payments and/or suspensions of social security contributions** for those sectors, regions or for types of companies that are hit the hardest by the outbreak.

(x) **Targeted support in the form of wage subsidies for employees** for those companies in sectors or regions that have suffered most from the coronavirus outbreak, and would otherwise have had to lay off personnel.

(xi) **Targeted recapitalisation aid** to non-financial companies, if no other appropriate solution is available. Safeguards are in place to avoid undue distortions of competition in the Single Market: conditions on the necessity, appropriateness and size of intervention; conditions on the State's entry in the capital of companies and remuneration; conditions regarding the exit of the State from the capital of the companies concerned; conditions regarding governance including dividend ban and remuneration caps for senior management; prohibition of cross-subsidisation and acquisition ban and additional measures to limit competition distortions; transparency and reporting requirements.

(xii) **Support for uncovered fixed costs** for companies facing a decline in turnover during the eligible period of at least 30% compared to the same period of 2019 in the context of the coronavirus outbreak. The support will contribute to a part of the beneficiaries' fixed costs that are not covered by their revenues, up to a maximum amount of €10 million per undertaking.

The Commission will also enable Member States to convert until 31 December 2022 repayable instruments (e.g. guarantees, loans, repayable advances) granted under the Temporary Framework into other forms of aid, such as direct grants, provided the conditions of the Temporary Framework are met.

The Temporary Framework enables Member States to combine all support measures with each other, except for loans and guarantees for the same loan and exceeding the thresholds foreseen by the Temporary Framework. It also enables Member States to combine all support measures granted under the Temporary Framework with existing possibilities to grant de minimis to a company of up to €25,000 over three fiscal years for companies active in the primary agricultural sector, €30,000 over three fiscal years for companies active in the fishery and aquaculture sector and €200,000 over three fiscal years for companies active in all other sectors. At the same time, Member States have to commit to avoid undue cumulation of support measures for the same companies to limit support to meet their actual needs.

Furthermore, the Temporary Framework complements the many other possibilities already available to Member States to mitigate the socio-economic impact of the coronavirus outbreak, in line with EU State aid rules. On 13 March 2020, the Commission adopted a Communication on a Coordinated economic response to the COVID-19 outbreak setting out these possibilities. For example, Member States can make generally applicable changes in favour of businesses (e.g. deferring taxes, or subsidising short-time work across all sectors), which fall outside State Aid rules. They can also grant compensation to companies for damage suffered due to and directly caused by the coronavirus outbreak.

The Temporary Framework will be in place until the end of December 2021. With a view to ensuring legal certainty, the Commission will assess before this date if it needs to be extended.

The non-confidential version of the decision will be made available under the case number SA.59913 in the State aid register on the Commission's competition website once any confidentiality issues have been resolved. New publications of State aid decisions on the internet and in the Official Journal are listed in the Competition Weekly e-News.

More information on the Temporary Framework and other action the Commission has taken to address the economic impact of the coronavirus pandemic can be found here.

IP/21/1581

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