

## Throwing a Life Jacket to the Airlines: The European Union's State Aid for Airlines in Covid-19 Outbreak<sup>\*</sup>

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### Abstract

Covid-19 has undoubtedly made its mark in the economy, and by making an unprecedented impact on airlines, the European Union has become a lifeline as it is able to approve national governments' proposals of state aid to financially support airlines. This article discusses the general impact of EU measures that have been implemented in response to the outbreak of Covid-19 in relation to airlines. The article will primarily examine state aid and how it has been affected by passenger rights. Moreover, on a topical note, conditional state aid has become a debated issue as it poses the question of whether state aid should be granted to airlines upon their acceptance of state aid. As the outbreak is still ongoing, the article seeks to point out potential problems with state aid on possibly enabling unfair competition.

### Keyword:

Covid-19, airlines, EU law, state aid, competition law

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### บทคัดย่อ

การระบาดของเชื้อไวรัสโควิด-19 ได้ส่งผลกระทบต่อเศรษฐกิจอย่างเห็นได้ชัด โดยเฉพาะในกรณีของสายการบินต่างๆที่เริ่มมีปัญหาทางการเงิน ในส่วนของสายการบินของประเทศสมาชิกของสหภาพยุโรปนั้น สหภาพยุโรปก็เปรียบเสมือนเครื่องมือชีวิตที่จะสามารถช่วยสนับสนุนสายการบินให้มีสภาพคล่องทางการเงินพอที่จะดำเนินธุรกิจต่อไปได้ภายใต้สถานการณ์วิกฤติเช่นนี้ บทความนี้จะทำการอภิปรายในเรื่องของมาตรการเพื่อการต่อต้านการแพร่เชื้อภายในสหภาพยุโรปและผลกระทบต่อธุรกิจสายการบินของสหภาพยุโรป อนึ่งจะมีการอภิปรายที่เน้นไปในส่วนของการให้ความช่วยเหลือโดยรัฐและสองหัวข้อหลักที่เป็นประเด็นในขณะนี้ นั่นคือ สิทธิของผู้โดยสารที่อาจมีผลกระทบต่อการตัดสินใจจะได้รับความช่วยเหลือทางการเงินขนาดไหน และเรื่องการจัดเงื่อนไขเกี่ยวกับสิ่งแวดล้อมให้สายการบินปฏิบัติเมื่อได้รับการช่วยเหลือจากรัฐ เนื่องจากวิกฤติการระบาดของเชื้อโควิด-19 ยังคงดำเนินต่อไป บทความนี้จะจึงประสงค์ที่จะชี้ถึงผลข้างเคียงของการที่สายการบินได้รับความช่วยเหลือจากรัฐ ซึ่งคาดว่าจะทำให้เกิดข้อโต้แย้งทางธุรกิจที่ผิดไปจากนโยบายการแข่งขันทางการค้าของสหภาพยุโรป

### คำสำคัญ

โควิด-19, สายการบิน, กฎหมายสหภาพยุโรป, ความช่วยเหลือจากรัฐ, กฎหมายแข่งขันทางการค้า

## I. Introduction

Since the outbreak of Covid-19, national governments have situated themselves in the centre of many unknowns, including the duration of which businesses are put on hold. Governments everywhere have made efforts in hopes of containing the new strand of coronavirus, including imposing or recommending travel restrictions. As a result of such a measure, the airline industry has been one of the many industries severely affected. The airline industry has been on a decline for the past months as travel restrictions are getting extended for longer periods of times. According to the Centre for Aviation (CAPA), most airlines will be bankrupt by the end of May 2020.<sup>1</sup> In light of the pending collapse of the airline industry, governments are now investing on bailout policies to financially support airlines suffering from losses incurred due to economic pause.<sup>2</sup> This article aims to explain the measures and their effects of the Covid-19 outbreak on the airline industry in the European Union (hereinafter the EU) in general. The EU's current state aid programmes to combat airlines' crisis will be discussed, especially in relation to the potential effects of the EU's passenger rights on the extent of finance granted as part of the state aid programmes. Furthermore, the article will explore the topic of environmental conditional state aid which has been proposed by environment activists. With consideration to these topical aspects, the article aims to analyse the future impacts of this period of lax state aid rules, in particular relating to market distortion and the role of state aid in giving unfair advantage to certain airlines. To illustrate this complication, Ryanair, Air France-KLM and Lufthansa will be discussed.

## II. The EU

The introduction has been a prelude to the effects the Covid-19 pandemic has had on the airline industry. Due to the fact that the outbreak is still ongoing at the time of writing, the full extent of the effects cannot be fully confirmed. Nonetheless, the International Civil Aviation Organisation (ICAO) has published a report of the economic impact analysis which provides a crucial insight into the future of the industry in addition to the guidance from the European Union Aviation Safety Agency (EASA). In this section, the guidance from WHO and ICAO will be discussed. Then, the

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<sup>1</sup> "COVID-19. By the end of May, most world airlines will be bankrupt," Centre for Aviation (17 March 2020), accessed 6 May 2020, from <https://centreforaviation.com/analysis/reports/covid-19-by-the-end-of-may-most-world-airlines-will-be-bankrupt-517512>.

<sup>2</sup> Tom Otley, "These airlines have received a bailout," *Business Traveller* (1 May 2020), accessed 6 May 2020, from <https://www.businesstraveller.com/features/these-airlines-have-received-a-bailout/>; "Crippled Airline Industry to Get \$25 Billion Bailout" *New York Times* (14 April 2020) accessed 7 May 2020, from <https://www.nytimes.com/2020/04/14/business/coronavirus-airlines-bailout-treasury-department.html>; Sam Morgan, "Sweden gets airline bailout green light from EU," *Euractiv* (13 April 2020), accessed 7 May 2020, from <https://www.euractiv.com/section/aviation/news/sweden-gets-airline-bailout-green-light-from-eu/>; Sandra Laville, "Coronavirus: airlines seek €12.8bn in bailouts without environmental conditions attached" *The Guardian* (22 April 2020), accessed 7 May 2020, from <https://www.theguardian.com/world/2020/apr/22/airlines-seek-128bn-in-coronavirus-bailouts-without-environmental-conditions-attached>.

section delves into how the current landscape of state aid looks like for airlines financially struggling. This section will be followed by a discussion about the implications of the EU's Covid-19 measures in 2 key issues which have risen, namely the effects of passenger rights amidst the widespread policy of airlines to cancel flights on the amount of state aid and the environmental implications attached to state aid.

### A. Leading up to the EU's Response

Having established that Covid-19 poses a serious threat to public health, many international organisations have issued recommendations to guide states' policies to mitigate the spread of Covid-19. On 29<sup>th</sup> February 2020, the World Health Organisation (WHO) advised against international travel restrictions as it was deemed an ineffective method. In the words of WHO, 'Such restrictions must be based on a careful risk assessment, be proportionate to the public health risk, be short in duration, and be reconsidered regularly as the situation evolves.'<sup>3</sup> Furthermore, WHO has required states that are implementing additional measures which may significantly interfere with international traffic to justify their measures and provide further details.<sup>4</sup> WHO subsequently made a joint statement with ICAO reiterating the collaboration on the common objective in containing the pandemic while attempting to limit interference with international travel.<sup>5</sup> However, it is clear that individual states are taking a cautious approach and implementing measures which they see suitable. A notable example of this is the EU and their Member States.

On 16<sup>th</sup> March 2020, a Communication from the EU Commission recommended the Member States and the Schengen Association States to implement a temporary restriction of travels for non-essential workers from third-country areas which has been facilitated by the EU's 'Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy.'<sup>6</sup> As the spread of Covid-19 persists, such temporary restriction has been prolonged to 15<sup>th</sup> May 2020 as of April, thus prolonging airlines' financial decline.

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<sup>3</sup> World Health Organisation (WHO), "Updated WHO recommendations for international traffic in relation to COVID-19 outbreak," World Health Organisation, (29 February 2020) accessed 7 May 2020, from <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>.

<sup>4</sup> *Ibid.* 'significantly interfere' meaning 'refusal of entry or departure of international travelers, baggage, cargo, containers, conveyances, goods, and the like, or their delay, for more than 24 hours.'; International Health Regulations, art. 43.

<sup>5</sup> International Civil Aviation Organisation (ICAO) and WHO, "Joint ICAO-WHO Statement on COVID-19," ICAO, (11 March 2020) accessed 7 May 2020, from <https://www.icao.int/Security/COVID-19/Pages/Statements.aspx>.

<sup>6</sup> The European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council on the assessment of the application of the temporary restriction on non-essential travel to the EU* (COM/2020/148 final), the European Union (EU), (8 April 2020) accessed 7 May 2020, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0148>.

## B. The EU's State Aid: Tailored to Covid-19's Economic Disturbance

Though the effects are still being felt by the airline industry, ICAO's economic impact analysis project that Europe will be impacted the most. According to ICAO, Europe is expected to undergo the biggest capacity reduction and a substantial decrease in demand for travels.<sup>7</sup> It has also been stated that Europe would be losing over two-thirds of its revenue.<sup>8</sup> Executive Vice-President Margrethe Vestager who is responsible for competition policy in the EU commented: 'The coronavirus outbreak is having an unprecedented impact on the aviation sector in Europe and worldwide.'<sup>9</sup> According to the International Air Transport Association (IATA), \$113 billion (19%) loss in airline revenue could result if the virus is not contained.<sup>10</sup>

For the Community's airlines, the current impact as well as the projected losses are significant pressures necessitating state aid applications following the legal framework prescribed in Article 107 of the Treaty on the Functioning of the European Union (TFEU). Many airlines have applied for such financial support as it has been reported that European airlines have already applied for €12.8 billion government support.<sup>11</sup> As airlines continue to seek aid from national government level and the EU level, the Commission has adjusted the guidelines to state aid and adopted a Temporary Framework for state aid which has been designed with flexibility to facilitate Member States in coping with the economic impacts in addition to state aids granted in accordance with Article 107(2)(b) Article 107(3)(b) of the TFEU.<sup>12</sup> So far, many states have already applied and been approved to receive state aids under the aforementioned frameworks, for example the Commission has approved the Swedish guarantee scheme worth €455 million to support airlines,<sup>13</sup> France's tax deferring scheme for airlines,<sup>14</sup>

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<sup>7</sup> Air Transport Bureau (Canada), "Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis," ICAO, (5 May 2020) accessed 7 May 2020, from [https://www.icao.int/sustainability/Documents/COVID-19/ICAO\\_Coronavirus\\_Econ\\_Impact.pdf](https://www.icao.int/sustainability/Documents/COVID-19/ICAO_Coronavirus_Econ_Impact.pdf).

<sup>8</sup> *ibid*

<sup>9</sup> European Commission, "State aid: Commission approves €455 million Swedish guarantee scheme to support airlines affected by coronavirus outbreak," EU Press Corner, (11 April 2020) accessed 7 May 2020, from [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_647](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_647).

<sup>10</sup> Jose Rivas, "State aid and the COVID-19 pandemic in the Aviation Sector," Bird&Bird, (March 2020) accessed 7 May 2020, from <https://www.twobirds.com/en/news/articles/2020/global/state-aid-and-the-covid-19-pandemic-in-the-aviation-sector>.

<sup>11</sup> Sandra Laville, *supra* note 2.

<sup>12</sup> European Commission, "State aid: Commission adopts Temporary Framework to enable Member States to further support the economy in the COVID-19 outbreak," EU Press Corner, (19 March 2020) accessed 7 May 2020, from [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_496](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_496); European Commission, *Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*,

<sup>13</sup> European Commission Decision in SA.56812 Loan guarantee scheme to airlines under the temporary framework for state aid measures to support the economy in the current COVID-19 outbreak, 11 April 2020.

<sup>14</sup> European Commission Decision in SA.56765 COVID-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France, 31 March 2020.

Danish's €137million in compensation to Scandinavian Airlines<sup>15</sup> amongst many other financial support schemes to companies affected by Covid-19.<sup>16</sup>

### C. The Temporary Framework

The Temporary Framework is a guidance for the Member States to shape their state aid policies appropriately while also bearing in mind that a 'level playing field' in the EU's internal market must be ensured. This has been explicitly mentioned in paragraphs 10 and 16 of the Temporary Framework which communicates that the Temporary Framework aims to allow Member States to resolve their economic difficulties and simultaneously ensure 'the integrity of the EU Internal Market and ensuring a level playing field'.<sup>17</sup> Within the Temporary Framework, the Commission provides a number of temporary state aid tools, though it must be noted that the Member States' national budget will be the main source of state aid, which the Member States may consider implementing. Such tools include:

1. Direct grants, tax advantage and advance payments that Member States may provide within the limit of €800 000 to resolve urgent liquidity challenges to companies;<sup>18</sup>
2. Guarantees on loans allowing banks to keep lending to customers;<sup>19</sup>
3. Subsidies on public loans taking form of favourable interest rates;<sup>20</sup>
4. Channeling state aid through credit institutions or financial institutions;<sup>21</sup>

Short-term export credit insurance which the Member States can provide to address the decline of private insurance market while the demand for insurance for exports to countries rise.<sup>22</sup>

<sup>15</sup> European Commission Decision in SA.56795 Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines, 15 April 2020.

<sup>16</sup> European Commission, "Coronavirus Outbreak - List of Member State Measures approved under Article 107(2)b TFEU, Article 107(3)b TFEU and under the Temporary State Aid Framework," (2020) accessed 7 May 2020, from [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/State\\_aid\\_decisions\\_TF\\_and\\_107\\_2\\_b\\_and\\_107\\_3\\_b.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/State_aid_decisions_TF_and_107_2_b_and_107_3_b.pdf).

<sup>17</sup> See paras 10 and 16 of the European Commission, *Communication from the Commission Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (hereinafter the Temporary Framework), the European Union (EU), (20 March 2020) accessed 7 May 2020, from [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC\\_2020\\_091\\_I\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001). Additionally, safeguards ensuring a level playing field has been expanded by the European Commission, *Communication from the Commission Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*, the EU, (4 April 2020) accessed 9 May 2020, from [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0404\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0404(01)).

<sup>18</sup> The Temporary Framework, *supra* note 17, paras 21-23.

<sup>19</sup> *Ibid*, paras 24-25.

<sup>20</sup> *Ibid*, paras 26-27.

<sup>21</sup> *Ibid*, paras 28-31.

<sup>22</sup> *Ibid*, paras 32-33.

### III. Issues

#### A. Passenger Rights

In the midst of the spread of Covid-19, travel restrictions have resulted in the rescheduling or cancellation of flight which brings the issue within the ambit of Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights or known as the Flight Compensation Regulation.

However, the Commission has recently published an interpretive guideline aiming to clarify the existing regulations on passenger rights which must now be read in light of Covid-19. In reality, an interpretive guideline seems to be needed given the controversy around the question as to whether passengers whose flights have been cancelled or delayed are entitled to compensation or refund, and if so, in what form may the compensation or refund be. From the point of view of a consumer, it is essential that airlines do not outright refuse to provide compensation especially as the Member States are adopting different measures with regards to air travel. Of course, such passenger rights must also be balanced with the consideration for the economic burden on airlines during this time which Member States seem to have expressed to the EU Commission in their argument in favour of vouchers-only compensation. Earlier in March, many airlines requested the EU authorities to waive refund requirements. Others have already implemented compensation with vouchers to which, understandably, the customers grew dissatisfied. Examples of this can be seen from the experience of the Irish airline, Ryanair, which had been offering vouchers to customers whose flights were cancelled.<sup>23</sup> Lufthansa's Chief Financial Officer had also stated that they are 'trying to push as many vouchers as possible, and not allow for cancellations just to be refunded immediately' to mitigate liquidity issues.<sup>24</sup>

Upon the EU Commission's guidelines, it is now certain that this mode of compensation is contrary to the Flight Compensation Regulation. As explained by the EU Commission, the Flight Compensation Regulation prescribes that airlines must provide choices for customers to choose between reimbursement or re-routing at a later date. It must be noted that there are two cases which must be distinguished from each other: The first where passengers cannot travel and do not want to cancel the trip (no-show passengers) and the second case where cancellation is done by the airlines, and in this case, the airlines are required to either reimbursement or re-routing in addition to vouchers should the airlines offer any. Therefore, vouchers cannot affect the passengers' rights to

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<sup>23</sup> Simon Calder, "Ryanair Refund: Passengers fear they may have to wait a year to claim money," *Independent* (29 April 2020), accessed 7 May 2020, from <https://www.independent.co.uk/travel/news-and-advice/ryanair-refund-flight-cancelled-cash-voucher-money-back-coronavirus-a9489331.html>.

<sup>24</sup> Laurence Frost, "European airlines resist mounting coronavirus refund claims," *Reuters* (28 March 2020), accessed 7 May 2020, from <https://www.reuters.com/article/us-health-coronavirus-airlines-refunds/european-airlines-resist-mounting-coronavirus-refund-claims-idUSKBN21E2ZM>.

compensation.<sup>25</sup> In light of this interpretation, the financial hardship on airlines is worsened and therefore must be considered when state aid proposals are adopted.

What does this mean in relation to airlines and state aid? If airlines are incurring substantial loss from reimbursement, in which they are, the question is whether the amount of finance provided in a state aid scheme will take into account such a loss.

## B. Conditional State Aid: Helping or Hurting?

Interestingly, state aid programmes have started talks amongst environmental activists and lawyers who would like to see approval of state aid upon environmental protection conditions. According to Air Transport Action Group, aviation is responsible for 2% of all human-produced carbon emissions and 12% carbon emissions from all transportations.<sup>26</sup> Taking into account the continuous growth of the aviation industry and the rising number of passengers annually, carbon emissions reduction goals are vital elements in reducing the world's climate change issues.

Consequently, it has been argued that states should provide state aid if airlines will be environmentally responsible once the economy recovers. Moreover, some have expressed discontent with the fact that airlines have been exempted from fuel taxation and VAT on international flights in Europe<sup>27</sup> and thus calling for states to ensure that airlines will be taxed as part of a *quid pro quo*. Worries about a spike in carbon emissions post-Covid-19 are shared amongst national as well as the EU policymakers. The former EU climate commissioner, Miguel Arias Cañete, who stated that state aid 'must be conditional, otherwise when we recover we will see the same or higher levels of carbon dioxide.'<sup>28</sup> So far, Austria has been the only Member State to commit to making use of public money for environmental goals although the terms are yet to be decided.<sup>29</sup> The public has joined the opposition of unconditional state aid through petitions.<sup>30</sup>

<sup>25</sup> Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 (2020) OJ C 89I/1, para 2.2.

<sup>26</sup> Air Transport Action Group (ATAG), "Facts & Figures," ATAG, (January 2020) accessed 7 May 2020, from <https://www.atag.org/facts-figures.html>.

<sup>27</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (2003) OJ L 283/51, art. 14(1)(b).

<sup>28</sup> Fiona Harvey, "Financial help for airlines 'should come with strict climate conditions,'" *The Guardian* (1 April 2020) accessed 7 May 2020, from <https://www.theguardian.com/environment/2020/apr/01/financial-help-for-airlines-should-come-with-strict-climate-conditions>.

<sup>29</sup> Sam Morgan, "Austrian Airlines bailout to be linked to climate targets," *Euractiv* (17 April 2020), accessed 7 May 2020, from <https://www.euractiv.com/section/aviation/news/austrian-airlines-bailout-to-be-linked-to-climate-targets/>.

<sup>30</sup> "#SavePeopleNotPlanes: Red Lines for Aviation Bailouts," Stay Grounded, (2020) accessed 7 May 2020, from <https://stay-grounded.org/savepeoplenotplanes/>.



#### IV. An Analysis of State Aid's Future Impacts on Fair Competition

In this unprecedented situation, states must be given some leeway and flexibility to implement suitable strategies and measures to cope with the ongoing economic impact. The EU appears to have put substantial effort to ensure that such flexibility is achieved in state aid policies granted to the airline industry and other businesses while shaping the Member States' policies with the Temporary Framework. At the time of writing, it may be said that the EU's objectives are achieved to a certain extent, but it must be admitted that shortcomings are to be expected.

Many European airlines are now being financially supported by their national governments with the approval from the EU Commission. This is evidently the benefit of the EU's relatively quick response to the economic impact of Covid-19 on airlines. Nonetheless, it must be borne in mind that Member States will have differently designed state aid programmes which can lead to great disparities in terms of the amount and form of financial support granted to airlines. On the one hand, state aid to airlines - and especially the speed in which they are approved by the EU and received by the struggling airlines - is crucial to prevent bankruptcy across the industry. On the other, further implications beyond facilitating the survival of airlines must be taken into account. The said implication, given the possibility of disparities in financial support, is with regards to the issue of fair competition and a level playing field. The possibility of disparities is increasingly becoming a reality for some airlines such as a comparison between Ryanair and Air France-KLM and Lufthansa.<sup>31</sup> It has been reported that Air France-KLM and Lufthansa were given a 30 billion euros in tax-payers' money bailout while Ryanair must undergo drastic restructuring which has been reported to result in the termination of 3,000 employees as well as salary cuts.<sup>32</sup> Chief Executive Officer of Ryanair, Michael O'Leary, coined the term 'state aid doping' to describe states' selectively choosing airlines likely to turn profits in the future despite their inefficiency, citing Lufthansa as an example of the recipient of Germany's massive state aid because its status as the national flag carrier.<sup>33</sup>

Though the point made by O'Leary may be invalidated by the sheer pressure of the circumstance which limits his point of view and regards state aid as being discriminately granted, the reasoning centred around the threat to fair competition and the potential distortion of the airline industry is certainly possible in the aftermath of Covid-19. Since the outbreak of Covid-19 and Member States' notification of state aid programmes to the Commission, none has been objected to by the Commission. In individual decisions, it appears that the EU Commission's consideration for fair

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<sup>31</sup> Oli Smith, "Ryanair boss savages biased Brussels after Macron and Merkel 'break EU state aid rules,'" *Express* (1 May 2020), accessed 7 May 2020, from <https://www.express.co.uk/news/world/1276408/Ryanair-news-Michael-O-Leary-European-Union-brussels-state-aid-Macron-Merkel-airlines>; Alasdair Sandford, "Ryanair to cut up to 3,000 jobs blaming 'state aid doping' for other European airlines," *Euronews* (May 2020), accessed 7 May 2020, from <https://www.euronews.com/2020/05/01/ryanair-to-cut-up-to-3-000-jobs-as-o-leary-criticises-manifestly-unfair-french-government>.

<sup>32</sup> Alasdair Sandford, *ibid.*

<sup>33</sup> Tara Patel and William Wilkes, "Europe Starts Stumping Up Billions for Cash-Strapped Airlines," *Bloomberg* (27 April 2020), accessed 7 May 2020, from <https://www.bloomberg.com/news/articles/2020-04-26/europe-starts-stumping-up-billions-for-cash-strapped-airlines>.

competition and the state aid's compatibility with the internal market is limited. While the EU prohibits state aid being granted to companies which are projected to fail or would create unjustified unfair competition, the question that lingers at this moment may be whether it is necessary for states to provide aid to companies most likely to yield the highest, or higher, profits in the future despite inefficiency. The EU Commission's decisions on state aid in relation to Covid-19 indicates an understandable degree of fixation on solving the current economic crisis of airlines but seems to lack foresight in future collapses of other airlines which may have received less financial aid or no state aid at all even with the Temporary Frameworks' emphasis on ensuring a level playing field.

Other than solving the current crisis, the EU Commission ought to accept the reality that it may not be able to prevent distortion of competition or safeguard a level playing field under a situation whereby the entire airline industry is experiencing substantial losses yet airlines are and will be receiving different amounts and forms of financial support from the national governments. In the opinion of the author of this article, the EU Commission has rightly prioritised economic well-being by issuing measures and frameworks to mitigate economic damage from the Covid-19 outbreak. Nevertheless, as there is a likelihood of a distorted market upon the defeat of Covid-19, it will be suggested that the EU Commission has a policy or measures in place to remedy the effects of state aid especially where distortion of market can be identified. This could manifest as a framework which addresses airlines and businesses which were adversely affected by the Member States' state aid decisions. In recognising that the crux of this issue relates to the competitive environment of the EU's internal market, An instance of this could be a policy to allow disadvantaged airlines to seek compensation where certain conditions are met, such as: Firstly, that there is proof that the airline did bear disadvantages during the period where state aid policies were implemented. Secondly, there should be a causal connection between the Member States' state aid policies or decisions and the airline's competitive disadvantage. Such policies aimed to implement in the post-Covid-19 can help illustrate the justifications of the Member States' state aid decisions that may have been deemed as unnecessary or unjustified. Moreover, since national budgets and tax revenues are being used to support state aid schemes, airlines disputing Member States' state aid decisions can have the effect of demonstrating the Member States' governments responsibility towards its citizens and their tax contributions. Where possible, Member States should seek to monitor the airline industry in order to ensure the proper functioning of the market and detect unfair competition or market distortion. Though it could be argued that airlines should bear the burden of bringing a case of unfair competition to the national government, this unique circumstance could shift this burden to the Member States as their state aid measures will severely impact many airlines to a varying extent.

Current discussions so far have consisted of the influence of passenger rights on financial support in state aid schemes and environmentalists taking advantage of possibly attaching 'green conditions' to state-aid. Once the outbreak of Covid-19 has calmed down, it is expected that the issues raised in the foregoing will be clarified. What seems appropriate as of now, nevertheless, is the contemplation as to whether and to what extent passenger rights should be compromised in this kind

of event. Moreover, it must be asked whether and to what extent conditional state aid is feasible given the pressure airlines must face to accept the state aid. While the post-Covid-19 may appear distant, the EU must remain prepared to address a new situation which may arise due to Covid-19, including the implementation of different state aid schemes across the Community. Under this circumstance, the answers to these questions remain uncertain and it remains to be seen how the EU will address them.

## Conclusion

To conclude, it is fair to say that the airline industry is amongst the industries most affected by the outbreak of Covid-19. This situation has brought economic downturn and financial instability to airlines who have had to cancel flights and process reimbursement to customers as soon as possible. This financial instability facing the European Community's airlines necessitate requesting national governments for state aid which must be approved by the EU Commission which signifies the state aid's compliance with the EU law concerning the integrity of the internal, single market. Although the financial support granted within the state aid schemes are substantial, it is unclear as to whether it will mitigate airlines' troubling liquidity since varying schemes will be applied. Additionally, as conditional state aid programmes are being proposed and supported, it is yet to be accepted and implemented by states other than Austria. As good as this may sound, imposing conditions on airlines upon accepting state aid implies an increase in financial burden to airlines which is likely to be far from ideal for airlines attempting to re-establish its losses in the aftermath of the outbreak. Consequently, it must be observed further whether conditional state aid prevails under airlines' financial pressure. Perhaps most importantly, the EU must be prepared to regulate post-Covid-19 airline industry since market distortion remains a realistic possibility and appears to have already manifested. With all the topics discussed in mind, the EU must be praised for its responsiveness, but it must be observant of the effectiveness of its state aid frameworks and policies of Member States which must undergo impact analysis. The landscape of the airline industry in Covid-19's aftermath, coupled with subsequent impact analyses, might serve as a key indicator as to whether the EU's attempt to throw a life jacket to the airline industry was all in vain.