

The EU's Lufthansa COVID Bailout Approval Has Been Annulled By The Court Of Justice

The rescue package provided to the German carrier has been found to have been unlawful.

BY LUKE PETERS PUBLISHED 19 HOURS AGO



The European Court of Justice has overturned a €6 billion (\$6.6bn) bailout of Lufthansa by the German government during the COVID pandemic following a complaint lodged by Ryanair.

Decision overturned

Ryanair has won a legal challenge it filed in the European Court of Justice (ECJ) against Lufthansa. The case sought to overturn an earlier decision by the European Commission ('the Commission'), which cleared the German national carrier's €6 billion (\$6.6 billion) state bailout by the German government in 2020 at the height of the COVID-19 pandemic.

The case was one of several legal cases brought by Ryanair against the aid provided to its European rivals. The complaints filed appealed against several decisions made by the European Commission under easier rules introduced during the pandemic to facilitate governments within the European Union (EU) prop up companies hit by the pandemic.



Photo: T.Darmstadt via Wikimedia Commons

The annulment awarded by the ECJ to the Irish carrier cited errors in EU competition regulators' decision to approve the German government's rescue package. Despite Lufthansa having already repaid the loan amount back to the German government in full, the decision reached by the court could have far-reaching consequences for any future state bailouts.

The German airline said it would analyze the ruling and then decide on a further course of action.

Background

In June 2020, the European Commission informed the German government June 2020 that it had agreed to a request to recapitalize Luftansa to the tune of €6 billion (\$6.6bn) as part of a more comprehensive support package for the Lufthansa Group because of heavy losses suffered by the airline due to the pandemic.

The injection of funds included an equity participation of €300m (\$329.3mn), plus two separate loans of €4.7 billion (\$5.16bn) and €1 billion (\$1.1bn).

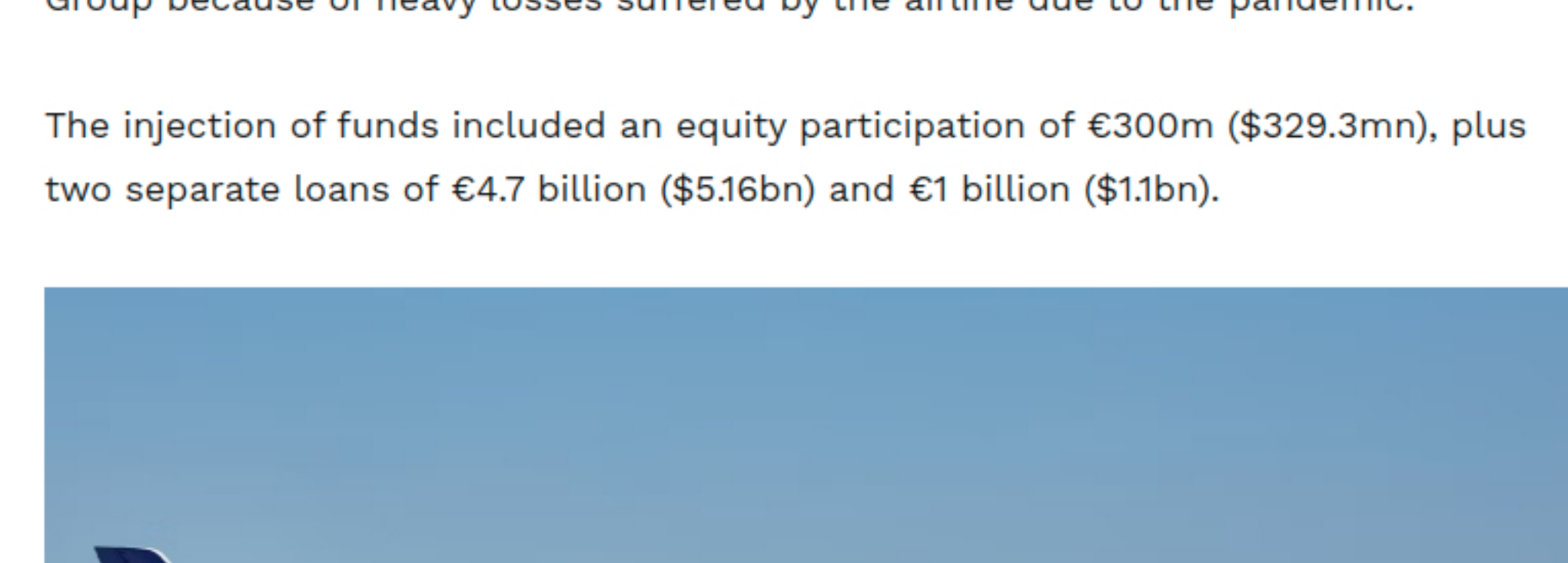


Photo: Lufthansa

Agreeing to the request at the time, the European Commission said the support package was compatible with its state aid rules and was also in line with the temporary relaxation of some of those rules due to the ongoing pandemic.

However, as a direct result of this decision and citing anti-competitive reasoning, both Ryanair and German airline Condor took legal action against the Commission granting its permission to the state aid.

Errors made by the Commission

The ECJ found against the Commission's decision to allow the state aid package because it infringed several of the requirements laid down by the rules. The Commission should not have originally approved the bailout under state aid rules because it had relied on the belief that the airline could not secure financing elsewhere in financial markets to meet its needs in the short term per the ruling.

The Commission believed that this specific condition was satisfied because it thought Lufthansa did not have sufficient collateral to obtain the financing for the entire amount of aid required.

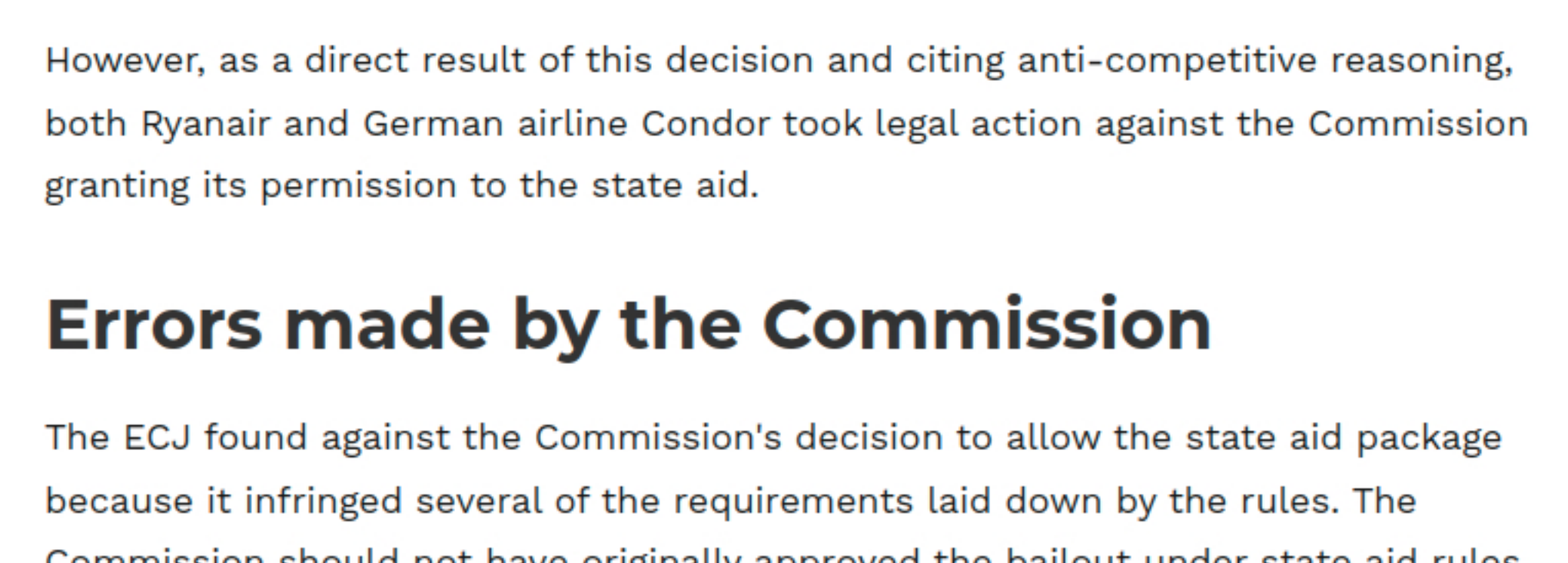


Photo: Airbus

However, the ECJ said there was no evidence suggesting that the Commission had assessed the possible availability of collateral, such as Lufthansa's fleet of aircraft, their value, and the terms for any loans it may have been able to obtain on the markets against such collateral.

The court also found that the Commission had not fully complied with the so-called "escape clause" of the EU's state aid rules, which provided for a relaxation of the regulations during the pandemic.



Photo: Kittikum Yoksapp / Shutterstock

The court found that Lufthansa also failed to buy back the German government's shareholding as soon as possible. It added that the Commission had failed to require a robust mechanism that incentivized Lufthansa to buy back the German government's shareholding as quickly as possible.

State aid was anti-competitive

Notwithstanding the above errors made by the Commission, according to the ECJ, one of the most important factors it took in overturning the Commission's decision was that it had erroneously denied that Lufthansa had maintained significant market power at certain airports as part of the original decision-making process.

The ECJ held that, during their appeal, both Ryanair and Condor had demonstrated to the court that their carriers market shares were adversely affected by the bailout of Lufthansa, as the carriers all competed directly against each other on a plethora of routes.

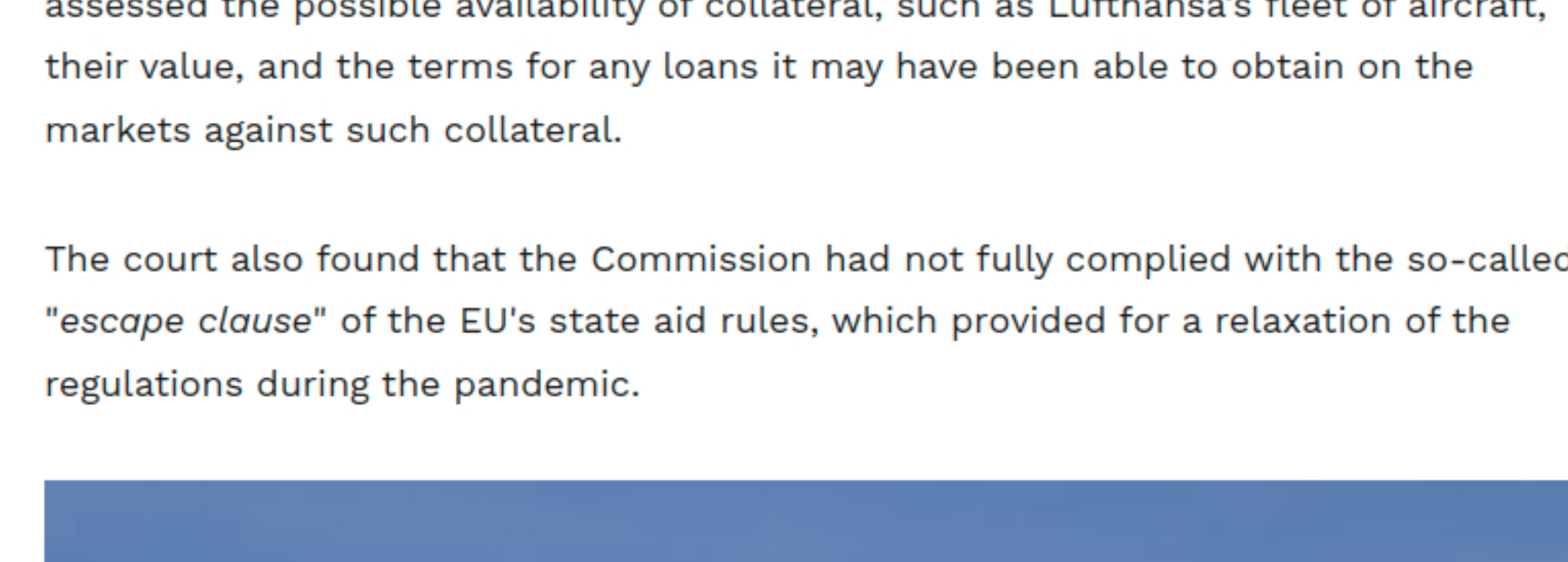


Photo: Condor

The court found that the bailout not only helped Lufthansa avoid the risk of exiting these routes where it was directly competing with Ryanair and Condor but also strengthened its competitive position on many of the routes to the detriment of the other airlines.

In making a ruling to overturn the decision by the Commission to allow the state aid to Lufthansa, a statement issued by the ECJ said,

"It is apparent from examining the relevant and credible data provided by Ryanair and Condor that the measure at issue was not only likely to allow the Lufthansa Group to cope with the risk of an exit from the markets on which it was in direct competition with the applicants but also to strengthen its competitive position."

The latest of several cases regarding state aid

The case brought against the decision to allow state aid to Luftsansane was one of several legal cases brought by Ryanair against air being provided to its rivals and cleared by the Commission under easier rules aimed at helping EU government prop up companies hit by the pandemic.

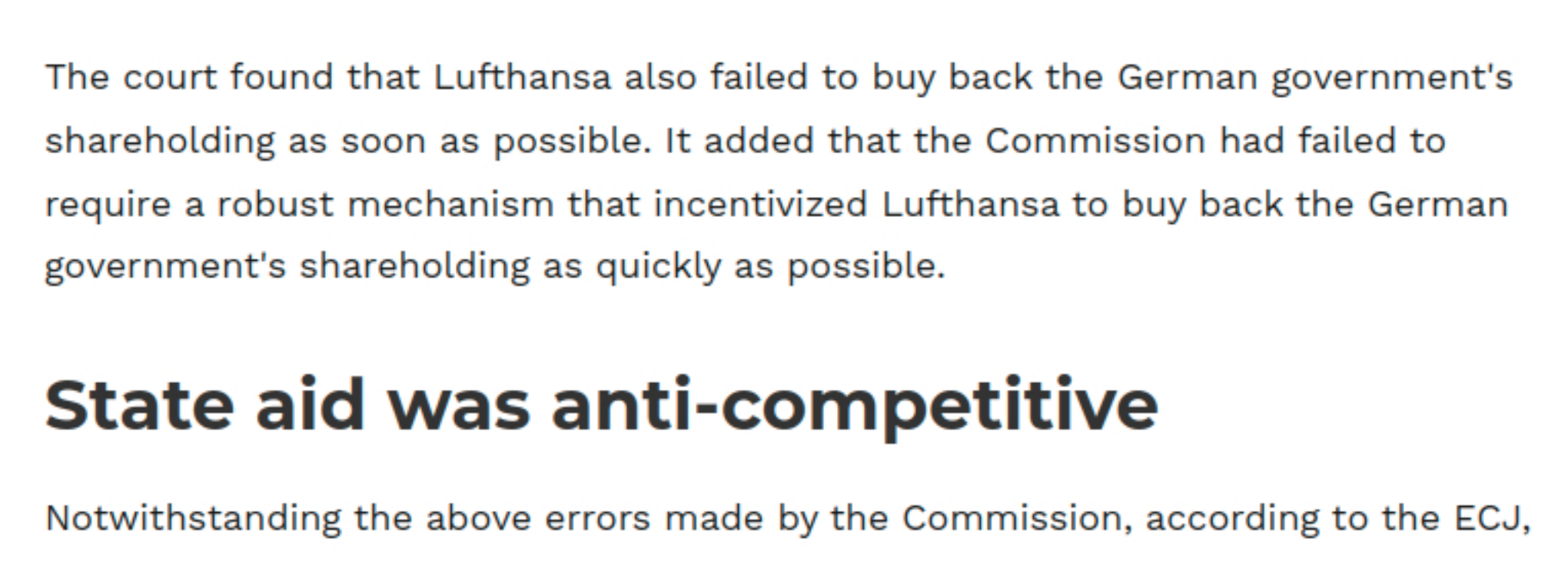


Photo: Vincenzo Pace / Simple Flying.

In a related case, the ECJ has also annulled the COVID-19-related state aid granted to the Scandinavian flag carrier SAS following a complaint from Ryanair. In the SAS judgment, the ECJ found that the recapitalization measure lacked conditions incentivizing the swift exit of the Swedish and Danish governments.

"Discriminatory bailouts" - Ryanair

According to Ryanair, the judgments issued by the ECJ today are a victory for the EU internal market and stand on record as a criticism of the "European Commission's head-in-the-sand approach to massive and discriminatory bailouts of ailing flag carriers by EU Member States with deep pockets."



Photo: Ryanair

In response to both decisions reached by the ECJ today, a Ryanair spokesperson said,

"One of the EU's greatest achievements is the creation of a single market for air transport. The European Commission's approval of the German recapitalization aid to Lufthansa and the Swedish and Danish recapitalization aid to SAS went against the fundamental principles of EU law."

Today's judgments confirm that the Commission must act as a guardian of the level playing field in air transport and cannot sign off discriminatory state aid under political pressure by national governments. The Court's intervention is a triumph for fair competition and consumers across the EU."

The statement continued,

"During the Covid-19 pandemic, over €40bn in discriminatory state subsidies has been gifted to EU flag carriers. Unless halted by the EU Courts in line with today's ruling, this state aid spree will distort the market for decades to come. Europe's emergence from the COVID-19 crisis with a functioning single market depends on airlines being allowed to compete on a level playing field. Undistorted competition eliminates inefficiency and benefits consumers through low fares and choice. Unjustified subsidies, on the other hand, encourage ineffectiveness and will harm consumers for decades to come."

What are your thoughts on today's decision by the ECJ? Do you agree or disagree with its findings in the Lufthansa and SAS cases? Tell us your thoughts in the comments.