

**COMMISSION DECISION (EU) 2022/795****of 10 September 2021****on State aid in favour of Alitalia SA.48171 (2018/C) (ex 2018/NN, ex 2017/FC) implemented by Italy***(notified under document C(2021) 6659)***(Only the Italian version is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

After giving notice to the parties concerned to submit their comments pursuant to those provisions <sup>(1)</sup> and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) On 5, 12 and 15 May 2017, respectively, the airlines Ryanair Ltd ('Ryanair'), Adria Airways d.o.o. ('Adria') and IAG International Airlines Group S.A. ('IAG') jointly, 'the complainants' submitted three formal complaints to the Commission alleging that Italy had granted unlawful and incompatible State aid to Alitalia – Società Aerea Italiana S.p.A. in amministrazione straordinaria ('Alitalia'). The complainants indicated that on 2 May 2017 the Italian authorities had granted Alitalia liquidity support in the form of a EUR 600 million loan ('the initial loan'). The complainants alleged that the initial loan was an unlawful and incompatible State aid.
- (2) On 14 June 2017, the Commission forwarded the complaints to the Italian authorities, requesting them to clarify the issues brought forward in those complaints. The Italian authorities replied to that request on 18 July 2017, and the Commission forwarded that reply to the complainants on 30 November 2017.
- (3) On 20 June, 12 September and 16 October 2017, IAG submitted additional information and updates regarding the expansion of Alitalia's route network after the granting of the initial loan.
- (4) On 30 October 2017, Adria submitted information indicating that Decree-Law No 148 of 16 October 2017 on 'Urgent provisions on financial matters and for un-deferrable needs' <sup>(2)</sup> ('Decree-Law 148/2017') had provided for the granting of an additional EUR 300 million loan to Alitalia ('the additional EUR 300 million loan'), bringing the total loan amount to EUR 900 million (the initial loan and the additional EUR 300 million loan will jointly be referred to as 'the two State loans').
- (5) On 21 December 2017, the Commission sent a request for information to the Italian authorities, which replied to that request on 24 January 2018.
- (6) On 23 January 2018, Italy notified the two State loans as rescue aid within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(3)</sup> (the 'Rescue and Restructuring Guidelines').

<sup>(1)</sup> OJ C 256, 20.7.2018, p. 4.

<sup>(2)</sup> Decreto-legge 16 ottobre 2017, n. 148 – Disposizioni urgenti in materia finanziaria e per esigenze indifferibili (GU Serie Generale No 242, 16.10.2017).

<sup>(3)</sup> Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

- (7) By letter dated 23 April 2018, the Commission informed Italy that it had decided to initiate the procedure provided for in Article 108(2) TFEU in respect of the two State loans.
- (8) The Commission decision to initiate the procedure ('the Opening Decision') was published in the *Official Journal of the European Union* on 20 July 2018. The Commission invited interested parties to submit their comments on the Opening Decision.
- (9) The Commission received comments from Italy, by letters dated 25 May 2018 and 25 September 2018, and from three interested parties: (i) Aegean Airlines S.A. ('Aegean'), (ii) an interested party which requested that its identity be withheld pursuant to Article 6(2) of Council Regulation (EU) 2015/1589 <sup>(4)</sup> ('the anonymous interested party') and (iii) Ryanair. On 15 November 2018 and 17 January 2019, the Commission sent the comments of the three interested parties to the Italian authorities inviting them to submit their observations, which they did by letter dated 20 March 2019.
- (10) The Commission requested further clarifications from the Italian authorities on 17 September 2018, 23 November 2018, 6 and 11 December 2018, 26 February 2019, 10 May 2019 and 2 July 2019. On 19 September 2019 and 28 October 2019, the Commission sent reminders regarding missing replies to the request for information of 2 July 2019.
- (11) The Italian authorities provided the Commission with further comments and information on 1 October 2018, 9 and 27 November 2018, 17 December 2018, 25 January 2019, 11 February 2019, 1 and 18 April 2019, 15 May 2019, 3 and 12 June 2019, 9 July 2019, 6 August 2019, 2 October 2019, 17 October 2019 and 19 November 2019.
- (12) The Commission services met the Italian authorities on several occasions, including on the following dates: 15 June 2017, 26 July 2017, 9 February 2018, 13 April 2018, 27 September 2018, 14 November 2018, 14 December 2018, 16 January 2019, 20 February 2019, 21 February 2019, 9 April 2019, 20 June 2019, 26 July 2019 and 27 September 2019.
- (13) The Commission also met with Alitalia (on 21 February 2019 and 9 April 2019), Aegean (on 10 January 2019) and the anonymous interested party (on 21 March 2019).
- (14) On 7 March 2019, Adria <sup>(5)</sup> submitted a new complaint alleging that the postponement of the maturity dates of the two State loans were unlawful and incompatible aid. On 22 March 2019, the Commission forwarded that complaint to the Italian authorities, requesting them to clarify the issues brought forward in that complaint. Italy replied to that request on 6 August 2019.

## 2. DESCRIPTION OF THE TWO STATE LOANS AND PERTINENT FACTS

### 2.1. The two State loans granted by the Italian State

- (15) On 23 April 2018, the Commission opened the formal investigation procedure with regard to the two State loans ('the measure').
- (16) The initial loan was provided for in Decree-Law No 55 of 2 May 2017 on 'Urgent measures to ensure continuity of the service provided by Alitalia S.p.A.' <sup>(6)</sup> ('Decree-Law 55/2017'). Alitalia S.p.A. was placed in extraordinary administration on 2 May 2017 (see recital 41).

<sup>(4)</sup> 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 (OJ L 248, 24.9.2015, p. 9).

<sup>(5)</sup> Adria had already filed a complaint about the initial loan and a complaint about the additional EUR 300 million loan (see recitals 1 and 4), but had not provided comments on the Opening Decision.

<sup>(6)</sup> Decreto-legge 2 maggio 2017, n. 55 – Misure urgenti per assicurare la continuità del servizio svolto da Alitalia S.p.A. (GU Serie Generale No 100, 2.5.2017). Although Decree-Law 55/2017 lapsed as it was not converted into law within the relevant time limit, its effects were maintained by Law No 96 of 21 June 2017.

- (17) Article 1 of Decree-Law 55/2017 provided that ‘in order to avoid interruption of the service provided by Alitalia – Società Aerea Italiana –S.p.A. under extraordinary administration, for domestic and international flight connections, including those with public service obligations within the meaning of current European legislation, taking into account the social hardships and serious inconvenience to users that would be caused by such interruption, financing of six hundred million euro in return for payment is hereby provided for a period of six months (...) in favour of Alitalia –Società Aerea Italiana –S.p.A. in extraordinary administration, to be used for the immediate management needs of the same company and other companies of the group subject to the extraordinary administration procedure (...)’. Although the granting legislation refers to the measure as ‘financing’ and Italy and Alitalia did not enter into a loan agreement, the Commission uses the term ‘loan’ to refer to the measure as the financing was repayable with interest.
- (18) The State granted the initial loan with an interest rate of 6-month Euribor plus 1 000 basis points, and was to be repaid within six months as from the first disbursement of the loan, i.e. by 5 November 2017. The initial loan had priority over the repayment of any other debt generated by Alitalia during the extraordinary administration procedure.
- (19) Italy initially prolonged the maturity date of the initial loan for six months, until 5 May 2018, by Decree-Law 148/2017; subsequently by Law No 172 of 4 December 2017 <sup>(7)</sup> (‘Law 172/2017’), it prolonged the maturity date until 30 September 2018. A further prolongation of the initial loan until 15 December 2018 was laid down by Decree-Law 38/2018 of 27 April 2018. That maturity date was subsequently modified several times (see Section 2.2.1).
- (20) The additional EUR 300 million loan was granted by Italy by Decree-Law 148/2017 with the result of increasing the State financing up to EUR 900 million. Article 12(2) of Decree-Law 148/2017 provided that *‘in order to guarantee the fulfilment of the transport obligations assumed by the extraordinary administration until the date of the business divestment without interrupting the continuity of the air transport service, in order to ensure the regular provision of domestic and international flight connections performed by the undertakings referred to in paragraph 1 pending completion of the business divestment procedure to be defined and implemented, the amount of financing .... shall be increased by EUR 300 million to be granted in 2018’*. Since the additional EUR 300 million loan was granted as an increase of the amount of the initial loan, the same terms and conditions applied, including the interest rate, as for the initial loan, except as regards the maturity of the loan. The maturities of the two loans were later synchronised (see Section 2.2.1).
- (21) According to Decree-Law 148/2017, the additional EUR 300 million loan was to be paid by the State to Alitalia in 2018 and to be reimbursed by 31 December 2018. That Decree-Law also extended the deadline for the completion of the tendering procedure (see Section 2.6) until 30 April 2018 in order to enable the disposal of Alitalia’s business complex.

## 2.2. Timeline of the disbursements of the two State loans

- (22) The initial loan and the additional EUR 300 million loan were granted by legislative acts and were to be paid following the adoption of a Decree of the Minister of Economic Development together with the Minister of Economy and Finance. According to those legislative acts, the two State loans were financed from the budget allocated to the Minister of Economic Development.
- (23) According to Decree-Law 55/2017, the initial loan was granted in order to avoid interruption of both international and domestic flights of Alitalia while under extraordinary administration, including flights falling under Alitalia’s Public Service Obligations (‘PSOs’), considering the serious social difficulties and serious inconvenience for users that an interruption of Alitalia’s flights would have caused.

<sup>(7)</sup> Legge 4 dicembre 2017, n. 172 – Conversione in legge, con modificazioni, del decreto-legge 16 ottobre 2017, n. 148, recante disposizioni urgenti in materia finanziaria e per esigenze indifferibili. Modifica alla disciplina dell’estinzione del reato per condotte riparatorie (GU Serie Generale No 284, 5.12.2017).

- (24) The initial loan was to be disbursed by a Decree of the Minister of Economic Development together with the Minister of Economy and Finance within five days from Alitalia being placed under extraordinary administration, and had to be used for urgent operational needs of the same company and other companies of the group subject to the extraordinary administration procedure. Urgent operational needs also included those relating to international systems used to settle economic relations with carriers.
- (25) On 4 May 2017, the extraordinary commissioners of Alitalia requested an urgent advance drawdown of EUR 240 million from the EUR 600 million loan. According to the Italian authorities, this was done primarily in order (i) to avoid the exhaustion of the cash needed to carry out Alitalia's business activities in the days immediately following the start of the extraordinary administration procedure, and (ii) to allow Alitalia to pay the security deposit requested by the International Air Transport Association ('IATA'). Without the payment of the security deposit, Alitalia risked being suspended from the systems <sup>(8)</sup> managed by IATA, which are essential for business continuity. That security deposit was paid in May 2017.
- (26) In October 2017, a second instalment of the initial loan amounting to EUR 360 million was released to Alitalia. According to the Italian authorities, it was provided at the request of the extraordinary commissioners to provide Alitalia with the necessary funding to maintain regular flights pending completion of the divestment of the relevant business activities.
- (27) According to Decree-Law 148/2017, which granted the additional EUR 300 million loan, the loan was enacted to ensure that Alitalia and other group companies could fulfil their flight obligations without interruption until the disposal of Alitalia's business activities.
- (28) Decree-Law 148/2017 was converted into law by Law 172/2017. That law indicated that the loan extension was necessary to ensure the fulfilment of Alitalia's transport obligations.
- (29) The additional EUR 300 million loan was disbursed to Alitalia on 15 January 2018.

#### *2.2.1. Synchronisation of the maturity of the two State loans*

- (30) On 27 April 2018, Decree-Law 38/2018 provided for another prolongation of the initial loan until 15 December 2018. That Decree-Law also set the same date as the new deadline for the repayment of the additional EUR 300 million loan, thereby synchronising the maturity of the initial loan and of the additional EUR 300 million loan.
- (31) On 14 December 2018, Decree-Law 135/2018 set the maturity date for the reimbursement of the two State loans from thirty days from the sale of Alitalia's assets coming into effect or, in any event, no later than 30 June 2019.

#### *2.2.2. Provisions of the Growth Decree-Law*

- (32) On 30 April 2019, Italy adopted Decree-Law No 34 on 'Urgent measures for economic growth and for the resolution of specific crisis situations' <sup>(9)</sup> ('Growth Decree-Law'), which provided for:
- (a) the elimination of seniority of the two State loans over any other debt incurred by Alitalia in extraordinary administration;
  - (b) the prolongation of the repayment of the two State loans until after Alitalia's assets were sold by the extraordinary administration;

<sup>(8)</sup> Various IATA Billing and Settlement Plans, IATA Cargo Accounts Settlement Systems and the IATA Clearing House.

<sup>(9)</sup> Decreto-legge 30 aprile 2019, n. 34 – Misure urgenti di crescita economica e per la risoluzione di specifiche situazioni di crisi (GU Serie Generale No 100, 30.4.2019). Decree-Law 34/2019 was converted into law by Law 28 June 2019, No 58, (GU Serie Generale No 151, 29.6.2019).

- (c) the payment of the interest due to the State accruing from the date of the payment of the two State loans to Alitalia until no later than 31 May 2019;
  - (d) the authorisation for the Ministry of Economy and Finance to use the interest accrued on the two State loans to subscribe to shares in the newly created company to which the assets of Alitalia are to be transferred.
- (33) As a result of the Growth Decree-Law, interest on the two State loans ceased to accrue as from 31 May 2019.
- (34) On 2 December 2019, the Growth Decree-Law was amended by Decree-Law No 137 'Urgent measures to ensure the continuity of the service performed by Alitalia – Società Aerea Italiana S.p.A. and Alitalia CityLiner S.p.A. in extraordinary administration' <sup>(10)</sup>, which synchronised the maturity of the interest due with that of the principal, as it provided for the prolongation of the payment of the principal and interest, until after Alitalia's assets were sold by the extraordinary administration.
- (35) The assessment of the two State loans as a single measure is set out in Section 5.1.4.1.1.

### 2.3. The beneficiary

- (36) The beneficiary of the measure is Alitalia –Società Aerea Italiana –S.p.A in amministrazione straordinaria ('Alitalia') together with the subsidiaries directly and indirectly owned by it.
- (37) Both Decree-Law 55/2017, the legal basis for the initial loan, and Decree-Law 148/2017, the legal basis of the additional EUR 300 million loan, provide that the two State loans are granted in favour of Alitalia. Decree-Law 55/2017 grants '*a financing of EUR 600 million loan in return for payment ... in favour of Alitalia –Società Aerea Italiana –S.p.A.*' (see recital 17); Decree-Law 148/2017 refers to the financing granted by Decree-Law 55/2017, providing for an additional EUR 300 million loan in favour of Alitalia.
- (38) Alitalia is a company headquartered in Fiumicino, Rome, operating in the air transport sector. Alitalia's total headcount was 11 377 on 31 December 2017 <sup>(11)</sup>. Alitalia's shareholding structure and Alitalia Group's structure is shown on Chart 1 <sup>(12)</sup> and the shareholders of Compagnia Aerea Italiana S.p.A. ('CAI') <sup>(13)</sup> as of May 2019 in Table 1.

<sup>(10)</sup> Decreto-legge 2 dicembre 2019, n. 137 – Misure urgenti per assicurare la continuità del servizio svolto da Alitalia – Società Aerea Italiana S.p.A. e Alitalia Cityliner S.p.A. in amministrazione straordinaria (GU Serie Generale No 282, 2.12.2019).

<sup>(11)</sup> As reported in the Report of the extraordinary commissioners of 11 July 2018, which is accessible at: [http://www.amministrazionistraordinariaalitaliasai.com/pdf/alitalia/allegato\\_2\\_alitaliarelazione2017.pdf](http://www.amministrazionistraordinariaalitaliasai.com/pdf/alitalia/allegato_2_alitaliarelazione2017.pdf)

<sup>(12)</sup> Chart 1 is drawn on the basis of the information contained in the document 'Attachment 6 Organisation Chart of the Alitalia Group', annexed to the notification of the rescue aid submitted by Italy on 23 January 2018 (see recital 6).

<sup>(13)</sup> Other shareholders with a stake equal or below 1 % include Factorit S.p.A. (1 %), Macca Srl (0,96 %) and residual share of Air France-KLM (0,73 %).

Chart 1

## Ownership structure of Alitalia and structure of the Alitalia Group on 23 January 2018

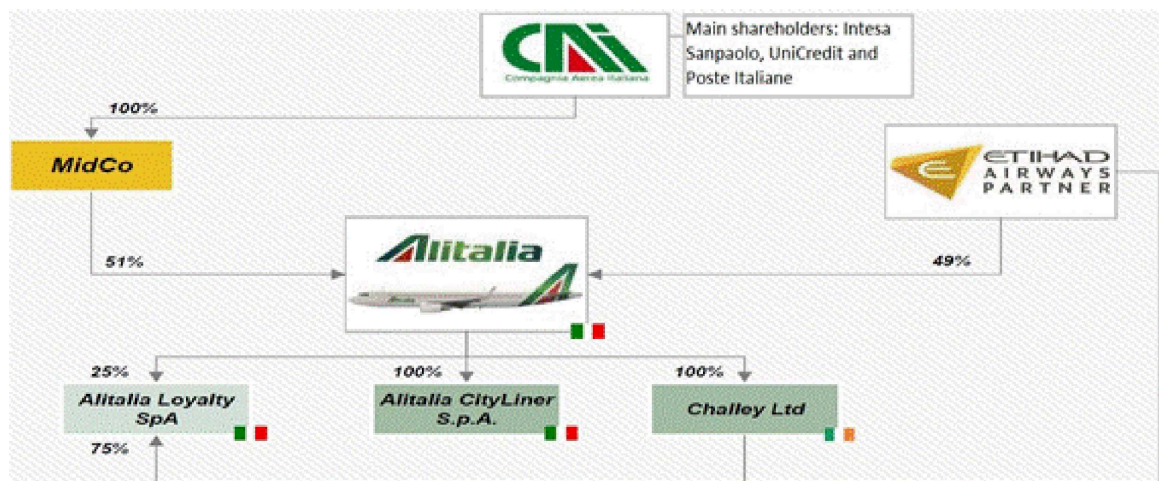


Table 1

Shareholders of CAI in May 2019. (To the Commission's knowledge, the shareholder structure remains unchanged.)

Shareholders of CAI, May 2019	Ownership %
Unicredit S.p.A	36.59
Intesa Sanpaolo	27.48
Banca Popolare di Sondrio Societa Cooperativa per Azioni	9.11
Atlantia S.p.A	6.52
Banca Monte dei Paschi di Siena S.p.A	6.11
MPS Leasing & Factoring S.p.A	3.97
IMMSI S.p.A	2.18
Poste Italiane S.p.A	2.02
PIRELLI & C.S.P.A.	1.4
Other shareholders equal or below 1%	4.62
<b>Total</b>	<b>100</b>

- (39) When it was placed in extraordinary administration, Alitalia owned the entire share capital of Alitalia CityLiner S.p.A. ('Cityliner') and of Challey Ltd Cityliner, a regional airline fully owned by Alitalia <sup>(14)</sup>, operates as Alitalia's transport capacity provider <sup>(15)</sup> covering part of the short-haul network. Challey Ltd is a sub-holding based in Ireland, which, itself, controls other companies, also based in Ireland ('Irish subsidiaries'), that own the entire fleet of aircrafts used by Alitalia and CityLiner and registered in Ireland, as well as minority interests in other part-owned companies. Challey Ltd and the Irish subsidiaries are not in extraordinary administration. Alitalia together with its subsidiaries accordingly form the Alitalia Group <sup>(16)</sup> ('the Alitalia Group'). Since Alitalia accounts for the overwhelming majority of the Alitalia Group's activities and employs 97 % of the total headcount of the Alitalia Group <sup>(17)</sup>, any evaluation pertaining to the group covers *mutatis mutandis* Alitalia.
- (40) Alitalia is 49 % owned by Etihad Investment Holding Company LLC and 51 % owned by MIDCO S.p.A., which, itself, is 100 % owned by CAI S.p.A. In the period since its acquisition by CAI S.p.A. in 2008, Alitalia has been continually loss-making. It attempted to improve its position in early 2017 with an ambitious cost-cutting plan involving more than EUR 1 billion in cost reductions, which was supposed to pave the way for additional financing (EUR 2 billion including EUR 900 million of new money), mainly led by its shareholder Etihad (the 'Turnaround Plan', see Section 4.2.1.1). The Turnaround Plan was to be put in place through a pre-insolvency procedure <sup>(18)</sup>. That procedure <sup>(19)</sup> required the agreement of the workforce <sup>(20)</sup> as major cost cutting measures would have affected them. However, the agreement was rejected in the workers' referendum held on 24 April 2017 because of the planned measures to cut labour costs, which foresaw amongst others an average wage cut of 33 %. As the Turnaround Plan could not be implemented, and the shareholders did not provide additional funding, Alitalia was placed under extraordinary administration.

#### 2.4. The extraordinary administration procedure

- (41) Upon the request of Alitalia's board of directors, Alitalia was placed under extraordinary administration <sup>(21)</sup> by the Decree of the Italian Ministry of Economic Development dated 2 May 2017. That decree also appointed three extraordinary commissioners to manage Alitalia. Alitalia was then declared insolvent by judgment of the Court of Civitavecchia of 11 May 2017. Thereafter, on 12 May 2017, Cityliner <sup>(22)</sup> was also placed under extraordinary administration by decree of the Italian Ministry of Economic Development. Cityliner was then declared insolvent by judgment of the Court of Civitavecchia of 26 May 2017.

<sup>(14)</sup> See Decree of Minister of Economic Development of 12 May 2017 placing Cityliner under extraordinary administration, publicly accessible on the web site of Alitalia's Extraordinary Administration: [www.fallcoweb.it/home/pdf/alitalia/estensione\\_procedura.pdf](http://www.fallcoweb.it/home/pdf/alitalia/estensione_procedura.pdf)

<sup>(15)</sup> See point 85 at page 55 et seq. of the Report on the causes of insolvency of Alitalia and Cityliner (Relazione sulle cause di insolvenza di Alitalia e Cityliner) drawn up on 26 January 2018 by the extraordinary commissioners and published on the web site of Alitalia's Extraordinary Administration: [http://www.fallcoweb.it/home/pdf/alitalia/relazione\\_cause\\_insolvenza.pdf](http://www.fallcoweb.it/home/pdf/alitalia/relazione_cause_insolvenza.pdf)

<sup>(16)</sup> See [http://corporate.alitalia.com/static/upload/201/0000/20160325\\_alitalia\\_sai\\_mogc-231\\_general-section.pdf](http://corporate.alitalia.com/static/upload/201/0000/20160325_alitalia_sai_mogc-231_general-section.pdf)

<sup>(17)</sup> See Section 1.2.2 at page 20 of the EA Programme published on the web site of Alitalia's Extraordinary Administration: [http://www.fallcoweb.it/home/pdf/alitalia/programma\\_0418.pdf](http://www.fallcoweb.it/home/pdf/alitalia/programma_0418.pdf)

<sup>(18)</sup> Article 67 of Regio Decreto 16 marzo 1942, n. 267 – Disciplina del fallimento, del concordato preventivo, dell'amministrazione controllata e della liquidazione coatta amministrativa (GU Serie Generale No 81, 6.4.1942, as subsequently amended over the years). This Decree will be referred to as 'the Italian Bankruptcy Law'.

<sup>(19)</sup> A 'piano di risanamento' under Article 67, third paragraph, point (d), of the Italian Bankruptcy Law is a procedure for companies that are experiencing reversible financial difficulty, i.e. the financial difficulty has chances to be reversed because of its specific reparable nature and the availability of adequate resources. Under that procedure, the recovery efforts are managed by the company and not by the judicial authority.

<sup>(20)</sup> According to the report of the extraordinary commissioners of 11 July 2018 (see footnote 20), on 31 December 2017 there were 11 755 employment contracts employed by Alitalia Group, corresponding to 10 871 full time employees at Alitalia S.p.A and CityLiner. On 31 December 2016, according to the KPMG report (see Section 4.2.1.2), there were 10 781 full time equivalent employed by Alitalia Group (also including the Irish subsidiaries).

<sup>(21)</sup> Pursuant to Marzano Law read in conjunction with Prodi-bis Law.

<sup>(22)</sup> Cityliner is described in recital 39.

- (42) In their submission of 20 March 2019, the Italian authorities indicated that, because of the admission of Alitalia to the extraordinary administration procedure, the private shareholders had been deprived of all the powers of management and supervision of Alitalia. In their place, by virtue of the legislation governing the extraordinary administration, the extraordinary commissioners were entrusted with managing the company until an extraordinary administration programme ('the EA programme') was authorised by the Minister of Economic Development. On the adoption of the EA programme, they would be authorised to sell the assets of Alitalia under the supervision of the Ministry of Economic Development.
- (43) On 26 January 2018, Alitalia's extraordinary commissioners provided to the Ministry of Economic Development a programme aiming at the sale of Alitalia's assets in operation <sup>(23)</sup> within a year, which was authorised by Ministerial decree of 23 March 2018. On 7 May 2019, the initial maturity date of the completion of the sales programme was postponed until 23 March 2020.
- (44) The sale procedure laid down by the authorised EA programme covered the assets relating to the business of Alitalia and Cityliner, the companies in extraordinary administration.

#### 2.4.1. Extraordinary administration (Legislative Decree No 270/1999, Prodi-bis Law)

- (45) Extraordinary administration is an insolvency procedure set out in Legislative Decree No 270 of 8 July 1999 <sup>(24)</sup> ('Prodi-bis Law') for the insolvency of large companies aimed at rescuing them, preserving their value through the continuation of their activities until restructuring or sale of the assets. Companies are only admitted to extraordinary administration if their return to economic equilibrium seems possible.
- (46) Under the extraordinary administration, the previous shareholder is deprived of its decision-making powers, while the company continues operating. The management of the business and the administration of the company's assets are taken over by the extraordinary commissioners. They are appointed by the Court, which declares the company insolvent. The extraordinary commissioners act in accordance with the EA programme (restructuring or sale of assets) authorised by the Minister of Economic Development.
- (47) When the extraordinary administration procedure takes effect, the debts incurred prior to the procedure are frozen and become subordinated to the debts incurred during the extraordinary administration as a result of the continuation of the business operation. The status of those debts incurred during the extraordinary administration as 'super senior' is provided by an explicit provision of law.

#### 2.4.2. Extraordinary administration for large companies with at least 500 workers and EUR 300 million of debt (Decree-Law No 347/2003, Marzano Law)

- (48) For large companies with at least 500 workers and at least EUR 300 million of debt, additional special rules apply under Decree-Law No 347 of 23 December 2003 <sup>(25)</sup> ('Marzano Law'). Alitalia falls within the scope of the Marzano law since, as set out in the judgment declaring Alitalia insolvent, Alitalia has 'in excess of five hundred subordinate employees for at least one year and debts totalling an amount in excess of three hundred million Euros' <sup>(26)</sup>.
- (49) According to the Marzano law, companies may submit their request to be placed under extraordinary administration as provided for by that law directly with the Ministry of Economic Development, even before the Court rules on their solvency. The extraordinary commissioners are appointed by the Minister of Economic Development and not by the Court. They operate under the supervision of the Minister of Economic Development. The initial duration of the extraordinary administration is 12 months as from the authorisation of the EA programme by the Minister of Economic Development, but can be further extended by additional (maximum) 36 months by Decree of the Ministry of Economic Development. In case of a group of companies, the procedure can be extended to the other companies of the group in addition to the parent company (as happened for Cityliner).

<sup>(23)</sup> Under Article 4 of Marzano Law in combination with Article 27, paragraph 2, point a, and Article 54 et seq. of Prodi-bis Law.

<sup>(24)</sup> Decreto legislativo 8 luglio 1999, n. 270 – Nuova disciplina dell'amministrazione straordinaria delle grandi imprese in stato di insolvenza, a norma dell'articolo 1 della legge 30 luglio 1998, n. 274 (GU Serie Generale No 185, 9.8.1999).

<sup>(25)</sup> Decreto-legge 23 dicembre 2003, n. 347 – 'Misure urgenti per la ristrutturazione industriale di grandi imprese in stato di insolvenza' (GU Serie Generale No 298, 24.12.2003).

<sup>(26)</sup> [http://www.fallcoweb.it/home/pdf/alitalia/en\\_alitalia-sentenza-17\\_2017-eng1.pdf](http://www.fallcoweb.it/home/pdf/alitalia/en_alitalia-sentenza-17_2017-eng1.pdf)



(50) In addition, for companies operating essential public services, the Marzano Law provides the following:

- the extraordinary commissioners have the powers to sell the business assets through a negotiated procedure (provided that the sale price agreed by the extraordinary commissioners with the buyer is not lower than the market value established by an independent expert's report).

## 2.5. Public statements by members of the Italian government

- (51) On 25 April 2017, following the workers' rejection of the Turnaround Plan, the Minister of Economic Development at the time, whose portfolio included the Alitalia dossier, was interviewed in the Italian newspaper *Corriere della Sera*. The Minister ruled out nationalisation or the State paying Alitalia's debts. However, in response to a question about a possible bridge loan to Alitalia, the Minister declared that the government would provide '[t]he bare minimum to complete the process [sale of Alitalia assets by the extraordinary commissioners]. Stopping airplanes on the ground is not imaginable because the connections would be compromised and the travellers would be hurt resulting in quite significant direct and indirect repercussions' <sup>(27)</sup>.
- (52) On 30 April 2017, the Minister of Economic Development was asked in a media interview why Alitalia could not be allowed to fail. The Minister explained that the failure of Alitalia '[w]ould be a shock for the gross domestic product, higher than the scenario of a six-month period covered by the government loan to find a buyer ... We cannot [let it] fail from one day to the next because we would no longer have connections from one part of the country to the other. There would be no other companies ready to make connections, for a period they would no longer be served' <sup>(28)</sup>.
- (53) On 2 May 2017, an Italian financial newspaper reported that the Prime Minister at the time stated that the Government 'intervened not only at the explicit request of the shareholders' meeting, but on our part is an act of responsibility by those who must ensure certain fundamental services' <sup>(29)</sup>. In the same article, the Minister for Territorial Cohesion and the South stated that 'by the decisions [of the Council of Ministers] on Alitalia, extraordinary administration and bridge loan of six months, we have secured all the routes. Air connections with the South are therefore guaranteed'.
- (54) According to an article in the Italian press on 3 May 2017, the Minister of Economic Development at the time stated that 'the government's strategy has always been to minimise the impact on public accounts' and that the government '[t]ried to avoid' granting the bridge loan of EUR 600 million, but it was '[a] necessary and inevitable evil' because 'putting the planes on the ground from morning to night would cost Italian taxpayers much more'. According to that article, the Minister then recalled that there are '4.9 million Alitalia prepaid ticket reservations' and stopping everything would cause damage to '[G]DP [and Italy's] image, and then ... the connections for the country would be lost for a certain number of days or weeks and this is impossible'. The initial loan, according to the Minister, 'therefore serves to avoid a worse situation from an economic point of view' <sup>(30)</sup>.
- (55) In an interview published on 15 October 2017, the then Minister of Infrastructures and Transport declared that the additional EUR 300 million loan was giving the extraordinary commissioners 'peace of mind. We don't want to sell Alitalia off cheaply, but sell it. We look at what happened to Air Berlin, acquired by Lufthansa: they have halved planes and personnel. But breaking a core business is always a defeat for everyone. That's why for Alitalia we're looking rather at the Meridiana model: finding a suitable partner which is able to improve it'. When asked whether it would be for the next government to deal with Alitalia, the Minister replied 'Not necessarily. The company is there and will continue to be there. Tomorrow the offers will close, let's see what the commissioners will tell us. Between now and Christmas we will have clarity on the future of Alitalia. But this government does not want to take hasty decisions' <sup>(31)</sup>.

<sup>(27)</sup> [https://www.corriere.it/economia/17\\_aprile\\_25/escluso-salvataggio-stato-ma-voli-saranno-garantiti-b7bc7812-29e4-11e7-9909-587fe96421f8.shtml](https://www.corriere.it/economia/17_aprile_25/escluso-salvataggio-stato-ma-voli-saranno-garantiti-b7bc7812-29e4-11e7-9909-587fe96421f8.shtml)

<sup>(28)</sup> <https://tg24.sky.it/economia/2017/04/30/intervista-carlo-calenda-alitalia.html>

<sup>(29)</sup> [https://www.ilsole24ore.com/art/alitalia-arrivano-commissari-gubitosi-laghi-e-paleari-prestito-ponte-600-mln-AEfKMpEB?refresh\\_ce=1](https://www.ilsole24ore.com/art/alitalia-arrivano-commissari-gubitosi-laghi-e-paleari-prestito-ponte-600-mln-AEfKMpEB?refresh_ce=1)

<sup>(30)</sup> <http://www.ilgiornale.it/news/economia/alitalia-prestito-600-milioni-calenda-agli-italiani-gi-1392415.html>

<sup>(31)</sup> [https://www.repubblica.it/economia/2017/10/15/news/graziano\\_delrio\\_bus\\_treni\\_e\\_piu\\_metro\\_un\\_piano\\_da\\_30\\_miliardi\\_per\\_ri\\_lanciare\\_i\\_trasporti\\_-178383342/](https://www.repubblica.it/economia/2017/10/15/news/graziano_delrio_bus_treni_e_piu_metro_un_piano_da_30_miliardi_per_ri_lanciare_i_trasporti_-178383342/)

- (56) In the same vein, after the rejection by the government of Lufthansa's offer (see the footnote in recital 61), the then Minister of Infrastructures and Transport declared, in an interview published on 24 November 2017, that Lufthansa's offer *'was not worthy of a large country like Italy and a company like Alitalia with thousands of workers and some of the most important connections in the country. We will wait until we are presented with an industrial development plan worthy of the name, not one which just imposes suffering on the workers. We have time until the end of the government's mandate; we are trying to get the best conditions. I recall that the Alitalia crisis is due to managerial errors, not to the market, which is indeed expanding rapidly'* <sup>(32)</sup>.

## 2.6. The sales process of Alitalia and its extensions

- (57) Article 1 of Decree-Law 55/2017, which granted the initial loan, provided that, in order to draw up the EA programme, the extraordinary commissioners had to publish, by 17 May 2017, a call for expressions of interest to purchase or restructure Alitalia's business complex. The process following that call for interest, to be carried out within six months of granting of the first financing, was to ensure that the principles of transparency, equal treatment and non-discrimination were met.
- (58) On 17 May 2017, in accordance with Article 1 of Decree-Law 55/2017, the extraordinary commissioners launched a call for expression of interest with the aim of deciding whether Alitalia could be restructured or its assets were to be sold, either as operating units or as operating goods and contracts.
- (59) The period within which expressions of interest were to be made came to an end on 21 July 2017. On 1 August 2017, the extraordinary commissioners, as authorised by the Minister of Economic Development, organised a tender process to sell the assets of the companies in extraordinary administration (Alitalia and Cityliner) as operating units with a deadline of 16 October 2017 for the presentation of the offers, and a deadline of 5 November 2017 for the finalisation of the sales process.
- (60) For the tender, the majority of the assets of the companies in extraordinary administration (Alitalia and Cityliner) were split into separate operating units, consisting specifically of (a) the business activities taken as a whole ('Complete Batch' or 'Single Lot'); or alternatively (b) the aviation activities ('Aviation Batch'); and (c) the handling activities ('Handling Batch'). The Aviation Batch comprised the assets and legal relationships connected to the air transportation activities carried out by the companies in extraordinary administration, including the fleet, the slots, the brand, the aircrafts of the Irish subsidiaries and the leasing and maintenance contracts. The Handling Batch included assets and legal relationships of the companies in extraordinary administration connected to the services carried out in airports for the assistance on ground in favour of third parties. The Complete Batch included assets and legal relationships of the Aviation Batch and of the Handling Batch. The bidder was free to define the perimeter of the purchase offer.
- (61) Decree-Law 148/2017, which granted the additional EUR 300 million loan, extended the initial deadline of 5 November 2017 for the completion of the sales process until 30 April 2018. Then following the unsuccessful tender <sup>(33)</sup> on 22 December 2017, the extraordinary commissioners opened a new negotiated procedure <sup>(34)</sup> to sell Alitalia's assets.

<sup>(32)</sup> [www.ilmessaggero.it/economia/flashnews/alitalia\\_gubitosi\\_il\\_2017\\_si\\_chiudera\\_con\\_una\\_crescita\\_dei\\_ricavi-3380622.html](http://www.ilmessaggero.it/economia/flashnews/alitalia_gubitosi_il_2017_si_chiudera_con_una_crescita_dei_ricavi-3380622.html)

<sup>(33)</sup> As reported at page 133 of the EA programme, no offer submitted (among others, by Lufthansa, EasyJet and Airport Handling S.p.A.) complied with the procedural rules. In particular, according to page 17 of the extraordinary commissioners' presentation at a hearing before the joint IX and X Committees of the Chamber of Deputies on 27 March 2019, those offers lacked binding elements and essential elements (bid bond, contractual documents or industrial plan).

<sup>(34)</sup> The possibility to have a negotiated procedure is provided for by Article 4, paragraph 4-quater, of the Marzano Law, as an alternative to a call for tender. The negotiated procedure must be carried out without prejudice to compliance with the principles of transparency and non-discrimination.

- (62) The negotiated procedure had an original deadline on 10 April 2018, which was subsequently extended to 31 October 2018. At the end of the negotiated procedure on 31 October 2018, four proposals <sup>(35)</sup> were received. Only the offer of the Italian rail company Ferrovie dello Stato ('FS'), which was backed by a EUR 17,5 million bid bond, was deemed to be valid by the extraordinary commissioners. As FS's offer was conditional, FS was granted a new deadline to submit its binding offer. The deadline to submit the binding offer was postponed several times, most recently until 21 November 2019.
- (63) FS failed to submit a final binding offer by that date. Due to that failure to submit a bid, the Commission understands that the sales process was deemed to have failed <sup>(36)</sup>.

## 2.7. The Opening Decision

- (64) In the Opening Decision, the Commission provisionally concluded that the two State loans constituted State aid within the meaning of Article 107(1) TFEU.
- (65) In particular, the Commission considered that the two State loans conferred an economic advantage on Alitalia for the purposes of Article 107(1) TFEU. The claim that Italy in granting Alitalia the two State loans had acted as a market economy operator was not substantiated by evidence.
- (66) In relation to the compatibility of the aid, the Commission considered that Alitalia was a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines and came to the provisional conclusion that there were serious doubts about the compatibility of the two State loans with the internal market under Article 107(3)(c) TFEU.
- (67) In particular, Italy had argued that the two State loans were needed to prevent a sudden exit from the market, and the associated negative consequences, of a company playing an important systemic role in respect of the entire air transport sector of Italy. The Commission considered that there was not sufficient information to reach the conclusion about the existence of a contribution to an objective of common interest.
- (68) The Commission also had doubts whether the appropriateness criterion of the two State loans had been met, since the two State loans were not reimbursed within six months after their first disbursement to Alitalia. In addition, it was not clear when the liquidation would occur and whether it would be finalised within a reasonable timeframe as required by the Rescue and Restructuring Guidelines. Therefore, the aid appeared to allow continued operations of Alitalia between May 2017 and at least October 2019, keeping an otherwise non-viable business on the market for significantly longer than a temporary period of six months.
- (69) In addition, the Commission had doubts whether the proportionality criterion of the two State loans had been met. The liquidity plan provided by Italy included a substantial liquidity cushion (EUR 796 million at the end of first quarter 2018, dropping gradually to EUR 546 million at the end of 2018). However, Italy failed to explain why that excess liquidity was strictly necessary to keep Alitalia in business for six months. Therefore, the Commission had doubts whether the amount of the aid was limited to the minimum necessary.
- (70) Lastly, based on the information provided by Italy, the Commission provisionally concluded that Alitalia had not benefitted from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years prior to the granting of the two State loans and that the 'one time, last time' principle, set out in points 70 and 71 of the Rescue and Restructuring Guidelines, had been respected. The Commission had previously concluded that there

<sup>(35)</sup> According to page 18 of the extraordinary commissioners' presentation at the hearing that took place on 27 March 2019 before the joint IX and X Committees of the Chamber of Deputies, on 31 October 2018 the extraordinary commissioners received two offers (Ferrovie dello Stato and EasyJet), one manifestation of interest (Delta Air Lines) and one non-binding communication (Lufthansa, 'the Lufthansa offer').

<sup>(36)</sup> That information has been reported by the press: see *Il Corriere della sera*, 21 November 2019 'Alitalia, il salvataggio salta ancora: ottavo rinvio per la cordata'; *La Repubblica*, 20 November 2019 'Si ferma la cordata Fs-Atlantia. Alitalia verso l'ottavo rinvio'; *La Repubblica*, 26 November 2019 'Alitalia, la resa del governo. Patuanelli: "La soluzione di mercato non c'è"'.

was no economic continuity between CAI and Alitalia Linee Aeree SpA, parts of whose assets were acquired by CAI and used to create the present Alitalia <sup>(37)</sup>. Alitalia Linee Aeree SpA had previously received a loan of EUR 300 million, which the Commission concluded was aid <sup>(38)</sup> under the previous version of the Rescue and Restructuring Guidelines <sup>(39)</sup>. Had there been continuity, Alitalia would not have been eligible for aid under the Rescue and Restructuring Guidelines.

### 3. COMMENTS FROM INTERESTED PARTIES

- (71) Three interested parties (i.e. Ryanair, the anonymous party concerned, Aegean) submitted their comments to the Commission under Article 108(2) TFEU.

#### 3.1. Ryanair

- (72) On the existence of aid, Ryanair argues that the Market Economy Operator Principle is not applicable either (i) to the initial loan, as Italy granted it as a public authority pursuing objectives of the general interest relating to the users of Alitalia's transport service and its workers and to the territorial continuity of the Italian Republic; or (ii) to the additional EUR 300 million financing, which cannot be accordingly justified by the State's prior exposure to Alitalia.
- (73) Concerning the compatibility of the aid, Ryanair argues that the compatibility conditions are not fulfilled. With regard to the common interest criterion, had Alitalia's fleet been grounded, competing low fare airlines would have been able to replace any lost service – including PSOs –, as demonstrated by the revitalization of the air traffic in Budapest and Barcelona airports following the collapse of Malév and Spanair respectively. Rather than helping the efficiency of the Italian air transport market, the aid in fact hinders it and harms the common interest. The aid is used to compete unfairly on profitable routes, also having regard to new services and initiatives (i.e. the new lounge 'Casa Italia' at Rome's airport <sup>(40)</sup>) launched by Alitalia. With regard to the return to long-term viability condition, Ryanair notes that, in the absence of a business plan, the two State loans create an unjustified cash reserve for Alitalia. Ryanair also submits that in addition to Alitalia's assets being insufficient to reimburse the loan, it remains loss-making, losing EUR 1,75 million per day with a daily negative EBIDTA of EUR 0,7 million.

#### 3.2. The anonymous interested party

- (74) With regard to the compatibility of the aid, the anonymous interested party argues that, contrary to the requirement that the rescue aid should be of an urgent and temporary nature, as it aims to respond to an acute liquidity crisis, the aid favours Alitalia over other airlines. This is because the aid artificially improves Alitalia's financial situation, as Alitalia's problems are not new but rather long-term issues, which have been dramatically and continuously increasing over the past years.
- (75) The anonymous interested party further argues that other means, less distortive for the market, would have been available to Alitalia to ensure the on-going operations during the extraordinary administration of Alitalia.

#### 3.3. Aegean

- (76) Aegean indicates that based on its market knowledge the terms of the initial loan and of the additional EUR 300 million loan were not in line with the conditions of financing which were likely to be available on the market to an airline in difficulty such as Alitalia. Aegean further notes that the declared objective of the initial loan and the additional EUR 300 million loan was to ensure the company remained a going concern. In light of this, it is clear that in pursuing that objective Italy could not have been guided by economic principles but rather political considerations such as maintaining employment and avoiding social unrest.

<sup>(37)</sup> Decision C(2008) 6745 final, of 12 November 2008, concerning State aid N 510/2008 – Italy – Sale of assets of the airline Alitalia.

<sup>(38)</sup> Commission Decision 2009/155/EC of 12 November 2008 on the loan of EUR 300 million granted by Italy to Alitalia No C 26/08 (ex NN 31/08).

<sup>(39)</sup> Communication from the Commission – Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

<sup>(40)</sup> The new lounge 'Casa Italia' was opened in June 2018 at Rome Fiumicino Airport, the boarding area of the capital hub from which almost all medium- and long-haul services of Alitalia take off towards extra-Schengen destinations. The lounge can be used exclusively by Alitalia and SkyTeam passengers traveling to intercontinental and extra-Schengen international destinations.

- (77) Referring to the compatibility of the aid, Aegean argues in particular that:
- (a) the aid was not limited to the minimum, as it was manifestly disproportionate as regards both the amount as well as its terms. The aid allowed Alitalia not only to remain active on the market, but also to scale up its operations by opening new competing routes under very low airplane load factors;
  - (b) the aid had a distortive effect on the market, which had been preserved for each day it remained at the disposal of Alitalia, with the additional negative effect of Alitalia's leveraging of the advantage received by the two State loans to market its services aggressively and compete with other airlines;
  - (c) contrary to point 55(e) of the Rescue and Restructuring Guidelines, Alitalia put in place structural measures, as demonstrated by the opening of new routes, which, in the context of aviation services market, constituted the acquisition of a market share, and an unjustified expansion of its operations;
  - (d) the distortive effect of the aid was demonstrated by the opening of new routes, the increased frequency of some flights, and the operation with low load factors on some of those routes. Such a distortive effect risked becoming permanent due to the excessive length of time during which the aid was at the disposal of Alitalia.

#### 4. INFORMATION PROVIDED BY ITALY

##### 4.1. Comments from Italy

###### 4.1.1. Public authority considerations

- (78) According to Italy, the initial loan was intended to address urgent management needs of Alitalia and other companies of the group placed under extraordinary administration, that is Cityliner (see recital 41). Those needs included ensuring that Alitalia could continue to participate in the international regulatory systems governing airlines, such as IATA, pending the decision to restructure Alitalia or to sell its assets (see recital 17).
- (79) The Italian authorities also added that the initial loan was provided due to the need to avoid service interruption, bearing in mind the social hardship and serious inconvenience to users that such an interruption would entail, infringing, inter alia, the right to territorial continuity within the Italian Republic guaranteed by the Italian Constitution.
- (80) Italy justified its claim that Alitalia's exit would lead to serious disruptions to the air passenger transport sector and society by providing the following data: on 1 May 2017, the total number of passengers who had booked for the period from May 2017 to March 2018 amounted to EUR 4 935 210 (either with a ticket already issued or with a ticket yet to be issued), of which approximately EUR 1,3 million in May and more than half a million during the first 15 days of the month. The total value of the tickets issued for the period from May 2017 to March 2018 was EUR 429 million (of which EUR 125 million related to the month of May 2017 only), while the compensation costs to be paid to passengers booked in the first 15 days of May 2017 pursuant to Regulation (EC) No 261/2004 of the European Parliament and of the Council <sup>(41)</sup> would have been approximately EUR 268,5 million.
- (81) The Italian authorities explained that once Alitalia entered the extraordinary administration the financing was granted pending the preparation and implementation of an EA programme.
- (82) The Italian authorities claimed that without the two State loans it would have been difficult to conduct the tender process for the divestment of Alitalia in accordance with the highest standards of openness, non-conditionality and competitiveness. This constituted the precondition for obtaining the best value possible from the assets to be sold, that is divesting Alitalia's businesses on the best market conditions achievable through a competitive procedure. In

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<sup>(41)</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (OJ L 46, 17.2.2004, p. 1).

its supplementary comments submitted on 25 September 2018, Italy emphasised that the economic logic of the two State loans was to ensure Alitalia's long-term viability by facilitating the successful completion, within a predetermined period of time, of the competitive tendering procedure for the sale of Alitalia's assets. That aimed, in essence, at preserving the maximum value of those assets until such a sale was complete.

#### 4.1.2. Concerning the assessment of the two State loans prior to granting

- (83) Italy did not submit any evidence that it had carried out an *ex-ante* assessment of the profitability of the two State loans before granting them. When the Commission asked it to provide any such evidence, Italy merely declared that the combination of the interest rate that applied to the two State loans with the strict binding requirements regarding their repayment ensures a positive result for the lender. Thus, according to Italy, the balance of the financial intervention would certainly be positive for the lender, since the risk taken on by the latter is limited and, in any case, remunerated on market terms.

##### 4.1.2.1. Concerning conformity of the initial loan with market conduct

- (84) The Italian authorities claimed that the initial loan was in line with market conditions and therefore fell outside the scope of Article 107(1) TFEU, as it did not constitute aid.
- (85) According to the Italian authorities, the initial loan is in line with market conduct due to the specific conditions attached thereto, i.e.: (i) a 6-month EURIBOR interest rate, plus 1 000 basis points in line with the Reference Rate Communication <sup>(42)</sup>; (ii) the mandatory payback within six months of payment, with (iii) priority repayment over any other debts under Alitalia's extraordinary administration. The interest cost charged was allegedly calculated on the basis of market conditions and parameters, taking full account of the specific circumstances of Alitalia. Since market conditions were applied, the loan conferred no State-funded advantage on Alitalia and cannot therefore constitute an aid measure.
- (86) The Italian authorities argued that the risk taken on by the State as a lender – remunerated at market conditions – is practically non-existent in the light of the recognised benefit of priority repayment over any other debts under Alitalia's extraordinary administration. The Italian authorities claim that it was reasonable to assume that Alitalia's assets could in any event cover the debts resulting from the initial loan, whatever the outcome of the extraordinary administration procedure.
- (87) According to the Italian authorities, the combination of the level of interest charged and the strict repayment terms means that the outcome for the lender, i.e. the end balance of the financial intervention, will certainly be positive. The loan was therefore fully in line with the principle of a private investor in a market economy and there was procedurally no obligation to give the Commission prior notification pursuant to Article 108(2) TFEU.
- (88) The Italian authorities also argued that private shareholders, including, in particular, Etihad, were also ready to provide financing to Alitalia within the framework of the Turnaround Plan. More specifically, on 22 December 2016, (i) Alitalia reached an agreement with its own financial creditors for a moratorium, (ii) Alitalia's shareholders discussed issuing participating equity instruments worth USD 231 million; (iii) [one of Alitalia's shareholders entered into agreements concerning economic commitments in the relationship between Alitalia's shareholders]. On 27 December 2016, Etihad also granted Alitalia a subordinated shareholder loan of EUR 100 million. In a note dated 25 March 2019, the Italian authorities also claimed that the two State loans are in line with the amount of the fresh new funding foreseen in Alitalia's Turnaround Plan.

<sup>(42)</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

#### 4.1.2.2. Concerning the additional EUR 300 million loan

- (89) The Italian authorities state that their arguments with regard to the initial loan equally apply to the additional EUR 300 million financing, which was provided under the same terms and conditions as the initial loan, taking full account of Alitalia's specific situation.
- (90) The Italian authorities further argue that the additional EUR 300 million loan and the prolongations of the repayment of the EUR 600 million financing in October 2017 were necessary to organise the tender and ensure the sale of Alitalia on the best market conditions achievable. The failure of such a tender would have had punitive effects on the company's business prospects and would have caused serious harm to all stakeholders. The two State loans were thus closely related to the aim of achieving the long-term viability of the company.

#### 4.1.3. Concerning the Opening Decision

- (91) With regard to the Opening Decision, Italy states that the Commission's assessment <sup>(43)</sup> of the value of Alitalia's assets predates Alitalia's entry into extraordinary administration, and was accordingly not up-to-date at the time of the Italian response (25 May 2018). Italy argues, in that regard, that the changes implemented by the new management of Alitalia led to actions to safeguard revenue, to contain costs and to increase efficiency. In that respect, Italy first contends that the extraordinary commissioners have addressed Alitalia's financial and managerial problems, by streamlining operations and renegotiating contracts, e.g. achieving a notable reduction in leasing costs (estimated leasing costs of EUR [210-250] million in 2018 compared to EUR [260-340] million in 2017). Italy stresses that, considering those savings and the fact that the sales procedure was on-going, Alitalia's assets were undervalued.
- (92) Furthermore, as part of the special powers granted to them by law, the extraordinary commissioners were empowered, for example, to take steps to recover money owed to Alitalia and to negotiate the settlement of claims with other parties. The value of Alitalia's assets would therefore have to be revised in light of the revenues obtained and cost cuttings made by the extraordinary commissioners. Italy also claims that the valuation in the non-binding communication submitted by Lufthansa may not have reflected the value of Alitalia's assets since the bid was for only part of the assets on offer and may reflect certain subjective interests from the bidding party. Accordingly, the valuation for part of the assets could not be used as a proxy for determining the value of all assets.
- (93) Italy challenges the Commission's claim that there was little evidence showing that Italy stood to lose more in the counterfactual scenario where the two State loans were not provided. Italy argues that, since Alitalia is in an insolvency procedure managed by extraordinary commissioners appointed by the government, those commissioners are acting with a public purpose. Italy argues that, although Alitalia is not owned by the State but the extraordinary commissioners are acting with a public purpose, Italy could, therefore, take into account the losses that the State would have incurred were Alitalia to have ceased operating and been liquidated when deciding whether to intervene as a market lender.
- (94) Italy further takes issue with the Commission's observation in recital 64 of the Opening Decision that, as the State was only an indirect minority shareholder, it could not stand to benefit from a better sale price to the same extent as the majority shareholders. Italy contends that, since the proceeds from the sale of the assets are destined for the creditors, accordingly the interest of a wider number of stakeholders, such as creditors, customers, workers and suppliers, need to be taken into account when assessing if the two State loans were made under market conditions.

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<sup>(43)</sup> The Commission did not provide its own assessment of the value of Alitalia in the Opening Decision, but referred to the value of Alitalia based on the valuation report commissioned by the extraordinary commissioners in October 2017 (that report, the so-called Leonardo study, is described in recitals 118 to 122; see recital 62 of the Opening Decision).

#### 4.1.4. Concerning the counterfactual scenario to granting the aid

- (95) In its supplementary comments submitted on 25 September 2018, Italy set out, in further detail, the consequences on the counterfactual scenario of liquidating Alitalia on 31 December 2017 claiming the following:
- (a) the State acted as a market economy operator, due to the significant losses it would have had to bear in case of the sale/closure of the company on 31 December 2017, already foreseen on the date of granting of the initial loan. Those losses would have amounted to EUR [more than a billion], essentially due to: (i) costs linked to unemployment borne by the State; (ii) unpaid taxes; (iii) compensation costs due to passengers; (iv) negative spill over effects on suppliers;
  - (b) the two State loans were to address Alitalia's urgent management needs and to avoid interruption of service, leading potentially to serious societal problems and disruption;
  - (c) the two State loans were in line with the rate for companies with a bad rating with low collateralisation in the Reference Rate Communication. Furthermore the loan enjoyed priority over all other debt; and
  - (d) the original maturity date of the sales process jeopardised the prospect of that process coming to a positive outcome and was thus extended. Consequently, also the original maturity date of the initial loan was extended and its amount was increased by granting the additional EUR 300 million loan.
- (96) Italy claimed that its reasoning was wholly in line with point 107 of the Commission Notice on the notion of State aid <sup>(44)</sup>, where it is stated that *'in the case of an equity or debt intervention in a public undertaking in difficulty, the expected return on such an investment should be compared with the expected return in the counterfactual scenario of the liquidation of the company. In the event that liquidation provides higher gains or lower losses, a prudent market economy operator would choose that option'*.
- (97) Italy contended that, had Alitalia been closed on 31 December 2017, Alitalia's employees would have been eligible to claim benefits from the general unemployment fund ('NASpI') and the specific solidarity fund for air transport employees ('FSTA'). Italy claims that the estimated cost of the unemployment payments that the State would have been liable for the staff of the company in the event of closure/winding up would have amounted to EUR [350-800] million, including the FSTA, for the period until 31 December 2018 and to EUR [500-900] million in the event of the extension of FSTA until 31 December 2019. Italy claimed that the unemployment costs would have been similar had Alitalia been closed on 1 May 2017, the day before the company was admitted to the extraordinary administration procedure.
- (98) Italy also mentioned that Alitalia's suppliers would be negatively affected by Alitalia's liquidation. They provide services, such as handling, customer service/call centres, cleaning, hotels accommodation, logistics and catering, with a total average annual value of EUR [100-300] million.
- (99) Further, Italy argues that, since Alitalia is in extraordinary administration, and thus managed by public authority, whose mandate is to restore, sell or liquidate the assets and distribute the proceeds to the creditors, the extraordinary commissioners were acting in the public interest; the discharge of their mandate allows them to protect only creditors' rights and not those of shareholders.
- (100) Moreover, Italy acknowledges the Court's finding in the Land Burgenland judgment. In paragraph 52 of that judgment the Court held that *'in order to assess whether the same measure would have been adopted in normal market conditions by a private vendor in a situation as close as possible to that of the State, only the benefits and obligations linked to the situation of the State as shareholder – to the exclusion of those linked to its situation as a public authority – are to be taken into account'* <sup>(45)</sup>.

<sup>(44)</sup> Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

<sup>(45)</sup> Judgment of 24 October 2013, *Land Burgenland and others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.



- (101) However, Italy contends that State aid rules cannot be applied in a way precluding Member States from adopting measures which are less costly than possible alternatives, merely because such measures may be inseparable from the State exercising its public prerogative. That approach would end up being economically irrational.

#### 4.1.5. Concerning the compatibility of the aid

- (102) Prior to the Opening Decision, the Italian authorities argued that, if the two State loans were to be deemed State aid, they would meet all the compatibility requirements for rescue aid. Alitalia is a firm in difficulty in view of the on-going extraordinary administration procedure (which corresponds to collective insolvency proceedings under the Rescue and Restructuring Guidelines). The Commission noted in the Opening Decision that, since the initial loan was not repaid six months after it was granted, the initial loan cannot be considered compatible as rescue aid, but could only be considered as restructuring aid. Italy, however, did not submit any arguments to claim that the two State loans would be compatible restructuring aid.
- (103) Following the Opening Decision, Italy claimed that the two State loans met all the compatibility requirements for rescue aid. As regards, first, the criterion of appropriateness (point 55 of the Rescue and Restructuring Guidelines), Italy argued that the failure to pay back the initial loan within six months does not infringe the appropriateness condition of the rescue aid since those guidelines exempt the aid from being paid back within that timespan if there is a liquidation plan or restructuring plan. Furthermore, Italy argued that the initial loan and the additional EUR 300 million loan must be treated as a single intervention, meaning the six month period would start to run only as from the disbursement of the additional EUR 300 million loan.
- (104) Second, as regards proportionality (point 60 of the Rescue and Restructuring Guidelines), Italy argued the two State loans were proportional, as they aimed at covering Alitalia's financial needs until the completion of the sales procedure and that the amount needed reflected the extraordinary commissioners' cautious approach to ensure that the Alitalia's assets could be transferred and not undermine the conditions for the repayment of the two State loans. Italy also provided an updated liquidity plan within the meaning of point 60 of the Rescue and Restructuring Guidelines, which in its view, reflected Alitalia's liquidity needs taking into account a number of factors including Alitalia's cash flow from operations, its total net investments, its business characteristics and the risks derived from market fluctuations peculiar to Alitalia.
- (105) Lastly, as regards the criterion concerning negative effects on competition and trade between Member States (under Section 3.6 of the Rescue and Restructuring Guidelines), Italy argued that since being placed under extraordinary administration, Alitalia recorded a decrease in the number of passengers and flights, ceased operations on certain long haul, loss-making, routes, increased the fleet's passenger load factor and achieved significant labour cost savings. Italy also makes reference to the fact that were Alitalia to suddenly stop operations, it would result in negative consequences given the essential role played by Alitalia in the air transport sector in Italy. The two State loans were limited to the minimum to ensure continuity of operations and not allow for Alitalia's expansion beyond that allowed by the Rescue and Restructuring Guidelines.

#### 4.2. Reports and studies provided by Italy concerning Alitalia

- (106) Although Italy has not submitted any *ex-ante* economic assessment of the two State loans prepared by it prior to them being granted, Italy provided various documents prepared by experts and other entities concerning Alitalia's economic situation and business operation. This section describes the main documents provided by Italy concerning Alitalia. Some of the documents were prepared prior to when Alitalia entered the extraordinary administration, so before the two State loans were granted (*ex-ante*), while others were made afterwards (*ex-post*).

#### 4.2.1. *Ex ante studies/documents*

##### 4.2.1.1. The Turnaround Plan

- (107) The Turnaround Plan was prepared in December 2016, in accordance with the requirements of Section 67 of the Italian Bankruptcy Law, when it was clear to Etihad that Alitalia was on the brink of bankruptcy. The Turnaround Plan included a financial and an industrial plan covering a period from 2017 to 2021 as required by the Italian Bankruptcy Law. It aimed at restoring Alitalia's viability by 2021 as a result of: (i) redesigning the network and increasing revenue by circa EUR 900 million per annum <sup>(46)</sup> (notably through an enhancement of the load factor, the development of long haul traffic and ancillary revenues); and (ii) reducing the costs of Alitalia by circa EUR 400 million per annum (cost efficiency measures and reducing Alitalia's headcount <sup>(47)</sup> by [X XXX] and the salaries up to [20-40]%). As well as the cost cutting measures, the Turnaround Plan estimated an equity contribution need of around EUR 1,4 billion, partly from non-cash items such as debt conversions but also partly from fresh capital increase, so as to restructure Alitalia and implement a new business plan. According to the Turnaround plan, if that course of action had been pursued, Alitalia would have reached creditworthiness from 2019 onwards.
- (108) The plan estimated that the net result of Alitalia would increase from EUR – 458 million in 2016 (pre-closing figures) to EUR + 168 million in 2021, while Alitalia's EBITDA would increase from EUR – 176 million in 2016 to EUR + 441 million in 2021.
- (109) The implementation of the plan required the approval of the trade unions due to the cost reductions affecting the work force. However, the Turnaround Plan was voted down in a referendum by the trade unions in April 2017, preventing the implementation of significant cuts in labour costs. It was the rejection of that plan that resulted in Alitalia being placed in extraordinary administration in May 2017.

##### 4.2.1.2. Review of the Turnaround Plan by Roland Berger and KPMG

- (110) At the beginning of 2017, before the referendum, the Turnaround Plan was reviewed by two independent business experts, namely by Roland Berger (on 7 February 2017) and KPMG (15 March 2017) based on the historical trading and the 2016 forecast figures. These experts were commissioned by Alitalia based on an agreed upon scope in order to support the decision making of Alitalia's shareholders and management. Roland Berger was responsible for the review of the industrial plan included in the Turnaround Plan and KPMG for the financial plan.
- (111) Both described the Turnaround Plan as '*ambitious [...] in light of Alitalia's recent history*' and signalled that it was crucial for all stakeholders, in particular trade unions, to be fully committed to that plan.
- (112) KPMG's review highlights the significant financing needed to sustain the plan over a period of several years, the need for full reliance on the realisation of the assumptions on cost savings and revenue generation, and the need to have all stakeholders (including workers) committed to the plan. KPMG furthermore emphasised the sensitivity of the plan in respect of the financial assumption related to the evolution of the revenue/cash-flow through prepaid ticket sales.

##### 4.2.1.3. Certification Report of the Turnaround Plan by Dr Riccardo Ranalli

- (113) Under the Italian Bankruptcy Law, the veracity of the figures provided by Alitalia (reliability) and the feasibility of the Turnaround Plan had to be checked and certified by an independent expert. The purpose of such a review is to ensure that the implementation of the plan will reduce Alitalia's debt and turn around its finances as a result of the proposed financial measures. That certification was carried out by Dr Riccardo Ranalli, a chartered accountant <sup>(48)</sup>.

<sup>(46)</sup> KPMG independent business review of Alitalia's turnaround plan, dated 15 March 2017.

<sup>(47)</sup> Ibid, page 58 of the review by KPMG.

<sup>(48)</sup> [https://www.ranallieassociati.it/dt\\_team/riccardo-ranalli/](https://www.ranallieassociati.it/dt_team/riccardo-ranalli/)

- (114) Dr Ranalli's certification report ('the certification report') lists the causes of Alitalia's crisis referred to in the Turnaround Plan <sup>(49)</sup>:
- (a) the independence of the company [Alitalia] against a backdrop of network carriers that, through the succession of mergers have achieved a critical mass to ensure an adequate level of competition;
  - (b) the large-scale penetration of the domestic market by low-cost carriers compared to other European countries (external cause);
  - (c) a small long-haul market share, despite unfulfilled demand;
  - (d) the inefficient cost structure, which translates into an average CASK <sup>(50)</sup> of EUR [X.X] (resulting from a small-medium haul CASK of EUR [XX.XX] and a long haul CASK of EUR [X.XX]) compared to the average figures of EUR 5,31 by long haul carriers and EUR 8,2 by network carriers (internal cause); and
  - (e) the constraint on the development of long haul business as a result of the Joint Venture agreements regarding the North American routes (internal cause).
- (115) The certification report (dated 28 April 2017) and a comfort letter (15 March 2017) positively certified the Turnaround Plan.

#### 4.2.1.4. The Standstill Agreement

- (116) In January 2017 Alitalia, its main shareholder Etihad Investment Holding Company LLC and the financial creditors of Alitalia agreed on a conditional Standstill Agreement. According to that agreement, *'pending the finalisation of the updated industrial plan and the relevant certification by an independent expert in accordance with Article 76, paragraph 3, point (d) of the Italian Bankruptcy Law (...), the Company [Alitalia] requires time to identify, inter alia, the detailed activities to be carried out under the Industrial plan for the improvement of its equity, financial and commercial condition and to implement the main terms of the Financial Plan'*. The Standstill Agreement, amongst others, required Etihad's granting of EUR 100 million subordinated shareholder loan, which was paid on 27 December 2016.
- (117) During the finalisation of the Turnaround Plan, Alitalia approached its financial creditors and requested a moratorium to meet its financial obligations, on the terms and conditions set out in the Standstill Agreement. The Standstill Agreement lasted until 31 March 2017 and included a weekly liquidity plan until the same date, demonstrating that, as a result of the Standstill Agreement and the actions included therein, the liquidity of Alitalia was ensured until 31 March 2017.

#### 4.2.2. Ex-post studies/documents

##### 4.2.2.1. The Leonardo study

- (118) The extraordinary commissioners engaged an independent advisor, Leonardo & Co, to estimate the expected sales value of Alitalia's operating units as described in recital 60. They sought that estimate as the extraordinary commissioners are bound by law not to sell Alitalia below a market benchmark. The study was commissioned on 14 September 2017. On 16 October 2017 Leonardo & Co sent to the three extraordinary commissioners the results of its study (the 'Leonardo study').
- (119) The Leonardo study dated 16 October 2017 aimed at estimating the sales value of the operating units of Alitalia on 1 May 2017, namely the start of the extraordinary administration. The study examined the value of three possible batches: (i) sale of the aviation business ('Lotto Aviation'); (ii) sale of the ground handling business ('Lotto Handling') and (iii) sale of both batches combined ('Lotto Unico' or 'Single Lot'). The sales value estimate of the Leonardo study is net of the attached liabilities of the assets on sale and excludes the liabilities prior to the extraordinary administration. The valuation methodology used by Leonardo & Co estimates the value of Alitalia with a mixed method combining an asset-based method with a profit-based method. Leonardo & Co considers that method as the most appropriate to estimate the value of a company in economic distress like Alitalia.

<sup>(49)</sup> Comfort letter of Dr Riccardo Ranalli dated 15 March 2017.

<sup>(50)</sup> Cost per available seat-kilometre.

- (120) As a starting point the book value of the assets in the Leonardo study amounts to around EUR 2,5 billion, which corresponds to the book value of the assets to be transferred under the Single Lot i.e. EUR 2 552 million according to the PriceWaterhouseCoopers (PwC) report. The value of those assets is then corrected by the liabilities attached to the assets and to the operation of Alitalia (mostly payables to suppliers) and by a profit correction. That correction is the difference between the expected profitability of the company over the first two years of the business plan and the average profitability of comparable airlines. Since Alitalia was expected to make losses in the first two years of operation, the profit correction is negative, further reducing the estimated sales value.
- (121) To account for the inherent uncertainty in the realisation of the business plan, the Leonardo study considers two scenarios to estimate the possible sale value of Alitalia's operating units. The 'inertial scenario' is drawn up from an inertia point of view, consistent with the 2017 economic and financial situation of Alitalia, and therefore in the absence of growth objectives and typical industrial strategies. The 'renaissance scenario' is based on a business plan drawn up from the point of view of discontinuity from the 2017 situation of Alitalia, providing the recovery of market shares and the profitability in the short to medium term, with the aim of enabling the company to regain a central role in the reference market.
- (122) The Leonardo study estimates the sales price of the Single Lot in the inertia scenario in the range of EUR 280 to EUR 411 million; and in the renaissance scenario the range of EUR 495 to EUR 626 million. The average of the highest and lowest valuation is equal to EUR 453 million.

#### 4.2.2.2. Financials of the three operating batches for sale by PwC

- (123) The extraordinary commissioners contracted PwC to verify the consolidated financials of the Alitalia Group and the carve-out balance sheets of the Aviation, Ground Handling and Single Lot batches on 1 May 2017. Those carve-out balance sheets determined the perimeters of the assets to be transferred in case of the sales of assets of Alitalia and determined which balance sheet items would remain with Alitalia after the sales.
- (124) Those verified financials, as exposed in the draft verification report drawn up on 21 September 2017 by PwC, were then used by Leonardo & Co to estimate the sales price of the batches <sup>(51)</sup>.
- (125) PwC completed and dated its verification report on 31 October 2017.

#### 4.2.2.3. Prices attached in the bids from Lufthansa, EasyJet and Airport Handling

- (126) On 16 October 2017, a number of companies submitted bids for part of Alitalia's business as part of the tender process (see recital 59), including Airport Handling, EasyJet and Lufthansa. This sub-section summarises their main features.
- (127) Airport Handling made a binding bid for Alitalia's ground handling business, offering EUR [XX.X] million with a top-up up to EUR 6,5 million conditional on achieving some targets.
- (128) EasyJet made a binding offer for part of Alitalia's aviation business excluding maintenance and repair services. The offer only values the short haul activity at EUR [XXX-XXX] million. EasyJet submitted in its offer that it preliminarily estimated at EUR [XXX] million the long haul business, whose takeover depended on an unidentified consortium partner. Therefore, there was a total maximum value by EasyJet of EUR [XXX] million.
- (129) The non-binding offer made by Lufthansa considered only part of the Aviation Batch (i.e. [XX] planes out of [XXX] and only [...] of the staff) and amounted to EUR [XXX] million (net of capitalised leases).

<sup>(51)</sup> See Leonardo study, page 3.

#### 4.2.3. Financial reports of Alitalia

- (130) The most recent published statutory accounts of the Alitalia Group are as of 31 December 2015. No statutory financial statements were prepared for 2016 as Alitalia was put under extraordinary administration prior to the acceptance and publishing of the statutory accounts of 2016. However, the pre-closing and the pro-forma financials for the year of 2016 were available, as well as the reports of the key experts preparing *ex-ante* or *ex-post* reports on Alitalia, i.e. KPMG, Roland Berger, Dr Ranalli and PwC. Those experts all relied on the 2016 figures for their analysis. Furthermore, a financial statement was prepared by Alitalia as of 28 February 2017 as required by the Italian bankruptcy law.
- (131) During the extraordinary administration procedure, no statutory financial statements were published. However, the website of the extraordinary administration of Alitalia published limited financial figures, mostly focusing on operating EBITDA and cash-flow (no balance sheet), with irregular intervals <sup>(52)</sup>.
- (132) Although it appears that, except for 2015, none of those financial reports were audited, there is no indication that the figures materially misrepresent the financial situation of Alitalia. In particular, the 2016 figures were certified by Dr Ranalli as part of the Turnaround plan.

### 5. ASSESSMENT OF THE AID

#### 5.1. Existence of aid within the meaning of Article 107(1) TFEU

- (133) By virtue of Article 107(1) TFEU, 'save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects the trade between Member States, be incompatible with the internal market'.
- (134) It follows that, for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: (i) it must be granted by the State and through State resources; (ii) it must confer an advantage upon an undertaking; (iii) it must be selective, i.e. favour certain undertakings or the production of certain goods; and (iv) it must distort or threaten to distort competition and it must affect trade between Member States.

##### 5.1.1. Notion of undertaking

- (135) Alitalia is a private company operating in the air transport sector established in Italy. It is an undertaking for the purposes of Article 107(1) TFEU since it carries out economic activities by offering services on a market <sup>(53)</sup>.

##### 5.1.2. State resources and imputability to the State

- (136) As has been stated by the Court <sup>(54)</sup>, for measures to be qualified as State aid within the meaning of Article 107(1) TFEU, (a) they have to derive from State resources, either directly or indirectly by any intermediary body acting by virtue of powers conferred on it and (b) they have to be imputable to the State <sup>(55)</sup>.
- (137) Since the two State loans result from acts of the Italian Government and the Parliament, they are clearly imputable to the Italian State. In addition, the two State loans were financed from the State budget and were thus clearly granted through State resources.

<sup>(52)</sup> Limited financial information was published by the extraordinary commissioners as of 2 May 2017, 31 December 2017, 31 March 2018, 30 June 2018 and 30 September 2018 on the website of the Alitalia Extraordinary Administration. On 27 March 2019, the extraordinary commissioners published a presentation, which included some financial figures as of 31 December 2018.

<sup>(53)</sup> Judgment of 16 June 1987, *Commission v Italy*, 118/85, EU:C:1987:283, paragraph 7.

<sup>(54)</sup> Judgment of 16 May 2002, *France v Commission (Stardust Marine)*, C-482/99, EU:C:2002:294.

<sup>(55)</sup> Judgment of 14 October 1987, *Germany v Commission*, C-248/84, EU:C:1987:437, paragraph 17.

### 5.1.3. *Selectivity*

- (138) To be considered State aid, a measure must be selective in that it favours only certain undertakings or the production of certain goods.
- (139) The two State loans were granted to a single company, Alitalia. Thus, they were granted on an *ad hoc* basis to a single company and were not available to other companies active in the Italian air transport sector which are in a comparable legal and factual situation, or in other sectors. No comparable companies were eligible for measures similar to those granted to Alitalia and thus no such companies received a comparable financing. The two State loans therefore are selective.

### 5.1.4. *Advantage*

- (140) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention <sup>(56)</sup>.
- (141) According to the case law of the Union Courts, economic transactions carried out by public bodies do not confer an advantage on their counterpart, and therefore do not constitute State aid within the meaning of Article 107(1) TFEU, if they are carried out in line with normal market conditions <sup>(57)</sup>. In order to determine whether a transaction has been carried out under those conditions, the Commission applies the Market Economy Operator test (the 'MEO test'). That test has been developed with regard to different economic transactions. The Commission will first examine whether the MEO test is applicable and, if so, will then apply it to the two State loans.

#### 5.1.4.1. Applicability of the market economy operator test

- (142) In the present case, the Commission must examine whether the MEO test is applicable. Should the Commission determine that the MEO test is not applicable to the two State loans, it need not apply that test. The Commission may then simply conclude that Alitalia obtained an economic benefit which it could not have obtained under market conditions, and thus an advantage within the meaning of Article 107(1) TFEU.
- (143) Before assessing applicability, however, since there are two State loans (the initial loan and the additional EUR 300 million loan), the Commission must assess whether those loans are separable for the purposes of assessing applicability or whether they constitute a single intervention. If they are separable, each loan would have to be assessed separately, in particular in respect of the applicability of the MEO test. If, by contrast, they were found to constitute a single measure, the Commission need only carry out one single assessment of the two State loans in that respect.

##### 5.1.4.1.1. The two State loans as a single measure

- (144) In line with the Commission's decisional practice, a series of State interventions which take place in relation to the same undertaking in a relatively short period of time, are linked to each other, or were all planned or foreseeable at the time of the first intervention, may be assessed as one intervention. On the other hand, when the later intervention was a result of unforeseen events at the time of the earlier intervention the two measures should normally be assessed separately <sup>(58)</sup>.

<sup>(56)</sup> Judgment of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; judgment of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

<sup>(57)</sup> Judgment of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraphs 60 and 61.

<sup>(58)</sup> Commission Decision of 19 December 2012 in Case SA.35378 Financing of Berlin Brandenburg Airport, Germany (OJ C 36, 8.2.2013, p. 10), recitals 14 to 33.

- (145) When assessing whether the two State loans constitute a single intervention, the Commission takes account of (i) the chronology of the two State loans in question; (ii) their purpose; and (iii) the undertaking's (financial and risk) situation at the time when the decision to grant each of the two State loans was made <sup>(59)</sup>.
- (146) In the Commission's view, the initial loan and the additional EUR 300 million loan should be considered, for the purpose of assessing applicability, to be a single measure.
- (147) In the first place, on the chronology of the loans in question, the two of them were granted in quick succession: the initial loan was granted on 2 May 2017 and then, less than six months later, the additional EUR 300 million loan was granted on 16 October 2017. Moreover, Italy changed the maturity dates of those loans by a series of short prolongations (see recitals 19 and 30) before it finally synchronised and, *de facto*, merged them into a single measure (see recitals 31 and 32).
- (148) In the second place, as is clear from recitals 17 and 19, the two State loans were granted with a specific purpose in mind, namely guaranteeing the continuity of air transport services by Alitalia until the extraordinary commissioners could complete the programme with which they had been invested by the Minister of Economic Development, namely the restructuring of Alitalia or the sale of its assets. They were granted by the Italian State and there was no attempt to seek financing from other sources.
- (149) Decree-Law 148/2017 explicitly states that the additional EUR 300 million loan was to be granted as an increase to the initial loan (see recital 19). Furthermore, the financing was described by the Italian authorities as a single measure in the notification to the Commission, where they also explained that the aid was paid in three instalments <sup>(60)</sup>. That description is also confirmed in the subsequent submissions of the Italian authorities <sup>(61)</sup>.
- (150) The terms and conditions of the two State loans are identical apart from the amount and the initial duration; moreover, the granting decree of the additional EUR 300 million loan refers to the granting decree of the initial loan, stating that the '*financing is increased*'. The two State loans were, in effect, merged into a single measure as a result of the synchronisation of their maturity dates (see recitals 30, 31 and 32).
- (151) In the third place, as regards Alitalia's financial situation and risk profile at the time when the decision to grant each of the two State loans was taken, they were, in essence, the same. A comparison of the financial situation and risk profile is set out in detail in Section 5.1.4.2. However, for the sake of completeness, the Commission observes that Alitalia's financial situation and risk profile when the two State loans were granted were as follows:
- (a) Alitalia was insolvent and under extraordinary administration. Accordingly, nothing changed in terms of the legal regime under which it was operating;
  - (b) the terms and conditions of the two State loans were the same, apart from the loan amount and the maturity dates. This demonstrates that the risk profile was essentially the same from Italy's point of view;
  - (c) although Alitalia did have EUR 545 million in available cash when the additional EUR 300 million loan was granted, that was mainly cash made available through the initial loan and not, to any significant extent, the result of cost savings or increased revenues. Alitalia was unable to generate positive cash flows to finance its activities and was reliant on external funding to finance its loss-making operations (see recital 228).
- (152) Furthermore, when the initial loan was granted, in the light of Alitalia's projected liquidity needs when it was placed in extraordinary administration, it was foreseeable that further financing would be needed if the sale or restructuring did not take place within six months (see recitals 246 to 248).

<sup>(59)</sup> Judgment of 19 March 2013, *Bouygues and Bouygues Télécom v Commission and Others*, Joined Cases C-399/10 P and C-401/10 P, EU:C:2013:175, paragraph 104; judgment of 13 September 2010, *Greece and Others v Commission*, Joined Cases T-415/05, T-416/05 and T-423/05, EU:T:2010:386, paragraph 177; judgment of 15 September 1998, *BP Chemicals v Commission*, T-11/95, EU:T:1998:199, paragraphs 170 and 171.

<sup>(60)</sup> Section 5.5 of the notification form.

<sup>(61)</sup> See, among others, point (1) letter b) of the letter sent by Italy to the Commission on 24 January 2018 and point (6) of the letter of 25 May 2018.

- (153) In fact, the Commission is of the view that Italy's unique aim was to provide sufficient financing to keep Alitalia operating until its assets could be sold. This view is based on the following elements:
- (a) the statements by various government ministers (see recitals 51 et seq.);
  - (b) Italy's arguments confirming that Alitalia was systemically important to the entire air transport sector of Italy to the effect that the government viewed it as too big to fail;
  - (c) the quasi-automatic coverage of Alitalia's cash needs and the automatic prolongation of maturity dates of the two State loans and extension of the sales proceedings;
  - (d) the fact that, since the initial loan was granted, Italy has never explicitly acted in such a manner as to recoup its investment or even entertained the possibility;
  - (e) Italy has not sought early repayment of the two State loans. Nor has it triggered liquidation or sought, at the very least, not to prolong the maturity of the two State loans in the absence of any study assessing the change in the likelihood of repayment of the two State loans when those loans were to be repaid;
  - (f) interest due on the two State loans at their maturity date has not been paid as a result of systematic postponement of the maturity of the two State loans and, indeed it ceased accruing from 31 May 2019.
- (154) Accordingly, the Commission considers the two State loans to constitute a single measure for the purposes of this decision.
- (155) The Commission will examine applicability on two grounds, assessing (i) whether Italy submitted sufficient *ex-ante* evidence showing that it acted as an economic operator and (ii) whether the State acted as a public authority rather than as economic operator when granting the two State loans.
- (156) Notwithstanding the abovementioned conclusion that the two State loans are not separable, even if the two State loans were treated as two separate measures the Commission's analysis of applicability set out below would apply *mutatis mutandis*.

#### 5.1.4.1.2. Italy acted as public authority and not as a market economy operator

- (157) The Commission considers that the MEO test is not applicable in the present case. Indeed, on the basis of all available evidence, Italy has acted steadfastly in its capacity as public authority to save Alitalia from bankruptcy and keep it operating.
- (158) As a preliminary remark, the Commission recalls that the Court has considered that the applicability of the MEO test ultimately depends on a State having conferred, in its capacity as shareholder and not in its capacity as a public authority, an economic advantage to an undertaking belonging to that State <sup>(62)</sup>. Interventions by the State which are intended to honour its obligations as a public authority cannot be compared to those of a private investor in a market economy <sup>(63)</sup>.
- (159) In order to determine whether the two State loans granted by the State represent the exercise of State authority or whether they are the consequence of obligations that the State must assume as shareholder, the Commission will examine not only the form of those loans but also (i) their nature and subject matter, (ii) the context in which they are taken, (iii) the objective pursued, and (iv) the rules to which the two State loans are subject.
- (160) If the State's intervention, having regard to its nature and subject matter and taking into account the objective pursued, is not an investment which may be made by a private investor, it would constitute intervention by the State as a public authority, thus precluding application of the MEO test <sup>(64)</sup>.

<sup>(62)</sup> Judgment of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraphs 79-82 and 87.

<sup>(63)</sup> Judgment of 15 December 2009, *EDF v Commission*, T-156/04, EU:T:2009:505, paragraph 228.

<sup>(64)</sup> See, to that effect, judgment in *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraphs 30, 86 and 87.



*The nature and subject matter of the measure*

- (161) As described in Section 2.1, the measure in question consisted of the two State loans granted by Italy to Alitalia on 2 May 2017 and 16 October 2017, respectively.

*The context of the measure*

- (162) From the outset, the State acted consistently and clearly in its capacity as public authority to save Alitalia from being liquidated, a fact also acknowledged in public statements by various government ministers (see Section 2.5), and not as a shareholder investing in a company or as a creditor.
- (163) Alitalia has been continuously and heavily loss-making in the period since being acquired by CAI in 2008. Alitalia's shareholders' attempts to put Alitalia back on track through the Turnaround Plan failed because of workers' rejection of that plan on 26 April 2017, which led to it being placed under extraordinary administration (see recitals 41 et seq.). Alitalia has continued to lose money while in extraordinary administration.
- (164) After the rejection of the Turnaround Plan but prior to being placed under extraordinary administration, there is no evidence that any investor was willing to step in and acquire Alitalia as a going concern, even for a nominal price. Nor is there any evidence that financial institutions were ready to provide significant loan facilities to allow sufficient liquidity for it to keep operating.
- (165) When the two State loans were granted, Alitalia was an undertaking in difficulty within the meaning of the Rescue and Restructuring Guidelines and had little prospect of becoming profitable in the near to medium term (see recitals 41, 66 and 218 to 229).

*The objective pursued*

- (166) The express purpose of putting Alitalia under extraordinary administration was to ensure the continuity of transport services provided by Alitalia and to preserve the value of its assets.
- (167) As an insolvent company, Alitalia was, in essence, frozen out of the credit markets and, due to its immediate and longer term liquidity problems, was dependent on the Italian State, which provided the two State loans.
- (168) As described in detail in Section 2, the initial loan was granted with the principal aim of avoiding interruption of the service provided by Alitalia, allowing it to maintain domestic and international flight connections, thus preventing both social hardships and serious inconvenience for users. Italy also claimed that such an interruption would entail infringing, inter alia, the right to territorial continuity within Italy guaranteed by the Italian Constitution. The additional EUR 300 million loan was granted for the same reason, as well as to facilitate the divestiture of Alitalia's assets. The objective of placing of Alitalia under extraordinary administration and the objective of the two State loans appear not to be different in essence.
- (169) This assessment is further supported by the public declarations of government ministers rendered both before the initial loan and the EUR 300 million loan were granted (see Section 2.5), namely that the government's main concern was preventing the sudden interruption of air transport services and the direct and indirect repercussions entailed by such an exit. They include the effect on Italy's economy and the alleged aim of preventing further losses to the taxpayer. According to those statements, the purpose was to give the extraordinary commissioners breathing room to find a buyer. That goal is reflected in the relevant legislation granting the two State loans and in Italy's own submissions (see recital 78 et seq.), according to which those loans were needed for Alitalia's management needs, to avoid the interruption of services and the social hardship and inconvenience entailed.

- (170) The contemporaneous statements from members of the Italian government at the material time (see Section 2.5) support the view that the grounds on which Italy granted the two State loans were not those of a market economy operator. Instead, the objective underlying the decision to grant the two State loans were that '*stopping airplanes on the ground is not imaginable because the connections would be compromised and the travellers would be hurt*' <sup>(65)</sup>, that '*We cannot [let it] fail from morning to night because we would no longer have connections from one part of the country to the other*' <sup>(66)</sup> and the '*putting the planes on the ground from morning to night would cost Italian taxpayers much more*' <sup>(67)</sup>.
- (171) As set out in Section 4.1, Italy explained in detail the disruption that would be occasioned by Alitalia exiting the market, citing, in that respect, the number of passengers who had booked and the number of tickets which had been issued.
- (172) Having examined the above elements, the Commission considers that the main purpose of the two State loans was to ensure that Alitalia kept operating for reasons of public policy rather than the financial interests of the State as a market economy operator. As such, any prospect that the State would make profit in connection with the two State loans, even in the long term, if that could be demonstrated, was merely incidental to the decision to grant the two State loans.
- (173) Furthermore, the Court has held that ensuring the continuity of transport services provided by an undertaking is a consideration which a private investor would not take into account <sup>(68)</sup>.
- (174) In addition, the maturity dates of the two State loans were regularly postponed and, at the same time, the State also postponed the obligation of payment of interest by Alitalia to those new maturity dates. As a result of the Growth Decree-Law, interest ceased to accrue on the two State loans from 31 May 2019. This moreover shows that the interest rate value of 6-month Euribor + 10 % which Italy argues demonstrated that it acted as an MEO (see recital 95) is merely artificial, as the State – as a lender – never received remuneration for either its liquidity cost or the credit risk related to Alitalia that a market economy lender would have sought to cover. This together with the absence of an *ex-ante* study submitted by Italy showing the State had a financial interest to grant those prolongations and payment of interest relief instead of going forward with the counter-factual scenario shows that the State acted in its public power remit as regards Alitalia. That behaviour, namely granting those postponements without specific *ex-ante* study, failing to claim payment of the interest, eventually putting an end to the accrual of that interest from 31 May 2019, is not in line with that of an MEO but demonstrates the interest of a public authority to maintain the continuity of transport service provided by Alitalia.

*The rules to which the measure is subject*

- (175) The two State loans at issue are *sui generis* and *ad hoc*. Specific decree-laws were adopted to provide for the grant of those loans and their subsequent prolongations and *de facto* merging into a single measure. The two State loans were financed from the budget allocated to the Minister of Economic Development. Furthermore, specific ministerial decrees provided for the disbursement of those loans.
- (176) The money for those loans accordingly came from the general State budget.

*Conclusion*

- (177) In conclusion, it must be noted that the measure presents, in view of its nature and subject matter, the context in which it was taken, its objective and the rules to which it is subject, the characteristics of an act within the prerogatives of public authority of Italy. Consequently, the private investor test cannot be applied to it.

5.1.4.1.3. Lack of a MEO test by Italy

- (178) The Court has held that 'the applicability of the private investor test ultimately depends [...] on the Member State concerned having conferred, in its capacity as shareholder and not in its capacity as public authority, an economic advantage on an undertaking belonging to it' <sup>(69)</sup>.

<sup>(65)</sup> See recital 51.

<sup>(66)</sup> See recital 52.

<sup>(67)</sup> See recital 54.

<sup>(68)</sup> Judgment of 19 December 2019, *Arriva Italia and others*, C-385/18, EU:C:2019:1121, paragraph 73.

<sup>(69)</sup> Judgment of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 81.

- (179) Where a Member State relies on the MEO test during the administrative procedure, that Member State '[m]ust establish unequivocally and on the basis of objective, verifiable and contemporaneous evidence that the measure implemented falls to be ascribed to the State acting as shareholder and is based on the requisite prior economic evaluations' <sup>(70)</sup>. That evidence must show clearly that the Member State concerned took the decision to make an investment before or at the same time as conferring the economic advantage based on a reasoned assessment demonstrating a market rate of return as a result of the measure actually implemented.
- (180) Furthermore, 'in order to assess whether the same measure would have been adopted in normal market conditions by a private investor in a situation as similar as possible to that of the State, only the benefits and obligations linked to the situation of the State as shareholder – to the exclusion of those linked to its situation as a public authority – are to be taken into account' <sup>(71)</sup>. It follows that the roles of the State as shareholder of an undertaking, on the one hand, and of the State acting as a public authority, on the other, must be distinguished.
- (181) In that regard, it may be necessary to produce evidence showing that the decision is based on economic evaluations comparable to those which, in the circumstances, a rational private investor in a situation as close as possible to that of the Member State would have had carried out, before making the investment, in order to determine its future profitability.
- (182) As recalled by the General Court <sup>(72)</sup>, 'whilst it is for the Commission to apply the private investor test and to request the Member State concerned to provide it with all relevant information to that end, it is the responsibility of that Member State or [...] the public undertaking concerned to provide evidence showing that it conducted a prior economic evaluation of the profitability of the measure in question, comparable to that which a private investor would have had carried out in a similar situation'.
- (183) The Court has further held that 'for the purposes of showing that, before or at the same time as conferring the advantage, the Member State took that decision as a shareholder, it is not enough to rely on economic evaluations made after the advantage was conferred, on a retrospective finding that the investment made by the Member State concerned was actually profitable, or on subsequent justifications of the course of action actually chosen' <sup>(73)</sup>.
- (184) Italy has failed to meet the minimal evidentiary standard for demonstrating that the MEO test is applicable in the present case.
- (185) As noted in recital 83, despite the Commission's repeated requests, Italy failed to submit any documentary evidence that it had carried out an assessment prior to granting the two State loans of the potential return on investment of those loans. Nor did it submit its assessment of the likelihood of the repayment together with the associated interest from Alitalia's own resources or from the sales proceeds of Alitalia itself, and of the risk of non-repayment. This is true as regards both the initial loan and the additional EUR 300 million loan.
- (186) Although, as pointed out in Section 4.2, Italy has submitted various reports and information about Alitalia available before the two State loans were granted, prepared for purposes other than the economic assessment prior to the granting of the two State loans, those reports and information do not even demonstrate the mere likelihood of repayment, nor meet the standard laid down by the Union Courts of acceptable evidence of an *ex-ante* evaluation of the profitability of the two State loans.

<sup>(70)</sup> Judgments of 16 January 2018, *EDF v Commission*, T-747/15, EU:T:2018:6, paragraph 142 and of 19 December 2019, *Arriva Italia and others*, C-385/18, EU:C:2019:1121, paragraph 48.

<sup>(71)</sup> Judgments of 19 December 2019, *Arriva Italia and others*, C-385/18, EU:C:2019:1121, paragraph 47 and of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 79 and the case-law cited. See also judgment of 10 December 2020, *Comune di Milano v Commission*, C-160/09 P, EU:C:2020:1012, paragraph 106.

<sup>(72)</sup> Judgment of 25 June 2015, *SACE and Sace BT v Commission*, T-305/13, EU:T:2015:435, paragraph 184.

<sup>(73)</sup> Judgment of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 85.

- (187) Furthermore, the Italian authorities were not able to prove the existence of a document, drawn up before or contemporaneously to the decision to grant either loan, which would constitute a business plan, a profitability assessment consisting notably of an economic assessment covering likelihood of repayment and appropriateness of pricing of the two State loans. There is no indication that the Italian administration, government, or members of parliament examined and discussed a business plan or the profitability of the two State loans before adopting the administrative and legislative provisions granting the two State loans.
- (188) Italy has therefore failed to meet the standard of proof requiring the Member State to show, unequivocally and on the basis of objective and verifiable evidence established before or at the same time as the decision to confer the economic advantage, that the measure falls to be ascribed to the State acting as a market operator and thus to discharge the evidentiary burden on it for the MEO test to be applicable in respect of the two State loans.

#### 5.1.4.1.4. Applicability assessment of the EUR 300 million loan

- (189) As stated in recital 154, the Commission considers the two State loans to constitute one single measure for assessing applicability. Nevertheless, were the additional EUR 300 million loan to be examined separately, in the Commission's view, the MEO test would still not be applicable.
- (190) The additional EUR 300 million loan was granted with much the same purpose as the initial loan, the main difference being that, by that time, the Italian authorities had opted to sell Alitalia's assets rather than restructure it (see recital 59).
- (191) According to Italy, it was provided, inter alia, to enable the successful completion of the sales procedure. As set out in recital 20, it should be recalled that the additional EUR 300 million loan was granted to guarantee fulfilment of transport obligations pending the divestment of assets. In that connection, the contemporaneous ministerial statements also show that Italy's primary interests were not those of a market economy operator, since the then Minister of Infrastructures and Transport declared: *'we don't want to sell Alitalia off cheaply, but sell it. We look at what happened to Air Berlin, acquired by Lufthansa: they have halved the number of planes and personnel. But breaking a core business is always a defeat for everyone'* <sup>(74)</sup>. As can be inferred from that statement, the implications of the sale carried out on market terms, namely Lufthansa's acquisition of Air Berlin, had negative social consequences in terms of employment, which no market economy operator would take into consideration. Accordingly, although the stated purpose of the EUR 300 million loan was to enable the completion of the sales process, the decision of the government was influenced by considerations extraneous to those of a market economy operator.

#### 5.1.4.1.5. Italy's arguments relating to applicability of the MEO test and the Commission findings

- (192) It can be inferred from what precedes that the principal purpose of the two State loans was to ensure that Alitalia keeps operating for reasons of public policy rather than the financial interests of the State as a market economy operator. As such, any prospect that the State would profit even in the long term, if that could be demonstrated, was merely incidental to the decision to grant the two State loans.
- (193) Italy claimed that the initial loan was to address Alitalia's urgent management needs and avoid interruption of service, leading potentially to serious societal problems. The Commission considers that these are again elements that no lender would have taken into consideration.
- (194) In that regard, Italy argues that Alitalia's shareholders were dispossessed once it was placed under the extraordinary administration procedure and managed by three extraordinary commissioners, who have taken over, as public officials, control of Alitalia in extraordinary administration. As such, Italy claims that its interest in Alitalia's outcome is equivalent to that of a shareholder.

<sup>(74)</sup> [https://www.repubblica.it/economia/2017/10/15/news/graziano\\_delrio\\_bus\\_treni\\_e\\_piu\\_metro\\_un\\_piano\\_da\\_30\\_miliardi\\_per\\_ri\\_lanciare\\_i\\_trasporti\\_-178383342/](https://www.repubblica.it/economia/2017/10/15/news/graziano_delrio_bus_treni_e_piu_metro_un_piano_da_30_miliardi_per_ri_lanciare_i_trasporti_-178383342/)

- (195) The Commission cannot accept that argument. By placing Alitalia in extraordinary administration, Italy acted in the exercise of its regulatory State powers to preserve the value of assets of an undertaking faced with the risk of bankruptcy and not as a market economy operator. By doing so, Italy unilaterally, by a *sui generis* provision (see recital 18), changed the priority ranking of Alitalia's creditors, which is an action not comparable with actions that private persons can undertake. The change in priority meant that the loan repayment took priority over any other debts under Alitalia's extraordinary administration. Only the State has the power to subordinate all existing claims (including senior debt) to the newer ones, such a power not being available to private creditors, or private persons in general. In that regard, Italy's actions as a public authority are indissociable from its actions as the grantor of the loans. Italy exercised its public power in an attempt to create a favourable investment situation immediately after using that power, a power no market economy operator would enjoy <sup>(75)</sup>.
- (196) Second, Italy itself confirms that the interests which the extraordinary commissioners must take account of, by law, cover a wide range of stakeholders such as creditors, customers, workers and suppliers – rather than solely its shareholders.
- (197) Italy claims that it acted as a market investor in providing the two State loans since, had it not intervened, the State would have been liable for EUR 1,3 billion due to (i) costs linked to unemployment; (ii) costs linked to Alitalia's liquidation including the public order costs linked to emergency management at airports and the compensation owed to passengers; and (iii) negative spill-over effects on suppliers. Moreover, the State would have suffered losses because of unpaid taxes.
- (198) However, those considerations prove precisely the opposite of Italy's claim, namely that Italy's objective was to maintain Alitalia's operation, regardless of the cost, taking primarily into consideration elements that a market economy operator would not take into account.
- (199) As the Court has stated, in order to assess whether the same measure would have been adopted in normal market conditions by a private operator in a situation as close as possible to that of the State, only the benefits and obligations linked to the situation of the State as a private operator, to the exclusion of those linked to its situation as a public authority, are to be taken into account <sup>(76)</sup>.
- (200) In respect of costs linked to unemployment, in line with the Court's settled case-law, the costs incurred by the State as a result of redundancies, unemployment benefits and aid for the restructuring of the industrial infrastructure <sup>(77)</sup> Should not be considered as relevant for a market economy operator.
- (201) As regards the unpaid taxes, the same principle applies: the State in levying taxes is exercising a public prerogative. In that regard, in order to determine whether measures taken by the State represent the exercise of State authority or whether they are the consequence of obligations that the State must assume as shareholder, it is important not to look at the form of those measures, but at their nature, their subject-matter and the rules to which they are subject, while taking into account the objective pursued <sup>(78)</sup>. In the present case, unpaid taxes would constitute losses that, in the normal circumstances, Italy would incur in its capacity as a State and not those of a shareholder of Alitalia. Preventing unpaid taxes was, therefore, not a consideration which the State could make as Alitalia's creditor or shareholder.

<sup>(75)</sup> See recital 155 of Commission Decision (EU) 2018/1498 of 21 December 2017 on the State aid and the measures SA.38613 (2016/C) (ex 2015/NN) implemented by Italy for Ilva S.p.A. in Amministrazione Straordinaria (OJ L 253, 9.10.2018, p. 45).

<sup>(76)</sup> Judgments of 6 March 2018, *Commission v FIH Holding and FIH Erhvervsbank*, C-579/16 P, EU:C:2018:159, paragraph 56, of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 79 and the case-law cited, and of 24 October 2013, *Land Burgenland and others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682, paragraph 52.

<sup>(77)</sup> Judgments of 6 March 2018, *Commission v FIH Holding and FIH Erhvervsbank*, C-579/16 P, EU:C:2018:159, paragraph 56, of 14 September 1994, *Spain v Commission*, C-278/92 to C-280/92, EU:C:1994:325, paragraph 22, and of 19 December 2019, *Arriva Italia and others*, C-385/18, EU:C:2019:1121, paragraph 73.

<sup>(78)</sup> See, to that effect, judgment of 19 January 1994, *SAT Fluggesellschaft*, C-364/92, EU:C:1994:7, paragraph 30.

- (202) As regards the costs linked to Alitalia's liquidation including the public order costs linked to emergency management at airports and the compensation owed to passengers that Italy claims would be borne by the State, these are costs which Italy would assume in its capacity as public authority and, in line with the abovementioned case-law, cannot be taken into consideration when assessing the applicability of the MEO test.
- (203) Lastly, no private investor or creditor would take account of the negative spill over effects on an undertaking's third party suppliers when deciding to provide financing to that undertaking.

*Conclusion on the applicability of the MEO test*

- (204) On those grounds, the Commission considers that the MEO test is not applicable in respect of the two State loans since (i) by providing the two State loans to Alitalia, Italy was clearly acting in its capacity as a public authority and (ii), in any event, Italy has failed to discharge the burden of proof as it has not carried out an *ex-ante* assessment of the expected profitability of the two State loans, nor has it assessed if the expected profitability was in line with market conditions.

5.1.4.2. Application of the market economy operator test

- (205) Without prejudice to the assessment in Section 5.1.4.1, in which the Commission concludes that the MEO test is not applicable, the Commission considers, by way of a subsidiary line of reasoning, that even if the MEO test were applicable, the two State loans conferred an economic advantage to Alitalia.

5.1.4.2.1 Information sources

- (206) As noted in recital 106, although Italy has not carried out an *ex-ante* assessment concerning the measures, there were a number of documents and reports available to Italy, which could have served as the basis of an MEO test of the two State loans granted in favour of Alitalia.
- (207) Section 4.2.1 lists the main *ex-ante* sources of information provided by Italy, which were, in its opinion, relevant for an MEO assessment and were available prior to granting the initial loan. As already explained in Section 5.1.4.1, none of those documents was prepared to assess the economic rationale (profitability and the risk related to the repayment) of the initial loan or of the subsequent EUR 300 million loan. Therefore, none of those documents performs the required *ex-ante* MEO assessment that a market operator would have performed before granting the loans (i.e. assessing if the two State loans and their conditions could be on market terms so that a market economy operator would have granted them). However, the information contained in those documents could have been used by Italy, at the time of granting the initial loan and the subsequent loan, to perform its *ex-ante* MEO assessment. The Commission will use those documents to carry out its MEO test for the two State loans.
- (208) Furthermore, the Commission, to fully discharge its investigative duty, will also take into account and assess other information that could be used to check if the two State loans provided an advantage to Alitalia. The other information it will use for that purpose are those reports that became available to Italy after the granting of the initial loan (the '*ex-post* studies' described in Section 4.2.2), the information submitted by the various parties that intervened in the formal investigation and the information collected by the Commission from publicly available sources.

5.1.4.2.2 The rationale of the MEO test applied to the two State loans

- (209) To assess whether the two State loans provided an economic advantage to Alitalia the Commission has to check whether a hypothetical MEO (in this case a 'private lender') in the same situation would have granted those two loans at the same conditions <sup>(79)</sup>. That assessment entails the following steps. First, there must be an assessment of the creditworthiness of Alitalia, that is, an assessment of Alitalia's capacity to repay that debt obligation. Second, if Alitalia is deemed to be creditworthy, the assessment has to check if the conditions of the two State loans are in line with the conditions of comparable transactions in the market. That assessment would compare the conditions of the two State loans (interest rates, collateral, seniority, maturity, repayment schedule) with the conditions that a private lender would have granted for comparable loans.

<sup>(79)</sup> Judgments of 22 November 2007, *Spain v Commission*, C-525/04 P, EU:C:2007:698, of 24 January 2013 *Frucona Košice v Commission*, C-73/11 P, EU:C:2013:32, and of 29 June 1999, *DM Transport*, C-256/97, EU:C:1999:332.

- (210) Furthermore, the economic considerations of the MEO could differ depending whether it has any existing exposure to the borrowing company. The Commission will assess the prior exposure of the Italian State to Alitalia. As it will be shown (see recital 239) that prior exposure was not relevant for the MEO assessment of the two State loans. The Commission therefore considers that a standalone assessment of the two State loans is the one that a market economy operator, namely a lender, would have pursued in the position of the Italian State.
- (211) After describing the financial situation of Alitalia at the time of the initial loan, the following sections set out and apply the MEO test in three different scenarios, namely a restructuring scenario with continued operation of Alitalia, a sales scenario in which Alitalia or its operating assets are sold in operation to a third party, and, to the extent possible, a liquidation scenario, when the assets are sold under liquidation.
- (212) The Commission's MEO assessment also considers two options: the two State loans as separate measures and the two State loans as a single measure. This is without prejudice to the Commission's conclusion, set out in Section 5.1.4.1.1, that the two State loans constitute a single measure.

#### 5.1.4.2.3. Assessment of the initial loan

##### *Introduction*

- (213) A market economy lender, at the time of granting the initial loan, would have compared the following two amounts:
- (1) The EUR 630 million debt repayment at the six-month maturity, which is the sum of the amount of the principal (EUR 600 million) and the amount equivalent to 10 % interest for a six-month period; and
  - (2) the expected cash available to Alitalia at the six-month maturity of the loan.
- (214) A necessary condition for the initial loan to be in line with market conditions is that the latter amount (under point 2 above) is greater than the former amount (under point 1 above). In other words, it should be assessed whether a market economy lender would expect Alitalia to generate enough cash to repay the loan plus interest at the 6 months maturity <sup>(80)</sup>.
- (215) In addition, a market economy lender would have also assessed the riskiness of the initial loan, which depends on characteristics, such as seniority, maturity and collateralization, as well as the financial situation of Alitalia. Based on that assessment, a market economy lender would have decided on the interest rate of the loan reflecting the riskiness of the loan. Therefore, another necessary condition for the loan to be in line with market conditions is that the 10 % interest rate should reflect the riskiness of the loan.
- (216) Furthermore, at the time of granting the initial loan on 2 May 2017, a market economy lender would have considered that the options available to the extraordinary commissioners were the following: 1) to restructure Alitalia; or 2) to sell Alitalia either as a going concern or as an asset sale. A market economy lender would have also assessed the following elements regarding the financial situation of Alitalia: its past financial performance, its assets and liabilities and its expected future cash flows.
- (217) In the following subsections, the Commission reconstructs the assessment that a market economy lender would have carried out before granting the initial loan. The Commission first presents Alitalia's financial situation at the time of the initial loan and then, for each of the three scenarios described in recital 211, assesses if the initial loan was in line with market conditions by verifying whether the necessary conditions described in recitals 214 to 216 are satisfied.

<sup>(80)</sup> Given the super senior status of the loan at the time of granting and the freeze of all Alitalia's pre-existing debt due to the extraordinary administration procedure, the market economy lender had first recourse on the sale proceeds. The Commission notes that the initial loan lost its super senior status, following the modifications introduced by the Growth Decree Law of 30 April 2019.

#### 5.1.4.2.3.1. Alitalia's financial situation at the time of the initial loan

- (218) The historical financial performance of Alitalia and its situation at the time of the start of the extraordinary administration and of the granting of the initial loan, is properly described, by its own shareholders, in the Turnaround Plan (described in Section 4.2.1.1) and by the financial report of 28 February 2017. The Turnaround plan was prepared by Alitalia's shareholders in December 2016 to illustrate their proposal for an internal restructuring of the company (see recitals 107 to 109) and it contains (in addition to the plan to turn Alitalia around between December 2016 and 2021) a detailed analysis of the financial performance of Alitalia in the period between 2009 and 2015.
- (219) The Turnaround plan shows that during the period 2009-2012 under the shareholding of CAI (the consortium that bought the assets of the bankrupt Alitalia Linee Aeree Italiane in 2008), Alitalia reported cumulative losses for EUR 800 million. Those losses triggered the adoption of a new three year (2013-2016) 'Strategic Plan' that had the objective of recovering profitability. However, that plan did not prove successful and Alitalia recorded EUR 569 million of losses in 2013 and EUR 578 million of losses in 2014 <sup>(81)</sup>.
- (220) The Turnaround plan reports that in the period 2009-2014 Alitalia recorded almost EUR [more than 1 billion] of losses including a cumulated negative operating cash flow of almost EUR [less than 1 billion]. Over that period overall, Alitalia needed a capital injection of EUR 1,5 billion and a further subscription of debt for EUR 1,2 billion. It is noteworthy that the Turnaround plan also indicates that in the period 2010-2013 the airline industry in aggregate was growing and recording positive profits <sup>(82)</sup>. Therefore, the Commission considers that those negative results for Alitalia appear to be specific to the company rather than being the results of negative macroeconomic developments.
- (221) The Turnaround plan also indicates that it was that unsustainable situation that led to the search of a new industrial and financial partner to bring Alitalia back to long-term viability. That partner was Etihad, which acquired 49 % of Alitalia in January 2015. From January 2015 the new company Alitalia-SAI became functional.
- (222) However, that attempt with Etihad to stabilize Alitalia failed. In December 2016, the shareholders of Alitalia-SAI concluded that, after the entry of Etihad, between January 2015 and December 2016, the company reported a cumulative net loss of EUR [500-800] million for the two years <sup>(83)</sup>. That cumulated loss is equivalent to a EUR [250-500] million loss on an annual basis, a value in line with the annual reported losses in the period 2009-2014. However, if the non-recurring items (mostly one-off revenue) is not considered, the loss amounts to EUR [more than 1 billion] <sup>(84)</sup>. Overall, such considerable amount of losses indicates also the failure of the Alitalia-SAI's venture between 2015 and 2016.

Table 2

#### Selected figures of Alitalia Group

[...]

- (223) The repeated failures of the past attempts to restructure Alitalia are also summarized in Figure 3.1.3.B of the Turnaround plan reproduced below as Graph 1.
- (224) In Graph 1, the green lines with circle indicate the different strategic plans that were announced over the period 2009-2016 to restructure Alitalia. All those plans had projected a steep growth in revenue. However, the red line with square marks reports the actual revenues and shows how the strategic plans' projections diverges markedly from the actual figures. Moreover, the actual figures show that Alitalia's revenue kept worsening over the period 2012-2016, with no sign of recovery.

<sup>(81)</sup> Turnaround Plan, pages 24-25.

<sup>(82)</sup> Turnaround Plan, page 22.

<sup>(83)</sup> Turnaround Plan page 31.

<sup>(84)</sup> See Table 2 with key figures of Alitalia Group. The EUR 1,2 billion loss is the sum of losses of EUR 468 million and EUR 697 million in 2015 and 2016, respectively, rounded up.



Graph 1

**Comparison of Alitalia's net profit under strategic plans (green) vs. actual (red)**

[...]

- (225) Overall the figures in Graph 1 depict an airline company in severe and prolonged distress (from at least 2009), not able to generate positive returns even in periods of aggregate growth of the airline industry. That prolonged situation of financial distress is also further corroborated by the repeated failures of the different attempts to restructure Alitalia.
- (226) The Turnaround plan, which was rejected by the trade unions in April 2017, was the last restructuring attempt by its shareholders, following which it entered the extraordinary administration and was declared insolvent.
- (227) In the absence of implementation of the Turnaround plan, it could be very well expected that Alitalia's performance and profitability would not change drastically but, at best, reflect historical performance of 2015 and 2016. Even if the Turnaround plan had been implemented, on the short term of six months, which was the maturity of the initial loan, or even for the next 12 months, no real positive change could be expected in the profitability and the net cash-flow generating ability of Alitalia.
- (228) Table 2 shows that in 2015 and 2016 the free cash-flow of Alitalia was negative EUR [240-350] million and negative EUR [240-350] million respectively. The Commission notes that Alitalia has not been able to generate positive cash flows to finance its operation, including *a fortiori* to repay its debt, but was relying on external funding (bank and bond finance, increased balance of prepaid tickets and trade payables to third parties) to finance its loss-making operation. Furthermore, in January and February 2017, just in two months, Alitalia reported an EBIT loss of EUR [100-300] million, and had a negative free cash-flow of EUR [XXX] million.
- (229) Eventually, in May 2017 when Alitalia filed for insolvency it had a negative equity of EUR –[XXX] million and total liabilities of EUR [X,X] billion <sup>(85)</sup> (see Table 2).

## 5.1.4.2.3.2. Prior exposure

*As a shareholder*

- (230) The Commission verified that the Italian State had a prior exposure to Alitalia as an indirect shareholder. That exposure originates from the control by the Italian State of Poste Italiane <sup>(86)</sup> that itself owned 2 % of CAI, which in turns had 51 % of Alitalia. Consequently, the Italian State was an indirect shareholder of Alitalia, owning circa 1 % of it. The Italian State in May 2017 was also a shareholder of the bank Monte dei Paschi di Siena S.p.A. that owned about 10 % of CAI (hence about 5 % of Alitalia given that CAI owned 51 % of Alitalia's shares). Overall the exposure as a shareholder of the Italian State toward Alitalia amounted to around 6 %.
- (231) The Commission finds that the indirect and relatively minor exposure to Alitalia could not justify Italy's action to become the lender of Alitalia when deciding to grant the two loans.
- (232) First, the risks associated with the repayment of the initial loan (see recitals 151 and 214) were very high. Those high risks would just exacerbate the State's exposure to Alitalia by additional risky debt. Moreover, considering that the amount of the pre-insolvency financial debts was above EUR [X] billion (see Table 2), it was unlikely that Alitalia's shareholders would recover anything at all, in the event of a sale of the assets.

<sup>(85)</sup> PwC report of 12 October 2017 prepared for the extraordinary administration.

<sup>(86)</sup> The Italian State controls a total of 65 % of Poste Italiane. As it owns directly about 30 % (through the Italian Ministry for Economy and Finance) and indirectly another 35 % (through Cassa Depositi e Prestiti, a financial vehicle under control of the Italian government).

- (233) Further, the Commission notes that the Italian authorities have also confirmed that Alitalia's shareholders were dispossessed once Alitalia was placed under the extraordinary administration procedure (see recital 194). On that basis it is clear that any prior exposure would not be relevant in the specific case as any prior exposure, in the form of shareholding, was wiped out at the moment Alitalia filed for insolvency.
- (234) That finding is further supported by the absence of any loan granted after the admission of Alitalia into extraordinary administration by other shareholders of Alitalia at that time such as Intesa or Unicredit banks, or industrial players such as Atlantia, Etihad or Air France-KLM. Those entities, even those that had higher exposures to Alitalia, did not finance Alitalia during the extraordinary administration. If providing a loan had been the best response from an economic perspective to defend the prior exposure, then the Commission would have expected to find private support to Alitalia as well. However, only the State acted as a lender to Alitalia following the start of the extraordinary administration.

*As a creditor*

- (235) The Commission however also notes that, based on the 2016 Standstill Agreement, the Italian State was also indirectly exposed to Alitalia as a pre-insolvency creditor beyond its indirect exposure as a shareholder of Banca Monte dei Paschi di Siena S.p.A. That is because the State was a shareholder of that bank, with a share that grew from 4,0 % in December 2016 to 52 % in August 2017.
- (236) Based on the annex to the 2016 Standstill Agreement, the exposure of Banca Monte dei Paschi di Siena S.p.A. to Alitalia amounted to EUR [10-20] million in short term liabilities and EUR [15-25] million of lines of credit.
- (237) The Commission considers that exposure to be of limited relevance given its comparatively small size in proportion to the overall liabilities of the airline company under the Standstill Agreement: Alitalia had EUR [120-160] million of short term liabilities, EUR [120-160] million of lines of credit, EUR [450-650] million of bonds, EUR [X,X] billion of operating leases, and total liabilities of EUR [more than 2,5] billion. Furthermore, the exposure of the Italian State through Banca Monte dei Paschi was also relatively small when compared to the additional financing provided by the Italian State with the initial loan <sup>(87)</sup>.
- (238) The Commission considers that such a small exposure would have not changed the assessment of a MEO that was considering whether to finance Alitalia with a sum of EUR 600 million (the initial loan) followed by the additional loan amounting to EUR 300 million.
- (239) In conclusion, a market economy operator in the situation of the Italian State would have disregarded its indirect exposure as a pre-insolvency creditor of Alitalia, as well as its indirect exposure as a minority indirect shareholder of Alitalia, when deciding whether to grant any loan to Alitalia.

5.1.4.2.3.3. MEO assessment of the initial State loan under a restructuring scenario

- (240) The initial loan was granted on 2 May 2017, the day on which Alitalia was placed under extraordinary administration (see recital 16). At that point in time the programme of the extraordinary administration was not yet decided and there was then an option to restructure Alitalia (see recitals 58 and 59).
- (241) Under that scenario the MEO would then look at the revenue generation potential of Alitalia and assess whether at maturity it was likely that Alitalia could reimburse the loan and the related interest.
- (242) Because the initial loan maturity was six months, an MEO would have checked, on the basis of the information available before granting the initial loan in May 2017, what would have been the expected cash position of Alitalia by the end of October 2017.

<sup>(87)</sup> Assuming that the State had a shareholding of 50 % of Banca Monte dei Paschi its exposure to Alitalia would have amounted to maximum EUR 20 million ([EUR 18 million short term liabilities + EUR 20 million credit lines] X 50 %).

- (243) The Italian authorities have not submitted any study or assessment performed prior to granting the initial loan, even though an MEO would have drawn up such an evaluation. Nevertheless, although *ex-post*, it is still yet possible to simulate the result of the assessment that Italy ought to have carried out before granting the initial loan if Italy had been acting as an MEO, if Italy had made such an assessment using information available *ex-ante*.
- (244) Even though the MEO is a test using forward-looking information, Italy could have examined the historical financial data of Alitalia and noticed the free cash flow consumption of Alitalia in the period of 2015-2016. As shown in recital 228, both in 2015 and 2016 Alitalia registered a negative free cash flow, and in January and February 2017 the cash outflow was proportionately even higher. Furthermore, given that Alitalia had entered extraordinary administration, it could be predicted that Alitalia's cash-flows would be even worse as a result of the foreseen risks and uncertainties specified in recital 247. Those elements would have suggested to the Italian authorities that, even without restructuring costs, between May and October 2017 Alitalia would have been likely to use the initial loan to finance its operating expenditure and would have been unlikely to be able to reimburse the principal and interest of the initial loan in October 2017.
- (245) The other approach to assess the expected cash position of Alitalia at the end of October 2017 would have been to obtain the cash-flow forecast of Alitalia. On 4 May 2017 the extraordinary commissioners applied for the initial loan (thereafter, 'initial loan application'). That application included a liquidity forecast up until the end of October 2019, which is approximately the maturity of the initial loan.
- (246) It forecasted a cash need of EUR 671 million for the first 6 months of the extraordinary administration, from May to October 2017, based on the liquidity plan. That liquidity plan assumed an initial cash balance on 2 May 2017 of EUR 74 million and a final cash balance as of end of October 2017 of EUR minus 597 million in the absence of State support. The detailed forecast is reported in Table 3, which shows the monthly cash-flow forecast.

Table 3

## Cash projections until 31 October, 2017

Last day	5-May	12-May	19-May	26-May	2-Jun	9-Jun	16-Jun	23-Jun	30-Jun
<b>OPENING CASH (*)</b>	74	93	-93	-82	-104	-145	-137	-156	-88
total collections	76	48	75	46	47	55	81	51	62
operating expenses	-15	-148	-58	-64	-60	-42	-90	-52	-143
impact from fuel prepayment risk									
outstations cash flow	1								
<b>cash flow from operating activities</b>	62	-100	17	-18	-34	14	-9	-1	-81
other inflows	4					3		75	
MRO capex expenses		-9	-3	0	-4	-6	-3	-2	-3
other capex									
Maintenance reserves		-5	-3	-3		-3	-3	-3	-3
<b>cash flow from investing and non recurring activities</b>	4	-14	-6	-3	-4	-5	-6	71	-6
capital repayments		0			-3		-3	0	-1
interests		0		-1	-1		-1	-2	0
new financing									
credit lines & deposits	-47	-71							
<b>cash flow from financing</b>	-47	-71		-1	-3		-4	-2	-1
<b>TOTAL CASH FLOW</b>	19	-186	11	-22	-41	9	-19	68	-88
<b>CLOSING CASH before credit lines</b>	93	-93	-82	-104	-145	-137	-156	-88	-176
RCF drawdowns									
Factoring net drawdowns	-30								
<b>Total credit lines drawdown (**)</b>	-30								
<b>CLOSING CASH after credit lines</b>	63	-123	-112	-135	-175	-167	-186	-118	-206
Drawn Lines of Credit	47	47	47	47	47	47	47	47	47
Undrawn Lines of Credit	75	75	75	75	75	75	75	75	75
April & May AMEX/BSP collections retained and offset by Factor (***)	30								
<b>Sensitivity</b>									
Drop in collections (cumulative)	-3	-8	-14	-19	-23	-25	-28	-30	-32
<b>CLOSING CASH after Sensitivity as of 4/5</b>	60	-131	-126	-154	-198	-192	-214	-148	-238
<b>CLOSING CASH PROJECTION as of 28/4</b>	-109	-149	-157	-197	-225	-192	-230	-165	-219

<b>CASH and cash flow sensitivity as of May 04th (*)</b>	<b>jul-17</b>	<b>aug-17</b>	<b>sep-17</b>	<b>oct-17</b>
€m				
<b>CASH beginning of period</b>	<b>-238</b>	<b>-290</b>	<b>-370</b>	<b>-485</b>
<b>Cash flow P&amp;L</b>	<b>-9</b>	<b>-42</b>	<b>-71</b>	<b>-77</b>
<b>Debt Service:</b>	<b>-7</b>	<b>-2</b>	<b>-12</b>	<b>-7</b>
<i>net Interests</i>	-2	-2	-5	-2
<i>Debt Principal Repayment</i>	-5	-1	-7	-5
<b>Capex:</b>	<b>-15</b>	<b>-15</b>	<b>-21</b>	<b>-2</b>
<i>fleet (Maintenance only)</i>	-12	-13	-19	-1
<i>other (no-fleet)</i>	-3	-2	-3	-1
<b>Maintenance Reserves:</b>	<b>-9</b>	<b>-11</b>	<b>-7</b>	<b>-7</b>
<i>MR receipts</i>	4	3	7	7
<i>MR payments</i>	-13	-14	-14	-13
<b>cash flow FAT</b>	<b>-12</b>	<b>-10</b>	<b>-4</b>	<b>-19</b>
<b>Total Cash Flow</b>	<b>-53</b>	<b>-79</b>	<b>-116</b>	<b>-112</b>
<b>CASH end of period as of May 04th</b>	<b>-290</b>	<b>-370</b>	<b>-485</b>	<b>-597</b>
<b>CASH end of period as of April 28th</b>	<b>-320</b>	<b>-413</b>	<b>-523</b>	<b>-597</b>

Source: Annex of Initial loan application of 4 May 2017

- (247) According to the initial loan application, the liquidity forecast was made in a very unstable situation: further strikes at Alitalia could be expected; there was also a risk that credit card companies could unilaterally withdraw pre-paid tickets, and suppliers could refuse to provide services. Furthermore, fuel price volatility was unknown. The plan also did not foresee any restructuring costs related to the reduction of employees and foresaw only a partial implementation of the business plan.
- (248) Nevertheless, the initial loan application depicts a clear situation in which Alitalia was not expected to be able to reimburse the initial loan with its cash flow. The projections indicate that the extraordinary commissioners expected to fully utilize the amount of the initial loan (given that the cash position at the end of October 2017 was supposed to amount to EUR minus 597 million). Therefore no principal or interest related to the initial loan could be expected to be paid back on the basis of Alitalia's cash flow.
- (249) In conclusion, under a restructuring scenario, an MEO in the situation of the Italian State would have considered in its assessment the past and expected cash flow positions of Alitalia available in May 2017. On the basis of that information, it would have concluded that the expected cash flows of Alitalia between May and October 2017 could not be sufficient to reimburse the principal of the initial loan and the possible interests. Therefore an MEO would not have granted such a loan to Alitalia. Given that an MEO would not have granted such a loan to Alitalia in the first place, it is not necessary to take a position on the interest rate set by Italy for the initial loan.
- (250) In the following section, the Commission assesses if the initial loan could have been considered to be in line with market conditions in the sale scenario and, in recital 332 shows how that assessment provides further support to the conclusion on the restructuring scenario.

#### 5.1.4.2.3.4. MEO assessment in a sale scenario

- (251) In a sale scenario, a market economy lender would expect the amount of cash available at the maturity of the initial loan to depend on the following factors:
- (1) the cash that Alitalia generates or loses from the time it receives the initial loan until when it is sold, i.e. the change in cash balance;

- (2) the timing of completion of the sale process; and
- (3) the sale proceeds.

(252) Before granting the initial loan, a market economy lender would have assessed those three factors and formed an expectation on each of them. Based on those expectations, the market economy lender would have then decided whether to grant a loan. In the absence of any evidence of such decision-making process by the Italian State, the Commission reconstructed such a process and assessed the relevant factors, by relying on the information available before the date of granting the initial loan.

#### 5.1.4.2.3.4.1. Change of cash balance

- (253) As indicated in recital 246, the extraordinary commissioners expected Alitalia to consume EUR 671 million of cash in the period from 5 May to 30 October 2017. Absent the initial loan, Alitalia's cash balance would have been minus EUR 597 million.
- (254) Consequently, at the maturity date of the initial loan (5 November 2017), not more than EUR 3 million were supposed to remain from the initial loan.
- (255) Based on the historical cash-flows and the financial projections of the initial loan application, a market economy lender would have inferred that the repayment of the initial loan at maturity depended on the sale of Alitalia before 5 November 2017 at a sufficiently high price. More precisely the sales price should have been at least EUR 627 million, i.e. the debt repayment of EUR 630 million net of the expected EUR 3 million cash balance at maturity.

#### 5.1.4.2.3.4.2. Loan maturity and timespan of sales

- (256) Given the conclusion in recital 255, the Commission will assess whether, based on the evidence available at the time of granting the loan, a market economy lender would have expected the sale process to end in six months.
- (257) The Commission considers that it would have been unrealistic to expect that the sale of Alitalia through a tender procedure could be realised and closed within the expected timeframe of the initial maturity of the granted loan (i.e. six months). In particular, the Commission considers that on average the sales of companies in extraordinary administration require a longer period taking into account the complexity of the matter and the number of stakeholders and interests involved. That view is in line with a recent study by the International Monetary Fund that estimates the average time required for the fulfilment of the sales programme under the Italian Extraordinary Administration framework <sup>(88)</sup>. That study estimates that the sales programme is usually concluded on average within a period of two and three years respectively for the extraordinary administration related to Prodi-bis Law and Marzano Law (the latter being the one applicable to Alitalia).
- (258) The Commission takes note of the Italian authorities' argument that in 2008 the sale programme of Alitalia – Linee Aeree Italiane under the extraordinary administration of that time was concluded within six months. However, the Commission considers that precedent not relevant to the present case. First, the sequence of events leading to the sale of Alitalia – Linee Aeree Italiane's assets in 2008 to the CAI group were part of a wider attempt of the Italian State to sell its 49,9 % stake in Alitalia – Linee Aeree Italiane. That attempt started at least in October 2006, as described in recital 15 of the Commission Decision C(2008) 6745 of 12 November 2008. It follows that the timeframe of the sale process concluded in 2008 cannot be clearly identified but is likely to be much longer than the six months the Italian authorities allege. Second, the Commission considers that if any lessons were to be drawn from the past attempt to sell Alitalia – Linee Aeree Italiane between 2006 and 2008, as described in Section 3.1 of that decision, it is the complexity of selling such a large enterprise already in difficulty for many years.

<sup>(88)</sup> International Monetary Fund, 'The insolvency regime for large enterprises in Italy. An economic and legal assessment', WP/18/218. <https://www.imf.org/en/Publications/WP/Issues/2018/09/28/The-Insolvency-Regime-for-Large-Enterprises-in-Italy-An-Economic-and-Legal-Assessment-46276>

- (259) Third, the Commission also considers that the developments between 2008 and 2017, under the CAI ownership and later under the CAI-Etihad partnership, would only reduce the attractiveness of an investment in Alitalia and hence increase the complexity of its sale and the timeline of such a sale. This because of the repeated failures (see recitals 218 to 229) to improve the financial viability of Alitalia.
- (260) Fourth, the Commission considers that the low attractiveness of investing in Alitalia as a company in operation and the likely need of a complete and complex restructuring of the company that would have necessarily lengthened the timeline of its sale. In particular, the Commission notes that the extraordinary administration programme also considers aspects related to the size of the company, for example concerning the preservation of employment levels. For that reason, it could likely be expected that the sale process could be lengthier than the envisaged six months. Against that background, the Commission considers that a market economy lender would have not considered likely that in 2017 the sale of Alitalia could be completed in six months.

#### 5.1.4.2.3.4.3. The proceeds from the sale of Alitalia

- (261) Before estimating the potential proceeds from the sale of Alitalia, the Commission will recall shortly the situation of the assets of Alitalia and the potential related liabilities on 1 May 2017.
- (262) As of 1 May 2017, Alitalia Group used in total 123 airplanes (25 long-haul, 78 medium-haul, and 20 regional). Of them, Alitalia owned 41 planes (7 long-haul, 34 medium-haul) and leased 77 planes, which are pledged for the benefit of the lessors. Alitalia does not own real estate, but rents space in the airports where it operates. Alitalia also has substantial intangible assets relating to its Alitalia brand, its licenses, and goodwill. Significant amounts, which are shown in the balance sheet as part of the fixed and current assets, relate to the leased planes (e.g. capitalized maintenance costs).
- (263) On 1 May 2017, the total book value of the fixed assets of Alitalia, as shown in Table 2, was EUR [more than 2] billion, while the current assets had a value of EUR [less than 1] billion <sup>(89)</sup>, giving a book value of the total assets of EUR [more than 3] billion. That book value of the total assets should be viewed together with the significant balance sheet debt of Alitalia (EUR [more than 3] billion) and its contingent liability (future payment instalments) related to the leasing of the planes (EUR [X,X] billion). As noted in point (b) of recital 264, the balance sheet does not allow to identify how much liability is attached to the operating assets, and what is the net book value of the operating assets that were offered for sale. This is because the highest value assets are the planes, and 77 planes are leased.
- (264) At the time of granting the initial loan, the proceeds from the sale of Alitalia were uncertain and difficult to forecast, because of the following reasons:
- (a) The perimeter of the company on sale was still undefined, as the extraordinary commissioners received the mandate to sell Alitalia only on 1 August 2017 (see recitals 58 and 59). Therefore, at the time of the granting of the initial loan, a potential buyer could not know which parts of Alitalia would be on sale (see recitals 262 and 263). Consequently an MEO would have had uncertainty concerning the scope of the offer that a buyer would have made.
  - (b) The amount of liabilities that would remain with Alitalia in extraordinary administration was still undefined. Those liabilities refer to obligations that, even though pre-dating the extraordinary administration procedure, have to be settled by Alitalia in extraordinary administration because they are necessary for the operation of Alitalia (e.g. financial leases). The Commission notices that, given Alitalia's large amount of debt (EUR 3,7 billion, see Table 2), knowing how much of that debt would remain with Alitalia in extraordinary administration is crucial for a potential buyer to determine its bid.

<sup>(89)</sup> Current assets are composed of: inventory EUR [XX] million, trade receivable EUR [XXX] million, other receivables EUR [XXX] million, and cash EUR [XX] million.

(c) The sale proceeds depend on the size of the company's assets the buyer bids for and how much value the buyer can extract from them. Both those factors are buyer-specific and, as such, very hard to predict *ex-ante* for the seller.

- (265) In light of those uncertainties and difficulties, the Commission will estimate the potential range of the sales price of Alitalia based on the evidence submitted by Italy (Section 4.2) and other publicly available information available at the time of granting the initial loan.
- (266) In addition, the Commission will also examine *ex-post* information: the valuation study by Leonardo & Co dated 16 October 2017, which relies at least partially on information available at the time of granting the initial loan (Section 4.2.2.1); and the offers that the extraordinary commissioners received following the publication of the tender for Alitalia's assets (Section 2.6). Even though a market economy lender could not rely on *ex-post* evidence in its assessment, those offers represent an *ex-post* benchmark for the *ex-ante* evidence.

#### 5.1.4.2.3.4.3.1 Ex-ante evidence

##### 5.1.4.2.3.4.3.1.1 Dr Ranalli's certification report ('the certification report')

- (267) Italy claims <sup>(90)</sup> that it decided to grant the initial loan based on the Turnaround plan. That business plan was originally drafted by the management of the company prior to the extraordinary administration and subsequently revised by KPMG, Roland Berger and Dr Ranalli (Section 4.2.1.2).
- (268) The certification report contains an estimate of the value of Alitalia resulting from the application of a discounted cash flow ('DCF') model to the revised Turnaround plan. One of the objectives of the report is to demonstrate that the enterprise value of Alitalia was higher than the invested capital on 31 December 2016. Both the enterprise value and the invested capital of Alitalia are the sum of the value of Alitalia's debts and its equity. However, the former (the enterprise value) is calculated using the market values of the debts and the equity, while the latter (the invested capital) is calculated using book values. Therefore, by showing that the enterprise value is greater than the invested capital of Alitalia, the certification report concludes that the book values of Alitalia's debts and equity are not overestimated.
- (269) The certification report indicates that, as of December 2016, the EUR [X XXX] <sup>(91)</sup> million book value of Alitalia's net debt and the EUR [XXX.X] million book value of equity are a correct representation of their respective market values. Therefore, Alitalia's enterprise value was at least EUR [X XXX.X] million on 31 December 2016, which equals the book value of the invested capital <sup>(92)</sup>.
- (270) Finally, the Commission notes that the certification report estimates that the enterprise value of Alitalia could be EUR [X XXX] million by 31 December 2019 as a result of the restructuring foreseen in the Turnaround plan.
- (271) The Commission observes that the estimates in the certification report refer to the enterprise value, which is not the same as what a potential buyer or equity investor would be willing to pay for Alitalia, for several reasons. First, the enterprise value includes the debt, which should be paid to the creditors. Second, the enterprise value assumed the undisrupted, going concern operation of Alitalia, which was not the case once Alitalia entered the extraordinary administration. To calculate the value that a buyer would be paying, it is necessary to subtract the liabilities attached to the assets on sale from the enterprise value.
- (272) The Commission also notes that, from the certification report, a market economy lender could infer that the book value of equity of EUR [100-150] million could be a correct representation of the market value of Alitalia's equity. Therefore, such a lender could take the book value of equity as a proxy for Alitalia's sale price on 31 December 2016. The Commission considers that the latter would be an unreliable proxy at the time of the granting of the initial loan because most of the liabilities of Alitalia as reported in the certification report were frozen and thus no longer relevant for the sale of Alitalia in the context of the extraordinary administration procedure. Hence, the equity value of Alitalia in extraordinary administration could have been higher than that of Alitalia prior to the extraordinary administration.

<sup>(90)</sup> IT submission of information dated 25 March 2019.

<sup>(91)</sup> See page 101 of the certification report.

<sup>(92)</sup> The book value of invested capital is the sum of the book value of equity (EUR 129,8 million) and the book value of net debt (EUR 1 165 million).

- (273) At the time of granting the initial loan, however, a market economy lender would have not known the amount of the liabilities attached to the company on sale, as they were still undefined. That is a crucial factor of uncertainty, as the sales price of EUR [100-150] million, calculated on the basis of Alitalia's equity value prior to the extraordinary administration, is well below the EUR 627 million needed to repay the loan (see recital 255).
- (274) The Commission considers that an MEO would have had additional concerns about the valuation in the certification report because of the lack of replicability of the study and its assumptions. With regard to replicability, the certification report does not contain the exact estimate of Alitalia's enterprise and equity value in 2016. That value cannot be calculated based on the available data in the report because some of the necessary parameters, notably the discount rate (WACC, i.e. weighted average cost of capital), are not reported.
- (275) The Commission asked the Italian authorities for clarification on the enterprise value calculation, in particular for end of 2016, but Italy could not provide any explanation. Italy also undertook to request clarification from Dr Ranalli himself about the estimates <sup>(93)</sup>, but the Commission never received a reply on that aspect.
- (276) With regard to the assumptions, the valuation in the certification report relies on the revised Turnaround plan originally prepared by the management of Alitalia prior to the extraordinary administration procedure. There are a number of reasons not to take that business plan as a basis to value Alitalia in extraordinary administration.
- (277) First, the Turnaround plan foresaw ambitious cost-saving and revenue-generating measures which, based on the calculations of the Commission, would bring Alitalia's return on invested capital ('ROIC') to 23,71 % in 2021, the last year of the Turnaround plan <sup>(94)</sup>. That ROIC is well above the industry average of 6 % reported at page 121 of the Turnaround plan. An MEO would expect a potential buyer or equity investor to be sceptical of that profitability target, because Alitalia had a history of repeatedly missing the targets of previous plans (see recitals 221 to 225). Moreover, the achievement of such an ambitious profit target is conditional on a successful restructuring of Alitalia, which an MEO would not take for granted, considering that the company was in distress at the time of granting the loan and the repeated past failures to implement a viable restructuring of the company.
- (278) Second, an MEO would have assessed Alitalia's valuation also under alternative, less optimistic, profitability scenarios. The Commission carried out a sensitivity analysis assuming a scenario where Alitalia would achieve a 6 % ROIC in 2021, which is the average profitability in the airline industry as reported in the Turnaround plan (see recital 277). Based on that profitability assumption, the Commission has then calculated the expected cash flows of the company by using the other parameters and assumptions mentioned in the certification report.
- (279) In addition to the profitability in 2021, the main assumptions of the business plan in the certification report concern the profitability of Alitalia at the beginning of the planning period, the terminal value at the end of the planning period, i.e. 2021 and the WACC, i.e. the discount rate. With regard to the profitability assumption, the first year of the plan assumes the same profitability (EBIT equal to minus 336,7 million) as that of Alitalia prior to extraordinary administration in 2016. With regard to the terminal value assumption, the certification study relies on the Gordon growth formula to estimate the terminal value. That approach assumes a constant and perpetual growth rate of the cash flows of the firm taken into account in the last year of the plan. The certification report assumes a 1 % growth rate. In addition, it makes the following adjustments to the cash flow in the last year of the plan: the variation of net working capital equal to zero and capital expenditures equal to depreciation.

<sup>(93)</sup> Request for information of 26 February 2019.

<sup>(94)</sup> ROIC (return on invested capital) is the ratio of NOPAT (net operating profit after tax) and invested capital. The Commission obtained NOPAT by multiplying the Italian corporate tax rate of 24 % (IRES) by the operating profit (EBIT) reported at page 101 of the certification report. Invested capital is also reported at page 101 of the certification report. Since Alitalia was loss making and could potentially carry those losses forward, applying the statutory tax rate to calculate taxes is conservative, as it underestimates the net profits and hence the ROIC.



- (280) With regard to the discount rate assumption, the Commission notes that the certification report does not mention the value of the WACC, i.e. the rate at which the future cash flows are discounted to arrive at an estimate of the enterprise value of Alitalia. Hence, the Commission had to reverse engineer the WACC. To that end, the Commission relied on the valuation assumptions and parameters available in the report <sup>(95)</sup> and a conservative assumption on the steady-state level of investment <sup>(96)</sup>. Using those assumptions, together with the enterprise value estimate of EUR [X XXX] million on 31 December 2019 (see recital 270), the only remaining unknown parameter, i.e. the WACC, can be established. That approach led to a WACC of 9,61 %. That value appears plausible, as it is slightly lower than the 10,8 % assumed in the Leonardo study (see recital 284 et seq.) and the Commission's own valuation (see recital 303 et seq.).
- (281) The Commission used that WACC of 9,61 % to discount Alitalia's revised cash flows, obtaining an enterprise value of EUR [XXX] million on 31 December 2016. The Commission also assessed the sensitivity of that estimate to the following two alternative assumptions. First, assuming a perpetual growth rate of 1,7 % <sup>(97)</sup> instead of 1 %, the enterprise value becomes EUR [XXX.X] million. Second, discounting cash flows at a 10,8 % WACC instead of 9,61 %, the estimate of the enterprise value is EUR [XXX.X] million. While that value might not be an accurate estimate of Alitalia's enterprise value as it results from a sensitivity analysis rather than a full-fledged business plan, it is well below the estimate of at least EUR [X XXX.X] million, which can be inferred from the certification report (see recital 269).
- (282) For all those reasons, and taking into account that a certain amount of liabilities would be transferred to the company in extraordinary administration (hence leading to a lower equity value), the Commission considers that an MEO would have valued Alitalia well below the EUR 627 million which were needed to repay the initial loan (see recital 255).
- (283) Finally the Commission also notes that the Turnaround plan, which included important salary cost reductions (see recital 40), was rejected in April 2017 by the Alitalia's workers referendum. For that reason, it would be very unlikely that a valuation of Alitalia could be based on a plan that was just rejected and whose rejection brought Alitalia into the extraordinary administration.

#### 5.1.4.2.3.4.3.2 Ex-post evidence

##### 5.1.4.2.3.4.3.2.1 The study by Leonardo & Co

- (284) The Leonardo study is dated 16 October 2017, after the date of granting the initial loan. Despite being prepared after the granting of the initial loan, the Commission believes that there are multiple reasons to consider the Leonardo study for the MEO assessment as a supplementary argument.
- (285) First, the Leonardo study aims to estimate precisely the expected sale value of Alitalia, which is the value needed to apply the MEO test as described in recital 251. That study was requested by the Extraordinary Administration precisely because under the Italian legal framework the extraordinary commissioners are bound not to sell the company under their administration at a price lower than its market value.

<sup>(95)</sup> Namely, free cash flows to the firm for the years 2020 and 2021, perpetual growth rate of 1 %, normalization assumptions to calculate the terminal value (i.e. variations in net working capital equal to zero and CAPEX equal to depreciation).

<sup>(96)</sup> Dr Ranalli assumes a steady state CAPEX equal to depreciation in the last year of the plan. As that value was not reported in the study, the Commission considered the depreciation value in the Turnaround plan and the difference between EBITDA and EBIT, which by definition equals depreciation and amortization, as possible alternatives. The Commission used the former, EBITDA in its estimation, as it yields a higher enterprise value. Since that value is such that the MEO test is not complied with (see recital 281), the assumption made by the Commission is more conservative.

<sup>(97)</sup> 1,7 % is the flight growth that Eurocontrol expected from 2019 onwards in its February 2017 'Seven years forecast' study.

- (286) Second, as the extraordinary commissioners received the mandate to sell the company on 1 August 2017, the Leonardo study was presumably prepared in the period from 1 August 2017 to 16 October 2017. Therefore, the period between the granting of the initial loan and the time when the valuation results in the Leonardo study became available is only between three and six months. The Commission considers this time lapse acceptable, as the value of Alitalia could not change substantially within this period.
- (287) Third, the valuation by Leonardo & Co refers to the most relevant part (or parts) of Alitalia on sale. That valuation gives the book value of the liabilities that a buyer would subtract from the enterprise value in order to determine a potential sales price. As the Commission noted in recital 264, that information based on the *ex-ante* evidence was not available, generating uncertainties on how much a potential buyer or equity investor would be willing to pay for Alitalia. However, that information could have been computed by an investor.
- (288) Fourth, while the estimation of the sale value and definition of the sale perimeter is done *ex-post*, the assets and liabilities subject to the valuation are those resulting from Alitalia's books on 1 May 2017, before the granting of the initial loan.
- (289) Finally, the perimeter of the valuation in the Leonardo study, as defined by the net invested capital of the Single Lot of Alitalia (EUR [X XXX] million), is close to the one defined in Dr Ranalli's certification report (EUR [X XXX.X] million on 31 December 2016). Hence, the valuations in the certification report and the Leonardo study refer to a perimeter of similar size at two close points in time, making them comparable.
- (290) The valuation by Leonardo & Co relies on two business plans for the years 2017-2022: one is the inertial scenario and the other is the renaissance scenario. The former is a pessimistic scenario where Alitalia's expected performance is in line with its past trend. By contrast, the renaissance scenario foresees an improvement of profitability and an increase in the market share of the company. While the management of Alitalia in extraordinary administration commissioned those two business plans after the granting of the initial loan, an MEO could have made similar projections *ex-ante*. Moreover, both business plans take the financial situation of Alitalia on 1 May 2017 as a starting point. Hence, the Commission considers that the Leonardo study can be regarded as an *ex-post* reconstruction of Alitalia's value based on *ex-ante* information.
- (291) The Leonardo study estimates the value of Alitalia by using a mixed method with both an asset and a profit component.
- (292) The Leonardo study chooses that method also because it was a method already used to value Alitalia in previous extraordinary operations and because it is a method commonly applied in the legal framework of the Italian extraordinary administration law <sup>(98)</sup>. On that basis, the Commission considers that an MEO in May 2017 could have applied a similar method to assess the expected sale value of Alitalia.
- (293) The method used by the Leonardo study starts from the asset component, namely the net invested capital, and then adds the profit component, namely the goodwill (bad will), to calculate the enterprise value. The estimate of the goodwill component consists in the difference between the net operating income of Alitalia and Alitalia's peers, based on the first two years of either of the two business plans.
- (294) The valuation methodology of the Leonardo study is widely used to value companies in economic distress like Alitalia <sup>(99)</sup>. It is also worth noting that that methodology leads to a negative profit correction, because Alitalia is expected to underperform its peers in the first two years of the business plan. A buyer of Alitalia would then discount such losses from its offer because if it were to invest in some other peers it would not sustain such losses. Since such a scenario is not unlikely for companies in distress, the Commission considers that the methodology of the Leonardo study seems plausible.

<sup>(98)</sup> Leonardo study, page 75.

<sup>(99)</sup> See, for example, 'Linee guida per la valutazione di aziende in crisi' by Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili.

- (295) Further the Commission notes that only the first two years of underperformance are discounted in the Leonardo study, when both the inertial and the renaissance scenario project that such an underperformance would last longer. Had this been taken into account, the estimates sale value of Alitalia would be even lower.
- (296) The estimate in the Leonardo study of the sales price of Alitalia's Single Lot, i.e. its enterprise value net of financial liabilities, ranges between EUR [XXX] and EUR [XXX] million in the inertial scenario and between EUR [XXX] and [XXX] million in the renaissance scenario. The average of the highest and lowest valuation is equal to EUR [XXX] million. The Commission considers the valuations above the average of EUR [XXX] million not realistic, as they hinge on a business plan which is more optimistic than the revised Turnaround plan, which the Commission did not consider to be realistic (see recitals 276-278) <sup>(100)</sup>.
- (297) Even though the Leonardo study is dated 16 October 2017, an MEO could have done a similar valuation based on the same business plans and information available before granting the initial loan. Hence, an MEO would have realised that the potential sales price of Alitalia was lower than the minimum sales price to repay the loan, i.e. EUR 627 million (see recital 255).

#### 5.1.4.2.3.4.3.2.2 EasyJet's and Lufthansa's offers

- (298) The Commission analysed the offers for the acquisition of parts of Alitalia that Lufthansa and EasyJet submitted on 16 October 2017 (see Section 4.2.2.3 on the offers). Even if they represent *ex-post* evidence, those offers could potentially provide a benchmark for the *ex-ante* valuations of Alitalia.
- (299) Lufthansa's bid was non-binding and concerned only certain parts of the Aviation Batch ([XX] planes out of [XXX] and [...] of the staff). Lufthansa valued at EUR 167 million the 25 airplanes acquired by Alitalia's Irish company, Challey Ltd, under a lease agreement and valued all the rest of the business (including the slots and the other 46 airplanes, of which 38 in leasing) at EUR 1.
- (300) EasyJet, in its non-binding offer, valued the short haul business (from Rome and Milan) at between EUR [XXX]-[XXX] million and the long haul business up to EUR [XXX] million. Both offers were conditional on finding a partner to form a consortium with one or more partners. As such, in addition to being non-binding EasyJet's offer was not yet finalized, because the ultimate valuation would depend on a yet unknown partner. The Commission also notes that EasyJet's offer assumed a cash-free and debt-free acquisition and so once the liabilities attached to the assets are considered the corresponding cash offer would be significantly lower.
- (301) A single binding offer was also received for the Handling Batch from Airport Handling. In that offer the handling part was valued a cash offer of EUR [XX.X] million that could be increased by a further EUR [X.X] million if some positive target results were reached three years after the closing.
- (302) Overall, the offers for the purchase of Alitalia's aviation and handling business as a going concern range between EUR [XXX.X] million, i.e. the value in the scenario where EasyJet only acquires the short haul business for EUR [XXX] million and Airport Handling purchases the handling batch for the minimum price in recital 301, to EUR [XXX.X] million, i.e. the best case scenario where EasyJet and Airport Handling pay EUR [XXX] million and EUR [XX.X] million for Alitalia's entire aviation business (i.e. both the short haul and the long haul) and the handling batch, respectively. Even though an MEO test must not rely on *ex-post* evidence, and those offers were preliminary and non-binding (except for the Handling Batch), the Commission observes that the median of that range of valuation, i.e. EUR [XXX.XX] is in line with the Leonardo study valuation and with the Commission's own evaluation carried out in recitals 303 to 321.

<sup>(100)</sup> Comparing the first two years of the revised Turnaround plan and the Renaissance scenario, which is the relevant timeframe in the Leonardo study's methodology, the latter foresees lower losses (average EBITDA of EUR 45 million vis-a-vis EUR -[XXX.X] million in the Turnaround plan) and higher revenues (average EBITDA of EUR 3 265 million vis-a-vis EUR [X XXX] million in the Turnaround plan). Moreover, the Renaissance scenario foresees a revenues increase of 21,66 % (10,49 % in the revised Turnaround plan) from year 1 to year 2.

#### 5.1.4.2.3.4.3.3 The Commission's independent estimation

- (303) In addition to the assessment of the documentation submitted by Italy the Commission has also carried out an independent estimation of the value of Alitalia in order to estimate the potential sale proceeds of Alitalia as a going concern <sup>(101)</sup>. The Commission's valuation takes an *ex-ante* perspective and is based on information or assumptions that could have been available to the Italian authorities in May 2017, at the time of the granting of the initial loan.
- (304) The Commission's valuation is an application the so-called 'multiples method'. The central assumption of that method is that similar companies should be valued similarly. On that basis, if it is possible to observe the value of companies that are comparable to the company under study, it is then possible to derive a valuation for the latter company. Usually comparable companies are listed companies for which it is possible to estimate an Enterprise Value ('EV'). Specifically, for airline companies the EV used is obtained as the sum of their equity (market value of equity provided by the stock market capitalisation) and the liabilities (including on-balance and off-balance sheet items – such as rent for aircrafts). Such an EV, also called an adjusted EV, is then scaled by an income metric as to compute a multiplier. The multiplier is then applied to the income figure of the company under assessment to obtain the resulting estimate for the enterprise value that would later have to be adjusted by removing the on- and off-balance liabilities to obtain an estimate of the equity value <sup>(102)</sup>.
- (305) In the airline industry the income metric typically used is the EBITDAR (Earnings Before Interests, Tax, Depreciation, Amortization and Rents). Because airline companies could decide to lease a significant part of their aircrafts fleet, EBITDAR is considered a better metric to assess the earning potential of airlines and is also neutral in relation to the choice of capital structure <sup>(103)</sup>.
- (306) In its application of the multiples method, the Commission considered the EBITDAR multiples computed in the Leonardo study <sup>(104)</sup> for seven traditional airline companies over the period 2017-2019. The Leonardo study estimates a median EV/EBITDAR that is equal to 4x in 2017, 4,2x in 2018 and 3,6x in 2019. The Commission used the average of those three values (3,93x) as the EV/EBITDA multiple to be used in the present case <sup>(105)</sup>.
- (307) As regards the EBITDAR of Alitalia, the Commission considered four possible scenarios. The first scenario considers the average historic EBITDAR generated by Alitalia in the period 2013-2016. That value amounts to EUR [XXX] million. The second scenario is taken from the projections of the inertial scenario presented in the Leonardo study and gives an amount of EUR [XXX] million in 2022 for EBITDAR. In a third scenario, the EBITDAR value amounts to EUR [XXX] million, in 2022, taken from the forecast renaissance scenario considered in the Leonardo study. Finally in a fourth scenario, the EBITDAR assumption considered is the forecast (for year 2021) made in the context of the Turnaround plan of late 2016 and amounts to EUR [XXX] million.

<sup>(101)</sup> Here the going concern assumption is used as the comparable companies are also going concern companies, and so the company as a whole should be considered rather than only its assets.

<sup>(102)</sup> In formula notations it would equate to:

Multiplier benchmark = average (EV/EBITDAR) for benchmark companies

EV estimated for company under study = Multiplier benchmark X EBITDAR company under study.

<sup>(103)</sup> For example, if EBITDA were to be used, it would unduly attribute relative higher revenue to companies that own their fleet (as the size of the owned fleet would likely be reflected in the interest (I) and depreciation/amortization (DA) items of the EBITDA). By contrast, airlines that rent most of their fleet would have a relatively lower EBITDA, as the rents for the aircrafts would have already been subtracted when computing the EBITDA. The use of EBITDAR aims then to make more comparable airlines companies with different ownership models of the aircrafts. The use of EBITDAR is not confined to the airline industry but is also common in other industries in which there are high investments in fixed assets that could be either owned or rented (for example EBITDAR is also used in the hotel industry to compare the profitability across different firms, where hotel companies can directly own the buildings or rent them).

<sup>(104)</sup> The Leonardo study is described in recitals 118 et seq.

<sup>(105)</sup> For the estimation of that multiple the Commission uses the estimation carried out at page 108 of the Leonardo study on seven benchmark traditional aviation companies. The Commission considers that the Italian authorities could have also estimated a similar value in May 2017, given that the same information was available also in May 2017 and the methodology is also a standard methodology of business valuation, especially in the airline industry. Taking the median value is justified as to reach a conservative estimate and especially considering the high uncertainty related to the future viability of Alitalia. That uncertainty and the historical low performance of Alitalia in fact excludes the adoption of multiples above the median value.

- (308) From the EV/EBITDAR multiples of 3,93x and the EBITDAR assumptions in recital 307, it is then possible to estimate the EV of Alitalia as a going concern. That value ranges from EUR [XXX] million to EUR [X XXX] million (see Table 4).
- (309) The estimated enterprise value includes both the on-balance sheet liabilities and the off-balance sheet liabilities related to the rents. Therefore, in order to estimate the equity value, the value that is relevant for the estimation of the possible cash to be received from the sale of Alitalia as a going concern, the EV has to be adjusted by removing both the off-balance and the on-balance sheet liabilities <sup>(106)</sup>.
- (310) The first adjustment consists in removing the component of off-balance liabilities related to the rent of the aircrafts. That is a typical adjustment for industries in which the value of rents are significant and rented assets are key to determine the revenue potential of a company (typical industries are hotel, airlines, commercial freight and shipping carriers). The capitalised value of aircrafts rents for Alitalia is estimated by multiplying by a factor of 7 the annual aircrafts rents <sup>(107)</sup>. That approximates the average of capitalised future amount of rent instalments that will be due by the company in order to have at its disposal the aircraft fleet that underlies the EBITDAR figure used.
- (311) In the light of the size of the rent, reflecting the high reliance of Alitalia on leased aircraft to deliver its business plan, that correction implies a downward adjustment that ranges from EUR [X XXX] million to EUR [X XXX] million depending on the specific business plan assumptions made in relation to the leased fleet <sup>(108)</sup>.
- (312) The second adjustment concerns the on-balance sheet financial liabilities. For the specific situation of Alitalia under extraordinary administration, those liabilities are limited exclusively to the financial leases reported on the balance sheet at May 2017, the amount of which is estimated in EUR [XXX] million by the PwC report <sup>(109)</sup>.
- (313) On the basis of those two corrections, the Commission finds that the equity value of Alitalia would be highly negative under the two more conservative scenarios (that is, the scenarios that assume an EBITDAR equal to the historical 2013-2016 values or to an EBITDAR in 2022 as indicated in the inertial scenario of the Leonardo study (columns 3 and 4 of Table 4)). The estimated negative equity value in those scenarios was to be expected, as in both cases Alitalia has relatively high annual aircraft rental fees that are above the annual expected EBITDAR. Thus, the income from operations (EBITDAR) under those scenarios is not even sufficient to pay for the rental cost of the fleet leading eventually to a negative value for the whole business.

<sup>(106)</sup> (This is because Enterprise Value considers the value of the company a whole including liabilities, while equity value considers only the value of equity, so it is net of liabilities.) That approach is in line with the approach depicted in the Leonardo study at page 107 and it is also consistent with the valuation approach described at page 56 of the presentation 'Transportation European Airlines – 4Q16 Review' by Morgan Stanley Research, dated 22 March 2019 and submitted by Italy as Annex 6 on 25 March 2019.

<sup>(107)</sup> The 7x factor is commonly applied in the valuation of airline industry, see for example page 21 of the study 'Balancing the books, IFRS 16 and aviation finance' December 2017, Deloitte. <https://cdn.euromoney.psdops.com/9e/4a/6119aed8408db267585cb6f42868/balancing-the-books-ifs-16-and-aviation-finance-report-dec2017-5.pdf> The same factor is also used in the Leonardo study when describing the EBITDAR method at page 107.

<sup>(108)</sup> The adjustments to reflect the amount of rents are taken from the respective plans considered under each scenario. See Table 1 for the specific sources.

<sup>(109)</sup> Although that quantity was estimated *ex-post* by PwC, the Commission considers that the Italian authorities could have estimated the same or a similar value in May 2017. In any case the PwC estimate refers to Alitalia's situation on May 2017 and therefore is considered as contemporaneous to the granting of the initial loan decision.

Table 4

EBITDAR multiple valuation					
		historical data (2013-2016)	inertial scenario (2022)	renaissance scenario (2022)	Turnaround plan (2021)
A	EBITDAR	[XXX.XX]	[XXX]	[XXX]	[XXX]
B	EBITDAR multiples	[X.XX]x	[X.XX]x	[X.XX]x	[X.XX]x
C (A*B)	EV	[XXX]	[XXX]	[X XXX]	[X XXX]
D	Multiple for operating leasing implied debt	[X]	[X]	[X]	[X]
E	Operating leases (at valuation time)	[XXX.XX]	[XXX]	[XXX]	[XXX]
F (D*E)	Adjustment for capitalised operating leases	[XXXX.XX]	[XXXX]	[XXXX]	[XXXX]
G	Financial leasing	[XXX]	[XXX]	[XXX]	[XXX]
<b>H (C-F-G)</b>	<b>equity value</b>	<b>[(X XXX)]</b>	<b>[(X XXX)]</b>	<b>[XXX]</b>	<b>[XXX]</b>

*Sources*

Historical EBITDAR and operating leases 2013-2016, page 24 Leonardo study  
 EBITDAR and operating leases – inertial scenario, page 63 Leonardo study  
 EBITDAR and operating leases – renaissance scenario, page 66 Leonardo study  
 EBITDAR and operating leases Turnaround plan, page 9 Allegato 5 bis in reply to REQ of 17 September 2018  
 Multiple for operating leasing implied debt, page 107 Leonardo study  
 EBITDAR multiples, page 108 Leonardo study, average of median values 2017-2019 for traditional carriers  
 Financial leasing PwC report of the Alitalia financial position in May 2017

(314) By contrast, the equity value is positive under the EBITDAR assumption of the renaissance scenario (EUR [XXX] million) and under the assumption of the EBITDAR of the Turnaround Plan (EUR [XXX] million).

(315) Those two latter estimated equity values could be taken as the upper bound estimate of the cash price that an investor could have potentially offered to purchase Alitalia <sup>(110)</sup>. Accordingly, the Italian authorities, if they had run the analysis described in recitals 304 to 315, could have expected that the extraordinary administration could have sold Alitalia as a going concern for a maximum of EUR [XXX]-[XXX] million in terms of cash offer.

<sup>(110)</sup> As indicated in Section 4.2.1.2, the Turnaround plan was also deemed to be 'ambitious [...] in light of Alitalia's recent history' by the independent review carried out by KPMG. On that basis, that scenario, rather than representing a conservative or an average, should be considered as an upper bound. The Renaissance scenario shares similar features of the Turnaround plan and therefore can be also considered as an upper bound.

- (316) On that basis, the Italian authorities could have verified that even the expected maximum cash offer of EUR [XXX]-[XXX] million would have been insufficient to repay the principal and the interest of the initial loan. As described in recitals 255 and 323, to pay back the principal and the interests of the initial loan the sale of Alitalia had to generate at least EUR [XXX] million.
- (317) The Commission notes that the estimate of EUR [XXX] million can only represent an upper bound of a possible cash offer. Further, those positive equity valuations are only achieved in 2021 or 2022, respectively for the Turnaround plan and for the renaissance scenario. This means that if a possible buyer of Alitalia were to assess the cash price it was willing to pay in 2017, it would have necessarily discounted that future value (i.e. take the present value) at 2017 and also take into account the expected interim losses (since profits were not probable) between 2017 and 2022. The starting point of Alitalia in 2017 was the situation of an unsustainable business model with an EBITDAR that was not even sufficient to pay the rent of its aircraft. Any valuation done considering the 2017 actual values of Alitalia would have necessarily led to a negative valuation. A potential acquirer of Alitalia would have then valued its acquisition taking into account the potential income generation after the restructuring phase. For that reason, the valuation would consider the income measure (EBITDAR) achieved at the end of the restructuring period under the different scenarios but would have to adjust that value considering the probable interim losses before reaching the restructuring. Furthermore, it also would have to take into account the time period required to achieve the restructuring.
- (318) On a conservative basis, the expected profit or losses could be approximated by the expected EBIT<sup>(111)</sup>. Consequently, the assessment of the expected cash offer to acquire Alitalia in May 2017 would take into account the expected future EBIT from 2018 to 2022 for the renaissance scenario and from 2017 to 2021 for the Turnaround plan<sup>(112)</sup>. By assuming a discount factor equal to 11,80 %<sup>(113)</sup>, it is then possible to discount those streams of EBIT and the positive equity value that could be attained in 2021 or 2022 depending on the specific scenario.
- (319) Table 5 presents an overview of those calculations:
- for the renaissance scenario, the calculations show that, once a potential investor takes into account the time needed to reach a stable profitability (five-year period from 2018 until 2022), the NPV of the resulting equity value is reduced from EUR [XXX] million to EUR [XXX] million;
  - for the Turnaround plan, that adjustment implies a reduction of the equity value from EUR [XXX] million to EUR [XXX] million.

Table 5

**Transition to profitability under the renaissance scenario and Turnaround Plan**

Renaissance scenario	2017	2018	2019	2020	2021	2022
EBITDAR (€m)		[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
EBIT (€m)		([XXX])	([XXX])	[XX]	[XXX]	[XXX]

<sup>(111)</sup> Using EBIT to approximate the net result is conservative because EBIT does not take into account the impact of interest on debt and the impact of taxes. Further, not all the net results would necessarily flow back to the investor as a dividend. Therefore using the full EBIT figure necessarily leads to an upper bound.

<sup>(112)</sup> The Renaissance scenario and the Turnaround plan cover a different period given that the Renaissance scenario was made one year later. However, both plans foresee a five-year period within which Alitalia could be brought from insolvency to a stable profitability. Therefore, the two plans are very similar and it could also be assumed that the implementation of the Turnaround plan could be aligned to the Renaissance scenario.

<sup>(113)</sup> As computed in the Leonardo study at page 99. The appropriate discount factor to be considered is the cost of equity component of the WACC of Alitalia as that average cost of capital would be considered by investors. The cash offer to buy Alitalia is estimated on the basis of the expected equity value that could be obtained after restructuring.

equity value (€m)					[XXX]
EBIT+equity value (€m)		((XXX))	((XXX))	[XX]	[XXX]
NPV (€m)	[XXX]				
Turnaround plan	2017	2018	2019	2020	2021
EBITDAR (€m)	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
EBIT (€m)	((XXX))	((XX))	[XX]	[XXX]	[XXX]
equity value (€m)					[XXX]
EBIT+equity value (€m)	((XXX))	((XX))	[XX]	[XXX]	[XXX]
NPV (€m)	[XXX]				
Cost of equity	[XX.XX]%				
<i>Source</i>					
Cost of equity, page 99 Leonardo study					
EBITDAR and EBIT Turnaround plan, page 9 Allegato 5 bis in reply to REQ of 17 September 2018					
EBITDAR and EBIT leases Renaissance scenario, page 66 Leonardo study					

- (320) In both cases the reduction in the equity value is driven by the time lag needed to reach the stable profitability that underlines the positive equity value of the final year 2022 and the periods of negative EBIT that are necessary to finance the first years of activity.
- (321) Those adjustments show that, on the basis of the possible scenarios of Alitalia and taking into account the necessary period of restructuring to bring back Alitalia to profitability, it would have been plausible to expect a cash offer for Alitalia not higher than EUR [XXX]-[XXX] million. That range is well below the threshold needed to repay the initial loan and the interest, i.e. EUR [XXX] million (see recital 255). Based on that estimate of the possible cash offer for the sale of Alitalia, an MEO would have not granted the initial loan because there were no prospects for the initial loan to be repaid in any meaningful manner.

#### 5.1.4.2.3.4.3.4 Conclusions on whether the initial loan would have been in line with market conditions in a sale scenario

- (322) A necessary condition for the initial loan to be in line with market conditions in a sale scenario is that the cash available to Alitalia at the six-month maturity is greater than the debt repayment of EUR 630 million, which is the sum of the EUR 600 million loan and the 10 % interest at the six-month maturity (see recital 18).
- (323) Based on the evidence in the initial loan application, the extraordinary commissioners expected Alitalia to consume most of the initial loan and remain with EUR 3 million cash at the six-month maturity (see recitals 246 to 248). Hence, in order for the initial loan to be in line with market conditions, the expected sales price of Alitalia must be greater than EUR 627 million, i.e. the debt repayment of EUR 630 million net of the expected available cash at the six-month maturity.
- (324) The Commission reconstructed the potential sale proceeds of Alitalia as a going concern based on the available evidence submitted by Italy and its own valuation. The Commission's reconstruction relied on the information available to a market economy lender at the time of granting the initial loan (*ex-ante* evidence), as well as *ex-post* evidence as a benchmark.



- (325) From the *ex-ante* evidence that Italy submitted, namely the certification report, the Commission retrieved an estimate of Alitalia's enterprise value of at least EUR [X XXX.X] million on 31 December 2016. A market economy operator would have not taken that enterprise value as a potential sale price, because of the existence of liabilities attached to the assets on sale and their uncertain amount at the time of granting the initial loan. A market economy operator would have also valued Alitalia under more realistic profitability expectations than in the Turnaround plan. More specifically, in the scenario where Alitalia is able to become as profitable as its peers by 2021, an MEO would have valued Alitalia no more than EUR [XXX.X] million (see recital 281). In addition, a market economy lender would have considered that some liabilities, i.e. those that would pass on to Alitalia in extraordinary administration, would have to be subtracted from that enterprise value.
- (326) Based on additional *ex-ante* evidence, namely the valuation presented in recitals 303 to 321 using *ex-ante* publicly available data, the Commission estimated the sale price of Alitalia at maximum EUR [XXX] million. That valuation relies on more realistic profitability forecasts than the certification report, uses common valuation methods in the aviation industry and takes into account the liabilities attached to Alitalia's assets.
- (327) That estimate is further confirmed by the assessment done in the Leonardo study (see recital 284 to 297) and by the offers made to purchase parts of Alitalia (see recitals 298 to 302).
- (328) Overall, based on the *ex-ante* evidence, the sale price of Alitalia as a going concern is well below the value of EUR 627 million that would be necessary for the granting of the initial loan to comply with the market economy operator principle (see recital 255).
- (329) The Commission also notes that the *ex-ante* valuations and the Leonardo study refer, respectively, to the whole Alitalia prior to the extraordinary administration and the largest batch on sale (i.e. Single Lot). However, a private investor might be interested in a smaller asset perimeter, resulting in even lower sale proceeds than those resulting from the valuations for the whole business.
- (330) In addition to the quantitative estimates of the sale price of Alitalia, the Commission observes that a market economy operator would have presumably lent less than 100 % of the forecasted sale price, considering the significant uncertainties on the sale or reorganisation proceeds and the timing of completion of the respective procedures. Based on available evidence, finalising a sale or reorganisation within the six-month maturity of the loan would have been a very ambitious goal. A market economy operator would have taken into account that, if that goal were not achieved, the repayment would be delayed, additional interest would accrue and an additional loan might be necessary, considering that Alitalia would have continued its loss-making trend (see recitals 218 et seq.). The Commission observes that the last scenario actually materialized when Italy granted the second loan of EUR 300 million, as explained in Sections 1.2 and 2 of the present decision.
- (331) Based on that evidence, the Commission concludes that the initial loan is not in line with market conditions as the expected sales proceeds at the time of granting the initial loan, together with the expected available cash, were lower than EUR 630 million, the sum of the principal and interest. For that reason, the Commission also considers that it is not necessary to assess whether the 10 % interest rate is in line with market conditions, as a market economy lender would have not granted the initial loan at all. Therefore, the Commission concludes that the whole amount of the initial loan provided an advantage to Alitalia.
- (332) Finally, the Commission observes that the conclusions in the sale scenario are consistent with those in the restructuring scenario and provide further support to them. More specifically, there are negative cash flows to the company in the first year of the business plans underpinning the enterprise value estimates in the certification report (Section 4.2.1.3) and the Leonardo study (Section 4.2.2.1). Hence, even if the extraordinary commissioners were able to restructure Alitalia in line with those business plans, the initial loan would have covered the expected losses in the first year of the planning period. Consequently, at the maturity date of the initial loan (i.e. 5 November 2017), Alitalia would not have had enough cash to repay the initial loan plus interest.

## 5.1.4.2.3.4.3.5 Evidence on Alitalia's value in a liquidation scenario

- (333) Among the different options to deal with Alitalia's situation, the management of Alitalia in December 2016, prior to filing for the extraordinary administration procedure, contemplated winding-up the company outside of bankruptcy proceedings as an alternative to the Turnaround plan <sup>(114)</sup>. In that scenario, the estimated value of assets would have been of EUR [less than 2] billion while that of liabilities would have been EUR [more than 3] billion, resulting in a net value of roughly EUR minus [1-2] billion. Furthermore, the management estimated that adding contingent liabilities related to leasing contracts and to the dismissal of workers would have brought the winding up cost of Alitalia to EUR [more than 4] billion.
- (334) The management's estimate of the asset value of EUR [1-2] billion described as the liquidation scenario in the Turnaround plan results from a piecemeal sale of each asset in Alitalia's balance sheet, assuming an asset-specific price. For example, the owned fleet is valued at its current half-life market value, with a further 20 % decrease of its related maintenance and overhaul expenses. The appraised value of the leased fleet is zero and so are intangible assets, equity stakes and other specific assets (e.g. deferred tax credits, restricted cash, etc.).
- (335) The Commission considers that an MEO would have not granted the initial loan relying on the value of assets in a liquidation scenario.
- (336) First, the management of Alitalia stated that that valuation was preliminary and would need to be confirmed by an appraisal. Second, while the extraordinary administration freezes the financial liabilities of a company, it is not clear how much of the EUR [more than 3] billion liabilities and additional contingency claims would remain. Third, proceeds from the piecemeal sale of assets in a liquidation scenario would have realized gradually and over a long period, especially considering the limited rights of creditors to enforce their claims against a company in extraordinary administration (see recital 47).
- (337) The Italian authorities have also commissioned a study to estimate the liquidation value of Alitalia during the extraordinary administration. That study was supposed to be split into two parts. Part one, which was completed and submitted to the Commission, containing only qualitative elements and part two, which the Commission did not receive, providing a quantitative valuation of the liquidation value. The last section of part one of the liquidation study compares the proceeds from the sale of Alitalia under a liquidation and a going concern scenario. That comparison is qualitative in nature, but clearly indicates that the proceeds from the sale of Alitalia would be lower in a liquidation than in a going concern scenario.
- (338) Furthermore, the Commission has assessed whether, under the legislation governing the extraordinary administration, an MEO could enforce the payment, for example by enforcing the liquidation of Alitalia. The Italian authorities indicated in their letter of 3 June 2019 that the Italian legislation does not allow creditors to request any conversion of the extraordinary administration proceedings to bankruptcy. According to articles 69 and 70 of Legislative Decree 270/99, the conversion into bankruptcy of the extraordinary administration procedure can be ordered by the competent court, either acting on its own motion, or upon the request of the extraordinary commissioners. Even though that court can act on its own motion, the fact remains that the Italian legislation does not foresee the possibility for a creditor to trigger the liquidation of Alitalia.
- (339) In light of the above, account taken also of the fact that since the MEO test is not satisfied when considering the expected proceeds from a sale as a going concern, the Commission considers that the MEO test would also not be passed under the hypothesis of the piecemeal liquidation of the company.

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<sup>(114)</sup> The winding-up scenario is presented in the same document describing the Turnaround plan.

#### 5.1.4.2.4. Assessment of the additional EUR 300 million loan

- (340) Without prejudice to the assessment in recitals 189 to 191, in this section, the Commission will apply the MEO test to the second loan in isolation, i.e. as an autonomous and independent measure from the initial loan <sup>(115)</sup>. In applying that MEO test, the Commission acknowledges that the following additional facts would be known to an MEO on 16 October 2017, i.e. the time of granting of the second loan, compared to those facts known at the time of granting the initial loan:
- (a) The extraordinary commissioners had already decided to sell Alitalia instead of restructuring it;
  - (b) The extraordinary commissioners had received offers for the parts of Alitalia on sale (Section 4.2.2.3), which did not result in the actual sale of the company;
  - (c) The Leonardo study, and the Alitalia valuation contained therein, was available to the extraordinary commissioners (Section 4.2.2.3);
  - (d) The deadline for the conclusion of the sale procedure, which was initially 5 November 2017, the same as the maturity date of the initial loan, was extended to 30 April 2018;
  - (e) Alitalia did not repay the initial loan, nor the accrued interest;
  - (f) Alitalia had EUR [180-220] million of cash on 30 September 2017 in addition to the availability of EUR [300-400] million out of the EUR 600 million of the initial loan.
- (341) In line with the Union Court's case law <sup>(116)</sup>, the assessment of the Commission disregards the benefits and obligations originating from the initial loan. Since the initial loan constitutes aid, the corresponding benefits and obligations refer to the State as a public authority rather than as an MEO.
- (342) Therefore, the Commission considers what the financial situation of Alitalia would have been absent the initial loan of EUR 600 million. In that scenario, Alitalia would have had a negative cash position of EUR [30-50] million on 30 September 2017 <sup>(117)</sup>. Presumably, Alitalia's cash position would have been even worse on 16 October 2017, as the company was loss making <sup>(118)</sup>. Since a company can operate only if cash inflows are greater than the outflows, the Commission considers the bankruptcy of Alitalia as a reasonable scenario without the initial loan.
- (343) Since Alitalia would be bankrupt without the initial loan, it would no longer be a going concern at the time of granting the second loan and therefore no market economy lender could have contemplated whether to grant the second loan at that time. Therefore, the Commission concludes that the MEO test cannot be applied in isolation to the second loan. In the following section, the Commission provides an assessment of the two loans as a single and intertwined measure.

#### 5.1.4.2.5 Overall assessment of the interplay of the two State loans to Alitalia

- (344) In this section, the Commission carries out an overall assessment of the interplay of the two State loans. The following facts indicate that the two State loans are intrinsically linked and, therefore, part of the same measure:
- (a) The identity of the grantor of the two State loans (the Italian State);
  - (b) The lack of proactive behaviour by the Italian State, namely the absence of any economic valuation for the purpose of granting the two State loans, no consideration of any credit protection measure after Alitalia did not reimburse the two State loans at maturity nor pay any interest (e.g. liquidation);

<sup>(115)</sup> See, for instance, judgments of 15 September 1998, *BP Chemicals v Commission*, T-11/95, EU:T:1998:199 and of 15 January 2015, *France v Commission*, T-1/12, EU:T:2015:17.

<sup>(116)</sup> See, for instance, judgment of 24 October 2013, *Land Burgenland and others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

<sup>(117)</sup> The –EUR [XX] million cash position is the result of subtracting the EUR [XXX] million of the initial loan from the total available cash on 30 September 2017, i.e. EUR [XXX] million (the sum of the EUR [XXX] million of cash and the EUR [XXX] million of the unused initial loan).

<sup>(118)</sup> As an *ex-post* benchmark, the Commission observes that Alitalia actually lost EUR [XX] million and EUR [XX] million in the months of September and October 2017.

- (c) The chronology of the two State loans in question, whose date of granting is less than six months apart;
  - (d) The purpose of the two State loans, which are part of a strategy to support and maintain Alitalia in the market until its assets are sold, secure its operations and jobs through a quasi-automatic coverage of its cash needs, regardless of the likelihood of repayment of the loans. That strategy is set out also in a number of political statements (see Section 5.1.4.1);
  - (e) Alitalia's financial and risk situation at the time when the decisions in relation to each of the State loans were taken <sup>(119)</sup>.
- (345) The Commission's analysis in recitals 340 to 343 gives further support to the argument that the second loan is intrinsically connected to the initial one. The result of that analysis is that the MEO test cannot be applied to the second loan in isolation, because a market economy operator would have not been in the position of the Italian State absent the initial loan. Therefore, the second loan is part of the same measure as the initial loan because the former would have not existed without the latter.
- (346) Considering the two State loans as part of the same measure, the Commission concludes that, if the initial loan constitutes an advantage for Alitalia, the additional EUR 300 million loan constitutes an advantage for Alitalia as well.

#### *Conclusion on the existence of an advantage*

- (347) In conclusion, the Commission finds that the MEO test is, in the first place, not applicable to the two State loans granted to Alitalia. In the second place, even if that test were applicable, the Commission finds that the MEO test is not met both in respect of the two State loans taken together and in respect of the two State loans separately. Accordingly, the Commission concludes that no MEO would have granted the initial and additional EUR 300 million loans, considering the lack of repayment prospects.
- (348) The Commission also notes that the terms and conditions of the two State loans such as the principal repayment date and the interest payment have constantly been deferred, the main aim of the Italian authorities being to provide fresh liquidity to Alitalia whatever the related conditions. Thus the Commission concludes that the two State loans qualify as grants given by the Italian government to support Alitalia's continued operations.
- (349) Overall, since the Commission considers the MEO test not to be applicable to the two State loans and that, even if that test was applicable, it would not be met as no market economy operator would have granted those loans to Alitalia, the Commission concludes that the Italian State granted an advantage to Alitalia equal to the nominal amount of the two loans, i.e. EUR 900 million.

#### *5.1.5. Distortion of competition and impact on trade between Member States*

- (350) According to Article 107(1) TFEU, to constitute State aid, a measure must distort or threaten to distort competition and have an effect on intra-Union trade <sup>(120)</sup>.
- (351) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. It is therefore sufficient that the aid allows the recipient to maintain a stronger competitive position than it would have had if the aid had not been provided.
- (352) According to the extraordinary administration programme, the Alitalia Group is the main Italian airline. In particular, Alitalia had a market share of 12,6 % of the total passenger traffic from and to Italy (32,6 % taking into account only the traffic on the national network) and during the first 10 months of 2017 carried about 18,5 million passengers (16,3 million by Alitalia and 2,2 million by Cityliner), of which 55 % on domestic routes, 32 % on international routes and 13 % on intercontinental routes. During the first 10 months of 2017, Alitalia flew

<sup>(119)</sup> See, for instance, the Judgment of the General Court of 15 September 1998 in T-11/95 *BP Chemicals v. Commission*, EU:T:1998:199, paragraphs 170 and 171; and judgment of the Court of Justice of 19 March 2013, *Bouygues and Bouygues Télécom v Commission and Others*, Joined Cases C-399/10 P and C-401/10 P, EU:C:2013:175, paragraphs 103 and 104.

<sup>(120)</sup> Judgment of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77.

to 94 destinations, including 26 in Italy and 68 in the rest of the world, with a total of over 4 200 weekly flights. According to the Extraordinary Commissioner trimestral report, published in September 2018 <sup>(121)</sup>, the Italian air passenger transport market is highly competitive and is characterised by, inter alia, a high penetration of low cost carrier on the domestic (the highest in Europe) and intra-European market.

- (353) The Commission thus considers that the two State loans affect trade between Member States, as they concern Alitalia, a company whose transport activity, by its very nature, directly concerns trade and covers several Member States as shown above. They also distort or threaten to distort competition within the internal market, as they concern only one company, which is in competition with other airlines on the European network.

#### *Conclusion on the existence of aid*

- (354) In light of the above, the Commission concludes that the two State loans involve aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market. The direct beneficiary of the aid is Alitalia and the part of the Alitalia Group which forms an economic unit for the purpose of the application of State aid rules. That economic unit is then considered to be the relevant undertaking benefitting from the aid measure. To determine whether several entities form an economic unit, the Union Courts look at the existing of controlling share or functional, economic or organic links.

#### **5.2. Lawfulness of the aid**

- (355) The Commission notes that the two State loans were granted to Alitalia before notification to the Commission. Thus, the two State loans were granted in breach of Article 108(3) TFEU and the standstill obligations laid down therein.
- (356) Therefore, since the two State loans have been found to constitute aid within the meaning of Article 107(1) TFEU, the Commission concludes that they constitute unlawful State aid.

### **6. COMPATIBILITY OF THE AID**

- (357) Insofar as the two State loans constitute State aid within the meaning of Article 107(1) TFEU, the Commission must assess whether that aid can be declared compatible with the internal market.
- (358) State aid is deemed to be compatible with the internal market if it falls within any of the grounds listed in Article 107(2) of the Treaty and it may be deemed to be compatible if it is found by the Commission to fall within any of the grounds listed in Article 107(3) of the Treaty.
- (359) However, it is the Member State granting the aid which bears the burden of proving that State aid granted is compatible with the internal market <sup>(122)</sup>.

#### **6.1. Assessment under Article 107(3)(c) TFEU and in particular under the Rescue and Restructuring Guidelines**

##### *6.1.1. Eligibility under Article 107(3)(c) TFEU and the Rescue and Restructuring Guidelines*

- (360) According to Italy, if the two State loans were to be deemed State aid, they should be assessed as rescue aid under the Rescue and Restructuring Guidelines, since Alitalia is an undertaking in difficulty, and they would be compatible with the internal market under those Guidelines. Those guidelines provide rules and conditions for the purposes of the compatibility assessment of rescue and restructuring aid pursuant to Article 107(3)(c) TFEU.

<sup>(121)</sup> <http://www.amministrazionestraordinariaalitaliasai.com/pdf/alitalia/doc-3-relazione-az-trim-1-luglio-30-settembre-2018-omissis.pdf>

<sup>(122)</sup> Case T-68/03, *Olympiaki Aeroporia Ypiresies v. Commission*, EU:T:2007:253, paragraph 34.

- (361) On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (362) In the present case, the Commission has assessed the compatibility of the measure under Article 107(3)(c) TFEU, and in particular under the Rescue and Restructuring Guidelines.
- (363) The Commission finds that Alitalia qualifies as undertaking in difficulty pursuant to point 20(c) of the Rescue and Restructuring Guidelines, as it was declared insolvent at the material time (see recital 41). Consequently, the only ground for assessing the compatibility of the aid is rescue and restructuring aid based on the Rescue and Restructuring Guidelines.
- (364) Two types of aid defined by those guidelines are relevant here, namely rescue aid and restructuring aid.
- (365) According to point 26 of the Rescue and Restructuring Guidelines, rescue aid is by nature urgent and temporary assistance. Its primary objective is to make it possible to keep an ailing undertaking afloat for the short time needed to work out a restructuring or liquidation plan.
- (366) According to point 27 of the Rescue and Restructuring Guidelines, restructuring aid often involves more permanent assistance and must restore the long-term viability of the beneficiary on the basis of a feasible, coherent and far-reaching restructuring plan, while at the same time allowing for adequate own contribution and burden sharing and limiting the potential distortions of competition.
- (367) While Italy did contend that the two State loans might constitute rescue aid (if they involve aid at all), it has not contended that they may constitute restructuring aid. Nor has Italy provided any of the elements demonstrating that those loans satisfy the criteria for restructuring aid set out in the Rescue and Restructuring Guidelines.
- (368) For rescue aid or restructuring aid to be considered compatible with the Rescue and Restructuring Guidelines, it must satisfy a cumulative set of criteria, laid down in Section 3 of those guidelines.

#### 6.1.2. *Compatibility of rescue aid*

- (369) In respect of rescue aid, the Commission in the Opening Decision provisionally concluded that the two State loans were not compatible for failing to satisfy three criteria in the Rescue and Restructuring Guidelines: (i) appropriateness (points 38(c) and 55(d)); (ii) proportionality (point 38(e)); (iii) effects on competition and trade (point 38(f)).
- (370) As regards appropriateness, in the Opening Decision, the Commission observed that the initial loan was not paid back within six months after the disbursement of the first instalment to Alitalia, i.e. before 4 November 2017, that the deadline for repayment had been extended for over a year that and an additional EUR 300 million loan had been granted.
- (371) The Commission observes that the appropriateness criterion for the two State loans to be qualified as rescue aid has not been met as the conditions set out in point 55 of the Rescue and Restructuring Guidelines were not fulfilled: (a) the two State loans have not been reimbursed within six months of being granted; (b) there was no restructuring plan within the meaning of Section 3.1.2 of the Rescue and Restructuring Guidelines; (c) there was no liquidation plan within the meaning of point 55(d)(iii) of the Rescue and Restructuring Guidelines. More specifically:
- (a) on the date of adoption of the present decision, neither the initial loan granted on 2 May 2017 nor the additional EUR 300 million loan granted on 16 October 2017 has been reimbursed;
- (b) the Italian authorities did not formally submit to the Commission any restructuring plan aiming at returning Alitalia to long-term viability as required by point 55(d) (ii) of the Rescue and Restructuring Guidelines; and

- (c) the Italian authorities did not formally submit to the Commission any plan for the liquidation of Alitalia within a reasonable time frame (a liquidation plan), as required by point 55(d) (iii) of the Rescue and Restructuring Guidelines. In that respect, the extraordinary administration programme does not constitute a liquidation plan, due to its timeframe and the wide margin left to the bidder in the choice of the perimeter of the assets to be purchased.

(372) As the conditions for rescue aid are cumulative, the Commission concludes that, without needing to examine the other criteria, the two State loans do not qualify as rescue aid within the meaning of the Rescue and Restructuring Guidelines. Therefore, the two State loans cannot be considered compatible with the internal market under the rules on rescue aid laid down in those Guidelines.

#### 6.1.3. *Compatibility of restructuring aid*

(373) As regards restructuring aid, as stated in point (b) of recital 371, the Italian authorities have not submitted to the Commission any restructuring plan aiming at returning to long-term viability or any liquidation plan involving the sale of Alitalia's assets and a subsequent liquidation of the company within a reasonable time frame, as required by points 55(d)(ii) and (iii) of the Rescue and Restructuring Guidelines.

(374) Notwithstanding that, the Commission will examine whether any of the documents submitted by Italy could constitute a restructuring plan. The only document which could qualify as such a plan is the extraordinary administration programme (see recital 43).

(375) Italy declared that the regulation on extraordinary administration does not require any restructuring plan to be drawn up by the extraordinary commissioners, although an industrial plan might be laid out at the end of the sales process by the purchaser of Alitalia.

(376) The Commission considers that the extraordinary administration programme cannot be deemed as a feasible, coherent and far-reaching restructuring plan to restore Alitalia's long-term viability under Section 3.1.2 of the Rescue and Restructuring Guidelines, but only a programme aimed at keeping Alitalia alive until the completion of the sale of its assets in operation. It fails to outline any reorganisation or rationalisation of Alitalia's activities or set out a pathway to making it viable and competitive again.

(377) The programme itself is only focused on the conservation of Alitalia's productive assets through continuing its business activities in view of the completion of the sales process <sup>(123)</sup>. Given that the extraordinary administration procedure was at an embryonic stage, and given the overall macroeconomic framework of the programme <sup>(124)</sup>, the programme does not contain even a (definitive and quantitative) projection for the settlement of Alitalia's debts based on the expected results of the extraordinary administration procedure.

(378) As regards the proportionality of the restructuring aid, as laid down in point 61 of the Rescue and Restructuring Guidelines, the amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs. In particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured.

(379) Italy has not provided any evidence that any investor or group of investors would wish to provide any fresh 'own contribution', which would have to match the amount of aid (at the very least the principal amount of the two State loans), as required by Section 3.5.2.1 of the Rescue and Restructuring Guidelines.

(380) Lastly, according to point 76 of the Rescue and Restructuring Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones.

<sup>(123)</sup> See page 6 of the extraordinary administration programme.

<sup>(124)</sup> See page 145 of the extraordinary administration programme.

- (381) The Italian authorities have not put forward any measures to avoid undue distortions of competition (compensatory measures), such as the reduction in capacity of available seat-kilometres or a reduction in airport slots, as required by Section 3.6.2 of the Rescue and Restructuring Guidelines.
- (382) As the conditions for restructuring aid are cumulative, the Commission concludes, without needing to examine any other criteria for restructuring aid, that the two State loans do not qualify as restructuring aid within the meaning of the Rescue and Restructuring Guidelines since there is no evidence that:
- (a) any document submitted by Italy qualifies as a restructuring plan to restore Alitalia to viability in the long-term as required by Section 3.1.2 of the Rescue and Restructuring Guidelines;
  - (b) an investor is willing to provide an own contribution as required by Section 3.5.2.1 of the Rescue and Restructuring Guidelines; and
  - (c) compensatory measures for the purposes of Section 3.6.2 of the Rescue and Restructuring Guidelines will be implemented.
- (383) In sum, the Commission concludes that the two State loans cannot be deemed compatible rescue or restructuring aid. Given that Italy has not presented any elements relating to any other ground of compatibility, the Commission concludes that the two State loans are incompatible with the internal market.

## 7. CONCLUSION

- (384) The Commission finds that the measure consisting of the EUR 600 million loan and the EUR 300 million loan, granted in favour of Alitalia, constitutes incompatible aid. Italy has unlawfully implemented the aid measure in breach of Article 108(3) TFEU.

## 8. RECOVERY

- (385) In line with the Union Courts' settled case law, Article 16(1) of Regulation (EU) 2015/1589 states that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.
- (386) Thus, since the two State loans in question were implemented in breach of Article 108(3) TFEU, and are to be considered as unlawful and incompatible aid, they should be recovered in order to re-establish the situation that existed in the internal market prior to their granting. Recovery should cover the time from the date when the aid was put at the disposal of the beneficiary until effective recovery. The amount to be recovered should bear interest until effective recovery.
- (387) As established in recital 349, the entire amount of the two State loans qualifies as advantage granted by Italy to Alitalia. Therefore, the aid principal can be already quantified at this stage at EUR 900 million. Italy will have to calculate the recovery interest accruing from the dates at which the aid was disbursed to Alitalia and until full repayment of the aid principal. The interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 <sup>(125)</sup>.
- (388) The obligation to repay the aid and the applicable recovery interest, calculated according to the methodology described in recital 387, arises irrespective of any additional interest that Italy may have to claim from Alitalia based on national law or on contracts between Alitalia and Italy. However, Italy may not raise any clause or provision contained in the national law or in contracts with the beneficiary to delay the recovery beyond four months from the notification of this Decision or to reduce the amount to be recovered, which has to include the aid principal of EUR 900 million plus the applicable recovery interest.

<sup>(125)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).



(389) Finally, the Commission notes that Alitalia (the direct beneficiary of the aid principal as established) may form an economic unit with the other companies in the Alitalia Group due to potential control exercised by Alitalia, for the purpose of the application of State aid rules (see recital 354). The Commission considers that Italy should, in the first place, recover the unlawful and incompatible aid granted to the Alitalia Group from Alitalia. Should it not be possible to recover the full amount of the aid from Alitalia, Italy should recover any outstanding amount from any other separate legal entity that forms part of the Alitalia Group and constitutes a single economic unit with Alitalia, so as to ensure that the advantage granted is eliminated and the situation previously existing on the market is restored through the recovery,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The EUR 600 million loan and the EUR 300 million loan granted by Italy respectively on 2 May 2017 and 16 October 2017 in favour of Alitalia – Società Aerea Italiana S.p.A. in amministrazione straordinaria, constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. That aid was unlawfully put into effect by Italy in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

#### *Article 2*

The State aid in the form of EUR 600 million and EUR 300 million loans granted respectively on 2 May 2017 and 16 October 2017 in favour of Alitalia – Società Aerea Italiana S.p.A. in amministrazione straordinaria is incompatible with the internal market.

#### *Article 3*

1. Italy shall recover the incompatible aid referred to in Article 1(2) from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest referred to in paragraph 2 shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

#### *Article 4*

1. Recovery of the aid referred to in Article 1(2) shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of its notification.

#### *Article 5*

1. Within two months following notification of this Decision, Italy shall submit the following information:
  - (a) the total amount (principal and recovery interest) to be recovered from the beneficiary;
  - (b) a detailed description of the measures already taken or planned to comply with this Decision; and
  - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1(2) has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken or planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

*Article 6*

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 September 2021.

*For the Commission*  
Margrethe VESTAGER  
*Member of the Commission*

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