

II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2015/1091

of 9 July 2014

on the measures SA.34191 (2012/C) (ex 2012/NN) (ex 2012/CP) implemented by Latvia for A/S Air Baltic Corporation (airBaltic)

(notified under document C(2014) 4552)

(Only the English text 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,

Having regards to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid SA.34191 (2012/C) (ex 2012/NN) (ex 2012/CP) ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. THE PRE-NOTIFICATION — SA.33799 (2011/PN)

- (1) By SANI notification No 6332 of 18 October 2011, registered on 20 October 2011, Latvia pre-notified to the Commission a LVL 16 million (EUR 22,65 million) ⁽²⁾ loan in favour of A/S Air Baltic Corporation ('airBaltic' or 'the company'). The Latvian authorities were of the view that the loan did not constitute state aid but nonetheless pre-notified it for reasons of legal certainty and transparency. This pre-notification was registered with reference number SA.33799 (2011/PN).
- (2) A meeting with the Latvian authorities and their advisers took place on 27 October 2011, after which the Latvian authorities submitted supplementary information by letter of 7 November 2011. The Commission requested additional information by e-mails of 16 November 2011, 17 November 2011, 1 December 2011, and 9 December 2011, to which the Latvian authorities respectively replied by e-mails of 16 November 2011, 22 November 2011, 7 December 2011, and 13 December 2011.

⁽¹⁾ OJ C 69, 8.3.2013, p. 40.

⁽²⁾ Exchange rate of EUR 1 = LVL 0,7063. Average exchange rate for 2011 published by the European Central Bank, available at <http://sdw.ecb.europa.eu/reports.do?node=100000233>.

- (3) On 4 January 2012, Latvia submitted additional information and explained that the LVL 16 million loan — referred to in paragraph 1.1 above — had been provided to the company already on 21 October 2011 without prior Commission authorisation. In addition, on 13 December 2011, the Latvian State decided to increase the capital of the company and on 14 December 2011 it granted a second loan to airBaltic.
- (4) In view of the fact that the measure had been granted to the company and of a complaint received on 9 January 2012 (see section 1.2 below), the Latvian authorities withdrew their pre-notification by e-mail of 21 February 2012. State aid case SA.33799 (2011/PN) was administratively closed on 27 February 2012.

1.2. THE COMPLAINTS — SA.34191 (2012/C) (ex 2012/NN) (ex 2012/CP)

- (5) On 9 January 2012, the Commission received a complaint lodged by the private company SIA Baltijas aviācijas sistēmas ('BAS' or 'the complainant'), former shareholder of airBaltic, in relation to a number of measures allegedly provided to airBaltic by the Latvian State.
- (6) By letter of 23 January 2012, the Commission sent the complaint for comments to Latvia, who replied on 13 March 2012. By letter of 14 May 2012, the Commission requested additional information from Latvia, provided on 16 July 2012.
- (7) By letter of 18 July 2012, registered on 20 July 2012, the Commission received a new complaint from Mrs Inga Piteriece, former member of the board of BAS, regarding an additional measure allegedly granted by the Latvian State to airBaltic. By e-mail of 24 July 2012, the Commission sent the new complaint for comments to Latvia, who replied on 22 August and 4 September 2012.
- (8) Meetings with the Latvian authorities, their advisers and representatives of airBaltic took place on 5 July and 17 August 2012.
- (9) By letter dated 20 November 2012, the Commission informed Latvia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid ('the opening decision'). Latvia submitted comments on the opening decision by letter dated 23 January 2013. The Commission requested information to Latvia by letter of 6 March 2013, replied to on 8 April 2013. In addition, a meeting with the Latvian authorities took place on 25 June 2013, after which Latvia submitted additional information on 14 August, 18 September, 9 and 25 October 2013. Additional meetings with the Latvian authorities and their legal representatives took place on 22 October and 22 November 2013, as well as on 10 January 2014. Latvia submitted additional information on 7 and 8 November, 2, 13 and 20 December 2013, and on 28 and 31 January, 28 February, 24 and 26 March, 9 April and 16 May 2014.
- (10) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾ on 8 March 2013. The Commission invited interested parties to submit their comments on the measures.
- (11) The Commission received observations from Ryanair and airBaltic, as well as three individuals on behalf of creditors of airBaltic (FLS, AB Jet and Eurobalt Junipro). The Commission forwarded these observations to Latvia, which was given the opportunity to react; Latvia's comments were received by letter dated 27 May 2013.
- (12) By letter dated 4 July 2014, Latvia agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation (EC) No 1/1958 and to have the present decision adopted and notified in English.

2. THE LATVIAN AIR TRANSPORT MARKET

- (13) The air transport market in Latvia has rapidly expanded since Latvia joined the EU. Between 2003 and 2007, the annual average growth of passengers at Riga International Airport — including point-to-point and transfer passengers — reached 47 %, passing from approximately 700 000 passengers in 2003 to 3,2 million in 2007. The entry of low-cost carriers, especially Ryanair, contributed to the market growth as substantial new demand was created with the opening of new routes.

⁽³⁾ Cf. footnote 1.

- (14) The global economic crisis of 2008-2009 severely hit the economic growth of Latvia and as a consequence its air transport market. As a result of the crisis, the number of point-to-point passengers in Latvia decreased from 3,2 million in 2008 to 2,7 million in 2009, although the total number of passengers continued to grow thanks to transfer passengers.
- (15) As of 2010, overall market growth resumed, reaching an average 12 % annual growth. While the point-to-point passenger market has increased on average 9 % annually, the increase in the transfer passenger market reached 18 % per year. Going forward, it is expected that the Latvian air transport market will continue to grow at an annual growth rate of 7 % between 2012 and 2015.
- (16) Riga International Airport is the leader in the Baltic region. In 2011, approximately 5,1 million passengers travelled to/from Riga, compared to 1,9 million passengers travelling to/from Tallinn and 1,7 million passengers travelling to/from Vilnius. In 2011, airBaltic carried 66 % of the passengers flying via Riga, while Ryanair, second largest operator and main competitor of airBaltic, carried 20 %. 15 other companies operated to/from Riga (full-service providers and low-cost carriers) accounting for 14 % of all passengers. ⁽⁴⁾

3. THE BENEFICIARY

- (17) airBaltic was established in 1995 through a joint venture between Scandinavian Airlines SAS and the Latvian State. In January 2009, SAS sold its entire stake in the company (47,2 %) to BAS.
- (18) From information published in the press, it appears that BAS was set up as a private company wholly owned by Mr Bertolt Flick until December 2010, when 50 % of its shares were transferred to the Bahamas-registered Taurus Asset Management Fund Ltd ("Taurus"). ⁽⁵⁾
- (19) As of October 2011, airBaltic's shareholders were the Latvian State — through the Ministry of Transport — with 52,6 % of the shares and BAS with 47,2 %, the rest (0,2 %) being held by the Russian airline Transaero. At the time, the president and CEO of airBaltic was Mr Bertolt Flick. Since 1 November 2011, the CEO of airBaltic is Mr Martin Gauss, former CEO of Malév.
- (20) On the basis of the information provided by the Latvian authorities, it appears that BAS had pledged its 47,2 % shareholding in airBaltic as collateral to Latvijas Krājbanka, the Latvian subsidiary of the Lithuanian bank Snoras ⁽⁶⁾. On 16 November 2011, Snoras collapsed and was nationalised ⁽⁷⁾. On 17 November 2011, the Finance and Capital Markets Commission of Latvia (FCMC) ordered a limitation of the banking operations of Latvijas Krājbanka in excess of EUR 100 000 ⁽⁸⁾. By order of the FCMC of 21 November 2011, the operations of Latvijas Krājbanka were suspended and a management of trustees was appointed ⁽⁹⁾.
- (21) According to the information provided, it appears that BAS defaulted on some of its financial obligations towards Latvijas Krājbanka. As a result, on 30 November 2011, Latvijas Krājbanka sold all except one of the airBaltic shares previously owned by BAS to the Ministry of Transport at their nominal value, totalling LVL 224 453 (EUR 317 787). ⁽¹⁰⁾ As a result, Latvia's shareholding in airBaltic increased to 99,8 %, while BAS retained just one share.

⁽⁴⁾ Source: Riga International Airport Yearbook 2011, available at <http://www.riga-airport.com/en/main/about-company/gada-gramata>.

⁽⁵⁾ See <http://bnn-news.com/airbaltic-shareholders-structure-11608>. The press reports some links between Taurus and a Russian entrepreneur Mr Vladimir Antonov.

⁽⁶⁾ The former main shareholder and chairman of the Lithuanian bank Snoras was Mr Vladimir Antonov.

⁽⁷⁾ The Central Bank of Lithuania explained that it needed to nationalise Snoras because of the failure to meet regulatory requirements, failure to provide requested information, and the poor condition of assets. See <http://en.rian.ru/business/20120523/173624459.html> and <http://www.bloomberg.com/news/2011-12-19/antonov-says-he-invested-50-million-euros-in-latvia-s-airbaltic.html>.

⁽⁸⁾ See http://www.lkb.lv/en/about_bank/news/archyve?item=2022&page=6.

⁽⁹⁾ See http://www.fktk.lv/en/publications/other_publications/2012-02-07_jsc_latvijas_krajbanka_c/.

⁽¹⁰⁾ The Minister of Transport explained that the goal of the acquisition was to protect the depositors of Latvijas Krājbanka. Apparently, BAS' financial problems threatened to prevent the State from investing in airBaltic's capital and thus the Government decided to act in the defence of its interests and take control of airBaltic. See <http://www.bloomberg.com/news/2011-12-01/latvia-buys-out-minority-shareholder-in-airbaltic-ministry-says.html> and http://www.sam.gov.lv/?cat=8&art_id=2598.

- (22) It also appears from the press that the shareholders of BAS had also pledged their shares in BAS as security with Latvijas Krājbanka ⁽¹¹⁾. On 6 February 2012, in the context of insolvency proceedings relating to BAS, ⁽¹²⁾ a subsidiary of Latvijas Krājbanka took over BAS' shares from its prior shareholders and appointed a new management.
- (23) Finally, it appears that on 8 June 2012 the Latvian State purchased from BAS its sole share in airBaltic for LVL 1. Therefore, as of this date, BAS is no longer shareholder of airBaltic ⁽¹³⁾.
- (24) In relation to the financial situation of airBaltic, the Latvian authorities have explained that the difficulties of the company started in 2008, due to the global economic recession and the drastic oil price increase. As a result, in 2008 airBaltic had losses of LVL 28 million (EUR 39,64 million). In 2009, the company however turned back to profits of LVL 14 million (EUR 19,82 million). ⁽¹⁴⁾ In 2010, airBaltic again made losses of LVL 34,2 million (EUR 48,42 million). In June 2011, the Latvian Minister of Economy said that airBaltic operated with a loss of LVL 18 million (EUR 25,48 million) in the first five months of 2011 and was close to bankruptcy. ⁽¹⁵⁾ airBaltic filed for legal protection from its creditors on 21 September 2011. ⁽¹⁶⁾ The audited results for 2011 show a loss of LVL 83,5 million (EUR 118,22 million).
- (25) On 27 August 2012, Latvia published an invitation for potential investors to express their interest in acquiring 50 % minus one vote of airBaltic's capital, ^(*) although transactions of a different nature were not excluded. The main criteria for choosing an investor would be the ability to support airBaltic's development, the investor's reputation and experience as well as its financial resources. The process is aimed for conclusion during 2014.

4. DESCRIPTION OF THE MEASURES

4.1. THE 3 OCTOBER 2011 AGREEMENT: THE FIRST STATE LOAN AND THE BAS LOAN

- (26) On the basis of an agreement dated 3 October 2011 ('the Agreement'), Latvia agreed to provide to airBaltic a loan of LVL 16 million (EUR 22,65 million) ('the first State loan', **measure 1**) alongside another loan of LVL 14 million (EUR 19,82 million) from BAS ('the BAS loan'). The conditions of both loans were linked and identical, and the initial interest rate was set at [11 — 13] ⁽¹⁷⁾ %. However, at the time of granting the loan to airBaltic, BAS waived its right to have the BAS loan collateralised.
- (27) The Agreement also stipulated that no later than 15 December 2011, the State would grant an additional loan to airBaltic for an undetermined amount in proportion to its voting rights, on identical conditions to the first State loan. Both State loans were to be capitalised if a number of conditions were met, among which the approval by the board of airBaltic of a business/restructuring plan.
- (28) Article 7 of the Agreement provided for the conditions of the future capital increase of airBaltic. In particular, Article 7.3 stated that '*the State loan and BAS loan [...] may be added to the sum to be capitalised*'. Under Article 7.4, BAS undertook to vote for the capitalisation of the loan and for the capital increase. In case BAS would not fulfil its commitments, Article 7.4 provided the State the right to purchase from BAS its shares in airBaltic for LVL 1. ⁽¹⁸⁾

⁽¹¹⁾ See <http://www.baltic-course.com/eng/transport/?doc=54423>. The press also reports that BAS allegedly owed LVL 14 million to Latvijas Krājbanka (see for instance <http://www.baltic-course.com/eng/transport/?doc=53861>).

⁽¹²⁾ According to Latvia, as of August 2013, BAS had not been declared bankrupt despite the attempts of several of its creditors.

⁽¹³⁾ In addition, it seems that at least since 2010 the main shareholders of airBaltic — the Latvian State and BAS — remained in conflict: the press reports on numerous legal actions between the Latvian State and BAS (see for instance <http://atwonline.com/airline-finance-data/news/airbaltic-files-bankruptcy-0921>).

⁽¹⁴⁾ See <http://centreforaviation.com/analysis/airbaltics-restructuring-plan-is-in-full-swing-but-competition-from-estonian-air-is-rising-74754>.

⁽¹⁵⁾ See <http://www.eurofound.europa.eu/emcc/erm/factsheets/18371/Air%20Baltic%20Corporation?Template=searchfactsheets&kSel=1> and <http://www.baltic-course.com/eng/transport/?doc=42089>.

⁽¹⁶⁾ See https://www.airbaltic.com/en/bottom_menu/press-room/press_releases/2011/airbaltic-files-for-legal-protection-airbaltic-to-continue-operations.

^(*) The Latvian Ministry of Transport placed an advertisement in the European and British editions of the Financial Times on 27 August 2012 inviting non-binding expressions of interest to participate in the sale of shares issued by airBaltic. See http://prudential.lv/upload_file/27082012-ABC%20ad%20EN.pdf.

⁽¹⁷⁾ Business secret.

⁽¹⁸⁾ The Latvian State apparently exercised this right on 8 June 2012 (see recital 23 above).

- (29) Latvia granted the first State loan to airBaltic on 21 October 2011 (see recital 3 above). BAS granted the BAS loan on 1 November 2011.
- (30) On 13 December 2011, once Latvia's shareholding in airBaltic had increased to 99,8 % (see recital 21 above), the Latvian Government decided to authorise an interest rate cut for the first State loan from [11 — 13] % to [2 — 4] %. Since the first State loan and the BAS loan were linked (see recital 26 above), the same interest rate cut was applied to the latter.

4.2. THE SECOND STATE LOAN OF 13 DECEMBER 2011

- (31) On 13 December 2011, at the same time as the interest rate cut of the first State loan (see recital 30 above), the Latvian Government decided to provide a convertible loan to airBaltic of LVL 67 million (EUR 94,86 million) at an interest rate of [9 — 11] % divided into two tranches ('the second State loan', **measure 2**)⁽¹⁹⁾.
- (32) The first tranche of the second State loan of LVL 41.6 million (EUR 58,89 million) was immediately made available to airBaltic by agreement of 14 December 2011. The second tranche of LVL 25,4 million (EUR 35,96 million) was made available to the company on 14 December 2012, i.e. after the Commission had adopted its opening decision.

4.3. AIRBALTIC'S CAPITAL INCREASE AGREED ON 22 DECEMBER 2011

- (33) During airBaltic's shareholders' meeting of 22 December 2011, the Latvian State and BAS — despite it having only one share in the company at that time — agreed to a capital increase of LVL 110 million (EUR 155,74 million) ('the capital increase', **measure 3**). This was to be achieved through conversion into capital of the first State loan, the first tranche of the second State loan and the BAS loan, together with a cash contribution from BAS of LVL 37,7 million (EUR 53,38 million).
- (34) The Latvian State executed its decision to participate in airBaltic's capital increase on 29 December 2011 and proceeded to convert into capital the first State loan and the first tranche of the second State loan.
- (35) By letter of 4 January 2012, the Ministry of Transport of Latvia requested that BAS participate in the capital increase by converting the BAS loan and injecting the cash. Despite the requests of the Latvian authorities, BAS did not seem inclined to fulfil the agreement reached at the shareholders' meeting. Indeed, by letters dated 6 to 26 January 2012, BAS contested the State's acquisition from Latvijas Krājbanka of the airBaltic shares that BAS previously owned (see recital 21 above) and requested that the State refrain from adopting decisions concerning changes in airBaltic's capital. On 19 January 2012 the FCMC issued a formal prohibition to BAS and airBaltic on including the BAS loan as part of the capital increase
- (36) By 30 January 2012, i.e. the end of the first stage of the subscription implementation period for the capital increase, BAS had neither converted its loan nor injected the cash.

4.4. THE COMPLAINT FROM BAS AND SUBSEQUENT EVENTS

- (37) The complaint filed with the Commission on 9 January 2012 concerned the first and second State loans as well as the capital increase. In addition, BAS complained about two other measures potentially entailing aid to airBaltic, namely the acquisition by the State of 0 %-coupon bonds from airBaltic in April 2010 (**measure 4**) and the payment of EUR 2,8 million by Latvijas Krājbanka to airBaltic on 21 and 22 November 2011 (**measure 5**).
- (38) Latvia explained that measure 4 entailed the acquisition of LVL 30 million (EUR 42,47 million) of 0 %-coupon bonds from airBaltic in by the majority shareholders of airBaltic at the time, i.e. the Latvian State and BAS. The part corresponding to Latvia was not directly subscribed by the Ministry of Transport — the actual owner of airBaltic's shares — but by the Latvian State Radio and Television Centre ('LVRTC'), a 100 % State-owned company. The bonds were acquired with a nominal value of LVL 1 each and had no interest, and were purchased

⁽¹⁹⁾ Contrary to what is stated in recital 80 of the opening decision, during the formal investigation procedure the Commission observed that BAS was not obliged under the Agreement to provide a convertible loan on *pari passu* terms alongside the second State loan.

by Latvia and BAS in proportion to their shareholding. This would result in the Latvian State acquiring 0 %-interest bonds from airBaltic in an amount of approximately LVL 15,78 million (EUR 22,34 million) and BAS acquiring approximately LVL 14,22 million (EUR 20,13 million). The bonds are to be converted into capital on 1 July 2015, at a rate of one share per bond.

- (39) As regards measure 5, the Latvian authorities explained that no payments were made to airBaltic on 21 and 22 November 2011 as alleged by the complainant. However, airBaltic submitted three payment orders to Latvijas Krājbanka prior to the decisions of the FCMC of 17 November 2011 to limit banking operations above EUR 100 000 and to halt all operations of Latvijas Krājbanka on 21 November 2011 (see recital 20 above). These orders were executed by Latvijas Krājbanka days after. In particular, the operations at stake were two payments of USD [...] million to IATA Clearing House and of EUR [...] million to Riga International Airport executed on 25 November 2011, and a transfer of EUR [...] million to an alternative bank account of airBaltic in Swedbank on 30 November 2011.

4.4.1. The 'reShape' plan of March 2012

- (40) In March 2012, airBaltic adopted a plan entitled 'reShape'. It foresees a number of measures, including the purchase of more efficient planes ⁽²⁰⁾ and the closure of certain routes, which would allow the company to break-even in 2014 in the realistic and optimistic scenarios. However, in the pessimistic scenario, airBaltic would have negative EBIT until at least 2016.
- (41) The reShape plan foresees that on top of the LVL 83 million (EUR 117.51 million) already committed to the company, ⁽²¹⁾ additional financing of LVL [45 — 55] million (EUR [64 — 78] million) will be needed [...] in the realistic scenario. This amount would go down to LVL [5 — 15] million (EUR [7 — 21] million) in the optimistic scenario but would increase to LVL [135 — 145] million (EUR [192 — 206] million) in the pessimistic one.

4.5. THE COMPLAINT OF 18 JULY 2012

- (42) Apart from Latvia and BAS, a number of other investors were also parties to the Agreement. These investors agreed to grant two syndicated loans to airBaltic for EUR 35 million each at an initial interest rate of [5 — 7] %. Syndicated loan 1 was supposed to be provided by Latvijas Krājbanka and the Lithuanian bank Snoras. Syndicated loan 2 was supposed to be provided by several companies, among others Taurus. These syndicated loans were to be granted in order to novate several claims that those private investors held against airBaltic. In case BAS would not fulfil its commitments under the Agreement, in line with its Article 7.4, the investors who were to grant to airBaltic the syndicated loan 2 — including BAS' shareholder Taurus — agreed to 'assign and to hand over to the State or its nominated company for the sum of LVL 1 all claims which stem from [...] the outstanding [syndicated] loan nr 2'.
- (43) On 18 July 2012, the Commission received an additional complaint (see recital 7 above) regarding the obligation of the investors under Article 7.4 of the Agreement to assign and to hand over to the State or its nominated company all claims stemming from syndicated loan 2 for just LVL 1 (see recital 28 above). The complainant alleges that by letters of 9 February 2012 and 12 June 2012 the Latvian State had decided that a claim of EUR 5 million towards airBaltic for syndicated loan 2 — the part granted by Taurus, out of a total of EUR 35 million — is to be assigned to airBaltic for a price of LVL 1 (**measure 6**).

5. THE OPENING DECISION

- (44) On 20 November 2012, the Commission decided to open the formal investigation procedure. In its opening decision, the Commission came to the preliminary view that airBaltic could be considered a firm in difficulty at the time the measures identified were provided. It also expressed doubts as regards the six measures under assessment and came to the preliminary conclusion that all of them entailed state aid.

⁽²⁰⁾ On 10 July 2012 airBaltic signed a letter of intent with Bombardier to acquire 10 CS300 aircraft and take purchase rights on a further 10 CS300 jetliners. Based on the list price of the CS300 airliner, a firm-order contract will be valued at approximately USD 764 million (EUR 621,74 million), and could increase to USD 1,57 billion (EUR 1,28 billion) should the purchase rights be converted to firm orders. See <http://www.airbaltic.com/public/49780.html>. Exchange rate of EUR 1 = USD 1,2288 — average exchange rate for July 2012 published by the European Central Bank, available at <http://sdw.ecb.europa.eu/reports.do?node=100000233>.

⁽²¹⁾ The first State loan of LVL 16 million and the second State loan of LVL 67 million (including the second tranche of LVL 25,4 million, which following the reShape plan was provided to the company in the second half of 2012).

- (45) The Commission first noted that the first State loan (**measure 1**) was provided by the State at the same time as the BAS loan — in proportion to their shareholdings — and at identical conditions, which at first sight would seem to suggest that the loans had been granted on *pari passu* terms. However, the Commission observed that it could not assess the first State loan and the BAS loan in isolation but in the overall context of the provisions of the Agreement. Accordingly, the Commission noted that from the Agreement it did not result that, in addition to the BAS loan, BAS also had to issue a convertible loan to airBaltic alongside the second State loan and that the State had made commitments that were different and economically more significant than those taken by BAS. The Commission also observed that the decision of BAS to invest in airBaltic was taken in a context in which the public authorities had already demonstrated their willingness to financially support the company.
- (46) In relation to the interest rate of the first State loan and the cut on the interest rate of [5-15] percentage points occurred in December 2011 (see recital 30 above), the Commission considered it doubtful that the rates applied would be at market level in view of the significant difficulties of airBaltic at the time.
- (47) With regard to the second State loan (**measure 2**) the Commission first observed that it was already foreseen in the Agreement, albeit with an undetermined amount and subject to a number of factors. According to the Commission, the second State loan could not be considered *pari passu* since from the Agreement it did not follow — contrary to what Latvia argued — that, in addition to the BAS loan, BAS also had to issue a convertible loan to airBaltic. Moreover, the Commission highlighted that when Latvia decided to provide the second State loan to airBaltic, there was no possible concomitance on the side of BAS since it was under no obligation to provide any other loan to airBaltic.
- (48) In relation to the interest rate of the second State loan ([9 — 11] %), the Commission expressed doubts that a private investor would have provided the company with a loan at such an interest rate in view of the difficulties that airBaltic was facing and the fact that the collateral used was the same as that granted in relation to the first State loan.
- (49) Pertaining to the capital increase agreed on 22 December 2011 (**measure 3**), the Commission noted that at the time the recapitalisation decision was taken, BAS had lost all except one of its shares in airBaltic (since the State had acquired them from Latvijas Krājbanka). As a result, the State increased its shareholding in the company to 99,8 % (see recital 21 above). Therefore, the conversion made little economic sense for BAS, who — in order to regain its former shareholding — was requested not only to convert into capital the BAS loan but also to inject LVL 37,7 million (EUR 53,38 million) in cash, all this with limited possibilities that the equity would provide any return in the short- to medium-term in view of the difficulties of the company. Moreover, the Commission expressed doubts on the date at which measure 3 was actually granted.
- (50) The Commission also noted that BAS and the State had a certain period of time — presumably until 30 January 2012, i.e. the end of the first stage of the subscription implementation period for the capital increase — to inject the capital in airBaltic. The State however did so on 29 or 30 December 2011, while BAS eventually never converted its loan or injected the cash. According to the Commission, before converting the loans, Latvia should have waited until it was reasonably assured that BAS would also do so. On this basis, the Commission was of the view that measure 3 did not appear to be MEIP-conform.
- (51) In relation to the acquisition of LVL 30 million (EUR 42,47 million) of 0 %-coupon bonds from airBaltic in April 2010 (**measure 4**), the Commission highlighted that these bonds, in view of their characteristics, were comparable to a capital injection. Given that profitability was excluded from the outset since no interest was attached to the bonds and that future profitability upon conversion appeared unlikely in view of the difficulties of the company, the situation of the airline industry, and the absence at the time of a plan for bringing the company back to profitability, the Commission raised doubts about the market-conformity of measure 4. In addition, the Commission was not able to exclude that BAS acquired the bonds because of the strong interest shown by Latvia in airBaltic before the bond issuance.
- (52) Concerning the EUR 2,8 million payments by Latvijas Krājbanka (**measure 5**), the Commission could not conclude with certainty whether — at the time these payments occurred — the actions of Latvijas Krājbanka, being a 100 % State-owned bank as, were independent of those of the State. In this respect, the Commission observed that Latvia had provided no evidence that airBaltic submitted the payment and transfer orders before the FCMC decision of 17 November 2011 to limit banking operations per client above EUR 100 000.

- (53) Finally, regarding the EUR 5 million claim attributed to airBaltic (**measure 6**), the Commission explained in its opening decision that by virtue of Article 7.4 of the Agreement, Latvia had decided that a claim of EUR 5 million towards airBaltic for syndicated loan 2 — the part granted by Taurus, of a total of EUR 35 million — was to be assigned to airBaltic for a price of LVL 1. The Commission highlighted that in economic terms this operation was very similar to a debt waiver, by means of which Latvia was freeing airBaltic from its obligation to pay interests and to reimburse part of syndicated loan 2 to the bearer of the claim. In addition, the Commission concluded that measure 6 was not MEIP-conform since airBaltic was not entitled under the Agreement to get the credit in exchange of LVL 1.
- (54) In relation to the rest of the claims under syndicated loan 2 totalling LVL 30 million (EUR 42,47 million) (see recital 42 above), the Commission noted that the reasoning above would apply *mutatis mutandis* to these claims.
- (55) The Commission therefore came to the preliminary conclusion that the six measures under assessment entailed unlawful state aid, since they had been granted in breach of the notification and stand-still obligations established in Article 108(3) TFEU.
- (56) The Commission also expressed doubts on the **compatibility** with the internal market of the six measures under assessment, in particular since the Latvian authorities did not provide any possible grounds for compatibility. Of the possible compatibility grounds, the Commission preliminarily considered — in view of the difficulties of airBaltic — that the only applicable criteria were those concerning aid for rescuing and restructuring firms in difficulty under Article 107(3)(c) TFEU on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²²⁾ ('the R&R Guidelines'). In this respect, on the basis of the information available at the time, the Commission was of the view that the conditions for rescue aid did not seem to be met, and that the reShape plan did not include any of the necessary elements for it to be considered a restructuring plan in the sense of section 3.2 of the R&R Guidelines.

6. COMMENTS ON THE OPENING DECISION

6.1. COMMENTS FROM LATVIA

- (57) In its comments on the Commission's opening decision, Latvia notes that **measures 1, 2, 3 and 6** were inter-dependent and that they derive from the Agreement, thus constituting essentially one and the same financial transaction which must be assessed at the time when the Agreement was entered into, i.e. 3 October 2011. On this basis, Latvia concludes that these measures are concomitant and MEIP-conform, thereby excluding state aid.
- (58) Latvia argues that BAS was the initiator of the Agreement and actually asked the State to participate in the capital increase. Eventually, the State agreed to the investment subject to strict conditions laid down in the Agreement. One of the key elements of the Agreement was an injection by the State and BAS of around LVL 100 million (EUR 141,58 million) in two stages: (i) LVL 30 million (EUR 42,47 million) in the form of the first State loan and the BAS loan, and (ii) approximately LVL 70 million (EUR 99,1 million) to be provided by the State and BAS according to their shareholding. Therefore, according to Latvia, BAS was under a contractual obligation to inject additional capital into airBaltic in proportion to its shareholding. Latvia derives this conclusion from Article 7.2 of the Agreement, which establishes that the State would provide a second loan to airBaltic '*in proportion to its voting rights*', which in Latvia's view means that BAS had to inject money also in proportion to its shareholding.
- (59) Latvia also notes that the Agreement provides for a number of contingency measures aimed at protecting the financial interests of the State in case BAS would fail not fulfil its obligations: (i) the right for the State to acquire the shares from BAS in exchange of LVL 1, (ii) the obligation for the private investors that granted syndicated loan 2 to airBaltic to attribute their claims against airBaltic to the State under certain circumstances, and (iii) the obligation for the investors to compensate airBaltic for certain off-balance sheets liabilities amounting to approximately EUR [...] million⁽²³⁾. The fact that BAS and the investors accepted these contingency measures is, in Latvia's opinion, proof that the investors were confident that BAS would fulfil its obligations. On this basis, Latvia considers that measures 1, 2 and 3 were concomitant and MEIP-rational. In addition, since measure 6 was a corollary of the contingency measures, Latvia claims that this measure does not entail aid either.

⁽²²⁾ OJ C 244, 1.10.2004, p. 2.

⁽²³⁾ The EUR [...] million figure is claimed by Latvia but does not result from the Agreement.

- (60) In addition, as regards **measure 1**, Latvia adds that the interest rate was in line with the MEIP and the Reference Rate Communication ⁽²⁴⁾ and argues that the lowering of the interest rate from [11 — 13] % to [2 — 4] % was economically rational for the State in order to reduce the funding costs of airBaltic (which at time it already owned at 99,8 %). Concerning **measure 2**, Latvia is of the opinion that the interest rate was in line with the MEIP.
- (61) Concerning **measure 3**, the Latvian authorities argue that the conversion into capital of the first State loan and the first tranche of the second State loan was done on the basis of the concomitant decision by BAS to convert the BAS loan and to inject LVL 37,7 million (EUR 53,38 million) in cash, reached at airBaltic's shareholders meeting of 22 December 2011. The Latvian authorities reiterate that measures 1, 2 and 3 should not be assessed in isolation but only in conjunction with the wider transaction they form an inseparable part of. Since this transaction was agreed by BAS and the State in full concomitance, Latvia excludes the presence of aid. Latvia further argues that the fact that BAS did not fulfil its commitment within the maximum deadline (i.e. 30 January 2012) is irrelevant and that the State had no option but to convert the first State loan and the first tranche of the second State loan into capital — it did so on 29 December 2011. Moreover, Latvia explains that the State took all possible steps towards forcing BAS to fulfil its commitment.
- (62) In what relates to **measure 6**, Latvia adds that the attribution of the claims to airBaltic was a corollary of the measures foreseen in Article 7.4 of the Agreement. According to Latvia, this ensures that the entire Agreement is *pari passu*, since the assignment of the claim to airBaltic guarantee that the private investors make a proportionate contribution to the financial injection into airBaltic.
- (63) Concerning **measure 4**, Latvia is of the opinion that the issuance of 0 %-coupon bonds was carried out concomitantly by the State and BAS under identical conditions and thereby excludes the presence of state aid. Latvia also explains that the decision to issue bonds was taken at the initiative of BAS. As regards the fact that these bonds offered no profit, Latvia claims that the Commission should take into account the so-called 'owner effect' and consider that the State, as shareholder of airBaltic, had different incentives than an outsider investor.
- (64) Finally, as regards **measure 5**, Latvia is of the opinion that no State resources were involved and that in any event the actions of the FCMC would not be imputable to the State.
- (65) In view of its opinion that no state aid was present, Latvia did not initially provide arguments on the compatibility of the measures with the internal market. However, during the course of the formal investigation procedure, Latvia provided arguments in this respect and noted that if state aid was present, it would be compatible restructuring aid under the R&R Guidelines.
- (66) On this basis, Latvia submitted in December 2013 a restructuring plan according to which the restructuring of airBaltic started in April 2011, when a first version of the plan was submitted to the company's management. This document identified some of the weaknesses of airBaltic and established that EUR [175 — 185] million in capital were needed. This first version of the plan evolved into the reShape plan of March 2012, which according to Latvia was a preliminary step to the restructuring plan submitted in December 2013.
- (67) The restructuring plan foresees a 5-year restructuring period from April 2011 to April 2016 and total restructuring costs of LVL [150 — 170] million (EUR [214 — 242] million). The restructuring plan foresees three types of restructuring measures: (i) optimisation of revenues and costs for the existing operations; (ii) network reconfiguration, resulting in adjustment of destinations, frequencies and timing; and (iii) network and fleet optimisation. The restructuring plan includes a total of 26 initiatives addressing revenue and costs, coupled with additional initiatives in the area of network reconfiguration and fleet renewal. As regards the restoration of airBaltic's viability, the plan expects that with these initiatives the company will break-even in 2014 and remain profitable thereafter, with EBIT reaching LVL [1 — 3] million (EUR [1,4 — 4,2] million) in 2014 and LVL [9 — 12] million (EUR [12,8 — 17] million) in 2016. The restructuring plan also includes revised financial forecasts on the basis of realistic, pessimistic and optimistic scenarios, which are subject to a sensitivity analysis in order to assess the risks and their possible impact.

⁽²⁴⁾ 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).

- (68) The plan also puts forward a number of compensatory measures: (i) fleet reduction by 27 %; (ii) the surrender of 14 profitable routes; and (iii) the surrender of [...] slot pairs in coordinated airports. Between 2011 and 2016, airBaltic will reduce its capacity by [17 — 20] % in terms of ASK ⁽²⁵⁾ ([7 — 10] % when considering profitable routes only). According to Latvia, such capacity reduction would be in line with past cases. In addition, the restructuring plan includes the release of [...] slot pairs as the result of the closure of several routes.
- (69) The restructuring plan estimates the restructuring costs at LVL [150 — 170] million (EUR [214 — 242] million), which will be used for repayment of third-party loans, to compensate losses resulting from the phase-out and disposal of certain aircraft, redundancy payments the purchase of new aircraft, etc.
- (70) In view of total restructuring costs, the proposed own contribution of airBaltic according to the restructuring plan amounts to LVL [100 — 110] million (EUR [141 — 155] million), i.e. [60 — 70] % of the total restructuring costs. According to the restructuring plan, the own contribution would result from several injections from private parties (including a liquidity facility and advance payments), private loans, a lease agreement for new aircraft and a partial write-off of debt with two banks.

6.2. COMMENTS FROM INTERESTED PARTIES

- (71) During the formal investigation procedure, the Commission received comments from Ryanair and airBaltic, as well as three individuals on behalf of creditors of airBaltic.
- (72) Ryanair agrees with the Commission's preliminary findings that the measures under assessment are inconsistent with the market economy investor principle ('MEIP') and incompatible with the internal market. Ryanair however argues that the Commission's assessment of the MEIP was not complete in the opening decision, since the Commission should have considered whether a private investor would have opted for liquidating airBaltic upfront instead of providing it with additional capital ⁽²⁶⁾. Ryanair also argues that the Commission should have assessed in its opening decisions whether the liquidation of airBaltic was more profitable for the State than the provision of additional funds. Although Ryanair considers that it had no sufficient information to comment on the reShape plan, it notes its doubts that airBaltic would return to profitability and considered that the company should have been liquidated.
- (73) Ryanair also argues that any aid to airBaltic would harm its market position since Ryanair operates 13 routes from Riga, of which more than half in direct competition with airBaltic.
- (74) airBaltic highlights in its comments that the reasons for the difficulties of the company were due to the conduct of the previous management and the unfortunate decisions of Mr Flick before October 2011, who — according to airBaltic — focused on a commercial strategy based solely on expansion and not on profitability. Also, airBaltic explains that the previous management of the company entered into many disadvantageous contracts and concluded transaction without business rationale, besides setting up an opaque corporate and organisational structure.
- (75) Also according to airBaltic, when Latvia decided to participate and to execute the Agreement, it acted as a rational private investor. airBaltic notes that Latvia's investment was concomitant to that of BAS and that it had required severe sacrifices from BAS and other private investors. In addition, the Agreement included sufficient safeguards to ensure that Latvia's interest were fully protected against BAS; using these safeguards was — according to airBaltic — more rational for Latvia than to breach its investment commitments, thereby causing the company to go bankrupt, destroying the value of the existing shareholders and exposing itself to damage claims by the private investors. On this basis, airBaltic concludes that the decision of Latvia to enter into the Agreement does not contain elements of state aid.
- (76) As regards the acquisition by the State of 0 %-coupon bonds from airBaltic in April 2010 (measure 4), airBaltic is of the opinion that it was economically rational and a fully concomitant investment of the State and BAS and thereby concludes that it did not entail state aid. In relation to the payment of EUR 2,8 million by Latvijas

⁽²⁵⁾ ASK stands for available seat kilometre (seats flown multiplied by the number of kilometres flown). ASK is the most important capacity indicator of an airline as employed by the air transport industry and by the Commission itself in previous restructuring cases in the air transport sector.

⁽²⁶⁾ Ryanair referred to Case C-405/11 P, *Buczek Automotive*, not yet published, at paras 55-57.

Krājbanka to airBaltic on 21 and 22 November 2011 (measure 5), airBaltic considers that these were decisions taken in the course of airBaltic's business and that they concern private funds, thereby excluding the presence of State resources.

- (77) Finally, airBaltic highlights the role of airBaltic in keeping Latvia connected with the rest of the EU and provides some information on the implementation of the reShape plan by the new management of the company.
- (78) As regards the comments provided by three individuals on behalf of creditors of airBaltic, they had a similar structure. The creditors complain in general terms about the measures subject to the opening decision, in particular as regards to measure 6. In addition, they made reference to certain unpaid debts of airBaltic which apparently had their origin in the Agreement and which allegedly had led some of the creditors into insolvency.

6.3. OBSERVATIONS FROM LATVIA ON THE COMMENTS OF INTERESTED THIRD PARTIES

- (79) In its observations on the comments of third parties, Latvia agreed with airBaltic's views that the measures under assessment did not entail state aid.
- (80) In relation to Ryanair's comments, Latvia observes that the case-law highlighted by Ryanair — suggesting that the State should have liquidated airBaltic instead of providing it with funds — is not applicable, since at the time the State was not a major creditor of airBaltic but merely a shareholder. According to Latvia, the private creditor test is not adequate to assess the rationality of the State's investment decisions in this case. In addition, Latvia argues that when it decided to enter into the Agreement it chose to suffer losses in the short-term with a view to return to profitability in the long-term and these investment decisions were taken at the initiative of BAS. Latvia also notes that the losses of airBaltic had been reduced and dismisses the arguments of Ryanair as groundless.
- (81) Finally, in what relates to the comments of the individuals on behalf of creditors of airBaltic, Latvia considers that they are unrelated to the measures set out in the opening decision and that they seemed to be aimed at improving the creditors' position in their commercial litigations with airBaltic.

7. ASSESSMENT OF THE MEASURES

- (82) This decision addresses as a preliminary point the issue of whether airBaltic is a firm in difficulty in the meaning of the R&R Guidelines (section 7.1 below). It then analyses whether the measures under examination entail state aid to airBaltic within the meaning of Article 107(1) TFEU (section 7.2 below) and whether any such aid is lawful (section 7.3 below) and compatible with the internal market (section 7.4 below).

7.1. DIFFICULTIES OF AIRBALTIC

- (83) As already indicated in the opening decision, the Latvian authorities themselves explain that the difficulties of airBaltic started in 2008, due to the global economic recession and the drastic oil price increase. As a result, in 2008 airBaltic made losses of LVL 28 million (EUR 39,64 million). In 2009 the company made profits of LVL 6 million (EUR 8,49 million). However, in 2010, airBaltic once again incurred losses, of LVL 34,2 million (EUR 48,42 million), which increased to LVL 84,7 million (EUR 119,2 million) in 2011. The Commission recalls that the Latvian Minister of Economy stated in June 2011 that airBaltic was close to bankruptcy⁽²⁷⁾, while the press reported that the company filed for legal protection from its creditors on 21 September 2011⁽²⁸⁾.
- (84) The audited annual accounts of airBaltic show that the company had negative equity during the period 2009-2012, which moreover increased every year. Indeed, airBaltic had negative equity of LVL 19,2 million (EUR 27,18 million) in 2009, which increased to LVL 23,3 million (EUR 32,99 million) in 2010, to LVL 105,6 million (EUR 149,51 million) in 2011 and to LVL 125,1 million (EUR 177,12 million) in 2012.

⁽²⁷⁾ See <http://www.eurofound.europa.eu/emcc/erm/factsheets/18371/Air%20Baltic%20Corporation?Template=searchfactsheets&kSel=1> and <http://www.baltic-course.com/eng/transport/?doc=42089>.

⁽²⁸⁾ See <http://atwonline.com/airline-finance-data/news/airbaltic-files-bankruptcy-0921>.

Table

AirBaltic's key financial data 2007 — June 2011 (LVL thousands)

	2009	2010	2011	2012
Net result	6 004	(34 207)	(84 761)	(19 117)
Operating costs	(207 312)	(266 930)	(306 183)	(248 168)
Financial expenses	(2 592)	(3 877)	(17 446)	(4 582)
Shareholders' equity	(19 282)	(23 359)	(105 620)	(125 145)

- (85) Point 10(c) of the R&R Guidelines stipulates that a company is regarded as being in difficulty where it *'fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings'*. This appeared to be the case of airBaltic at least as of 21 September 2011 — if not earlier — when it filed for legal protection from its creditors. The Commission however notes that the court allegedly rejected the legal protection a few days later, apparently because of the negotiations between Latvia and BAS that culminated in the Agreement. Irrespective of this, the Commission considers that, in any event, it would appear that airBaltic is a firm in difficulty within the meaning of point 11 of the R&R Guidelines
- (86) In accordance with that provision, a firm may be considered to be in difficulty *'where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value'*. From the table above it emerges clearly that airBaltic has been loss-making since 2008 (with the exception of 2009). However, it appears that airBaltic was able to achieve a profit in 2009 only due to the extraordinary drop in fuel prices. Therefore, as indicated in the opening decision, it appears that the return to profitability in 2009 was a one-off occurrence due to extraordinary circumstances and not a structural trend. The company's debt and financial expenses increased significantly between 2008 and 2009 but in particular between 2009 and 2010, when the cost of financing increased from LVL 3,8 million (EUR 5,38 million) to LVL 17,4 million (EUR 24,64 million) ⁽²⁹⁾. It also results that the cost-related variables of airBaltic increased at a rate of [5-10] % per year, that is, faster than the revenue-related variables which increased at [2 — 7] % annually. Finally, the Commission reiterates the finding in the opening decision that the losses of airBaltic were of such magnitude that in 2010 its negative equity amounted to approximately LVL 23,3 million (EUR 32,99 million), which increased to approximately LVL 105,6 million (EUR 149,51 million) due the additional losses incurred in 2011. Considering all of the factors mentioned above, it appears that the criteria in point 11 of the R&R Guidelines are met.
- (87) The Commission therefore comes to the conclusion that airBaltic was a firm in difficulty within the meaning of the R&R Guidelines at least from 2011.

7.2. EXISTENCE OF STATE AID

- (88) By virtue of Article 107(1) TFEU, 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 trade between Member States, be incompatible with the internal market.
- (89) In order to conclude whether state aid is present, the Commission must assess whether the cumulative criteria laid down in Article 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of competition and effect on intra-EU trade) are met for each of the six measures being assessed.

⁽²⁹⁾ Source: airBaltic's annual report for 2011.

7.2.1. Measures 1, 2, 3 and 6 as a single transaction

- (90) Latvia argues that measure 1 must be assessed together with measures 2, 3 and 6 since they were agreed on the same date, i.e. 3 October 2011, at a point in time when Latvia and BAS were both major shareholders of airBaltic.
- (91) The Commission agrees with the Latvian authorities that the first State loan (measure 1) and the BAS loan cannot be assessed in isolation and must therefore be viewed as part of the overall context of the Agreement, on the basis of which both loans were provided. However, the Commission disagrees with the argument of Latvia that the other measures must be assessed together as a single transaction.
- (92) The Commission is of the opinion that on 3 October 2011, when the Agreement was entered into, BAS and the State committed with absolute certainty to provide the first State loan (measure 1) and the BAS loan. Those measures may therefore be said to have been granted at that date. However, the exact amounts of the second State loan (measure 2) and of the capital increase (measure 3) cannot be ascertained with certainty from the information in the Agreement. In particular, as regards measure 2, the Agreement merely states that Latvia would provide a loan in proportion to its shareholding but does not quantify it. In this respect, the Commission observes that Article 7.1 of the Agreement states that the foreseeable equity increase (resulting from capitalisation of the first and second State loans and the BAS loan, together with an additional cash contribution from BAS) would not exceed LVL 100 million (EUR 141,58 million). However, the following points should be noted. First, only the first State loan and the BAS loan were quantified in the Agreement, at respectively LVL 16 million and LVL 14 million. The figure of LVL 100 million was merely a forecast, an estimate of what might be required or expected in terms of equity increase by the end of the year; the amount of the equity increase was not clearly determined in the Agreement. Indeed, the actual amount of the equity increase agreed in December 2011 was in fact LVL 110 million (see recital 33 above), i.e. in excess of what had been foreseen in the Agreement. The Commission is of the view that the amounts of Measures 2 and 3 were not determined or ascertainable on 3 October 2011.
- (93) Similarly, as regards measure 6, the Commission observes that when the Agreement was entered into on 3 October 2011, the State did not know whether it would need to make use of Article 7.4 of the Agreement and have the claims of private investors assigned to it. In addition, the State was not obliged to assign to airBaltic the claims resulting from syndicated loan 2. The assignment of the claims of private investors to the State was a mere eventuality subject to BAS not fulfilling its obligations under the Agreement, something which was not known and which there was no reason to suspect on 3 October 2011. For this reason, measure 6 cannot be considered as having been granted at the moment the Agreement was signed and cannot therefore be considered as *pari passu* with the first State loan and the BAS loan.
- (94) In addition, Latvia argues that most of the claims of the private investors which were supposed to be novated in the two syndicated loans were unsecured, and that had the State let the company go bankrupt, the private investors would have sued the State for damages, which would have been more costly for the State than providing the rest of measures to airBaltic.
- (95) In the Commission's view, the claim that the private investors would have sued the State asking for damages is purely hypothetical and not supported by any evidence. In addition, nothing shows that Latvia actually took into account these considerations when providing support to airBaltic.
- (96) In view of the above, the Commission comes to the conclusion that the argument of concomitance raised by the Latvian authorities does not stand. For this reason, the Commission concludes that measures 1, 2, 3 and 6 cannot be considered as constituting a single transaction decided on 3 October 2011 and will therefore assess them separately.

7.2.2. The first State loan (measure 1)

- (97) The Commission notes that the first State loan was provided directly by Latvia through the State Treasury upon request of the Ministry of Transport. This is expressly stated in the Agreement. It is therefore clear that measure 1 entails State resources and that it is imputable to the State. Latvia does not contest this point.

- (98) In order to assess whether measure 1 entailed an undue selective advantage to airBaltic, the Commission first observes that the first State loan and the BAS loan were agreed on 3 October 2011, i.e. the date of signature of the Agreement. At that moment in time, Latvia and BAS were the major shareholders of the company and the loans were provided in proportion to their shareholding (52,6 % and 47,2 % respectively), and with identical and linked conditions.
- (99) As indicated in recital 45 above, the Commission had observed in the opening decision that BAS' decision to invest in airBaltic may have been influenced by the willingness of the public authorities to financially support the company. However, while it is true that the Latvian Government had expressed its interest in maintaining airBaltic as the national carrier, ⁽³⁰⁾ the Commission observes that the support of the Latvian State was under negotiation and was still undetermined and subject to conditions. On this basis, the Commission cannot exclude that the first State loan and the BAS loan were provided concomitantly, thereby excluding the presence of aid. As the General Court has clarified, *'simultaneity cannot in itself, even where significant private investments have been made, suffice for a finding that there has been no aid within the meaning of Article [107(1) TFEU] without taking into consideration the other relevant facts and points of law'* ⁽³¹⁾.
- (100) The Commission has therefore also assessed whether the agreed interest rate of [11 — 13] % for the first State loan (and the BAS loan) can be considered to be at market level.
- (101) During the course of the formal investigation procedure, Latvia submitted evidence regarding the value of the collateral (trademarks and receivables) which was assessed by the independent auditor [...] as part of an audit of the company initiated in the summer of 2011. As the receivables (as of 30 September 2011) were part of the relevant financial information, they were also subject to evaluation by [...]. As regards the trademarks, their value was based on the price at which airBaltic had bought back the trademarks from BAS. In order to determine the liquidation value of the collateral, Latvia applied a [...] % discount rate in accordance with the Latvian Treasury's internal collateral valuation methodology, which the Commission considers to be adequate in view of the nature of the collateral. On this basis, the liquidation value of the collateral was LVL [15 — 25] million (EUR [21,3 — 35,5] million) which was [15 — 25] % higher than the amount of the first State loan.
- (102) In addition, the Commission observes that in view of the significant collateral on the first State loan, applying an interest rate of [11 — 13] % would be in line with the Reference Rate Communication. ⁽³²⁾ The assertion that an interest rate of [11 — 13] % was market conform is moreover reinforced by the fact that BAS (a private investor) had waived its right to have the BAS loan collateralised (see recital 26 above): the BAS loan was therefore more risky than the State loan but was granted at the same interest rate.
- (103) Bearing in mind the level of collateralisation and the interest rate applied, the Commission concludes that measure 1 did not entail a selective advantage to airBaltic and that the presence of state aid can be excluded, without it being necessary to assess further whether the rest of the cumulative conditions of Article 107(1) TFEU would be met ⁽³³⁾.

The reduction of the interest rate of the first State loan from [11 — 13] % to [2 — 4] %

- (104) On 13 December 2011, i.e. once Latvia's shareholding in airBaltic had increased to 99,8 % (see paragraph (21) above), the Latvian Government decided to authorise a cut in the interest rate on the first State loan — and thus also of the BAS loan — of [9 — 11] percentage points corresponding to the risk premium, from [11 — 13] % to [2 — 4] %.

⁽³⁰⁾ See for instance the press release of the Cabinet of Minister of Latvia of 7 September 2011 (<http://www.mk.gov.lv/en/aktuali/zinas/2011/09/070911-cm-01/>), where the Prime Minister at the time is reported as having stated that *'it is essential to maintain airBaltic as the national air operator which creates substantial advantages for Latvia in the area of logistics, tourist attraction and as a significant employer, however, emphasizes the need to choose the solutions which are most favorable to the public interest'*.

⁽³¹⁾ Case T-565/08 *Corsica Ferries v Commission*, judgment of 11 September 2012, not yet reported, at para 122.

⁽³²⁾ See footnote 24. The base rate for Latvia on 3 October 2011 was 2,2 %. To this figure a margin of 400 basis points should be added, considering the difficulties of airBaltic at the time and the significant level of collateralisation of the loan, resulting in a rate of 6,2 %.

⁽³³⁾ The Commission nonetheless observes that the first State loan was capitalised on 29 December 2011 as part of measure 3. The assessment of measure 3 is presented in section 7.2.4 below.

- (105) Latvia considers that the reduction of the interest rate was justified because the loan was risk-free, given that the liquidation value of the collateral was estimated to be LVL [15 — 25] million (EUR [21,3 — 35,5] million), i.e. [15 — 25] % higher than the amount of the first State loan (see recital 101 above).
- (106) The Commission is not convinced by the arguments of Latvia when it claims that by lowering the interest rate, the State reduced the funding costs of airBaltic (since the interest rate of the BAS loan was also reduced), which at the time was almost exclusively owned by the State at 99,8 %. This was — according to Latvia — a rational decision for the State since the foregone revenues for the State in the form of interest were compensated by the advantage that the State, as a majority shareholder of airBaltic, derived from the company having to pay lower interest.
- (107) On the other hand, the Commission recalls that at the time the first State loan and the BAS loan were granted, the Agreement stipulated that the conditions of both were identical and linked, and therefore any change in one of the loans would result in an identical change on the other loan. The reduction of the interest rate is therefore mirrored for both loans and the very significant level of collateralisation of the loan and the fact that the BAS loan was not collateralised remain unchanged. Since BAS had agreed up front to link the conditions of the BAS loan to those of the first State loan, the Commission has no reasons to consider that this would not be a market-conform decision.
- (108) On this basis, the Commission concludes that even taking into account the reduction of the interest rate, measure 1 did not entail a selective advantage to airBaltic and the presence of state aid can be excluded.

7.2.3. The second State loan (measure 2)

- (109) The second State loan was provided directly by Latvia through the State Treasury, by means of a decision of the Latvian Government of 13 December 2011 authorising the Ministry of Finance to provide in the State budget for a convertible loan to airBaltic of LVL 67 million (EUR 94,86 million). Therefore, measure 2 entails State resources and is imputable to the State.
- (110) The Commission observes that at the time when the second State loan was provided, i.e. 13 December 2011, BAS had lost its entire shareholding in airBaltic, with the exception of one share, and the State now owned 99,8 % of the company. Therefore, the State and BAS were no longer in a comparable position as shareholders.
- (111) Latvia argues that pursuant to Article 7.2 of the Agreement, which states that Latvia would provide a loan to airBaltic ‘in proportion to its shareholding’, BAS was obliged to provide funds to airBaltic in an amount corresponding to its number of shares. This was to be done by BAS at the time of the capital injection of December 2011 in the form of cash. The Commission notes, however, that on 13 December 2011 BAS only had one share in airBaltic. It follows that the State should have adopted the position of a prudent market economy investor and assessed whether, given the change in circumstances concerning the shareholdings, BAS had any incentive to inject cash into the company at the time of the capital increase. In fact, the State had foreseen this possibility and included in the Agreement several contingency measures — in particular in Article 7.4 — in case BAS failed to fulfil its commitments. Moreover, as Latvia acknowledges, the second tranche of the second State loan was to be released in the event that BAS failed to provide additional funds.
- (112) Article 7.4 of the Agreement gave the State the right to purchase from BAS all its shares in airBaltic for LVL 1. At the time the Agreement was signed, this meant a guarantee for the State that BAS would fulfil its commitments or else would lose all its shares in airBaltic. However, the situation changed radically on 30 November 2011, when Latvijas Krājbanka sold all except one of the airBaltic shares owned by BAS to the Latvian State (see recital 21 above). In this new context, Article 7.4 was deprived of its meaning. Indeed, with only one share, BAS had little incentive to fulfil its obligations: the consequence of not doing so would simply mean losing its only share in airBaltic. A prudent market operator would have carefully considered providing additional funds to airBaltic under those new circumstances and, at the very least, would have asked the other party (i.e. BAS) for

assurance that it would indeed commit funds to the company. The Commission notes in addition that it seems unlikely that such assurance would have been given since BAS would have needed to inject a very high amount of money — much more than it could have originally estimated — in order to regain its former shareholding of 47,2 % or any other meaningful level of shares in airBaltic.

- (113) Latvia also indicates that the second State loan was granted at market terms, thereby excluding any undue advantage to airBaltic.
- (114) As regards the collateral, Latvia noted that the second State loan had the same collateral as the first State loan, i.e. receivables and the trademarks of airBaltic. As explained in paragraph (101) above, the liquidation value of the collateral was estimated at LVL [15 — 25] million (EUR [21,3 — 35,5] million). It thus appears that the level of collateralisation available for the second State loan would be low. Moreover, there is no reason to suppose that a private market operator would accept that security already in place on the first State loan would be reduced below at least 100 %.
- (115) In order to ascertain the market conformity of the rate applied to the first tranche of the second State loan, the Commission will use as the best available proxy the rate resulting from the application of the Reference Rate Communication. The base rate for Latvia on 13 December 2011 was 2,2 %. To this figure, a margin should be added depending on the rating of the beneficiary and the collateralisation of the loan. As indicated in the preceding paragraph, the level of collateralisation is low. Given the difficulties of airBaltic at the time, it follows from the Reference Rate Communication that a margin of 1 000 basis points should be added to the base rate, resulting in a rate of 12,2 %. It therefore appears that the interest rate of [9 — 11] % on the first tranche of the second State loan cannot be considered to be market conform.
- (116) The second tranche of the second State loan was made available to the company on 14 December 2012 at an interest rate of [6 — 8] %. Latvia argues that this interest rate is above the one resulting from the Reference Rate Communication and is therefore MEIP-conform.
- (117) According to the Reference Rate Communication, the applicable base rate for Latvia on 14 December 2012 was 1,91 %. The margin to be added to that base rate depends on the rating of the beneficiary and the level of collateralisation. As explained in section 7.1 above, the Commission is of the view that airBaltic was a firm in difficulty since at least 2011. In addition, the second tranche had as collateral the receivables and the trademarks of airBaltic. The arguments about the insufficiency of the collateral would apply *mutatis mutandis*, and thus a margin of 1 000 basis points should be added. The resulting reference rate would therefore be 11,91 %, well above the [6 — 8] % actually applied.
- (118) Bearing all of the above in mind, the Commission considers that a prudent market economy operator would not have provided the second State loan to airBaltic.
- (119) On this basis, the Commission concludes that measure 2 conferred an undue advantage on airBaltic. This advantage was selective in nature given that its sole beneficiary was airBaltic.
- (120) The Commission must also consider whether measure 2 was likely to distort competition and affect trade between Member States, by providing airBaltic with an advantage over competitors not receiving public support. It seems clear that measure 2 was able to affect intra-EU trade and competition as airBaltic competes with other EU airlines, in particular since the entry into force of the third stage of liberalisation of air transport ('third package') on 1 January 1993. In addition, for travel of relatively shorter distances within the EU, air travel is in competition with road and rail transport, and therefore road and rail carriers might also be affected.
- (121) Measure 2 thus enabled airBaltic to continue operating so that it did not have to face the consequences normally deriving from its difficult financial situation. Based on the considerations set out above, the Commission comes to the conclusion that measure 2 involved state aid for the benefit of airBaltic within the meaning of Article 107(1) TFEU.

7.2.4. The capital increase agreed on 22 December 2011 (measure 3)

- (122) As indicated above, the first State loan and the first tranche of the second State loan entail State resources and are imputable to the State. Their conversion into capital was decided by the Ministry of Transport of Latvia, i.e. 99,8 % shareholder in airBaltic since 30 November 2011. Therefore, measure 3 also entails State resources and is imputable to the State.
- (123) The Commission does not share the views of the Latvian authorities that measure 3 does not entail aid. In the first place, the Commission reiterates that the conclusions reached in section 7.2.1 above are applicable to measure 3. In addition, the Commission considers that measure 3 was granted not on 22 December 2011 (i.e. the date of the shareholders' meeting of airBaltic) but on 29 December 2011, date on which the State converted its loans. Indeed, according to the information provided by the Latvian authorities during the formal investigation procedure, according to the applicable rules BAS and the State had until 30 January 2012 to formalise the conversion decided at airBaltic's shareholders meeting.
- (124) The Commission also notes that on 29 December 2011, Latvia could have had reasonable doubts as to the willingness of BAS to fulfil its commitments. Indeed, BAS had already given indications that it would not convert its loan: Latvia itself admits that the second tranche of the second State loan, decided on 13 December 2011, was foreseen precisely to account for the eventuality that BAS would not fulfil its commitments. Moreover, since 30 November 2011 the State and BAS were no longer in a comparable position as shareholders since BAS had lost its entire shareholding in airBaltic with the exception of one share and the State owned 99,8 % of the company.
- (125) In view of those developments, the State, before actually converting the State loans, should have inferred — or at least had reasons to suspect — from BAS' actions that it did not intend to fulfil its obligations (see recital 35 above). Moreover, since BAS had lost all its shares in airBaltic except one, the remedy provided for in Article 7.4 of the Agreement — i.e. the right for the State to purchase from BAS all its shares in airBaltic for LVL 1 — had been deprived of meaning: the State had lost the means by which it could have forced BAS to abide by what it had agreed to.
- (126) Bearing the elements indicated above in mind, the Commission comes to the conclusion that a prudent market economy operator would not have converted its loans into capital before being sure that the other party would convert its loan and inject the cash, and in that context would have carefully assessed the incentives of the other party to fulfil its commitments.
- (127) Moreover, the Commission observes that, even if it had respected the agreement reached at the shareholders meeting, BAS would not have regained its former shareholding in airBaltic. In order to reach a 47,2 % stake, BAS would have had to invest much more than the amounts agreed to at that meeting. Therefore, the Commission is of the view that the State, had it acted in accordance with the MEIP, should have carefully considered whether BAS would invest significant amounts of money — the BAS loan and cash amounting to LVL 37,7 million (EUR 53,38 million) — in order to get a minority shareholding in airBaltic.
- (128) As an additional argument, Latvia explains that BAS' obligation to inject the cash and convert the BAS loan was confirmed by the existence of a guarantee by a Russian entrepreneur, Mr Vladimir Antonov, who agreed to make the necessary payments on behalf of BAS.⁽³⁴⁾ However, it appears from the information available to the Commission that the guarantee was never in fact provided.
- (129) Latvia also indicates that the preconditions for the capitalisation of the State loans required by Article 7.2 of the Agreement were met on 13 December 2011, when it was presented with a business plan showing a return to profitability of airBaltic in 2015 and suggests that the decision to convert the State loans into capital was therefore MEIP-conform. The Commission however remains unconvinced of Latvia's arguments, since the plan was not complete and would not have been relied upon by a rational private operator in order to inject significant amounts of capital into a firm in difficulty.

⁽³⁴⁾ The guarantee letter, dated 3 October 2011, states that the guarantee is void if the State 'has used its rights according to [...] Clause 7.4 [of the Agreement] and the State has become no less than 99,78 % shareholder of voting shares of [airBaltic]'. Indeed, Latvia became 99,8 % shareholder of airBaltic on 30 November 2011.

- (130) On the basis of the above, the Commission concludes that Latvia did not act on *pari passu* terms when converting its loans and therefore increasing airBaltic's capital. The State's behaviour was moreover not in line with the MEIP test. Therefore, airBaltic received an undue advantage resulting from measure 3, which is selective as the company was the sole beneficiary.
- (131) The Commission must also consider whether measure 3 was likely to distort competition and affect trade between Member States, by providing airBaltic with an advantage over competitors not receiving public support. The conclusions reached in recital 120 above apply *mutatis mutandis*.
- (132) The Commission thus concludes that the conversion into capital of the first State loan and the first tranche of the second State loan entailed State aid to airBaltic within the meaning of Article 107(1) TFEU.

7.2.5. The 0 %-coupon bonds (measure 4)

- (133) As already indicated in the opening decision, it follows from the 30 April 2010 agreement formalising the purchase of the 0 %-coupon bonds that the purchaser LVRTC (see recital 38 above) acted on behalf of the Latvian State. In addition, Latvia has argued that bonds were purchased by the LVRTC for budgetary reasons. It is therefore clear that measure 4 entails State resources and that it is imputable to the State, points which furthermore Latvia does not contest.
- (134) In the course of the formal investigation procedure Latvia provided evidence demonstrating that both the State and BAS acquired the bonds in proportion to their shareholding in airBaltic and on the same conditions. In addition, it appears that the State did not provide funding to airBaltic before April 2010, while BAS had actually invested significant amounts in the company before that date. Finally, it emerged from the investigation that the bond issuance agreement was adopted at the initiative of BAS and airBaltic's management, which had already suggested to the State in April and June 2009 a capital increase in the company in proportion to their shareholdings.
- (135) As highlighted in the opening decision, the Commission is of the opinion that the purchase of 0 %-coupon bonds was not a typical investment by a prudent market operator. However, the Commission notes that Latvia and BAS were at the time major shareholders of airBaltic and their investment decision should be assessed from this perspective and not from that of a purely external investor. Indeed, it appears rational to conclude that the owners of airBaltic were not looking for short-term profit at the time but were interested in keeping the company afloat.
- (136) On the basis of the above, the Commission comes to the conclusion that Latvia acted as a prudent market operator when purchasing 0 %-coupon bonds together with the private investor BAS. The Commission therefore excludes the presence of an undue advantage in relation to measure 4, and assessment of the other cumulative conditions laid down in Article 107(1) TFEU concerning the presence of state aid is superfluous.

7.2.6. The EUR 2,8 million payments by Latvijas Krājbanka (measure 5)

- (137) Measure 5 relates to the payment of EUR 2,8 million by Latvijas Krājbanka to airBaltic on 21 and 22 November 2011. As explained in recital 39 above, airBaltic submitted three payment orders to Latvijas Krājbanka prior to the decisions of the FCMC of 17 November 2011 to limit banking operations above EUR 100,000 and of 21 November 2011 to halt all operations of Latvijas Krājbanka. Latvia considers that no State resources were involved given that the operations concerned three payment orders of airBaltic to IATA Clearing House, Riga International Airport and an alternative bank account of airBaltic in a different bank (see recital 39 above). These were, according to Latvia, mere common banking operations concerning private funds of airBaltic. Latvia also argues that the decisions of the FCMC were not imputable to the State.
- (138) Latvia has explained that the transfer of funds had their origin in payment orders submitted by airBaltic before the FCMC ordered the suspension of the activities of Latvijas Krājbanka on 21 November 2011. Latvijas Krājbanka executed the transactions on 25 and 30 November 2011.

- (139) Moreover, pursuant to the Law on the FCMC of 1 June 2000, the FCMC takes its decisions without having to take account of any requirement or instruction of any other public authority. In addition, the funding of the FCMC is not dependent upon the State, as the FCMC's activities are financed through payments by parties active on the Latvian financial and capital markets. It also appears from the applicable laws that the State is not involved in the execution of the enforcement powers and rights of the FCMC relating to its supervision of credit institutions.
- (140) On the basis of the evidence before it, the Commission is of the view that the trustees appointed by the FCMC acted independently of the State, which would exclude imputability of their actions to Latvia.
- (141) On the basis of the above, the Commission concludes that measure 5 did not entail state aid within the meaning of Article 107(1) TFEU.

7.2.7. The EUR 5 million claim from Taurus attributed to airBaltic (measure 6)

- (142) The follow-up complaint received on 18 July 2012 refers to the obligation of the investors under Article 7.4 of the Agreement to hand over to the State or its nominated company — under certain circumstances — the outstanding claims stemming from syndicated loan 2 in exchange for LVL 1 (see recital 42 above).
- (143) In accordance with Article 7.4 of the Agreement, Taurus assigned to Latvia a EUR 5 million claim it had against airBaltic for LVL 1. Subsequently, Latvia assigned the claim to airBaltic.
- (144) In relation to the remaining claims, amounting to EUR 30 million (EUR 42,47 million), which were supposed to be novated within the framework of syndicated loan 2, the Latvian authorities requested the investors by letter of 9 February 2012 to assign to it their respective claims in exchange for 1 LVL each. Furthermore, Latvia brought an action before the Riga Regional Court in relation to three of the investors in order to enforce Article 7.4 of the Agreement. Latvia has indicated its intention to also attribute these claims to airBaltic.
- (145) Latvia argues that the assignment of the EUR 5 million claim to airBaltic was a contingency measure aimed at protecting the State's financial interests and should be seen as a *pari passu* measure under the Agreement, and thus exclude State aid.
- (146) The Commission notes that it follows clearly from Article 7.4 of the Agreement that the relevant claims were to be assigned or handed over 'to the State or its nominated company for the sum of LVL 1'. Therefore, since the decision to attribute the EUR 5 million claim to airBaltic was taken by the State, this decision is imputable to it and entails State resources.
- (147) It emerged during the course of the formal investigation procedure that the agreements for the syndicated loans were never signed. However, it appears from the evidence submitted by Latvia that the courts recognised the validity of the Agreement as regards the obligation of the private investors to assign to the State or its nominated company the claims resulting from syndicated loan 2.
- (148) In this respect, Latvia indicates that, according to several judgments of the Latvian courts, the owner of the EUR 5 million claim is not entitled to request repayment of this amount but only to claim shares in airBaltic reflecting a EUR 5 million advance payment into the share capital of the company. Since the State already owned 99,8 % of the shares of airBaltic, Latvia argues that the entitlement to additional shares does not represent any meaningful economic value for the State.
- (149) The Commission notes that contrary to what Latvia suggests, while the courts may have recognised the right of the State to take over the claims resulting from syndicated loan 2 in line with Article 7.4 of the Agreement, this does not mean that Latvia was obliged to attribute this claim to airBaltic. The Commission notes that a prudent market economy operator would have not assigned the claim to airBaltic for LVL 1. Latvia has not provided evidence as to why the State was better off granting the claim to airBaltic than keeping it or using it for some other purpose. As a result of the assignment, Latvia placed the company in a more favourable position than its competitors.

- (150) Furthermore, the Commission does not agree with the arguments of the Latvian authorities and highlights that any additional share in airBaltic would have an additional value to the State, even if small, such that the presence of aid cannot be excluded. ⁽³⁵⁾ In addition, by granting the claim to airBaltic, the State gave up not only to the claim but also any right to interest at a rate of [5 — 7] % thereon.
- (151) Finally, Latvia argues that measure 6 should be considered as having been granted, for State aid law purposes, on 3 October 2011, i.e. at the date of signature of the Agreement, together with measures 1, 2 and 3.
- (152) The Commission reiterates the conclusions reached in section 7.2.1 above, that is, when the Agreement was entered into on 3 October 2011, the State did not know whether it would need to make use of Article 7.4 of the Agreement. In addition, the State was not obliged to assign to airBaltic the claims affected by the application of that provision.
- (153) Finally, the Commission observes that Latvia has not substantiated its claim that the purpose of Article 7.4 of the Agreement was to safeguard the State's investment in airBaltic by preventing any harm to the State in case of default of BAS.
- (154) The Commission thus concludes that by providing measure 6, the State did not act as a market economy investor, nor was the operation *pari passu* with measures 1, 2 and 3. Therefore, the Commission is of the opinion that measure 6 conferred an undue advantage on airBaltic. This advantage was selective in nature given that its sole beneficiary was airBaltic.
- (155) For the reasons set out in recital 120 above, measure 6 was likely to distort competition and affect trade between Member States.
- (156) On account of the arguments above, the Commission comes to the conclusion that measure 6 involved state aid for the benefit of airBaltic within the meaning of Article 107(1) TFEU.

7.2.8. Conclusion on the existence of aid

- (157) The Commission concludes that measures 1, 4 and 5 did not entail state aid for the reasons set out above.
- (158) However, the Commission considers that measures 2, 3 and 6 constituted state aid to airBaltic. In order to determine the amount of aid already disbursed to airBaltic, the Commission observes that measure 3 consisted of the capitalisation of the first State loan of LVL 16 million (EUR 22,65 million) and the first tranche of the second State loan of LVL 41,6 million (EUR 58,89 million). The second tranche of the second State loan of LVL 25,4 million (EUR 35,96 million) made available to airBaltic on 14 December 2012 — i.e. the remaining part of measure 2 which had not been capitalised — should be added to that amount, together with the EUR 5 million attributed to airBaltic as measure 6. The overall total amount of State aid granted to airBaltic is therefore approximately LVL 86,53 million (EUR 122,51 million).

7.3. LEGALITY OF THE AID

- (159) Article 108(3) TFEU states that a Member State shall not put an aid measure into effect before the Commission has adopted a decision authorising this measure.
- (160) The Commission observes that Latvia granted measures 2, 3 and 6 to airBaltic without notifying them to the Commission for approval. The Commission regrets that Latvia did not comply with the stand-still obligation and therefore violated its obligation according to Article 108(3) TFEU.
- (161) As regards the intention of the Latvian authorities to grant to airBaltic EUR 30 million resulting from syndicated loan 2 and linked to measure 6, the Commission recalls the obligation of the Latvian authorities under Article 108(3) TFEU to inform the Commission, in sufficient time to enable it to submit its comments, of any plans to grant aid.

⁽³⁵⁾ Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)*, [2003] ECR I-7747, para 81.

7.4. COMPATIBILITY OF THE AID

- (162) Insofar as measures 2, 3 and 6 constitute state aid within the meaning of Article 107(1) TFEU, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article. As indicated in the opening decision, in view of the nature of the measures and of the difficulties of airBaltic, the only relevant compatibility criteria appear to be those concerning aid for rescuing and restructuring firms in difficulty under Article 107(3)(c) TFEU on the basis of the R&R Guidelines, and in particular the provisions regarding restructuring aid.
- (163) The Latvian authorities were initially of the view that none of the measures entailed state aid. However, on the basis of the doubts raised by the Commission in its opening decision, Latvia provided compatibility arguments and argued that the measures constitute compatible restructuring aid.
- (164) In particular, Latvia provided an updated restructuring plan in December 2013, complemented by submissions of 28 January, 28 February and 24 March 2014. Latvia notes that the restructuring of airBaltic started on 18 April 2011, when a first plan was submitted to the company's management. This first plan, which was submitted to the Commission, identified some of the weaknesses of airBaltic and established that approximately EUR [175 — 185] million in share capital was needed to allow the company to renew its fleet and allow it to compete effectively with low-cost carriers. Latvia argues that as of April 2011, several actions were taken, including the closure of airBaltic's hub in Vilnius and the cancellation of routes, thereby starting airBaltic's restructuring process. In order to guarantee airBaltic's return to profitability, a comprehensive set of initiatives covering revenues, operations, network, fleet and overall organisation were developed at the later stage (the reShape plan).
- (165) This first plan was developed in 2011, and included the principal financial aspects of the restructuring. According to Latvia, this led to entering the Agreement and eventually resulted in the reShape plan of March 2012.
- (166) The arguments of Latvia will be assessed in the following sections.

7.4.1. Eligibility

- (167) According to point 33 of the R&R Guidelines, only firms in difficulty within the meaning of points 9 to 13 of the R&R Guidelines are eligible to receive restructuring aid. The Commission has already concluded that airBaltic was a firm in difficulty from at least 2011 (see recital 87 above).
- (168) Point 12 of the R&R Guidelines states that a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is unsecure. A firm is in principle considered as newly created for the first three years following the start of operations in the relevant field of activity. airBaltic was established in 1995 and cannot be regarded as a newly created firm. Also, airBaltic does not belong to a business group within the meaning of point 13 of the R&R Guidelines.
- (169) The Commission therefore concludes that airBaltic is eligible for restructuring aid.

7.4.2. The validity of the restructuring plan

- (170) The Commission notes that the restructuring of airBaltic started in April 2011, when the company's management prepared a first restructuring plan. This plan mainly focused on fleet optimisation and the need to replace the company's aircraft by more efficient planes, which is also a cornerstone of the later ReShape plan. At the same time, the Vilnius hub was closed. Several weeks later, upon review by [...], the management of airBaltic included in the plan a headcount reduction of [8 — 12] %.
- (171) The 2011 plan was updated in the form of the reShape plan, referred to above and formally adopted during the first quarter of 2012. As noted in recital 164 above, the Latvian authorities submitted a restructuring plan to the Commission in December 2013, updating the reShape plan.

- (172) The Commission notes that the April 2011 restructuring plan set out the main needs of airBaltic. Although it was not fully developed, that plan constituted a first basis for determining the restructuring needs of airBaltic and ensuring that it would return to viability. It moreover constituted the basis for the reShape plan, which was under preparation at the time the Agreement was signed (i.e. 3 October 2011) and was finalised in March 2012.
- (173) In its past practice, the Commission has accepted that restructuring plans are defined over time and considered the initial plans as the starting point of the restructuring period. For instance, in the *Varvaressos* decision ⁽³⁶⁾ the Commission considered that the measures granted to this firm between 2006 and 2009 were to be assessed as part of a restructuring continuum on the basis of a restructuring plan dated 2009 (covering the period 2006-2011). Similar to the airBaltic case, the 2009 restructuring plan of Varvaressos was the evolution of a 'strategic and business plan' dating from 2006.

7.4.3. Restoration of long-term viability

- (174) According to point 34 of the R&R Guidelines, the grant of restructuring aid must be conditional on implementation of a restructuring plan which must be endorsed by the Commission in all cases of individual aid. Point 35 explains that the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions.
- (175) Pursuant to point 36, the plan must describe the circumstances that led to the company's difficulties and take account of the present state and future market prospects with best-case, worst-case and base-case scenarios.
- (176) The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be high enough to enable the restructured firm to compete in the marketplace on its own merits (point (37)).
- (177) The Commission observes that the restructuring plan describes the circumstances that led to airBaltic's difficulties, which were mainly caused by the global economic crisis of 2008-2009, which had a significant impact in the Baltic region, affecting also the airline sector.
- (178) In addition, the restructuring plan explains that the commercial strategy pursued in the past as well as a number of decisions by airBaltic's former management contributed further to the company's difficulties. In particular, as regards the commercial strategy of airBaltic, the restructuring plan highlights that in the past it had focused solely on expansion and not on profitability, thereby exposing the company to unsustainably high expenditure. The costs were moreover very much increased by reason of the fleet, which included four different types of aircraft, as well as the high costs of aircraft leasing. Routes were opened without adequately assessment of their profitability, and many of them were loss-making.
- (179) The restructuring plan covers a 5-year restructuring period starting in April 2011 and assumes a return of airBaltic to long-term viability by April 2016 at the latest, although according to the base-case scenario, airBaltic is expected to return to profitability in 2014. The duration of the restructuring is thus of a maximum of 5 years, in line with previous case practice in the passenger air transport sector ⁽³⁷⁾. Indeed, the Commission has consistently been of the view that, in the current economic circumstances, it is important to avoid a mere short-term turnaround and instead create a solid base for future growth. In that context, the necessary stabilisation of operational and services performance will take several years.

⁽³⁶⁾ Commission Decision 2011/414/EU of 14 December 2010 on the State aid C 8/10 (ex N 21/09 and NN 15/10) implemented by Greece in favour of Varvaressos S.A. (OJ L 184, 14.7.2011, p. 9).

⁽³⁷⁾ See Commission decision in case SA.30908 — CSA — *Czech Airlines — Restructuring plan*, at para. 107 and Commission decision in case SA.33015 — *Air Malta plc.* at para. 93. See as well Commission Decision 2010/137/EC of 28 August 2009 on State aid C 6/09 (ex N 663/08) — *Austrian Airlines — Restructuring Plan* (OJ L 59, 9.3.2010, p. 1) at para. 296 and Commission Decision 2012/542/EU of 21 March 2012 on the measure SA.31479 (2011/C) (ex 2011/N) which the United Kingdom plans to implement for Royal Mail Group (OJ L 279, 12.10.2012, p. 40), at para. 217.

- (180) The restructuring plan emphasises the change in the commercial strategy of airBaltic, which aims at becoming a hybrid airline, targeting higher yield customers through most of the services traditionally offered by network carriers while seeking cost efficiencies typically developed by low-cost carriers. This strategy has already been implemented to a very significant extent by the new management of the company since October 2011. In addition, the restructuring plan envisages three main types of restructuring measures: (i) optimisation of revenues and costs for existing operations; (ii) network reconfiguration, resulting in adjustment of destinations, frequencies and timing in order to optimise RASK and CASK ⁽³⁸⁾ at route level; and (iii) network and fleet optimisation, with the objective to review and define the optimal network and fleet size. In total, 13 initiatives addressing revenues and 13 initiatives addressing costs were developed, while two additional initiatives were developed in the area of network reconfiguration and fleet renewal.
- (181) Concerning fleet optimisation, the Commission observes that the diverse and ageing fleet of airBaltic is less fuel efficient and more maintenance intensive than that of competitors, which translates into increasing costs. During 2012 and 2013, airBaltic decided to operate only part of its available aircraft in order to decrease costs. In 2013, in order to partly compensate the loss in capacity resulting from the removal of the Fokker and Boeing 757 fleets, airBaltic added two Q400 Bombardier planes to its fleet. Moreover, with a view to replacing the fleet, the current leasing contracts have been renegotiated at more favourable terms until the new Bombardier CS300 becomes available in [...] or [...]. By the end of 2014, airBaltic will operate 25 aircraft and it will continue at this level until the end of the restructuring period in 2016. In overall terms, there will be a 27 % reduction of the aircraft fleet during the restructuring period.
- (182) As regards the network reconfiguration, the Commission observes that in 2013 the new network delivered an extra LVL [16 — 21] million (EUR [22,7 — 29,8] million) at C1 level ⁽³⁹⁾ compared to the previous year, inter alia, due to the cancellation of unprofitable routes (e.g. [...]) and reduction in frequencies ([...] on [...], [...]) and [...]).
- (183) The revenue initiatives include the introduction of new fare structures or the optimisation of the baggage fee structure. In addition, online check-in will be promoted, while the cabin crew and the sales force will operate on flexible remuneration. As regards the costs initiatives, they include the renegotiation of fuel prices with current suppliers and of the contracts for engine checks and overhauls, leasing optimisation, and reduction of hangar costs and costs relating to crew hotel stays. Also the current agreements with ground-handling providers will be renegotiated.
- (184) Most of the restructuring measures described in the preceding paragraphs have already been implemented. As a result of the revenue optimisation initiatives and the initiatives to reduce costs, as well as the fleet renewal and the network reconfiguration, airBaltic finished 2012 with a negative EBIT of LVL 30 million (EUR 42,47 million) as opposed to a budgeted negative EBIT of LVL 38 million (EUR 53,8 million). In 2013, the negative EBIT was reduced to LVL 7,7 million (EUR 10,9 million), also above target. It is expected that the company will break-even in 2014 and will remain profitable thereafter, with EBIT reaching LVL [1 — 3] million (EUR [1,4 — 4,2] million) in 2014 and LVL [9 — 12] million (EUR [12,8 — 17] million) in 2016. The return on equity (ROE) is expected to reach [3 — 6] % by 2014 and [18 — 21] % by 2016.
- (185) The restructuring plan includes revised financial forecasts on the basis of realistic, pessimistic and optimistic scenarios based on reliable assumptions. For instance, the realistic scenario assumes a market growth of [6 — 8] %, while it limits the growth of airBaltic to [1 — 3] % in 2014 and to [2 — 4] % in 2015 and 2016, with an inflation rate of [1 — 3] % per year and increasing fuel costs, passing from [950 — 1000] USD/t in 2014 to [1 000 — 1 050] USD/t in 2016. The load factor ranges from [69 — 71] % in 2014 to [71 — 75] % in 2016. In this scenario, the implementation of the initiatives will allow airBaltic to break even in 2014 (with EBIT of LVL [1 — 3] million (EUR [1,4 — 4,2] million)), while the company will remain profitable thereafter, with EBIT of LVL [6 — 9] million (EUR [8,5 — 12,8] million) in 2015 and of LVL [9 — 12] million in 2016 (EUR [12,8 — 17] million).

⁽³⁸⁾ Respectively revenue per available seat kilometre (RASK) and cost of available seat kilometre (CASK).

⁽³⁹⁾ See recital 194 below.

- (186) In all scenarios, airBaltic's EBIT would be positive by 2016, ranging from LV [10 — 15] million (EUR [14,2 — 21,3] million) in the optimistic scenario to LVL [5 — 10] million (EUR [7,1 -14,2] million) in the pessimistic one. The scenarios are also subject to a sensitivity analysis in order to assess the risks and their possible impact by 2016, in particular considering currency risks (appreciation/depreciation of USD against LVL and EUR) and changes to the load factors, fuel market price, yield and number of passengers.
- (187) The Commission has assessed the restructuring plan and is of the view that it should enable airBaltic to achieve the expected return to long-term viability by April 2016 at the latest. The restructuring plan includes a detailed assessment of the circumstances leading to the difficulties of airBaltic, which are duly addressed as a result of the restructuring measures in the form of revenue and costs initiatives as well as initiatives in the area of network reconfiguration and fleet renewal.
- (188) In addition, the Commission considers that the restructuring plan submitted by Latvia duly quantifies the impact of the different restructuring measures, that the assumptions are adequate and appropriate to the context of the passenger air transport sector, and that viability is foreseen at adequate levels under all scenarios during the entire restructuring period. The sensitivity analysis is adequate and shows that the impact on EBIT of the factors taken into consideration would be limited.
- (189) Therefore, in view of the significant restructuring measures undertaken and the progress made to date, the Commission considers that the restructuring plan will enable airBaltic to restore its long-term viability within a reasonable timescale.
- (190) In addition, the evidence provided by Latvia shows that airBaltic is currently on track to meet most of the objectives fixed in the restructuring plan, which is an additional indicator of the reliability of the plan.

7.4.4. Avoidance of undue distortions of competition (compensatory measures)

- (191) According to point 38 of the R&R Guidelines, compensatory measures must be taken in order to ensure that the adverse effects on trading conditions are reduced to an acceptable level. These measures may comprise divestment of assets, reductions in capacity or market presence or reduction of entry barriers on the markets concerned (point (39)).
- (192) In this regard, closure of loss-making activities which would at any rate be necessary to restore viability will not be considered as a reduction of capacity or market presence for the purpose of the assessment of the compensatory measures (point (40)).
- (193) Latvia proposes as compensatory measures for airBaltic the cancellation of profitable routes, which leads to a reduction in capacity, and the surrender of slot pairs at coordinated airports.
- (194) In addition to the abandon of unprofitable routes as required for a return to viability, the restructuring plan provides for the surrender of 14 profitable routes⁽⁴⁰⁾ in terms of the C1 contribution margin. It is the Commission's practice, to consider routes as profitable if they had a positive C1 contribution margin in the year preceding their surrender⁽⁴¹⁾. The C1 contribution takes account of flight, passenger and distribution costs (i.e. variable costs) attributable to each individual route. The C1 contribution is the appropriate figure since it takes into account all costs which are directly linked to the route in question. Routes with a positive C1 contribution not only cover the variable costs of a route, but also contribute to the fixed costs of the company.
- (195) As regards capacity, the restructuring plan therefore provides that the total capacity of the company was [5 — 5,5] billion ASK in April 2011, while at the end of the restructuring period in April 2016, airBaltic's capacity is expected to be [4 — 4,5] billion ASK, i.e. an [17 — 20] % reduction. The Commission notes in this respect that mainly in the context of the return to long-term viability the fleet will be reduced from 34 aircraft in April 2011 to 25 aircraft by the end of 2014 and will remain at that level until the end of the restructuring period in April 2016 (see recital 181 above). When only profitable routes are considered, the capacity reduction is of [7 — 10] %.

⁽⁴⁰⁾ Namely the routes between [...]. The Commission understands that the closures of these routes are pure compensatory measures since nothing suggests that they were closed as a necessary consequence of the reduction of the fleet.

⁽⁴¹⁾ See Commission decision in case SA.30908 — CSA — Czech Airlines — Restructuring plan, at para.130 and 131.

- (196) In addition, the Commission observes that airBaltic has cancelled a number of routes operating from the fully coordinated ⁽⁴²⁾ airports of [...]. As a result, [...] slots pairs in fully coordinated airports have been released in 2011 and 2012, which creates new business opportunities for competing airlines to operate routes to and from these airports and to increase their presence in them.
- (197) When assessing whether the compensatory measures are appropriate, the Commission will take account of the market structure and the conditions of competition to ensure that any such measure does not lead to deterioration in the structure of the market (point 39 of the R&R Guidelines). The compensatory measures must be in proportion to the distortive effects of the aid and, in particular, to the size and the relative importance of the firm on its market or markets. The degree of reduction must be established on a case-by-case basis (point 40 of the R&R Guidelines).
- (198) The Commission observes that airBaltic is a very small player in the European aviation market, representing 0,5 % of the output of the entire European airline industry.
- (199) In addition, the Commission comes to the view that the [7 — 10] % capacity reduction of airBaltic is not insignificant considering the relatively small size of airBaltic compared to the European airline industry's productive capacity and output in terms of passengers. For a relatively small carrier like airBaltic, further fleet and capacity reductions could endanger its return to long-term viability without providing any meaningful market opportunities for competitors. Moreover, although airBaltic is the largest air carrier in Latvia, its market share in Riga will decrease from [65 — 70] % in 2011 to [55 — 60] % in 2016.
- (200) Furthermore, the Commission observes that Latvia is an assisted area for regional investment aid purposes under Article 107(3)(a) TFEU ⁽⁴³⁾. According to point 56 of the R&R Guidelines, *'the conditions for authorising aid [in assisted areas] may be less stringent as regards the implementation of compensatory measures and the size of the beneficiary's contribution. If needs of regional development justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas'*.
- (201) The Commission has also taken into account the particularities of the present case when assessing the appropriateness of the proposed compensatory measures, bearing in mind Latvia's peripheral geographical situation and its accessibility to the rest of the European Union. In this respect, the Commission notes that the large majority of Latvia's railway system uses Russian gauge which is wider than the Standard gauge used in most of the EU, thereby creating interoperability problems with neighbouring EU countries. Sea transport also appears to offer a limited degree of substitutability with air transport, in particular for passenger transport. Finally, the Commission observes that the closest international airports reachable by land transport are those of Vilnius and Tallinn, which are around 300 km away from Riga, thereby not constituting convenient alternatives hubs, in particular for business passengers.
- (202) Therefore, the Commission is of the view that the compensatory measures adopted by airBaltic, i.e. the [7 — 10] % capacity reduction and the surrender of slots in coordinated airports, are acceptable in the circumstances of the present case. The compensatory measures proposed by Latvia are therefore sufficient under the R&R Guidelines in order to ensure that the adverse effects on trading conditions resulting from the granting of restructuring aid to airBaltic are reduced to an acceptable level.

7.4.5. Aid limited to the minimum (own contribution)

- (203) According to point 43 of the R&R Guidelines, in order to limit the amount of aid to the strict minimum, a significant contribution to the restructuring costs from the beneficiary's own resources is necessary. This can include the sale of assets that are not essential to the firm's survival, or external financing at market conditions.

⁽⁴²⁾ Fully coordinated airports are defined in Article 2(g) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1). According to Article 3(4) of Regulation (EEC) No 95/93, these airports experience, at least during certain periods, capacity constraints.

⁽⁴³⁾ See Commission decision of 13 September 2006 in State aid case N 447/2006 — Latvia — Regional aid map 2007-2013.

- (204) The own contribution must be real, i.e. actual, excluding all future profits such as cash flow (point 43 of the R&R Guidelines). Inherently, the own contribution must not include any further state aid. For large firms, the Commission usually considers a contribution of at least 50 % of the restructuring costs to be appropriate. However, in exceptional circumstances and in cases of particular hardship, the Commission may accept a lower contribution (point 44 of the R&R Guidelines).
- (205) The restructuring plan estimates the restructuring costs at LVL [150 — 170] million (EUR [214 — 242] million), based on the funds required for repayment of third-party loans (LVL [5 — 15] million (EUR [7,1 — 21,3] million)), compensation of losses resulting from the phase-out and disposal of certain aircraft (LVL [15 — 25] million (EUR [21,3 — 35,5] million)), provision for bad debts that the company would not be able to recover (LVL [5 — 10] million (EUR [7,1 — 15,3] million)), redundancy payments (LVL [1 — 4] million (EUR [1,4 — 5,6] million)), the purchase of new aircraft, in particular [...] Bombardier Q400NG and [...] Boeing 737-500 (for a total of LVL [50 — 60] million (EUR [71,1 — 85,3] million)), the repurchase of trademarks from BAS (LVL [5 — 15] million (EUR [7,1 — 21,3] million)), unforeseen off balance sheet liabilities resulting from a claim from [...] (LVL [5 — 15] million (EUR [7,1 — 21,3] million)), and LVL [45 — 55] million (EUR [64 — 78,2] million) to buffer the expected losses until airBaltic returns to profitability.
- (206) In view of total restructuring costs of LVL [150 — 170] million (EUR [214 — 242] million), the proposed own contribution of airBaltic according to the restructuring plan amounts to LVL [100 — 110] million (EUR [141 — 155] million), i.e. [60 — 70] % of the total restructuring costs. The own contribution breaks down as follows:
- (i) Private financial injections of LVL [20 — 30] million (EUR [28,4 — 42,6] million) granted by BAS and the private investors THC and [...] in the period April-September 2011. This amount includes LVL [...] million (EUR [...] million) in the form of a liquidity facility granted by [...] in March and May 2011 for the purchase of spare parts from airBaltic; LVL [...] million (EUR [...] million) and LVL [...] million (EUR [...] million) of advance payments into the equity of airBaltic respectively made by [...] and [...]; and LVL [6 — 8] million (EUR [8,5 — 12,3] million) from Transatlantic Holdings deriving from a share purchase agreement.
 - (ii) Private loans of LVL [20 — 30] million (EUR [28,4 — 42,6] million) granted by BAS after the Agreement, namely the BAS loan (LVL 14 million (EUR 19,82 million)) and a vendor loan of LVL [5 — 15] million (EUR [7,1 — 21,3] million) for the repurchase of trademarks.
 - (iii) Lease agreements for new aircraft valued at LVL [45 — 55] million (EUR [64 — 78] million).
 - (iv) LVL [...] million (EUR [...] million) from a partial debt write-off resulting from the restructuring of the debt of airBaltic agreed with Latvijas Krājbanka and Snoras in March 2014.
- (207) Regarding the private financial injections mentioned in point (i) above, Latvia has demonstrated that BAS made advance payments into the equity of the company of LVL [7 — 9] million (EUR [10 — 13] million) between June and July 2011. The Commission is of the view that these payments constitute an own contribution within the meaning of point 43 of the R&R Guidelines, since BAS was a private market operator and the Commission has no reasons to consider that it was not acting in accordance with market logic. The same conclusion applies to the LVL [6 — 8] million (EUR [8,5 — 12,3] million) provided by Transatlantic Holdings in exchange for [...] outstanding unpaid shares in airBaltic, which took place in September 2011.
- (208) As regards point (ii) above, the Commission is of the view that the loan of LVL 14 million (EUR 19,82 million) granted by BAS, i.e. the BAS loan, constitutes external financing at market terms which can be accepted as own contribution from a private investor that was shareholder of the company at the time.
- (209) As regards the lease agreements for new aircraft in the amount of LVL [45 — 55] million (EUR [64 — 78] million) (point (iii) above), the restructuring plan explains that in March 2013 airBaltic concluded new lease agreements for aircraft with private counterparties as part of its fleet reduction and optimisation programme. The agreements relate to the net-lease of [...] Bombardier Dash 8 Q400NG aircraft for a period of 10 years for a total amount of approximately USD [...] million (EUR [...] million), i.e. a monthly rent of approximately USD [...] (EUR [...]).

- (210) According to the restructuring plan, the lease was granted at market conditions by [...]. The monthly rent is intended to cover the amortisation of the purchase price minus residual value at the end of year 10 of the relevant aircraft (plus a certain mark-up to cover [...] financing and operating costs as well as a profit margin), thereby effectively equalling the purchase price of the new aircraft.
- (211) The Commission notes that lease arrangements as such are a standard form of financing in the airline industry and may be equated to loans provided to a company undergoing restructuring. The fact that there is collateral covering a significant part of the loan does not preclude that the loan be considered as 'own contribution'. In addition, Latvia has confirmed that the lease arrangements are subject to standard collateralisation (i.e. the ability to seize the plane in case of a default and a cash security deposit). Therefore, the lessor runs a certain degree of creditor risk given that it would suffer considerable losses in the event of a default by airBaltic, i.e. the immediate loss of income from rent, which continues until the aircraft can be re-leased to a new customer, as well as the costs incurred to reconfigure the aircraft for the next operator. ⁽⁴⁴⁾
- (212) On the basis of the above, the Commission notes that the lease agreements show that airBaltic was able to obtain external financing at market conditions. Therefore, the lease agreements can be regarded as proof that the market believes in the long term viability of airBaltic, given that the agreements are only secured by the standard type of collateral and the financier still runs a certain degree of risk. This is in line with point 43 of the R&R Guidelines, which states that the own contribution should originate from external financing at market conditions and is a sign that the market believes in the feasibility of the envisaged return to viability. The Commission hence considers the LVL [45 — 55] million (EUR [64 — 78] million) leases as part of the own contribution. This is moreover in line with past practice of the Commission, in, for example, the *Czech Airlines* case. ⁽⁴⁵⁾
- (213) However, the Commission has doubts as regards some of the types of own contribution proposed in the restructuring plan, as explained below.
- (214) As regards the advance payment into the equity of airBaltic of LVL [...] million (EUR [...] million) made by [...] in July 2011, it appears from the information submitted by Latvia that this is directly related to measure 6, which, it has been concluded, entails state aid. Therefore, the advance payment into equity of airBaltic made by [...] cannot be considered as own contribution, which must necessarily be free of aid.
- (215) In relation to the liquidity facility of LVL [...] million (EUR [...] million) granted by [...] between April and June 2011 for the purchase of spare parts, the Latvian authorities have not provided evidence allowing the Commission to have a clear understanding of this measure and its significance in terms of belief in a return to viability of the beneficiary. The Commission is therefore unable to conclude with certainty that this facility is acceptable as own contribution.
- (216) As regards the vendor loan of LVL [5 — 15] million (EUR [7,1 — 21,3] million) from BAS to airBaltic for the repurchase of trademarks, Latvia has not provided any evidence that the loan was actually provided.
- (217) On the basis of the above, the Commission does not consider acceptable as own contribution the advance payment into the equity of airBaltic of LVL [...] million (EUR [...] million) made by [...] in July 2011, the liquidity facility for LVL [...] million (EUR [...] million) granted by [...] between April and June 2011 for the purchase of spare parts, and the vendor loan of LVL [5 — 15] million (EUR [7,1 — 21,3] million) from BAS to airBaltic for the repurchase of trademarks and the partial debt write-off of LVL [...] million (EUR [...] million). The Commission also doubts, in particular on the basis of the inconclusive information provided in that respect (unclear nature of the debts at issue, including several claims and the trademarks of airBaltic) whether the LVL [...] million (EUR [...] million) partial debt write-off by the two banks can count as own contribution.
- (218) In any event, the Commission notes that the other measures proposed as own contribution are nevertheless in line with point 43 of the R&R Guidelines and that the level of own contribution is therefore acceptable. They amount to LVL [75 — 85] million (EUR [107 — 120] million), which is equivalent to approximately [48 — 50] % of the restructuring costs. For a large firm like airBaltic, the level of own contribution should

⁽⁴⁴⁾ The total costs for transitioning the aircraft from an operator in default to meeting the delivery requirements for a new customer can easily run to up to [...] % of the aircraft's book value.

⁽⁴⁵⁾ See *Czech Airlines* decision, para.119 and 145.

normally be 50 %. However, according to point 56 of the R&R Guidelines, the Commission may be less stringent as regards the size of the own contribution in assisted areas, as was the case for Latvia at the time the measures were granted (see recital 200 above).

- (219) Therefore, the Commission considers that the requirements of point 43 of the R&R Guidelines have been fulfilled.

7.4.6. The 'one time, last time' principle

- (220) Finally, point 72 of the R&R Guidelines, which provides that a company that has received rescue and restructuring aid in the past 10 years is not eligible for rescue or restructuring aid (the 'one time, last time' principle), must be respected.
- (221) Since measures 1, 4 and 5 do not entail state aid, they are not to be taken into account for the purposes of the 'one time, last time' principle. Moreover, the Latvian authorities have confirmed that airBaltic has not benefited from any rescue or restructuring aid in the past 10 years. The Commission therefore considers that the 'one time, last time' principle is respected.

7.5. CONCLUSION AS REGARDS MEASURES 2, 3 AND 6

- (222) In view of the above, the Commission finds that Latvia unlawfully implemented measures 2, 3 and 6 in favour of airBaltic, in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the Commission considers that the measures and the restructuring plan meet the conditions required by the R&R Guidelines. The Commission therefore considers the aid compatible with the internal market.
- (223) Finally, the Commission notes that Latvia agreed to have the present decision adopted and notified in English.

HAS ADOPTED THIS DECISION:

Article 1

The first State loan of LVL 16 million which the Republic of Latvia granted to airBaltic in 2011, as well as the acquisition by the State of 0 %-coupon bonds from airBaltic in April 2010 and the payment of EUR 2,8 million by Latvijas Krājbanka to airBaltic in November 2011, do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

The second State loan of LVL 67 million and the capital increase of airBaltic, which the Republic of Latvia implemented in 2011, as well as the attribution to airBaltic of a claim of EUR 5 million, which the Republic of Latvia implemented in 2012, constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

That aid is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 9 July 2014,

For the Commission
Joaquín ALMUNIA
Vice-President
