

Official Journal

of the European Union

C 266



English edition

Information and Notices

Volume 53

1 October 2010

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EN
Price:
EUR 3

⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty**Cases where the Commission raises no objections**

(Text with EEA relevance)

(2010/C 266/01)

Date of adoption of the decision	23.2.2009
Reference number of State Aid	N 727/07
Member State	Italy
Region	Veneto
Title (and/or name of the beneficiary)	Istituzione del «Fondo di rotazione per le agrienergie»
Legal basis	Legge regionale 12 dicembre 2003 n. 40 «Nuove norme per gli interventi in agricoltura» articolo 58 <i>ter</i>
Type of measure	Aid scheme
Objective	Environmental protection
Form of aid	Interest subsidy
Budget	Overall budget: EUR 30 million
Intensity	80 %
Duration (period)	Until 31.12.2010
Economic sectors	Electricity, gas and water supply
Name and address of the granting authority	Giunta Regionale Regione Veneto Palazzo Balbi 3013 Venezia VE ITALIA
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Non-opposition to a notified concentration**(Case COMP/M.5741 — CDC/Veolia Environment/Transdev/Veolia Transport)****(Text with EEA relevance)**

(2010/C 266/02)

On 12 August 2010, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in French and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
 - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32010M5741. EUR-Lex is the on-line access to the European law.
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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

30 September 2010

(2010/C 266/03)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,3648	AUD	Australian dollar	1,4070
JPY	Japanese yen	113,68	CAD	Canadian dollar	1,4073
DKK	Danish krone	7,4519	HKD	Hong Kong dollar	10,5918
GBP	Pound sterling	0,85995	NZD	New Zealand dollar	1,8436
SEK	Swedish krona	9,1421	SGD	Singapore dollar	1,7942
CHF	Swiss franc	1,3287	KRW	South Korean won	1 550,65
ISK	Iceland króna		ZAR	South African rand	9,5438
NOK	Norwegian krone	7,9680	CNY	Chinese yuan renminbi	9,1321
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,3058
CZK	Czech koruna	24,600	IDR	Indonesian rupiah	12 173,44
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,2101
HUF	Hungarian forint	275,75	PHP	Philippine peso	59,869
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	41,6923
LVL	Latvian lats	0,7094	THB	Thai baht	41,442
PLN	Polish zloty	3,9847	BRL	Brazilian real	2,3201
RON	Romanian leu	4,2718	MXN	Mexican peso	17,1258
TRY	Turkish lira	1,9806	INR	Indian rupee	61,2470

⁽¹⁾ Source: reference exchange rate published by the ECB.

V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice concerning the anti-dumping measures in force in respect of imports into the Union of certain polyethylene terephthalate originating, inter alia, in Malaysia: change of the name of a company subject to an individual anti-dumping duty rate

(2010/C 266/04)

Imports of certain polyethylene terephthalate originating in Malaysia are subject to a definitive anti-dumping duty, imposed by Council Regulation (EC) No 192/2007 ⁽¹⁾ ('Regulation (EC) No 192/2007').

Hualon Corporation (M) Sdn. Bhd. ('Hualon'), a company located in Malaysia, whose exports to the Union of certain polyethylene terephthalate are subject to an individual anti-dumping duty of EUR 36,0 per tonne imposed by Article 1(2) of Regulation (EC) No 192/2007, has informed the Commission that after being put into receivership, on 23 July 2008 all its Malaysian assets and liabilities were taken over by Recron (Malaysia) Sdn. Bhd. ('Recron'), who became the legal successor.

Hualon has argued that the take over and the change of name does not affect the activities of the company with regard to the product concerned and therefore the right of Recron to benefit from the individual anti-dumping duty rate applied to Hualon by Regulation (EC) No 192/2007.

The Commission has examined the information provided and, considering that the company requesting a name change has been taken over by a company which did not produce the product concerned before, has concluded that the change of name in no way affects the findings of Regulation (EC) No 192/2007. Therefore, the reference in Article 1(2) of Regulation (EC) No 192/2007 to:

Hualon Corp. (M) Sdn. Bhd.

should be read as:

Recron (Malaysia) Sdn. Bhd.

The TARIC additional code A186 previously attributed to Hualon Corp. (M) Sdn. Bhd. shall apply to Recron (Malaysia) Sdn. Bhd.

⁽¹⁾ OJ L 59, 27.2.2007, p. 1.

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

STATE AID — AUSTRIA

State aid C 16/09 — Hypo Group Alpe Adria (HGAA)

Invitation to submit comments pursuant to Article 108(2) TFEU

(Text with EEA relevance)

(2010/C 266/05)

By means of the letter dated 22 June 2010 reproduced in the authentic language on the pages following this summary, the Commission notified Austria of its decision to prolong the authorisation of the aid temporarily found compatible with the internal market and to further extend the procedure as laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

Interested parties may submit their comments on the measures in respect of which the Commission is extending the procedure within two weeks of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State aid Greffe
Office: J-70, 03/219
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22961242

These comments will be communicated to Austria. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

1. PROCEDURE

By decision of 18 December 2008 the European Commission approved in case N 615/08 emergency State aid from Germany to HGAA's majority owner BayernLB in form of a risk shield of EUR 4,8 billion and a capital injection of EUR 10 billion on the basis of Article 107(3)(b) TFEU for a period of six months or until the submission of a credible and substantiated restructuring plan for the bank. This aid enabled BayernLB to inject EUR 700 million into its subsidiary HGAA. In the same month, Austria granted a capital injection for HGAA in the amount of EUR 900 million under the Austrian banking scheme.

On 29 April 2009, Germany notified a restructuring plan for BayernLB including HGAA to the Commission. At the same date Austria provided a viability plan for HGAA, which is required for fundamentally sound banks under the Austrian banking scheme.

In its decision of 12 May 2009 in case N 254/09 ('the opening decision') the Commission raised doubts about the compatibility of the aid granted to BayernLB with the internal market, questioned whether HGAA was fundamentally sound and expressed doubts regarding the compatibility with Article 107(3)(b) TFEU of the aid granted to HGAA by Austria.

Austria notified additional aid measures on 18 December 2009.

In its decision of 23 December 2009 in case C 16/09 and N 698/09 the Commission found the measures in favour of HGAA described in paragraph 2 temporarily compatible with the internal market on the basis of Article 107(3)(b) TFEU until the submission of a credible restructuring plan and its assessment by the Commission, but at most for a period of six months. At the same time the procedure as laid down in Article 108(2) TFEU was extended with respect to these additional measures.

In April 2010 Austria provided a restructuring plan for HGAA.

In view of the ongoing assessment of the restructuring plan and aid by the Commission Austria asked for a prolongation of the temporary approval of the measures.

2. THE MEASURES PROVIDED TO HGAA

HGAA received EUR 700 million from BayernLB and EUR 900 million in Tier 1 *Partizipationskapital* from the Republic of Austria and liquidity guarantees of EUR 1,35 billion for bond issues on the basis of the Austrian emergency bank support scheme.

In addition, HGAA received the following aid measures temporarily authorised by the December 2009 decision:

- a temporary guarantee of EUR 100 million by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme,
- a recapitalisation of EUR 200 million by the Land Carinthia with a dividend of 6 %, which will be due for the first time for the business year 2013,
- a further recapitalisation by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme for a maximum amount of EUR 350 million,
- liquidity measures amounting to approximately EUR 200 million provided by the Land Carinthia in the context of existing business relationships.

3. ASSESSMENT

The Commission has in its Decisions of 12 May 2009 and 23 December 2009 already established that the measures granted to HGAA constitute State aid.

The original doubts on the compatibility of the aid measures expressed in the two previous decisions have not yet been allayed by the submission of the restructuring plan.

As regards the restoration of viability the Commission has doubts that the overall business model of the bank is apt for restoring viability.

In addition, given HGAA's low rating and prospective high funding costs in light of the expiration of the guarantees from the Land Carinthia and funding support from its former owner BayernLB, the Commission questions whether HGAA will not have to reorient its business model more profoundly,

which might in particular affect its public finance business, which is characterised by low margins.

Furthermore, the Commission considers that HGAA has to cope with significant asset quality problems given the low and still deteriorating quality of its loan book and doubts that the underlying problems as regards the decision-making and risk management processes can be remedied in a timely manner.

In addition, the Commission doubts that the bank would be able to remunerate its own capital as set out in the Restructuring Communication which requires an appropriate return on equity in line with the risk profile of the bank and whether the bank is able to provide an adequate remuneration taking normal market conditions into account or alternatively to repay the State provided capital over time.

In addition, the Commission questions whether the injected capital into HGAA by Austria under the Austrian bank scheme is appropriately remunerated as the bank had been considered as fundamentally sound by Austria at the time of the capital injection in December 2008 and benefitted therefore from cheaper rates. The Commission recalls that it has questioned the assessment by Austria in its May 2009 Decision that the bank is fundamentally sound.

As regards measures for addressing competition distortions, the Commission recalls its doubts that the proposed measures are sufficient to adequately limit the distortions created by the aid. In particular, most of the business HGAA plans to divest seems to concentrate on loss-making activities and are thus necessary for restoring viability. In other words, the Commission doubts whether not more measures are needed for addressing the distortions of competition caused by the aid.

TEXT OF LETTER

The Commission wishes to inform your authorities that it has further extended the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) initiated on 12 May 2009 with its decision C(2009) 3811 final. The Commission also prolongs the authorisation of the aid it has temporarily found compatible with the internal market until it has concluded its examination of the restructuring plan.

1. PROCEDURE

- (1) By decision of 18 December 2008 the European Commission approved in case N 615/08 emergency State aid from Germany to BayernLB in form of a risk shield of EUR 4,8 billion and a capital injection of EUR 10 billion on the basis of Article 107(3)(b) TFEU for a period of six months or until the submission of a credible and substantiated restructuring plan for the bank ⁽¹⁾.

⁽¹⁾ Commission Decision of 18 December 2008 in case N 615/08 *BayernLB*, OJ C 80/4 of 3 April 2009.

- (2) In the same month, BayernLB's subsidiary Hypo Group Alpe Adria (HGAA) received EUR 700 million from BayernLB following large write-downs and losses. In addition, HGAA received EUR 900 million in Tier 1 *Partizipationskapital*⁽¹⁾ from the Republic of Austria on the basis of the Austrian emergency bank support scheme⁽²⁾.
- (3) On 29 April 2009, Germany notified a restructuring plan for BayernLB (including HGAA) to the Commission. At the same date Austria provided a viability plan for HGAA.
- (4) In its decision of 12 May 2009 in case N 254/09⁽³⁾ the Commission opened the formal investigation procedure, raising doubts about the compatibility of the restructuring aid to BayernLB with the internal market, in particular whether the restructuring plan was apt to restore the viability of BayernLB ("the opening decision"). In the same decision, the Commission questioned whether HGAA was fundamentally sound and it expressed doubts regarding the compatibility with Article 87(3)(b) of the EC Treaty, now Article 107(3)(b) TFEU, of the aid granted to HGAA by Austria.
- (5) Austria notified additional aid measures on 18 December 2009, including a temporary asset guarantee under the Austrian scheme, a capital injection and a provision of liquidity, see below point 19.
- (6) In its decision of 23 December 2009 in cases C 16/09 and N 698/09⁽⁴⁾ ("the rescue decision") the Commission extended the procedure in relation to the following measures in favour of HGAA which it at the same time found temporarily compatible with the internal market on the basis of Article 107(3)(b) TFEU until the submission of a credible restructuring plan and its assessment by the Commission, but at most for a period of six months: a temporary guarantee of EUR 100 million, a recapitalisation of EUR 200 million by Land Carinthia, a further recapitalisation for a maximum amount of EUR 350 million and the liquidity provided by the Land of Carinthia. The measures are described in detail in paragraph 19.
- (7) In view of the ongoing assessment of the restructuring plan and aid by the Commission, by letter dated 15 June 2010 Austria asked for a prolongation of the temporary approval of the measures.
- (8) Given the urgency to obtain a Commission Decision before the expiry of the authorisation of the measures, both Germany and Austria have exceptionally agreed that the authentic language for this decision should be English.

2. DESCRIPTION

- (9) For a detailed description of the beneficiary and the aid measures, reference is made to the opening decision and the rescue decision.

2.1. The beneficiary

- (10) HGAA is the sixth largest Austrian bank with a balance sheet of EUR 41 billion as of 31 December 2009, corresponding to roughly 15 % of Austrian GDP.
- (11) HGAA is fully owned by the Austrian State after the nationalisation of 23 December 2009.
- (12) HGAA is active in 12 countries (Austria, Italy, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Germany, Liechtenstein (in liquidation), Hungary, Bulgaria, the Former Yugoslav Republic of Macedonia and Ukraine). The business in Liechtenstein is in liquidation. The bank is active in both banking and leasing, but does not pursue both activities in all the countries mentioned above.
- (13) HGAA had pursued an aggressive growth strategy, in particular aimed at taking advantage of the rapidly growing markets in South-Eastern Europe. In the past decade, HGAA entered Bosnia-Herzegovina, Serbia, Montenegro, Bulgaria, the Former Yugoslav Republic of Macedonia and Ukraine. In addition to those markets, the group also entered Hungary and Germany during that period.
- (14) The bank has a substantial market shares in some of the South-Eastern European countries in which it is active: its market share in banking amounts to [$> 10\%$] (*) in Montenegro and [$> 8\%$] in Croatia, and its market share in leasing amounts to over [$> 15\%$] in Croatia and Slovenia, [$> 20\%$] in FYRoM and [$> 30\%$] in Montenegro. The expansion strategy of the bank was facilitated by the liability guarantees of the Land (federal State) Carinthia amounting to about EUR 19 billion at the end of 2009, which has enabled the bank to borrow money at favourable conditions⁽⁵⁾.
- (15) Following the prospect of large losses and write-downs, Austria acquired from each of the previous owners all shares by contract for the symbolic price of one Euro per owner in December 2009.
- (16) HGAA has a rating below investment grade from Moody's (Baa2/P2/E) with a negative outlook.

2.2. The measures

- (17) In December 2008, HGAA received EUR 700 million from its majority owner at the time, BayernLB, which itself had received State aid in the same month from the Free State of Bavaria.
- (18) HGAA received EUR 900 million in Tier 1 *Partizipationskapital* from the Republic of Austria and liquidity guarantees of EUR 1,35 billion for bond issues on the basis of the Austrian emergency bank support scheme.

⁽¹⁾ *Partizipationskapital* has no voting rights.

⁽²⁾ Commission Decision of 9 December 2008 in case N 557/08, OJ C 3, 8.1.2009, p. 2, Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich, last prolonged by Commission Decision of 16 December 2009 in case N 663/09.

⁽³⁾ OJ C 134, 13.6.2009, p. 31.

⁽⁴⁾ OJ C 85, 31.3.2010, p. 21.

(*) Confidential information.

⁽⁵⁾ This stems from the previously prevailing State guarantees for new debt ("Ausfallhaftung") from the Land Carinthia which was abolished with a transitional period and a grandfathering clause in 2003.

(19) In addition, HGAA received the following aid measures temporarily authorised by the Commission's December 2009 decision:

- a temporary guarantee of EUR 100 million by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme,
- a recapitalisation of EUR 200 million by the Land Carinthia with a dividend of 6 %, which will be due for the first time for the business year 2013,
- a further recapitalisation by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme for a maximum amount of EUR 350 million,
- liquidity measures amounting to approximately EUR 200 million provided by the Land Carinthia in the context of existing business relationships.

3. THE RESTRUCTURING PLAN

(20) According to the submitted restructuring plan the problems of HGAA are largely due to its aggressive growth strategy pursued in recent years which in particular aimed at taking advantage of the rapidly growing markets in South-Eastern Europe. The economic conditions of these countries have deteriorated significantly as a prolonged period of strong economic growth has given way to significant declines of real and nominal GDP. Moreover, losses and in particular the increasingly large share of non-performing loans were to a significant extent caused by a lack of [...] proper control mechanisms [...].

(21) The submitted restructuring plan states that HGAA will continue doing business in Austria, with a strong focus on Carinthia, where it intends to pursue business in the areas of retail clients, SMEs and selective corporate and public finance. The bank envisages maintaining both banking and leasing activities in [most countries of the former Federal Republic of Yugoslavia]. However, it intends to terminate its leasing activities in [...]. Leasing and banking activities will be ended in [...]. In Austria, the bank also plans to discontinue its cross-border financing business and the financing of big ticket projects. HGAA moreover plans to cease its risky project finance activities and tourism projects as well as large tourism-based financing activities. Leasing activities will focus on small vehicle and other mobile assets. The new business for real estate is planned to focus on selective opportunities only.

(22) The overall aim of the restructuring plan is to focus on small/retail business with less risk than before, which, according to the bank, will enable it to rely on historically grown competences, in which the bank has made profits in the past, including during the financial crisis. The plan provides for a balance sheet reduction amounting to [> 35] % by the end of the restructuring period and a

reduction of the risk weighted assets by [> 50] % compared to the 2008 balance sheet. The reduction is achieved mainly through putting some banks and leasing activities in a run off mode or divesting them as explained in paragraph 20.

(23) The bank also plans to overhaul many of its procedures as regards credit and leasing decisions as well as its overall risk management framework. It intends to start an annual risk review, to assess the risks inherent to any new product it launches and has already started to apply a reworked method of calculating its risk absorption quality on a group level since June 2009. As a result of this process, HGAA claims having already identified its major risk types.

(24) According to the plan the economic problems of HGAA were significantly influenced by the current financial crisis which affected markets in South-Eastern Europe particularly strongly. HGAA admits in that respect that quality of its assets has deteriorated significantly, with only [< 40] % of its gross exposure having an internal investment grade rating and with the share of problem loans ⁽¹⁾ when compared to gross exposure increasing steadily since the beginning of 2008, reaching almost [> 15] % of the bank's gross exposure. In 2009, the amount of risk provisions of HGAA reached almost [> 150] % of the bank's net interest revenues of that year. It has to be noted that the leasing activities were to a significant degree responsible for the encountered asset problems.

(25) The plan is based on the assumption of a significant turnaround in the markets in which the bank is active, forecasting a return to robust rates of growth in the South-Eastern European countries.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

(26) As stated in 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, save as otherwise provided in the Treaty.

(27) The Commission recalls that it has already established that the measures granted to HGAA constitute State aid with its Decisions of 12 May 2009 and 23 December 2009.

4.2. Compatibility of the Aid

(28) The Commission must assess the continuation of all emergency aid measures as restructuring aid, on the basis of the submitted restructuring plan and against the conditions of the Restructuring Communication ⁽²⁾.

⁽¹⁾ Defined as a high likelihood that the borrower cannot repay the loan, or if the payments are more than 90 days overdue. Taking into account the lower payment morale in some of the markets where HGAA operates, the bank has replaced the 90 days criterion with a 180 days criterion in some countries.

⁽²⁾ Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

- (29) A restructuring plan needs to ensure that the bank is able to restore long-term viability without continued State aid. The restructuring plan also needs to provide for adequate burden sharing, and limit the aid to the minimum necessary. Finally, proportionate measures need to be taken to limit the distortions of competition caused by the aid.
- (30) The original doubts expressed in decision of 23 December 2009 have not yet been allayed by the submission of the restructuring plan described above. Therefore the Commission continues to have doubts as regards the compatibility of the aid.
- (31) As regards the restoration of viability the Commission firstly has doubts as regards the overall business model of the bank, i.e. whether the presented plan of maintaining some parts of the business in South-Eastern Europe (while divesting or winding down others) combined with the Austrian activities will enable the bank to create sufficient profits to ensure long-term viability.
- (32) Importantly, the plan does not show in a satisfactory manner that HGAA will indeed, as claimed, concentrate on activities where it has also made profits in the past, including during the financial crisis.
- (33) The Commission furthermore questions whether the largely unregulated leasing activities would not need to be scaled down further, given that they seem to have been one of the main sources of HGAA's problems in the past.
- (34) In addition, given HGAA's low rating and prospective high funding costs in light of the expiration of the guarantees from the Land Carinthia and funding support from its former owner BayernLB, the Commission questions whether HGAA will not have to reorient its business model more profoundly, which might in particular affect its public finance business, which is characterised by relatively low margins.
- (35) Furthermore, the Commission considers that HGAA has to cope with significant problems given the low and still deteriorating quality of its asset portfolio. In that regard it can be considered as a difficult task to overhaul many of the basic decision-making processes and its overall risk management processes. The Commission doubts whether such a large task can be implemented timely, given the complexity of HGAA in many countries while avoiding further problem exposures. The Commission also considers that a significant part of the problems encountered by HGAA were not mainly the result of the deterioration of the economic situation in South-Eastern Europe but rather of deep-rooted management problems.
- (36) The Commission recalls that it noted in the rescue decision of 23 December 2009 that the external report commissioned by HGAA and BayernLB has found serious problems in the credit monitoring procedures of HGAA as well as in its collateral valuation. As a result the previously projected potential losses could well increase still further, in particular if the benign view concerning loss-given-default ratios were not to materialise. Moreover, the Commission doubts that the scenarios applied by the external consultants at that time were sufficiently prudent in relation to "a protracted global recession" as specified in point 13 of the Restructuring Communication. Therefore, the Commission continues to have these doubts in relation to the return to long-term viability of the rescued HGAA.
- (37) In addition to these previously expressed doubts the Commission is concerned about the seemingly [...] deterioration of asset quality and considers that this could constitute a major threat to HGAA's viability, which is not addressed by the restructuring plan.
- (38) Moreover, the Commission questions whether the unsatisfactory rating of HGAA can be improved sufficiently over the course of the restructuring period in order to enable the bank to raise both capital and funding on the markets, which is a crucial prerequisite for the proposed business model of the bank. The Commission notes in this respect that the expiry of the liability guarantees of the Land Carinthia entails the risk of rising long-term funding costs for the bank. Furthermore, the Commission has to examine whether the submitted underlying economic assumptions included in the plan are prudent enough.
- (39) In addition, the Commission doubts that the bank would be able to remunerate its own capital as required under points 13 and 14 of the Restructuring Communication which requires an appropriate return given the risk profile of the bank and a remuneration at normal market conditions or the repayment of capital over time.
- (40) As regards burden sharing, the Commission recalls its doubts as to whether the burden sharing of the owners (in particular BayernLB, Land Carinthia, GRAWE) has been appropriate.
- (41) In addition, the Commission questions whether the injected capital into HGAA by Austria under the Austrian bank scheme is appropriately remunerated as the bank had been considered as fundamentally sound by Austria and benefitted therefore from cheaper remuneration rates. The Commission recalls that it has questioned that assessment at the time Austria submitted its viability report for the bank and in the opening decision.
- (42) As regards measures for addressing competition distortions, the Commission recalls its doubts that the proposed measures are sufficient to adequately limit the distortions created by the aid. In particular, most of business HGAA plans to divest seems to concern loss-making activities and be necessary for restoring viability. In other words, the Commission doubts whether not more measures are needed to address the distortions of competition caused by the aid.

5. CONCLUSION

- (43) All measures in favour of HGAA constitute State aid. The Commission still doubts the compatibility of the aid measures as regards the restoration of long-term viability, burden sharing and measures to limit distortions of competition.
- (44) In light of the doubts regarding the compatibility of the aid with the Restructuring Communication, in particular the failure of the current revised restructuring plan to demonstrate the restoration of viability, proper burden sharing and a sufficient degree of mitigation of competition distortions, the Commission needs to further investigate the measures and thus to extend the formal investigation procedure pursuant to Article 108(2) TFEU.
- (45) However, the Commission has established that it can authorise emergency measures temporarily if needed for reasons of financial stability⁽¹⁾, when it cannot take a final decision due to doubts on compatibility of the measures as restructuring aid. In light of the ongoing fragile situation of the financial markets the Commission bases its assessment on Article 107(3)(b) TFEU as the breakdown of a systematically relevant bank can directly affect the financial markets and indirectly the entire economy of a Member State.
- (46) The Austrian Central Bank has confirmed that HGAA is a bank with systemic relevance for the financial market in Austria but also in certain countries in South Eastern Europe. Therefore the Commission prolongs the authorisation of the aid it has temporarily found compatible with the internal market until it has concluded its examination of the restructuring plan.

6. DECISION

In view of the above, the Commission has decided:

- to further extend the procedure as laid down in Article 108(2) TFEU initiated with its decision C(2009) 3811 final of 12 May 2009 and extended with its decision C(2009) 10672 final of 23 December 2009, and
- to prolong the authorisation of the aid it has temporarily found compatible with the internal market by Decision C(2009) 10672 final until it has concluded the examination of the restructuring plan for Hypo Group Alpe Adria.

The Commission requests Austria to provide all information necessary for the Commission to assess the compatibility of the aid measures. Austria is requested to forward a copy of this letter to HGAA immediately.

The Commission warns Austria that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publishing a notice in the EEA Supplement to the *Official Journal of the European Union*, and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.'

⁽¹⁾ Commission Decision of 13 November in case C 15/08, *Hypo RealEstate*, not yet published, and Commission Decision of 31 March 2009 in case C 10/09 *ING* (OJ C 158, 11.7.2009, p. 13).

Prior notification of a concentration**(Case COMP/M.5974 — Finavias/Abertis/Autopista Trados M-45)****(Text with EEA relevance)**

(2010/C 266/06)

1. On 23 September 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertakings Finavias Sàrl ('Finavias', Luxembourg), controlled by AXA Investment Managers Private Equity SA ('AXA Private Equity', France), itself belonging to AXA group ('AXA', France), and Iberpistas, controlled by Abertis Infraestructuras, SA ('Abertis', Spain) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Autopista Trados M-45 ('Trados M-45', Spain) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Finavias: private equity and asset management activities,
- for AXA Private Equity: asset management investing in non-listed companies or investment funds. It belongs to AXA, an international group active in the provision of life and non-life insurance and related financial services,
- for Abertis: mobility and telecommunications infrastructures through five business areas — toll roads, telecommunication infrastructures, airports, car parks and logistics,
- for Trados M-45: road concessions management.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope the EC Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.5974 — Finavias/Abertis/Autopista Trados M-45, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

Prior notification of a concentration**(Case COMP/M.5994 — Apothek DocMorris/K-Mail Order/JV)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2010/C 266/07)

1. On 22 September 2010, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertakings Apothek DocMorris NV (Netherlands), belonging to the Haniel group, and K-mail Order GmbH & Co KG (Germany) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Wellsana BV (Netherlands) by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Apothek DocMorris NV: retail trade in pharmaceutical products through a pharmacy,

— K-mail Order GmbH & Co KG: retail trade in fashion, jewellery, household goods and health products.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.5994 — Apothek DocMorris/K-Mail Order/JV, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

⁽²⁾ OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').

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