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(Information)

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EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.6863 — Avnet EMG/MSC Investoren)

(Text with EEA relevance)

(2013/C 290/01)

On 4 September 2013, 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 English 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 32013M6863. EUR-Lex is the online access to the European law.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

4 October 2013

(2013/C 290/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3593	AUD	Australian dollar	1,4409
JPY	Japanese yen	132,03	CAD	Canadian dollar	1,4042
DKK	Danish krone	7,4598	HKD	Hong Kong dollar	10,5406
GBP	Pound sterling	0,84690	NZD	New Zealand dollar	1,6366
SEK	Swedish krona	8,6732	SGD	Singapore dollar	1,6942
CHF	Swiss franc	1,2271	KRW	South Korean won	1 458,03
ISK	Iceland króna		ZAR	South African rand	13,5862
NOK	Norwegian krone	8,1145	CNY	Chinese yuan renminbi	8,3192
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,6240
CZK	Czech koruna	25,554	IDR	Indonesian rupiah	15 281,81
HUF	Hungarian forint	296,92	MYR	Malaysian ringgit	4,3207
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	58,659
LVL	Latvian lats	0,7028	RUB	Russian rouble	43,7317
PLN	Polish zloty	4,2045	THB	Thai baht	42,546
RON	Romanian leu	4,4285	BRL	Brazilian real	2,9926
TRY	Turkish lira	2,7152	MXN	Mexican peso	17,8150
			INR	Indian rupee	83,6320

[1] *Source*: reference exchange rate published by the ECB.

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.6941 — Piper/G+J/G+J RBA)

Candidate case for simplified procedure

(Text with EEA relevance)

(2013/C 290/03)

1. On 27 September 2013, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Piper Verlag GmbH ('Piper', Germany), belonging to the Bonnier Group ('Bonnier', Sweden), acquires within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking G+J/RBA GmbH & Co. KG ('G+J/RBA', Germany) by way of purchase of shares. The other controlling party is G+J AG & Co. KG ('G+J', Germany), belonging to the Bertelsmann group ('Bertelsmann', Germany). Piper also acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the newly founded National Geographic Buchgesellschaft mbH ('NGB', Germany) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Bonnier: Publishing of books, journals, periodicals, radio and tv services,

— Bertelsmann: Publishing and distribution of journals and periodicals and supplementary online offers; radio and TV broadcasting, TV production, publishing of books and business processes outsourcing services,

— G+J/RBA: Publishing of journals, periodicals and related products, especially calendars, travel guidebooks and DVDs,

— NGB: Publishing of books.

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.

(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').

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.6941 — Piper/G+J/G+J RBA, to the following address:

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

OTHER ACTS

EUROPEAN COMMISSION

Publication of an application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(2013/C 290/04)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council [1].

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2]

'STRACHITUNT'

EC No: IT-PDO-0005-01047-19.10.2012

PGI ( ) PDO (X)

1. **Name**

'Strachitunt'

2. **Member State or Third Country**

Italy

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product*

Class 1.3. Cheeses

3.2. *Description of the product to which the name in point 1 applies*

'Strachitunt' is a blue cheese made from raw whole cow's milk using the ancient dual-curd technique and matured for a medium to long period of at least 75 days.

'Strachitunt' has a thin and coarse rind, of average firmness, sometimes covered with mould, and yellowish in colour but turning to grey with extended ripening.

It is a cylindrical cheese with flat sides varying in diameter from 25 cm to 28 cm, with a straight or slightly convex heel of 15 cm to 18 cm in height. Each cheese weighs between 4 kg and 6 kg.

When cut, 'Strachitunt' has a compact, marbled texture, melting away from the rind, with creamy streaks and green-blue veins from the mould formation. The degree of marbling in the curd varies according to the number of spores naturally present in the milk and their capacity to develop.

The flavour is aromatic and intense, ranging from mild to spicy, and can become more pronounced as it matures.

(1) OJ L 343, 14.12.2012, p. 1.
(2) OJ L 93, 31.3.2006, p. 12. Replaced by Regulation (EU) No 1151/2012.

The fat content is at least 48 %, expressed as a percentage of dry matter.

3.3. *Raw materials (for processed products only)*

Raw milk, collected in two separate milkings, with at least 90 % of the total coming from Bruna (brown) cows.

Calf rennet and salt available on the market are used in the production process.

3.4. *Feed (for products of animal origin only)*

The milk used in the production of 'Strachitunt' comes from farms where grass and/or hay from mixed-grass meadows make up at least 65 % of the total dry matter in the cattle's diet. At least 90 % of this fodder, corresponding to around 60 % of the cattle's diet, must come from the area identified in point 4 below. The animals' diet may also include cereal concentrates (corn, barley, wheat), pulses (soya), and by-products of cereal and pulse processing, representing no more than 35 % of the dry matter, with salt licks and mineral or vitamin complexes as supplements.

The use of maize silage is prohibited.

3.5. *Specific steps in production that must take place in the identified geographical area*

All stages of the production process must take place within the defined geographical area described in point 4 below, including rearing the cows, milking, collecting and processing the milk, and making and maturing the cheese.

3.6. *Specific rules concerning slicing, grating, packaging, etc.*

Strachitunt PDO cheese may be cut and packaged outside the geographical production area. Companies cutting and packaging the cheese must inform the Consorzio di Tutela (protection body) for 'Strachitunt' prior to carrying out such activities.

3.7. *Specific rules concerning labelling*

'Strachitunt' cheese is marketed in whole wheels and/or cut into pieces, and is released for consumption with the logo (Figure 1) stamped on one side and the date of production stamped on the heel.

Whole wheels must also have an identifying label bearing the name 'Strachitunt' and the logo (Figure 1) on the top side of the wheel. If cut into pieces, the external packaging of the cheese must show the logo in a repeated pattern (Figure 1).

Figure 1: Graphic symbol (logo)

4. **Concise definition of the geographical area**

The production area includes the municipalities of Taleggio, Vedeseta, Gerosa and Blello, located in Bergamo province at a minimum altitude of 700 m above sea level. These areas, in part or as a whole, make up the Valtaleggio region.

5. **Link with the geographical area**

5.1. *Specificity of the geographical area*

The Taleggio valley, located at the heart of the Orobian Pre-Alps with a considerable portion in the Bergamo Orobian natural park, has no industrial activities or sources of pollution within its borders, and benefits from a sufficiently remote position compared with the overcrowded Lombardy plains and the most built-up areas. This situation enables the Taleggio valley to retain uncontaminated areas where nature thrives, and these have a positive influence on all the production activities in the area.

Aside from their neighbouring locations, the districts identified above also share similar geo-anthropic characteristics. The prevalence of grazing meadows gives an ideal environment for rearing livestock and alpine grazing, and enables the milk used in making 'Strachitunt' cheese to be produced and processed. The high proportion of Bruna cows in the area is typical of cattle-rearing in this mountain region. The location of the area of origin guarantees that animals will have at least six months of pasture-grazing each year, and this improves the quality of the milk, which is highly dependent on achieving an optimum level of animal welfare. The combination of these conditions and the general climate of this mountain region at an altitude of at least 700 m above sea level, together with the storehouses where the cheese is matured, continues to represent the optimal environment for producing many different types of soft cheese, today as in the past. The geographical area consists of localities with an historic and documented dairy-farming tradition, and thus the techniques used in producing and maturing Strachitunt are long-established.

Within the geographical production area, the milk is processed either directly at the alpine pasture site, or at other farms in the region: in the first case, the milk is not transported at all; in the second, it is transported only a short distance.

In addition, the adoption of traditional techniques, such as the dual-curd method and the use of acid whey as a degreasing agent to clean the heating vat and utensils, are environmentally friendly and respect the microflora that are naturally present in the working environment, whilst maintaining the wholesomeness of the finished product. Farms within the area of origin mainly use underground storehouses for maturing the cheese, with 'static' cooling systems that take advantage of the climate's low temperatures. This is made possible by the shape of the valley, whereby the areas to the right of the Enna stream have a very limited exposure to the sun, even during the summer. These conditions help to determine the varying degree of marbling that characterises the cheese.

5.2. *Specificity of the product*

'Strachitunt' is the product of the ancient dual-curd cheese-making technique. This technique requires the use of two curds: one warm, and one cold, obtained approximately 12 hours apart from the two daily milkings.

The curds are combined and mixed to form a single cheese.

'Strachitunt's' distinguishing characteristics are its special production method, its degree of marbling which varies according to the presence of natural mould (adding any fungal cultures to the milk is prohibited), and its compact, marbled texture melting away from the rind, with creamy streaks.

5.3. *Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI)*

The methods used to produce 'Strachitunt' stem from the morphological characteristics of the Valtaleggio area, which shaped the development of small farms where cheeses were made for private consumption.

In addition, rearing Bruna cattle, with their remarkable capacity to adapt to the mountain soil and climate conditions, has influenced and continues to influence the characteristics of the milk.

Historically, it was necessary to produce raw-milk cheeses in copper vats because wood was used for fuel, which did not allow the milk to be heat-treated.

The dual-curd technique also emerged as a result of the necessity of processing milk immediately after milking, as it was impossible to keep it chilled; this method allowed the warm curd to be used as soon as it was obtained together with the cold curd from the previous milk processing.

This processing method means that the chemical, physical and microbiological qualities of the milk and of the finished product are very closely linked. The marbling comes from the natural presence of mould spores in the milk and in the places where the cheese matures. This mould is able to develop due to the special production techniques and the practice of piercing holes in the cheese while it is maturing.

All the activities that take place during the production of 'Strachitunt' are inseparably linked to the geographical environment and the traditions handed down over time, which determine the distinctive characteristics of the finished product.

Reference to publication of the specification

(Article 5(7) of Regulation (EC) No 510/2006 [3])

The Ministry launched the national objection procedure with the publication of the PDO proposal for 'Strachitunt' in *Official Gazette of the Italian Republic* No 14 of 19 January 2011.

The full text of the product specification is available on the following website:

http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3335

or by going directly to the home page of the Ministry of Agricultural, Food and Forestry Policy (http://www.politicheagricole.it) and clicking on 'Qualità e sicurezza' (at the top right of the screen), and then on 'Disciplinari di Produzione all'esame dell'UE'.

(3) See footnote 2.

CORRIGENDA

Corrigendum to Invitation to submit comments pursuant to Article 1(2) in Part I and Article 6(1) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the alleged aid to Scandinavian Airlines through the new revolving credit facility

(Official Journal of the European Union C 287 of 3 October 2013)

(2013/C 290/05)

The Invitation to submit comments pursuant to Article 1(2) in Part I and Article 6(1) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the alleged aid to Scandinavian Airlines through the new revolving credit facility (2013/C 287/07) should read as follows:

'Invitation to submit comments pursuant to Article 1(2) in Part I and Article 6(1) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the alleged aid to Scandinavian Airlines through the new revolving credit facility

By means of Decision No 259/13/COL of 19 June 2013, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) in Part I and Articles 4(4) and 6(1) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The Norwegian authorities have been informed by means of a copy of the decision.

By means of this notice, the EFTA Surveillance Authority gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month of the date of publication to:

EFTA Surveillance Authority
Registry
Rue Belliard/Belliardstraat 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

The comments will be communicated to the Norwegian authorities. The identity of the interested party submitting the comments may be withheld following a request in writing stating the reasons for the request. Having regard, inter alia, to Article 109(2) of the Agreement on the European Economic Area ('EEA Agreement'), and to the parallel competence of the European Commission and the Authority in the present case, the Authority will also transmit any comments received to the European Commission, unless the interested party providing such comments has raised duly motivated objections to such transmission.

SUMMARY

Procedure

By way of a letter dated 5 February 2013, the EFTA Surveillance Authority ('the Authority') received a complaint from the European Low Fares Airline Association ('ELFAA') regarding the participation of Norway, Sweden and Denmark in a revolving credit facility ('new RCF') in favour of Scandinavian Airlines ('SAS').

In a letter dated 18 February 2013, the Authority invited the Norwegian authorities to submit their comments on the complaint and on the allegations of unlawful State aid. The Norwegian authorities replied with a letter dated 25 March 2013. They also provided additional information by way of a letter dated 6 June 2013.

Assessment of the measure

In recent years, SAS has been reliant on external credit facilities with a view to supporting its financial preparedness. In this regard, SAS had a revolving credit facility in place since December 2006 ('the old RCF'), which was exclusively provided by a number of lender banks. The old RCF was due to expire in June 2013. Following some negotiations, the banks accepted a new RCF in November 2012 that would be set up jointly with the four largest shareholders — Norway, Sweden and Denmark ('the States') together with the main private shareholder, the Knut and Alice Wallenberg Foundation ('KAW').

Further to the above, 50 % of the new RCF is provided by the States in proportion to their shareholding in SAS and the remaining 50 % is provided by KAW together with the existing lender banks involved in the old RCF (with the exception of one bank). The States and KAW participate in the new RCF on the same terms as the banks.

The Authority has assessed whether the establishment of the new RCF conferred an undue economic advantage on SAS and considers that the *pari passu* principle may not apply since the participation of the public authorities in the new RCF was not replicated by any private investor. In this respect, the bank lenders have roughly halved their contribution to the new RCF (compared to the old RCF) and the Authority cannot exclude that the private lenders' participation was influenced by considerations related to their existing credit exposure to SAS under the old RCF, as well as by the States' participation in the new RCF, rather than by prospects of profitability as such.

The Authority has also examined whether the participation of the States in the new RCF could be considered acceptable to a private investor operating in a market economy. In this respect, the Authority has doubts whether the relevant business plan and accompanying returns analysis, which constitute the basis for the States' participation, are sufficiently sound to induce a private investor to participate in the new RCF.

Furthermore, insofar as the new RCF constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has doubts regarding its compatibility with the exceptions laid down in Article 61(2) and (3) of the EEA Agreement. The conditions for rescue and restructuring aid laid down in the Authority's Guidelines on State aid for rescuing and restructuring firms in difficulty do not appear to be met.

Conclusion

In light of the above considerations, the Authority cannot conclude at this stage that the participation of the States in the new RCF is provided on market terms. It therefore cannot exclude an undue advantage in favour of SAS potentially amounting to State aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, insofar as the new RCF constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, the Authority has doubts regarding its compatibility with the EEA Agreement.

Therefore, the Authority has decided to open the formal investigation procedure in accordance with Article 1(2) in Part I and Articles 4(4) and 6(1) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. Interested parties are invited to submit their comments within one month from publication of this notice in the *Official Journal of the European Union*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 259/13/COL

of 19 June 2013

on alleged aid to Scandinavian Airlines through the new Revolving Credit Facility

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY"),

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 61 to 63, 109(1) and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular to Article 24, HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(2) of Part I and Articles 4(4) and 6 (1) of Part II,

Whereas:

I. FACTS

1. Procedure

(1) In late October 2012, the Authority and the European Commission ("the Commission") were informally contacted by Norway, Denmark, and Sweden (jointly "the States") in relation to their intention to participate in a new Revolving Credit Facility ("RCF") in favour of Scandinavian Airlines ("SAS"). On 12 November 2012, the States decided to participate in the new RCF without however formally notifying the measure to the Authority.

(2) On 5 February 2013, the Authority received a complaint from the European Low Fares Airline Association ("ELFAA") against the participation of the States in the RCF. With a letter dated 18 February 2013, the Authority invited the Norwegian authorities to submit their comments on the complaint and on the allegations of unlawful State aid.

(3) The Norwegian authorities replied with a letter dated 25 March 2013. They also provided additional information by way of a letter dated 6 June 2013.

(4) For this procedure, the Authority, pursuant to Article 109(1) of the Agreement on the European Economic Area ("EEA Agreement") in conjunction with Article 24 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, is competent to assess whether the provisions of the EEA Agreement have been complied with by Norway. On the other hand, the Commission is solely competent to assess whether the provisions of the Treaty on the Functioning of the European Union ("TFEU") have been respected by Denmark and Sweden. Also, on the basis of Article 109(2) and Protocol 27 to the EEA Agreement, in order to ensure a uniform application throughout the EEA, the Authority and the Commission shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases.

(5) In the light of the above and given the parallel competence in the present case of the Authority and the Commission, the Authority will transmit the observations it receives from interested parties and the States to the Commission, unless the party providing such observations has raised a duly motivated objection to that transmission.

2. The Scandinavian air transport market

(6) Between 2001 and 2011, the Scandinavian air transport market (encompassing Denmark, Sweden, Finland and Norway) reportedly grew by 126 % in ASK ([1]) terms. Almost all of the growth in the short-haul Scandinavian market came from low-cost carriers, in particular Norwegian Air Shuttle and Ryanair. Indeed, it is estimated that low-cost carriers generated 90 % of the growth in that period ([2]).

(7) Despite the increase in the importance of low-cost carriers, the dominant player in the Scandinavian market is still SAS, with an estimated market share in 2011 of 35,6 %, far from the highs above 50 % enjoyed a decade ago. The market shares of Norwegian Air Shuttle and Ryanair reached 18,7 % and 6,8 % respectively in that year.

3. The beneficiary

(8) SAS is the flag carrier of the States, the largest airline in Scandinavia and the eighth largest airline in Europe. It is also a founding member of the Star Alliance. The airline group, which includes

([1]) Available Seat Kilometer (ASK) is a measure of an airline flight's passenger carrying capacity. It is equal to the number of seats available multiplied by the number of kilometers flown.

([2]) Source: http://www.airlineleader.com/regional-focus/nordic-region-heats-up-as-all-major-players-overhaul-their-strategies.

Scandinavian Airlines, Widerøe ([3]) and Blue1, is headquartered in Stockholm with its main European and intercontinental hub at Copenhagen Airport. In 2011, SAS carried 22,9 million passengers, achieving revenues of SEK 38 billion.

(9) SAS is currently 50 % owned by the States: 21,4 % by Sweden, 14,3 % by Denmark, and 14,3 % by Norway. The main private shareholder is the Knut and Alice Wallenberg's foundation ("KAW") (7,6 %), while the remaining shareholders own stakes of 1,5 % or less.

Table 1

Principal shareholders in SAS AB on 31 March 2012 ([4])

Shareholder	Total
The Swedish Government	21,4 %
The Danish Government	14,3 %
The Norwegian Government	14,3 %
Knut and Alice Wallenberg's foundation	7,6 %
Försäkringsaktiebolaget, Avanza Pension	1,5 %
A.H Värdepapper AB	1,4 %
Unionen	1,4 %
Denmark's National Bank	1,4 %
Robur Försäkring	0,9 %
Ponderus Försäkring	0,8 %
Andra AP-fonden	0,5 %
Tredje AP-fonden	0,5 %
SSB+TC Ledning Omnibus FD No OM79	0,5 %
Nordnet Pensionsförsäkring AB	0,4 %
Swedbank Robur Sverigefond	0,4 %
Swedbank Robur Sverigefond Mega	0,3 %
JPM Chase NA	0,3 %
AMF Aktiefond Småbolag	0,3 %
JP Morgan Bank	0,3 %
KPA Pensionsförsäkring AB	0,2 %
Nomura International	0,2 %

([3]) See paragraph (23) below, concerning the sale of 80 % of the shares of Widerøe.
([4]) Source: http://www.sasgroup.net/SASGroup/default.asp.

(10) The financial position of SAS has been weak for several years, with recurring losses since 2008 and a current S&P credit rating of CCC+, downgraded from B- in November 2012. These difficulties have been heightened by the market environment of high fuel costs and uncertain demand. As a result of its deteriorating financial position, SAS followed a substantial cost reduction program ("Core SAS") in 2009/2010. In order to help to implement that program, SAS had to raise equity from its shareholders by way of two rights issues: (i) SEK 6 billion in April 2009; and (ii) SEK 5 billion in May 2010 ([5]).

4. **Description of the measure: the new RCF in 2012**

(11) As for other airlines globally, SAS has been reliant on external credit facilities to maintain a minimum level of liquidity. Since 20 December 2006, SAS has relied on an RCF that was due to expire in June 2013 ("the old RCF"). The old RCF amounted to EUR 366 million and was exclusively provided by a number of banks […]. It also included a number of financial covenants or conditions, like for instance […].

(12) In December 2011, the management of SAS projected that the airline would […] as a result of the deterioration in its business performance. As a result, in early January 2012, SAS drew the old RCF in full […]. It afterwards entered into negotiations with the banks and reached an agreement for a covenant reset on 15 March 2012, which increased the cost of drawing the old RCF, tightened the drawdown conditions and required SAS to provide full and immediate repayment of the drawn amount. In addition, SAS had to provide the lenders with a Recapitalisation Plan that had to be endorsed by the board and the main shareholders, i.e. the States and KAW.

(13) The Recapitalisation Plan was underpinned by the so-called 4 Excellence Next Generation ("4XNG") business plan, based on a business review by […] in early 2012. The 4XNG business plan will, according to SAS, enable it to position itself as a financially self-sufficient airline. It foresees a number of financial targets that SAS has to meet in the financial year 2014/2015, namely an EBIT margin above 8 %, a financial preparedness ratio above 20 % and an equity ratio (equity/assets) in excess of 35 %. The plan is supposed to allow SAS to improve its EBT by approximately SEK 3 billion on an annual basis, while its implementation will require restructuring costs and one-off costs of approximately SEK 1,5 billion.

(14) As a result of the revised international accounting standard concerning employee benefits (IAS 19) that will be applied by SAS as of November 2013, the SAS Group's equity will be reduced when all unrecognized deviations from estimates and plan amendments will have to be recognized in full. In addition, the plan includes […] an asset disposal and financing plan, which totals approximately SEK 3 billion in potential net cash proceeds. The asset disposal includes (i) the sale of Widerøe, a subsidiary regional airline in Norway ([6]), (ii) the sale of […], (iii) the sale of […], (iv) the sale of airport-related real estate interests, (v) the outsourcing of ground handling, (vi) the sale of aircraft engines, (vii) the sale of […], (viii) the outsourcing of call centres, and (ix) the sale or secured financing of three Q400 aircraft.

(15) Norway insists that the 4XNG plan is self-financing, which means that SAS would generate enough cash from operations and non-core disposals to fund the upfront cost of 4XNG. However, SAS was concerned about investor perception of a weak liquidity position of the airline brought on by the significant upfront costs of implementing 4XNG. SAS thus requested an extension of the old RCF together with a new RCF supported by the States and KAW. However, SAS argued that neither the extension of the old RCF nor the new RCF would be drawn.

(16) The discussion on the new RCF started on 4 June 2012 ([7]). Initially, in line with the Recapitalisation Plan (see paragraph (11) above), the banks that were lenders of the old RCF required that the States provide another round of equity, e.g. a rights issue, since they were unwilling to support a new RCF on their own. However, the States rejected this idea.

(17) After some negotiations, the banks accepted a new RCF that would be set up jointly with the States and KAW to be structured strictly on equal terms without subordination or disproportionate rights to security. It must be noted that the new RCF was initially targeted to be SEK [4-6 billion] in size, while only SEK [1-4 billion] of available security existed. On 22 October 2012, the size of the new RCF was finally reduced to SEK 3,5 billion (approximately EUR 400 million).

([5]) The rights issues of 2009 and 2010 constitute part of a separate investigation carried out by the Commission.
([6]) On 20.5.2013, SAS reported that it had signed an agreement to sell 80 % of its shares in Widerøe to an investor group. SAS will retain a 20 % share in Widerøe but will have an option to transfer full ownership in 2016. See http://mb.cision.com/Main/290/9410155/119539.pdf.
([7]) […].

(18) The new RCF is provided by the same banks that provided the old RCF (except one [8]) together with the States and KAW: 50 % of the new RCF is provided by the States in proportion to their shareholding in SAS, and the remaining 50 % is provided by the banks and KAW. The States and KAW participate in the new RCF on the same terms (fees, interest rates, covenants) as the banks.

(19) The main characteristics of the new RCF are the following:

— It is divided into two sub-facilities of SEK 2 billion (Facility A) and SEK 1,5 billion (Facility B), to which the States participate at 50 %. The pricing conditions for both facilities include an up-front fee, a commitment fee, a utilisation fee, a margin and an exit fee.

— SAS needs to satisfy certain conditions to be able to draw on the RCF, and these conditions are somewhat tighter for Facility B than for Facility A.

— The new RCF continues the security package of the old RCF and in addition the lenders have been granted security over all shares in Widerøe and all other unencumbered fixed assets of the SAS Group as of December 2012. The new RCF thus has first ranking security on a number of SAS assets, including 100 % of the shares of its subsidiaries Widerøe and SAS Spare Engine, […] aircrafts and a number of properties. These securities are valued with a book value of approximately SEK 2,7 billion (i.e. approximately 75 % of the new RCF) and are shared pro rata between Facility A and Facility B.

— Facility B can only be drawn once Facility A has been totally drawn. […].

— The maturity of the new RCF is 31 March 2015.

(20) The terms of the new RCF were agreed upon on 25 October 2012. It was however subject to *inter alia* parliamentary approvals for each of the States and the signing of union agreements with flight deck and cabin crew.

(21) The States submitted a report prepared by CITI dated 7 November 2012 ("the CITI report") which sought to assess and evaluate whether a private investor in a situation as close as possible to that of the States may have entered into the new RCF on similar terms and conditions. Assuming a successful implementation of the 4XNG business plan in its base case, the CITI report concluded that the participation of the States to the new RCF would generate an internal rate of return (IRR) of [100-130 %], a cash-on-cash multiple of circa [4-9x], and an increase in equity value of close to [800- 1 200 %] (from November 2012 until March 2015). The CITI report concludes that the return required by the States is thus at least equal to that required by private investors in a similar position. However, the CITI report does not assess the probability of SAS successfully executing the "base case" of the 4XNG business plan, nor does it assess the impact of deviations from the "base case" such as, for example, a failure to monetise non-core assets.

(22) SAS announced on 19 December 2012 that all the necessary conditions for the new RCF to enter into force – see paragraph (20) above – were in place, including parliamentary approval in the States. As of this date, the new RCF replaced the old RCF [9].

(23) By letter of 6 June 2013, Norway explained that, as a result of the sale of 80 % of the shares of Widerøe (paragraph (14) above), the States and the lending banks had agreed with SAS to a modification of the terms and conditions of the new RCF. However, as of that date, the agreement had not been formally signed and therefore it seems that the modifications to the new RCF had not entered into force. These modifications include the following:

— […]. [10]

5. **Comments by the parties involved**

5.1. ***Comments by ELFAA***

(24) ELFAA is of the view that the measure fails to meet the market economy investor ("MEI") test.

(8) […], one of the lenders under the old RCF, indicated that it would not be prepared to participate in the new RCF. As a result, […] increased their participation in the new RCF proportionally.
(9) See http://www.reuters.com/finance/stocks/SAS.ST/key-developments/article/2662973.
(10) As explained in paragraph (73) below, this latest development will be examined under the investigation procedure.

(25) ELFAA argues that no private investor would be willing to continue financing SAS in view of the SAS Group's financial situation as well as of the rights issues in 2009 and 2010 which failed to make the airline viable. ELFAA moreover considers that the 4XNG business plan will fail to restore the SAS Group's viability. In this respect, ELFAA points to statements by the Norwegian Minister for Industry and Trade who admitted that, despite the capital injection in 2009 and 2010, "SAS's revenue evolved considerably less than planned" and that "the return on the Government's investment in SAS, during the period 2006 to date, has been negative. SAS has failed to meet the State's requirement". ([11]) Norway's figures on return on investment ("ROI") were significantly negative (-90,8 % for the period 2009-2012). ELFAA notes that the ROI figures of Denmark and Sweden are similarly negative.

(26) ELFAA also argues that the new RCF does not meet the *pari passu* argument since the participating banks were under heavy political pressure to participate in the new RCF. These banks would thus not act in a comparable situation to that of the States. Moreover, ELFAA considers that KAW hardly qualifies as a typical private investor due to the charity-like purpose of the foundation.

(27) As regards the CITI report, ELFAA notes that CITI did not conduct any independent evaluation of the 4XNG business plan and that it merely assumed that this business plan will be carried out in accordance with its conditions. Therefore, ELFAA argues that the over-optimistic working assumption that SAS Group's business plan is solid and will be carried out as expected is enough to render CITI's statement void of any evidentiary value.

(28) As regards compatibility, ELFAA argues that the new RCF and the 4XNG business plan are in direct conflict with the essential conditions for the approval of State aid under the Authority's Guidelines on aid for rescuing and restructuring firms in difficulty ("the R&R Guidelines") ([12]), in particular as regards the "one time, last time" principle and the requirement for compensatory measures.

(29) Finally, ELFAA also asserts that the grant of unlawful State aid may have also extended to the banks participating in the new RCF.

5.2. ***Comments by the Norwegian authorities***

(30) Norway claims that its participation in the new RCF is on market terms since it participates in it *pari passu* ([13]) with the banks and KAW, thereby excluding the presence of State aid.

(31) Norway firstly argues that the position of each of the participating banks cannot be determined globally, given that there exist marked differences as to the extent to which the banks have other exposures vis-à-vis SAS, which would render any direct comparison meaningless. In any event, Norway claims that the banks were less exposed than the States and consider that the banks had no actual exposure from the old RCF in the period in which the negotiations on the new RCF took place, given that SAS had not drawn on the old RCF since it had been fully repaid in March 2012.

(32) Norway admits that no shareholder other than KAW was asked to participate in the new RCF due to the fragmented ownership structure of SAS. However, in its view, this means that these shareholders will not receive any benefit from SAS having access to the new RCF, apart from any potential gain in stock value. Norway considers that KAW fully qualifies as a private investor.

(33) Norway considers the 4XNG business plan to be sufficiently robust and believes that there is strong evidence that SAS will be able, after completing the implementation of the plan, to generate return to shareholders at par with market levels and that it will not require further support from its core shareholders. It also argues that the sensitivity analyses of the 4XNG business plan confirm that SAS will achieve long-term viability even if the plan is not implemented in full.

(34) Finally, Norway also considers that the risks and potential rewards of its participation in the new RCF have been carefully balanced and that sufficient safeguards have been put in place. It moreover explains that the CITI report (paragraph (21) above) confirms that their participation in the new RCF would be on market terms and will potentially generate an IRR of [100-130%].

([11]) Source: White Paper to the Norwegian Storting, SAS – participation in the credit facility, Recommendation from the Ministry of Industry and Trade on 16.11.2012 (provided by the complainant).

([12]) OJ L 107, 28.4.2005, p. 28, EEA Supplement No 21, 28.4.2005, p. 1. The Chapter in the Authority's R&R guidelines was due to expire on 30.11.2012. On 28.9.2012 the Commission in the context of the state aid modernisation (SAM) initiative, adopted a Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty of 1.10.2004, until they are replaced by new rules (OJ C 296, 2.10.2012, p. 3). Therefore, the validity of the Chapter in the Authority's R&R guidelines has been prolonged until it is replaced by new rules (Decision No. 438/12/COL).

([13]) See paragraph (45) below.

II. ASSESSMENT

1. Difficulties of SAS

(35) Point 10 of the R&R Guidelines clarifies that a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of the R&R Guidelines in the following circumstances: (a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; (b) in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(36) In this respect, the Authority observes that the SAS Group's financial position has been weak for several years and that its financial performance has deteriorated significantly in the period 2008-2012. In particular, it is clear from the annual reports of the airline that, from 2008 onwards, SAS has incurred substantial losses every year and has registered significant amounts of financial net debt.

Table 3

SAS Group's key financial data 2007-2012 (SEK million) ([14])

	2007	2008	2009	2010	2011	2012 (Jan-Oct)
Revenue	50,958	52,870	44,918	41,070	41,412	35,986
Financial net debt	1,231	8,912	6,504	2,862	7,017	6,549
EBT	1,044	– 969	– 3,423	– 3,069	– 1,629	– 1,245
Net income	636	– 6,360	– 2,947	– 2,218	– 1,687	– 985
Cash flow for the year	– 1,839	– 3,084	– 1,741	868	– 1,243	– 1,018
Return on capital employed (ROCE) – %	6,7	– 19,6	– 11,7	– 7,6	– 2,2	– 8,1
Return on book equity after tax – %	3,8	– 47,6	– 26,8	– 17,0	– 12,0	– 24,8
Interest coverage ratio – %	1,8	– 5,3	– 4,4	– 1,9	– 0,6	– 1,6

(37) The financial difficulties of the airline reached a peak and apparently became unsustainable in 2012, when SAS presented the 4XNG business plan, perceived by the management of the airline as the "final call" for SAS. ([15]) In addition, in November 2012 the press reported the possibility of SAS going into bankruptcy. ([16]) Also, the CITI report indicates that, in the absence of a new RCF, the likely outcome would be the default of SAS. These elements suggest that, at least at that time, SAS fulfilled the criteria for being the subject of collective insolvency proceedings under its domestic law in the sense of point 10(c) of the R&R Guidelines. On the basis of the information available at this stage, the Authority cannot exclude that SAS would fulfil this criterion at least since November 2012 and could be deemed a firm in difficulty.

(38) In any event, the Authority notes that, in accordance with point 11 of the R&R Guidelines, 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".

([14]) Source: annual reports of SAS for the period 2008-2012, available at http://www.sasgroup.net/SASGroup/default.asp

([15]) See in this sense the words of the CEO of SAS, quoted by Reuters on 12.11.2012: " "This *truly* is our 'final call' if there is to be a SAS in the future," said Chief Executive after launching a new rescue plan for the airline […] which has not made a full-year profit since 2007", available at http://www.reuters.com/article/2012/11/12/uk-sas-idUSLNE8AB01O20121112. See as well the article entitled "SAS tops European airline critical list" in the Financial Times of 13.11.2012, available at http://www.ft.com/intl/cms/s/0/fa1cbd88-2d87-11e2-9988-00144feabdc0.html#axzz2TSY5JHUh.

([16]) See for instance Reuters on 18.11.2012 (http://www.reuters.com/article/2012/11/19/sas-idUSL5E8MI6IY20121119) and the Financial Times of 19.11.2012 (http://www.ft.com/intl/-cms/s/0/43e37eba-322f-11e2-b891-00144feabdc0.html#axzz2TSY5JHUh).

(39) From Table 3 above, it appears that SAS had not only incurred continuous losses and significant amounts of financial debt since 2008, but also that its revenue was in decline from 2008 onwards. The negative EBT for the whole period 2008-2012 and cash flow figures (except for 2010) are also clear indicators of the difficulties SAS has been facing during this time. Also, two of the main indicators of profitability (return on equity and ROCE) show substantially negative values as well as the interest coverage ratio, which shows the incapacity of the airline to generate enough cash from its operations to meet its interest obligations.

(40) In view of these indicators, and bearing in mind point 11 of the R&R Guidelines, the Authority is at this stage of the view that SAS was a firm in difficulty at the time the measure was provided to the airline. In this respect the Authority recalls that the fact that not every indicator in point 11 of the R&R Guidelines applies to SAS is irrelevant, since the R&R Guidelines contain a non-exhaustive list of typical symptoms of a situation of economic difficulty and not a cumulative list of criteria. ([17])

2. **Presence of State aid**

(41) Article 61(1) of the EEA Agreement reads:

"Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States 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 Contracting Parties, be incompatible with the functioning of this Agreement."

(42) The concept of State aid thus applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(43) To constitute State aid, a measure must stem from State resources and be imputable to the State. In principle, State resources are the resources of a Member State and of its public authorities as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.

(44) In order to determine whether an economic advantage in favour of SAS within the meaning of Article 61(1) of the EEA Agreement was granted, and therefore whether this measure involves State aid, the Authority will assess whether the airline received an economic advantage which it would not have obtained under normal market conditions. To examine this question the Authority applies the MEI test. In such a case, SAS would be able to continue operating without having to face the consequences normally deriving from its poor financial results.

(45) According to the MEI test, no State aid would be involved where, in similar circumstances, a private investor of a comparable size to the relevant bodies in the public sector, and operating in normal market conditions in a market economy, could have been prompted to provide the measures in question to the beneficiary. The Authority therefore has to assess whether a private investor would have entered into the transaction under assessment on the same terms. The attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return. In principle, a contribution from public funds does not involve State aid if it takes place at the same time as a significant capital contribution on the part of a private investor made in comparable circumstances and on comparable terms (*pari passu*).

(46) Finally, the measures in question must distort or threaten to distort competition and be liable to affect trade between the Contracting Parties.

(47) According to established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and on competition. ([18]) In keeping

([17]) See Case T-349/03 *Corsica Ferries* [2005], ECR II-2197, paragraph 191, and Commission Decision of 13.5.2003 in case C 62/2000, *Kahla*, OJ 2003 L 227/12, point 117.

([18]) See Case 730/79 *Philip Morris Holland BV v Commission* [1980] ECR 2671, paragraph 11; Case T-288/97 *Regione Friuli Venezia Giulia v Commission* [2001] ECR 2001 II-1169, paragraph 41; and Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)* [2003] ECR I-7747, paragraph 75.

with the Court case law, the Authority is of the view that any potential economic advantage granted to SAS through State resources would fulfil this condition, given that SAS is in competition with other airlines of the European Union and the EEA, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1993 ([19]).

(48) The Authority has assessed the presence of State aid in respect of the new RCF in 2012. It cannot be disputed that the measure entails State resources, since it is financed by resources coming from the States' budgets, and that it would be imputable to the State, in particular since the parliament of Norway approved the participation of the Government in the new RCF (paragraph (22) above).

(49) The only criterion of the notion of State aid that is thus in question is whether the measure conferred an undue economic advantage on SAS.

(i) *Pari passu participation of the States, KAW and the banks in the new RCF*

(50) Norway claims that the participation of the States in the new RCF is on market terms since they participate in it *pari passu* with the banks and KAW. However, the Authority doubts at this stage that the *pari passu* argument holds as the States and the banks do not seem to be in comparable positions. The General Court has stated in this sense that "[…] la concomitance ne saurait à elle seule, même en présence d'investissements privés significatifs, être suffisante pour conclure à une absence d'aide au sens de l'article [107], paragraphe 1, [TFUE] sans prendre en considération les autres éléments pertinents de fait ou de droit" ([20]).

(51) The banks have roughly halved their contribution to the new RCF (from EUR 366 million to approximately EUR 200 million) and have therefore reduced their overall present exposure to SAS by approximately 50 % in terms of the RCF. However, the States – which had no return as regards the 2009 and 2010 rights issues in view of the persistently negative results of SAS (paragraph (10) above) – have increased their exposure to SAS.

(52) The Authority considers it likely that the banks may have carried out their own risk assessment before taking the decision to participate in the new RCF. However, contrary to the arguments of Norway, the Authority is of the view that the position of these banks must be seen in the context of the old RCF. That is, at the time of taking a decision to lend money to SAS through the new RCF, the banks had to compare whether it would be less risky to participate in the new RCF than to continue with the old RCF which was due to expire on June 2013 (paragraph (11) above).

(53) The situation of the banks already participating in the old RCF can thus not be compared to that of other banks without participation in the old RCF but with an interest in taking part in the new RCF. As the CITI report underlines, a new lender without participation in the old RCF would require more stringent terms and conditions for the new RCF than those provided by the lending banks. In other words, the independent financial advisor of the States also considers that a new lender would not have participated afresh in the new RCF under the current terms. It therefore appears that a bank without previous exposure to SAS would not have offered the airline a similar deal.

(54) In addition, the Authority notes that the banks participating in the old RCF should have taken into consideration the fact that SAS could have drawn from the old RCF until June 2013 if the new RCF had not been put into place. This would have meant for the banks an exposure of EUR 366 million (paragraph (11) above) and the risk that SAS may completely draw it, as it had actually done in January 2012 (paragraph (11) above).

(55) In this respect, the Authority highlights the context in which the new RCF was negotiated and cannot exclude at this stage that the fact that SAS had drawn completely on the old RCF in January 2012 (paragraph (11) above) could have influenced the conduct of the lending banks to participate in the new RCF so as to ensure that the money that they had lent to SAS was not completely lost in view of the significant difficulties of the airline (section 1 above).

([19]) The "third package" included three legislative measures: (i) Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1); (ii) Council Regulation (EEC) No 2408/92 of 23.7.1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8); and (iii) Council Regulation (EEC) No 2409/92 of 23.7.1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15).These Regulations were incorporated in the EEA Agreement until the time they were repealed by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24.9.2008 on common rules for the operation of air services in the Community (Recast), as incorporated in the EEA Agreement by means of Annex XIII to the EEA Agreement.

([20]) Case T-565/08 *Corsica Ferries France SAS v Commission* [not yet published], paragraph 122.

(56) It is also unclear to the Authority whether the behaviour of the banks could have been influenced by the States' conduct. The Authority notes that the banks were willing to participate in the new RCF only on condition that the States participate in it as explained in paragraphs (15) and (16) above. In view of the continuous financial support of the States to the airline throughout the last years (see for example the 2009 and 2010 rights issues), the Authority cannot exclude at this stage that the decision of the banks to participate in the new RCF was influenced by the conviction that the States would support SAS. Moreover, as the involvement of the States was a strict requirement for the private operators to participate in the new RCF, the Authority considers that the pari passu condition may not be applicable given that the participation of the public authorities could not be replicated – and in fact was not – by any private investor.

(57) The Authority moreover questions whether the behaviour of KAW can be considered as a reference point to establish the conduct of a private investor. The General Court has stated in its judgment in *Alitalia* that "[a] capital contribution from public funds must therefore be regarded as satisfying the private investor test and not constituting State aid if, inter alia, it was made at the same time as a significant capital contribution on the part of a private investor made in comparable circumstances" ([21]). In other words, in order for the pari passu argument to be applicable, the private investor participating in a given operation must be guided by prospects of profitability of the investment and it must not have other interests. However, the Authority observes that KAW is already exposed to SAS not only through its shareholding but also *via* the bank SEB (in which it has a majority shareholding and apparently control). […]. According to information received from SAS, SEB's net credit card exposure to the airline as of late November 2012 was *circa* SEK […] million ([22]). Therefore, KAW's participation in the new RCF could be motivated not so much by prospects of profitability of the investment but by the perspective to avoid higher losses through its subsidiary SEB.

(ii) *Assessment of the participation of the States in the new RCF under the MEI test*

(58) The Authority has also examined whether the participation of the States in the new RCF could be considered rational from a shareholder perspective and would fulfil the MEI test outside the *pari passu* line of reasoning.

(59) In the first place, although the Authority cannot exclude at this stage with absolute certainty that the 4XNG business plan – which constitutes the basis for the lenders' participation in the new RCF – can be successfully implemented in its entirety, it however has doubts whether the said business plan relies on sufficiently robust assumptions and it is uncertain whether the sensitivity analyses carried out in the plan are not overly optimistic. This concerns *inter alia* the following drivers:

— The 4XNG business plan appears to assume a market growth in ASK ([23]) of [5-9 %] and [4-8 %] respectively in 2013/2014 and of [2-5 %] p.a. for 2015-2017. This seems optimistic in view of expected growth rates for the European air transport market issued by international experts. ([24])

— The plan assumes a growth in GDP of [1-4 %] p.a. for 2013-2017, which seems optimistic in view of the figures publicly available in the Commission's economic forecasts at the moment the 4XNG business plan was prepared, in particular considering the weak growth in the EU and the Euro area, the SAS Group's main markets. ([25])

([21]) See Case T-296/97 *Alitalia v Commission* [2000] ECR II-3871, paragraph 81.

([22]) Other banks also had additional exposure to SAS apart from that of the old RCF. For instance, as of 2.11.2012, […] had a bilateral exposure to SAS of […] in addition to secured loans for an amount of […].

([23]) See footnote 1 above.

([24]) According to the most recent financial forecasts (March and June 2013) of the International Air Transport Association (IATA), Europe continues to lag behind other areas, largely as a result of the on-going recession in home markets. IATA predicts growth rates (both in terms of capacity and traffic) below 3%. (http://www.iata.org/whatwedo/Documents/economics/industry-outlook-financial-forecast-march-2013.pdf) and (http://www.iata.org/whatwedo/Documents/economics/Industry-Outlook-Financial-Forecast-June-2013.pdf).

([25]) The Commission's European Economic Forecast - spring 2012 (published in May 2012) forecasted a GDP growth in Denmark of 1,1 % in 2012 and 1,4 % in 2013, while the forecast for Sweden for 2012 was 0,3 % and 2,1 % for 2013. Also, for Norway the Commission forecasted a GDP growth in 2012 of 1,7 %, reaching 2,0 % in 2013. These forecasts were revised in the autumn 2012 forecast (published in November 2012): for Denmark, GDP projections were 0,6 % in 2012 and 1,6 % in 2013 (falling to 1,3 % in 2014), while for Sweden GDP growth in 2012 was increased to 1,1 % and reduced to 1,9 % in 2013 (reaching 2,5 % in 2014). Regarding Norway, the Commission increased its GDP growth projections – although highlighting a downward trend – 3,1 % in 2012 and to 2,5 % in 2013 (and to 2,3 % in 2014). However, given that Europe is the main market of SAS, it appears that SAS will continue to suffer from the weak growth in the EU: the spring 2012 forecast projected GDP growth of 0 % in 2012 and of 1,3 % for 2013 (-0,3 % and 1 % in 2012 and 2013 respectively in the Euro area). The autumn 2012 forecast revised downwards the GDP projections for the EU to -0,3 % in 2012 and to 0,4 % in 2013, while it would be 1,6 % in 2014 (in the Euro area, the fall in GDP in 2012 was increased to -0,4 %, while it would be 0,1 % in 2013 and 1,4 % in 2014). The forecasts are available at http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-1_en.pdf and http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-7_en.pdf, respectively.

— Although the assumed inflation of approximately [1-4 %] p.a. in 2013/2014 seems in line with the Commission's forecasts available at the time, it does not appear realistic to assume an inflation of [0-3 %] for the period 2015-2017 ([26]).

(60) Also, as indicated in paragraph (14) above, the 4XNG business plan includes a number of asset disposals, with an estimated impact of SEK 3 billion, as well as several cost-reducing measures. In this respect, the Authority observes that, while some of these material cost reductions have already been achieved ([27]), it is not clear whether a completely successful implementation of the 4XNG business plan could have been conclusively predicted at the time of signing the new RCF. For instance, it appears that the divestment of the SAS Group's stake in Air Greenland – which as the States have explained has been on sale since at least the introduction of Core SAS – has not taken place ([28]).

(61) In addition, the Authority has assessed the validity of the CITI report, which appears as a crucial element in the argumentation of the States that their participation in the new RCF complies with the MEI test. In addition to assessing generally whether the terms and conditions for the new RCF would be acceptable to a private investor in as close as possible a situation to that of the States, the CITI report also assesses the overall anticipated return on the States' participation in the new RCF over the period 8 November 2012 to 31 March 2015, taking into account their combined 50 % shareholding and the anticipated future growth in the equity value of SAS.

(62) As regards the new RCF terms and conditions, the CITI report assesses the fees, the relatively stringent drawdown conditions and the number and type of financial covenants (albeit making some further recommendations regarding the latter) ([29]), and comes to the view that a private investor in a similar situation may have participated in the new RCF on similar terms.

(63) Nevertheless, the Authority highlights – as acknowledged by the States – that CITI did not assess the 4XNG business plan nor perform a sensitivity analysis of the financial model, but merely relied on the information provided to them. Furthermore, the CITI report does not value the security of the new RCF ([30]). As noted in paragraph (23) above, the size of the new RCF will likely be materially reduced by the proceeds of the sale of 80 % of the Widerøe shares since these divested shares would no longer serve as security, and SAS will pledge […] as security to Facility A. However, it is unclear to the Authority precisely what the market value of the security for the remaining part of the new RCF would be and how the remaining Widerøe shares can be used as security in that regard.

(64) Since the Authority does not have information showing any independent assessment of the adequacy of the underlying collateral of the new RCF from a private market investor perspective, it is not possible to conclude at this stage that the security package (when viewed together with the relevant drawdown conditions and financial covenants) would meet the conditions of the MEI test.

(65) The CITI report performs a return analysis on the new RCF including the implied capital gain from the States' shareholding in SAS. The CITI report presents an annualised IRR for the States over a three-year investment horizon assuming full and successful implementation of the underlying "base case", ([31]) ignoring any deviations from this scenario. Moreover, the CITI report focuses entirely on this one particular scenario without considering the impact of possible alternative scenarios with less favourable assumptions on the return analysis.

(66) Generally, an IRR analysis should take into account a range of future scenarios, including default, and assign probabilities of occurring to each of the scenarios. The CITI report assigns a zero probability to the likelihood that SAS will default in the next three years. However, given that SAS is currently rated CCC+ by Standard & Poor's, this seems an underestimation of the risk. Rating agencies' data shows that CCC+ firms have an average one-year default probability of around 8-9%. Over a multi-year horizon, the default probability is higher.

([26]) In April 2012, at the time the 4XNG business plan was prepared, the International Monetary Fund ("IMF") estimated an inflation rate of approximately 1,9 % p.a. in the EU for the period 2015-2017. For the States, the IMF estimated an inflation rate of between 1,8-2,5 % p.a. for the period 2015-2017 (figures available at http://www.imf.org/external/ns/cs.aspx?id=28).

([27]) For example, the signing of new collective agreements with flight crew unions and the transfer from defined-benefit to defined-contribution pension schemes in November 2012.

([28]) For example, the signing of new collective agreements with flight crew unions and the transfer from defined-benefit to defined-contribution pension schemes in November 2012.

([29]) For example, the CITI report expressed some reservations regarding the adequacy of the SEK […] million liquidity requirements and recommended […], common in aviation transactions.

([30]) SAS was to provide security for the new RCF with a "book value" of approximately SEK 2,7 billion, i.e. approximately 75 % of the new RCF (see paragraph (19) above).

([31]) In this respect, the CITI report assumes (pursuant to the base case) that the market capitalisation of SAS will grow by [800-1 200 %] over three years which would appear to be quite an optimistic assumption.

(67) The Authority also assessed the model accompanying the 4XNG business plan, which offers seven different scenarios for each of the base, downside and pessimistic cases (as indicated above, CITI did not assess this model and limited itself to the base case scenario). The IRR varies depending on the case and the scenario, with the IRR going down to around [80-110 %] in what is called the "downside case" or even showing a non-positive IRR in the "pessimistic case" ([32]).The "downside" case appears to be a variation on the "base case" and also seems a rather optimistic case given that the only difference vis-à-vis the "base case" is that it assumes an [60-100 %] implementation of the 4XNG cost initiatives. It should be added that the SAS Group's interim report for November 2012 – January 2013 ([33]) shows that the projections of financial ratios for end 2012 were overly optimistic, resulting in too high an IRR. Given that deviations from projections further in the future are even more likely, it is important that the IRR reflects this uncertainty.

(68) On basis of the above, the Authority has doubts whether the 4XNG business plan is sufficiently sound to induce a private investor to participate in the RCF. The Authority recalls that the attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return.

(69) Against this background, the Authority cannot conclude at this stage that the participation of the States in the new RCF is provided on market terms and therefore cannot exclude an undue advantage in favour of SAS.

(70) The Authority is thus of the preliminary view at this stage that the new RCF entailed State aid for SAS.

(71) As regards ELFAA's allegations that the RCF may have also entailed State aid to the banks participating in it (paragraph (29) above), the Authority does not have sufficient grounds to consider that these banks may have derived an undue advantage from their participation in the new RCF. The mere fact that the States decided to participate in the new RCF does not necessarily mean that there is an advantage to the other lenders, which in any event continue to be very much exposed to SAS. Taken to the extreme, ELFAA's line of reasoning would mean that, any time that State aid is provided to a given undertaking, the creditors of the beneficiary would also receive State aid due to the improvement in the financial position of the beneficiary.

(72) The Authority therefore concludes at this stage that the measure did not entail State aid to the banks participating in the new RCF.

(73) In relation to the modifications to the terms and conditions of the new RCF agreed between SAS, the States and the lending banks (paragraph (23) above), the Authority notes that, on the basis of the information provided by Norway, as of 6 June 2013 – the date when the information was provided to the Authority - the agreement had not been formally signed and therefore the modifications had not entered into force. In view of this, the Authority notes that in the investigation procedure it will examine how the amended terms and conditions of the new RCF impact on the assessment of the present RCF measure and whether or not they have to be considered as new aid.

3. **Unlawful aid**

(74) According to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, new aid must be notified to the Authority, and cannot be put into effect before the Authority has taken a decision authorizing it (the standstill obligation).

(75) Should the Authority conclude that State aid has been granted, there would be a breach of the standstill obligation, given that this aid has already been put into effect, whilst not having been notified to, nor approved by, the Authority.

4. **Compatibility assessment**

(76) In so far as the establishment of the RCF constitutes State aid within the meaning of Article 61(1) of the EEA Agreement, its compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.

([32]) These reflect possible returns which the Authority has provisionally estimated for the downside and pessimistic cases using CITI's own IRR model.

([33]) Available at http://www.sasgroup.net/SASGROUP_IR/CMSForeignContent/1q2012-13eng.pdf.

(77) According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met. ([34]) The Norwegian authorities consider that the measure does not constitute State aid and therefore have not provided any possible grounds for compatibility.

(78) The Authority has nonetheless assessed whether any of the possible compatibility grounds listed in Article 61(2) and (3) of the EEA Agreement would *prima facie* be applicable to the measure concerned. The Authority considers at this stage that the exceptions laid down in Article 61(2) of the EEA Agreement are clearly not applicable and have not been invoked by the Norwegian authorities. The same conclusion would apply to the exception foreseen in Article 61(3) (d).

(79) In view of the fact that SAS would seem to be a firm in difficulty within the meaning of the R&R Guidelines in late 2012 – i.e. at the time the RCF was implemented (see section 1 above), it does not appear at this stage that the exception relating to the development of certain areas or of certain sectors laid down in 61(3)(a) of the EEA Agreement could be applicable.

(80) In view of the nature of the measure and of the difficulties of SAS, the only relevant criteria appear to be those concerning aid for rescuing and restructuring firms in difficulty under Article 61(3)(c) TFEU on the basis of the R&R Guidelines.

(81) The Norwegian authorities have provided no arguments as to the possible compatibility of the measure as rescue and/or restructuring aid. In any event, the Authority notes that the conditions for rescue aid laid down in section 3.1 of the R&R Guidelines do not seem to be met. In relation to restructuring aid as defined in section 3.2, the Authority observes that the 4XNG business plan does not include any of the necessary elements for it to be considered a restructuring plan in the sense of the R&R Guidelines, in particular regarding own contribution and compensatory measures. What is more, while normally compensatory measures should lead to a reduction in the capacity or market presence of the aid beneficiary, it appears that SAS is expanding its activities and increasing the number of routes: in 2012, 38 new routes were launched and 45 more will be operated as from 2013 ([35]).

(82) On the basis of the arguments above, the Authority has doubts whether the new RCF can be regarded as compatible with the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The Authority concludes that the new RCF does not entail State aid for the banks participating in it pursuant to Article 61(1) of the EEA Agreement.

Article 2

The formal investigation procedure provided for in Article 1(2) of Part I and Articles 4(4) and 6(1) of Part II of Protocol 3 is opened into the new RCF granted to SAS, implemented by the Norwegian authorities.

Article 3

The Norwegian authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 4

The Norwegian authorities are requested to provide within one month from notification of this decision, all documents, information and data needed for the assessment of the compatibility of the aid measure.

Article 5

This Decision is addressed to the Kingdom of Norway.

([34]) Case C-364/90 *Italy v Commission*, [1993] ECR I-2097, paragraph 20.
([35]) See SAS Group's Q4 2012 Media/analyst presentation dated 12.12.2012, available at http://www.sas-group.net/SASGROUP_IR/CMSForeignContent/Analystmaterial_4q2012.pdf.

Article 6

Only the English language version of this decision is authentic.

Done at Brussels, 19 June 2013.

For the EFTA Surveillance Authority

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