Uradni list Evropske unije

C 147

Slovenska izdaja

Informacije in objave

Zvezek 57

16. maj 2014

Vsebina

SL

[1] Besedilo velja za EGP

V *Objave*

POSTOPKI V ZVEZI Z IZVAJANJEM POLITIKE KONKURENCE

Evropska komisija

([1]) Besedilo velja za EGP

II

(Sporočila)

SPOROČILA INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Začetek postopka

(Zadeva M.7000 – Liberty Global/Ziggo)

(Besedilo velja za EGP)

(2014/C 147/01)

Dne 8. maja 2014 je Komisija odločila, da začne postopek glede zgoraj navedenega primera po ugotovitvi, da priglašena koncentracija sproža velike dvome o združljivosti s skupnim trgom. Začetek postopka odpira drugo fazo preiskave v zvezi s predlagano koncentracijo in ne posega v končno odločitev o primeru. Odločba je v skladu s členom 6(1)(c) Uredbe Sveta (ES) št.139/2004 ([1]).

Komisija vabi zainteresirane tretje osebe, da Komisiji predložijo svoje pripombe glede predlagane koncentracije.

Z namenom, da bodo pripombe v celoti upoštevane v postopku mora Komisija prejeti pripombe najkasneje v 15 dneh po dnevu te objave. Pripombe pošljite Komisiji po telefaksu (+32 22964301) ali pošti pod sklicno številko M.7000 – Liberty Global/Ziggo na naslednji naslov:

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

([1]) UL L 24, 29.1.2004, str. 1 (Uredba o združitvah).

Nenasprotovanje priglašeni koncentraciji

(Zadeva M.7145 – Veolia Environnement/Dalkia International)

(Besedilo velja za EGP)

(2014/C 147/02)

Komisija se je 7. maja 2014 odločila, da ne bo nasprotovala zgoraj navedeni priglašeni koncentraciji in jo bo razglasila za združljivo z notranjim trgom. Ta odločitev je sprejeta v skladu s členom 6(1)(b) Uredbe Sveta (ES) št. 139/2004 ([1]). Celotno besedilo odločitve je na voljo samo v angleščini in bo objavljeno po tem, ko bodo iz besedila odstranjene morebitne poslovne skrivnosti. Na voljo bo:

— v razdelku o združitvah na spletišču Komisije o konkurenci (http://ec.europa.eu/competition/mergers/cases/). Spletišče vsebuje različne pripomočke za iskanje posameznih odločitev o združitvah, vključno z nazivi podjetij, številkami zadev, datumi ter indeksi področij,

— v elektronski obliki na spletišču EUR-Lex (http://eur-lex.europa.eu/sl/index.htm) pod dokumentarno številko 32014M7145. EUR-Lex zagotavlja spletni dostop do evropskega prava.

([1]) UL L 24, 29.1.2004, str. 1.

IV

(Informacije)

INFORMACIJE INSTITUCIJ, ORGANOV, URADOV IN AGENCIJ EVROPSKE UNIJE

EVROPSKA KOMISIJA

Menjalni tečaji eura [1]

15. maja 2014

(2014/C 147/03)

1 euro =

	Valuta	Menjalni tečaj		Valuta	Menjalni tečaj
USD	ameriški dolar	1,3659	CAD	kanadski dolar	1,4845
JPY	japonski jen	139,17	HKD	hongkonški dolar	10,5882
DKK	danska krona	7,4644	NZD	novozelandski dolar	1,5786
GBP	funt šterling	0,81520	SGD	singapurski dolar	1,7108
SEK	švedska krona	8,9740	KRW	južnokorejski won	1 401,78
CHF	švicarski frank	1,2227	ZAR	južnoafriški rand	14,1337
ISK	islandska krona		CNY	kitajski juan	8,5090
NOK	norveška krona	8,1050	HRK	hrvaška kuna	7,5910
BGN	lev	1,9558	IDR	indonezijska rupija	15 599,43
CZK	češka krona	27,440	MYR	malezijski ringit	4,4064
HUF	madžarski forint	303,62	PHP	filipinski peso	59,797
LTL	litovski litas	3,4528	RUB	ruski rubelj	47,4450
PLN	poljski zlot	4,1792	THB	tajski bat	44,333
RON	romunski leu	4,4328	BRL	brazilski real	3,0197
TRY	turška lira	2,8466	MXN	mehiški peso	17,6440
AUD	avstralski dolar	1,4589	INR	indijska rupija	80,9842

[1] *Vir*: referenčni menjalni tečaj, ki ga objavlja ECB.

Mnenje svetovalnega odbora za omejevalna ravnanja in prevladujoče položaje Sestanek z dne 17. februarja 2014 o predhodnem osnutku sklepa v zvezi z zadevo C.39398 Visa MIF

Država poročevalka: Malta

(2014/C 147/04)

1. Svetovalni odbor se strinja s pomisleki, ki jih je Komisija izrazila v osnutku sklepa, predloženem Svetovalnemu odboru 5. februarja 2014 v skladu s členom 101 Pogodbe o delovanju Evropske unije (PDEU) in členom 53 Sporazuma EGP.

2. Svetovalni odbor se strinja s Komisijo, da se postopek v zvezi z družbo Visa Europe lahko zaključi s sklepom v skladu s členom 9(1) Uredbe (ES) št. 1/2003.

3. Svetovalni odbor se strinja s Komisijo, da so zaveze, ki jih je ponudila družba Visa Europe, primerne, potrebne in sorazmerne ter da bi morale biti pravno zavezujoče za to družbo.

4. Svetovalni odbor se strinja s Komisijo, da ob upoštevanju zavez, ki jih je ponudila družba Visa Europe, in brez poseganja v člen 9(2) Uredbe (ES) št. 1/2003, ni več razlogov, da bi Komisija ukrepala proti omenjeni družbi.

5. Svetovalni odbor poziva Komisijo, naj upošteva vse druge točke, ki so bile obravnavane med razpravo.

6. Svetovalni odbor priporoča objavo tega mnenja v *Uradnem listu Evropske unije*.

Končno poročilo pooblaščenca za zaslišanje ([1])

Visa MIF (AT.39398)

(2014/C 147/05)

Uvod

(1) Osnutek sklepa v skladu s členom 9(1) Uredbe Sveta (ES) št. 1/2003 ([2]) je naslovljen na družbo Visa Europe Limited (v nadaljnjem besedilu: družba Visa Europe) in se nanaša na del postopka v zadevi AT.39398 – Visa MIF.

(2) Komisija je 6. marca 2008 po preiskavi po uradni dolžnosti, ki se je začela 28. novembra 2006, začela postopek v zvezi z določitvijo „večstranskih medbančnih provizij“, ki se privzeto uporabljajo za čezmejne transakcije in nekatere transakcije na domačih prodajnih mestih, opravljene znotraj Evropskega gospodarskega prostora (v nadaljnjem besedilu: EGP) z uporabo plačilnih kartic VISA.

(3) Po prvem obvestilu o nasprotovanju leta 2009 je Komisija 8. decembra 2010 sprejela prvi sklep v skladu s členom 9(1) Uredbe (ES) št. 1/2003, s katerim so za družbo Visa Europe postale zavezujoče nekatere zaveze v zvezi z njenimi medregionalnimi in določenimi domačimi večstranskimi medbančnimi provizijami za transakcije z njenimi potrošniškimi debetnimi karticami s takojšnjim plačilom ([3]). Komisija je nadaljevala s preiskavo večstranskih medbančnih provizij pri plačilu s potrošniškimi kreditnimi karticami.

(4) Komisija je 31. julija 2012 družbi Visa Europe poslala dodatno obvestilo o nasprotovanju, v katerem je v glavnem izrazila svoje predhodno stališče, da določitev večstranskih medbančnih provizij v okviru sheme Visa in nekatera povezana pravila, ki se uporabljajo za transakcije s potrošniškimi kreditnimi karticami VISA, če se trgovec nahaja znotraj EGP, ne morejo biti izvzeti iz prepovedi iz členov 101(1) PDEU in 53(1) Sporazuma EGP.

Vpogled v spis

(5) Avgusta 2012 je bil družbi Visa Europe omogočen vpogled v spis prek DVD-ja. Družba je poleg tega zaprosila za dostop do: (1) rezultatov preiskave bank pridobiteljic, ki jo je leta 2010 izvedla Komisija (v nadaljnjem besedilu: preiskava bank pridobiteljic), in (2) dokumentov, ki se nanašajo na študijo o „stroških in koristih, ki jih imajo trgovci od različnih načinov plačevanja“ (v nadaljnjem besedilu: študija o stroških) iz leta 2008, katere izvedbo je Komisija oddala zunanjim izvajalcem.

Dostop do dokumentov preiskave bank pridobiteljic prek podatkovne sobe

(6) V odgovor na zahtevo družbe Visa Europe je GD za konkurenco predlagal organizacijo posebnih podatkovnih sob, kjer bi imeli zunanji pravni svetovalci družbe Visa Europe zgolj dostop do anonimiziranih kvalitativnih informacij, ki so jih posredovale banke pridobiteljice v okviru preiskave bank pridobiteljic, njeni zunanji gospodarski svetovalci pa zgolj dostop do kvantitativnih informacij. Zunanji pravni svetovalci družbe Visa Europe so januarja 2013 ustrezno pridobili dostop do dela informacij bank pridobiteljic o „čezmejnem pridobivanju“.

(7) Kar zadeva preostali del informacij bank pridobiteljic, se družba Visa Europe ni strinjala z GD za konkurenco o nekaterih pravilih, ki urejajo pogoje za dostop do podatkovne sobe, in je v skladu s členom 7 Sklepa 2011/695/EU zadevo predložila meni. Družba Visa Europe me je prosila predvsem, da: (a) njenim zunanjim svetovalcem dovolim razkritje držav izvora vseh bank, ki sodelujejo v preiskavi bank pridobiteljic; (b) spremenim pravilo, v skladu s katerim imajo zunanji pravni svetovalci zgolj dostop do kvalitativnih, gospodarski svetovalci pa do kvantitativnih informacij.

([1]) V skladu s členoma 16 in 17 Sklepa 2011/695/EU predsednika Evropske komisije z dne 13. oktobra 2011 o funkciji in mandatu pooblaščenca za zaslišanje v nekaterih postopkih o konkurenci (UL L 275, 20.10.2011, str. 29) (Sklep 2011/695/EU).

([2]) Uredba Sveta (ES) št. 1/2003 z dne 16. decembra 2002 o izvajanju pravil konkurence iz členov 81 in 82 Pogodbe (UL L 1, 4.1.2003, str. 1).

([3]) Glej moje končno poročilo z dne 26. novembra 2010 (UL C 79, 12.3.2011, str. 6).

(8) Zahtevo iz točke (a) sem zavrnil, ker je obstajalo resno tveganje, da bi se identiteta bank, ki so sodelovale v preiskavi bank pridobiteljic, razkrila, če bi se razkrile njihove države izvora. Nadalje, družba Visa Europe ni dokazala, da bi bile informacije o državah izvora teh bank nujno potrebne za uresničevanje njenih pravic do obrambe. Kar zadeva točko (b), sem sklenil, da bi zunanji pravni in gospodarski svetovalci družbe Visa Europe morali imeti dostop do vseh informacij v podatkovnih sobah, ker se predlagana omejitev dostopa, da se zaščitijo zaupne informacije, glede na okoliščine zadeve ne zdi upravičena, po drugi strani pa je z vidika pravic družbe Visa Europe do obrambe pomembno, da se lahko gospodarski in pravni svetovalci med seboj posvetujejo o dokumentih, do katerih imajo dostop.

Dostop do dokumentov študije o stroških

(9) Glede zavrnitve dostopa do dokumentov študije o stroških GD za konkurenco meni, da ti dokumenti niso del spisa Komisije, se ne uporabljajo v dodatnem obvestilu o nasprotovanju oziroma slednje ne temelji na njih ter ne vsebujejo kakršnih koli razbremenilnih elementov. Ker se razpisni pogoji študije o stroških nanašajo na postopek proti družbi Visa Europe, sem ob upoštevanju opredelitve v odstavku 8 obvestila o pravilih za vpogled v spis ([1]) sklenil, da predstavljajo dokumenti študije o stroških del spisa Komisije. Vendar pa sem opozoril na to, da družbi Visa Europe ni treba zagotoviti dostopa do vseh teh dokumentov. Korespondenca med Komisijo in njenimi pogodbeniki o oceni dela pogodbenikov in finančnih vidikih študije, korespondenca, ki odraža notranje razprave med Komisijo in njenimi strokovnjaki, in drugi dokumenti začasne narave predstavljajo notranje (nedostopne ([2])) dokumente.

Rok za odgovor na dodatno obvestilo o nasprotovanju

(10) Družba Visa Europe je na dele dodatnega obvestila o nasprotovanju odgovorila februarja 2013, pri čemer je GD za konkurenco podaljšal začetno obdobje 12 tednov, v katerem je bilo treba predložiti odgovor.

Zaveze

(11) Družba Visa Europe je 10. maja 2013 predložila zaveze z namenom odprave pomislekov Komisije. Komisija je 14. junija 2013 objavila obvestilo v skladu s členom 27(4) Uredbe (ES) št. 1/2003 ([3]) in prejela 17 odgovorov zainteresiranih tretjih oseb. Družba Visa Europe je novembra 2013 predložila spremenjeni predlog zavez.

(12) Z osnutkom sklepa Komisije postanejo predlagane zaveze zavezujoče za družbo Visa Europe za obdobje štirih let. V sklepu se tako v glavnem ugotavlja, da ni več razlogov za ukrepanje, kar zadeva večstranske medbančne provizije, ki jih je določila družba Visa Europe za transakcije, izvedene znotraj EGP s potrošniškimi plačilnimi karticami VISA, in pravila družbe Visa Europe glede čezmejnega pridobivanja.

(13) V zvezi s predlaganimi zavezami nisem prejel nobenih zahtev ali pritožb s strani strank v postopku ([4]).

(14) Glede na zgoraj navedeno menim, da je bilo spoštovano učinkovito uveljavljanje procesnih pravic vseh strank.

V Bruslju, 19. februarja 2014.

Wouter WILS

([1]) Obvestilo Komisije o pravilih za vpogled v spis Komisije v zadevah na podlagi členov 81 in 82 Pogodbe ES, členov 53, 54 in 57 Sporazuma EGP in Uredbe Sveta (ES) št. 139/2004 (UL C 325, 22.12.2005, str. 7).

([2]) Obvestilo o pravilih za vpogled v spis, odstavek 12.

([3]) Sporočilo Komisije, objavljeno v skladu s členom 27(4) Uredbe Sveta (ES) št. 1/2003 v zadevi AT.39398 – Visa MIF (UL C 168, 14.6.2013, str. 22).

([4]) V skladu s členom 15(1) Sklepa 2011/695/EU se lahko stranke v postopkih, ki ponudijo zaveze v skladu s členom 9 Uredbe (ES) št. 1/2003, v kateri koli fazi postopka obrnejo na pooblaščenca za zaslišanje zaradi zagotovitve učinkovitega uveljavljanja svojih procesnih pravic.

Povzetek sklepa Komisije

z dne 26. februarja 2014

v zvezi s postopkom na podlagi člena 101 Pogodbe o delovanju Evropske unije in člena 53 Sporazuma EGP

(Zadeva AT.39398 Visa MIF)

(notificirano pod dokumentarno številko C(2014) 1199 final)

(Besedilo v angleškem jeziku je edino verodostojno)

(2014/C 147/06)

Komisija je 26. februarja 2014 sprejela sklep v zvezi s postopkom na podlagi člena 101 Pogodbe o delovanju Evropske unije in člena 53 Sporazuma EGP. Komisija v skladu z določbami člena 30 Uredbe Sveta (ES) št. 1/2003 ([1]) v tem povzetku objavlja imena strank in glavno vsebino sklepa, vključno z vsemi naloženimi sankcijami, ob upoštevanju pravnega interesa podjetij do varovanja poslovnih skrivnosti.

(1) Zadeva se nanaša na določitev večstranskih medbančnih provizij, ki jih je družba Visa Europe Limited (v nadaljnjem besedilu: družba Visa Europe) določila za transakcije znotraj regije, transakcije na nekaterih domačih ([2]) prodajnih mestih in tiste transakcije na prodajnih mestih znotraj EGP ([3]), ki so bile opravljene s potrošniškimi kreditnimi in debetnimi karticami Visa, izdanimi v državah zunaj EGP, ki spadajo v območje družbe Visa Europe, ter na pravila glede čezmejnega pridobivanja.

1. PREDHODNI POMISLEKI GLEDE KONKURENCE

(2) Komisija je v svojem obvestilu o nasprotovanju z dne 3. aprila 2009 (v nadaljnjem besedilu: obvestilo o nasprotovanju) začasno sklenila, da je družba Visa Europe pri določitvi večstranskih medbančnih provizij kršila člen 101 Pogodbe in člen 53 Sporazuma EGP.

(3) Komisija je 8. decembra 2010 v skladu s členom 9 Uredbe št. 1/2003 sprejela sklep (v nadaljnjem besedilu: sklep o zavezah). Ta za obdobje štirih let pravno zavezuje družbo Visa Europe, da izpolni zaveze in (i) zniža povprečne ponderirane večstranske medbančne provizije za transakcije s potrošniškimi debetnimi karticami, ki so predmet postopka, na 0,20 %, ter (ii) vzdržuje in/ali uvede številne spremembe pravil svojega omrežja.

(4) Komisija je v svojem dodatnem obvestilu o nasprotovanju z dne 31. julija 2012 (v nadaljnjem besedilu: dodatno obvestilo o nasprotovanju) preoblikovala in podrobneje opredelila svoje nasprotovanje glede večstranskih medbančnih provizij za transakcije s potrošniškimi kreditnimi karticami. Prav tako je razširila področje uporabe postopka na neposredno uporabo medregionalnih (ali mednarodnih) večstranskih medbančnih provizij, če se trgovec nahaja znotraj EGP, in zavzela predhodno stališče, da so pravila družbe Visa Europe glede čezmejnega pridobivanja kršila člen 101 Pogodbe in člen 53 Sporazuma EGP.

(5) Medbančne provizije dejansko plača banka trgovca (v nadaljnjem besedilu: pridobitelj) banki imetnika kartice (v nadaljnjem besedilu: izdajatelj) za vsako transakcijo s plačilno kartico na prodajnem mestu. Kadar imetnik kartice pri nakupu blaga ali storitev trgovca uporabi plačilno kartico, trgovec dejansko plača provizijo pridobitelju. Pridobitelj obdrži del te provizije (marža pridobitelja), del pripada izdajatelju (večstranska medbančna provizija), majhen del pa pripada upravljavcu sheme (v tem primeru družbi Visa). V praksi je velik del provizije, ki se zaračunava trgovcu, določen z večstransko medbančno provizijo.

([1]) UL L 1, 4.1.2003, str. 1.

([2]) Trenutno v Belgiji, Italiji, Luksemburgu, Latviji, na Madžarskem, Islandiji, Irskem, Malti, Nizozemskem in Švedskem.

([3]) Gre za transakcije pri trgovcih znotraj EGP, opravljene s potrošniškimi karticami Visa, izdanimi v državah zunaj EGP, ki spadajo v območje družbe Visa Europe. Območje družbe Visa Europe obsega EGP, Andoro, Ferske otoke, Grenlandijo, Izrael, Monako, San Marino, otoke Svalbard in Jan Mayen, Švico, Turčijo in Vatikan.

(6) V predhodni oceni so izraženi pomisleki, da sta cilj in učinek večstranskih medbančnih provizij znatno omejevanje konkurence na trgu pridobiteljev v škodo trgovcev in posredno njihovih strank. Zdi se, da večstranske medbančne provizije z uvedbo pomembnega stroškovnega dejavnika, ki je skupen vsem pridobiteljem, umetno zvišujejo osnovo, na kateri pridobitelji določajo provizije, ki se zaračunavajo trgovcem. Po predhodni oceni Komisije večstranske medbančne provizije družbe Visa Europe niso objektivno potrebne. Omejevalni učinek na trgih pridobiteljev je še dodatno okrepljen z učinkom večstranskih medbančnih provizij na trgih omrežij in izdajateljev kot tudi z drugimi omrežnimi pravili in praksami, in sicer s pravilom spoštovanja vseh kartic, pravilom o nediskriminaciji, prakso poenotenja provizij ([1]) in segmentacijo trgov pridobiteljev zaradi pravil, ki omejujejo čezmejno pridobivanje ([2]). Nadalje je v obvestilu o nasprotovanju in dodatnem obvestilu o nasprotovanju navedeno, da večstranske medbančne provizije ne izpolnjujejo zahtev za odobritev izjeme v skladu s členom 101(3) Pogodbe, pri kateri gre za ustvarjanje učinkovitosti, pri čemer se potrošnikom zagotavlja pravičen delež doseženih koristi.

(7) Za čezmejne pridobitelje v okviru sistema Visa Europe velja pravilo, ki določa uporabo večstranskih medbančnih provizij, veljavnih v državi, v kateri je izvedena transakcija. V skladu s tem pravilom morajo čezmejni pridobitelji privzeto uporabljati ali večstranske medbančne provizije, določene za posamezne države, ali večstranske medbančne provizije znotraj regije ali registrirane domače večstranske medbančne provizije. Izdajateljice in pridobiteljice v državi transakcije, ki so članice sheme Visa, in čezmejni pridobitelji lahko odstopajo od domače večstranske medbančne provizije ali večstranske medbančne provizije, določene za posamezne države, s sklenitvijo dvostranskih sporazumov, ki vključujejo nižje medbančne provizije ali pa jih sploh ne vključujejo. Pri tem so lahko čezmejni pridobitelji v slabšem položaju, če želijo skleniti dvostranske sporazume te vrste, saj verjetno ne bodo imeli močnih povezav z domačimi izdajatelji. V državah, kjer so sklenjeni pomembni dvostranski sporazumi, ki vključujejo domače pridobitelje, za čezmejne pridobitelje običajno veljajo višje večstranske medbančne provizije, določene za posamezne države, večstranske medbančne provizije znotraj regije ali pa registrirane domače večstranske medbančne provizije. To pravilo se z vidika cilja in učinka šteje tudi za območno in cenovno omejitev, ki pridobitelje v državah, kjer je večstranska medbančna provizija nižja, ovira pri nudenju svojih storitev v drugih državah po cenah, ki odražajo njihove nizke večstranske medbančne provizije. Glede na cilj uresničitve notranjega trga plačil je to zelo resna omejitev, za katero se zdi, da je neutemeljena. Takšno umetno ločevanje trgov pridobiteljev škoduje potrošnikom, saj morajo trgovci za storitve pridobivanja plačevati višje cene. Komisija je zato v dodatnem obvestilu o nasprotovanju zavzela predhodno stališče, da je cilj in vsebina tega pravila ohraniti segmentacijo nacionalnih trgov z omejevanjem vstopa in cenovne konkurence čezmejnih pridobiteljev.

2. **SKLEP O ZAVEZAH**

(8) Družba Visa Europe se je 10. maja 2013 v skladu s členom 9 Uredbe (ES) št. 1/2003 zavezala, da bo odpravila pomisleke Komisije glede konkurence.

(9) Komisija je 14. junija 2013 v skladu s členom 27(4) Uredbe (ES) št. 1/2003 v *Uradnem listu Evropske unije* objavila obvestilo s povzetkom zadeve in predlaganih zavez ter pozvala zainteresirane tretje osebe, naj v enem mesecu od objave predložijo svoje pripombe o zavezah. Komisija je 30. avgusta 2013 družbi Visa Europe sporočila pripombe, ki jih je po objavi obvestila prejela od zainteresiranih tretjih oseb. Družba Visa Europe je 5. novembra 2013 predložila revidirane zaveze.

([1]) Pravilo spoštovanja vseh kartic je pravilo sistema Visa, ki obvezuje trgovce, pogodbeno zavezane k sprejemanju plačil z določeno znamko kartice (npr. VISA, VISA Electron ali V PAY), da sprejmejo vse kartice določene znamke brez diskriminacije in ne glede na identiteto banke izdajateljice ali vrsto kartice v okviru te znamke. Pravilo o nediskriminaciji je pravilo sistema Visa, ki trgovcem preprečuje uvajanje dodatnih plačil za transakcije s plačilnimi karticami VISA, VISA Electron ali V PAY, razen če lokalna zakonodaja izrecno določa, da lahko trgovec zaračunava dodatno plačilo. Praksa poenotenja provizij je praksa, v skladu s katero pridobitelji trgovcem zaračunavajo iste provizije za sprejemanje različnih plačilnih kartic iste plačilne sheme (npr. debetne in kreditne kartice VISA) ali za sprejemanje plačilnih kartic iz različnih plačilnih shem (npr. kreditne kartice VISA in MasterCard). Komisija je predhodno ocenila, da navedena pravila in prakse zmanjšujejo zmožnost trgovcev, da bi lahko omejili skupinsko uveljavljanje tržne moči članov združenja Visa Europe prek večstranskih medbančnih provizij, s čimer se posledično krepijo protikonkurenčni učinki večstranskih medbančnih provizij.

([2]) Čezmejno pridobivanje je dejavnost pridobiteljev, katerih cilj je pritegniti trgovce s sedežem v drugi državi EGP, kot je tista, kjer ima sedež pridobitelj.

(10) Komisija je 26. februarja 2014 sprejela sklep v skladu s členom 9 Uredbe (ES) št. 1/2003, s katerim so te zaveze postale zavezujoče za družbo Visa Europe za obdobje štirih let. Glavna vsebina zavez je povzeta v nadaljevanju:

(a) Družba Visa Europe se zavezuje, da bo v dveh mesecih po uradnem obvestilu družbi Visa Europe o sklepu o zavezah znižala povprečne letne ponderirane večstranske medbančne provizije znotraj EGP, ki se uporabljajo za transakcije s potrošniškimi kreditnimi karticami, na 0,3 %.

(b) Znižanje bo dve leti po uradnem obvestilu o sklepu o zavezah ločeno veljalo tudi v vseh državah EGP, v katerih družba Visa Europe neposredno določa posebne večstranske medbančne provizije za domače transakcije s potrošniškimi kreditnimi karticami, in v tistih državah EGP, kjer se za domače transakcije s kreditnimi karticami uporabljajo večstranske medbančne provizije za transakcije znotraj EGP, ker drugih večstranskih medbančnih provizij ni.

(c) Družba Visa Europe se tudi zavezuje, da bo od 1. januarja 2015:

— znižanje večstranskih medbančnih provizij za kreditne kartice na 0,3 % veljalo tudi za vse večstranske medbančne provizije, ki jih družba Visa Europe določa za transakcije pri trgovcih znotraj EGP s potrošniškimi kreditnimi karticami Visa, izdanimi v državah zunaj EGP, ki spadajo v območje družbe Visa Europe ([1]), in

— znižanje večstranskih medbančnih provizij za debetne kartice na 0,2 % veljalo tudi za vse večstranske medbančne provizije, ki jih družba Visa Europe določa za transakcije pri trgovcih znotraj EGP s potrošniškimi debetnimi karticami Visa, izdanimi v državah zunaj EGP, ki spadajo v območje družbe Visa Europe.

(d) Družba Visa Europe se zavezuje, da bodo od 1. januarja 2015 veljala nova pravila glede čezmejnega pridobivanja, ki bodo čezmejnim pridobiteljem omogočala, da ponudijo domačo debetno večstransko medbančno provizijo ali domačo kreditno medbančno provizijo, ki se bosta uporabljali glede na lokacijo trgovca, ali 0,2-odstotno večstransko medbančno provizijo za transakcije s potrošniškimi debetnimi karticami in 0,3-odstotno večstransko medbančno provizijo za transakcije s potrošniškimi kreditnimi karticami, v skladu z nekaterimi pogoji.

(e) Družba Visa Europe se zavezuje, da bo še naprej izvajala ukrepe za povečanje preglednosti. Družba Visa Europe se zlasti zavezuje, da bo:

— uvedla pravilo, ki od pridobiteljev zahteva, da trgovcem kot administrativno provizijo ponudijo provizijo za trgovce, ki se bo zaračunavala na osnovi „večstranska medbančna provizija plus plus“ (z drugimi besedami morajo pridobitelji, če se to zahteva, v pogodbah in računih jasno razčleniti provizijo za trgovce na tri komponente, in sicer na večstransko medbančno provizijo, na vse druge provizije, ki se uporabljajo za plačilni sistem, in na provizijo pridobitelja). Družba Visa Europe bo od pridobiteljev zahtevala, da to pravilo uvedejo v 12 mesecih od uradnega obvestila družbi Visa Europe o sklepu o zavezah za vse nove sporazume in v 18 mesecih za obstoječe pogodbe,

— uvedla poenostavljeno strukturo večstranskih medbančnih provizij za večstranske medbančne provizije, ki jih določa družba Visa Europe, da bi omogočila znižanje števila kategorij provizij za vsaj 25 % in s tem povečala preglednost ter omogočila primerjavo med provizijami.

(11) Družba Visa Europe imenuje pooblaščenca za spremljanje izpolnjevanja zavez družbe Visa Europe. Komisija je pooblaščena, da pred imenovanjem potrdi ali zavrne imenovanje predlaganega pooblaščenca.

(12) Zaveze bodo veljale štiri leta od datuma uradnega obvestila družbi Visa Europe o sklepu o zavezah.

(13) Povprečna ponderirana omejitev večstranskih medbančnih provizij, ki je določena v zavezah, je bila ocenjena na podlagi preskusa z metodo indiferentnosti trgovcev. S tem sklepom se ugotavlja, da so zaveze ustrezne in potrebne za odpravo pomislekov iz obvestila o nasprotovanju in dodatnega obvestila o nasprotovanju ter da niso nesorazmerne.

([1]) Območje družbe Visa Europe obsega EGP, Andoro, Ferske otoke, Grenlandijo, Izrael, Monako, San Marino, otoke Svalbard in Jan Mayen, Švico, Turčijo in Vatikan.

(14) Svetovalni odbor za omejevalna ravnanja in prevladujoče položaje je 17. februarja 2014 izdal pozitivno mnenje glede sprejetja Sklepa. Pooblaščenec za zaslišanje je 19. februarja 2014 izdal končno poročilo.

(15) S sklepom se je zaključil postopek glede večstranskih medbančnih provizij družbe Visa Europe za transakcije znotraj EGP, opravljene s kreditnimi karticami, večstranskih medbančnih provizij za domače transakcije, opravljene s kreditnimi karticami, ki jih določa družba Visa Europe, večstranskih medbančnih provizij za transakcije, opravljene s kreditnimi in debetnimi karticami, izdanimi v državah zunaj EGP, ki spadajo v območje družbe Visa Europe, in mednarodnih večstranskih medbančnih provizij ter pravila družbe Visa Europe o večstranskih medbančnih provizijah, ki se uporabljajo v primeru čezmejnega pridobivanja.

(16) Sklep ne zajema večstranskih medbančnih provizij, ki jih določata družbi Visa Inc. in Visa International Service Association, v zvezi s tem preiskava Komisije še poteka.

V

(Objave)

POSTOPKI V ZVEZI Z IZVAJANJEM POLITIKE KONKURENCE

EVROPSKA KOMISIJA

DRŽAVNE POMOČI – REPUBLIKA LATVIJA

Državna pomoč SA.36612 (2014/C) (ex 2013/NN) – Nepriglašena državna pomoč, ki jo je Latvija dodelila bankama Citadele in Parex

Poziv k predložitvi pripomb na podlagi člena 108(2) Pogodbe o delovanju Evropske unije

(Besedilo velja za EGP)

(2014/C 147/07)

Z dopisom v verodostojnem jeziku z dne 16. aprila 2014 na straneh, ki sledijo temu povzetku, je Komisija uradno obvestila Republiko Latvijo o svoji odločitvi, da začne postopek na podlagi člena 108(2) Pogodbe o delovanju Evropske unije v zvezi z zgoraj navedeno pomočjo.

Zainteresirane strani lahko v 10 delovnih dneh od dneva objave tega povzetka in dopisa, ki mu sledi, predložijo svoje pripombe o ukrepu, v zvezi s katerim Komisija začenja postopek, na naslov:

European Commission
Directorate-General for Competition
State aid Greffe
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Faks +32 22961242

Te pripombe se pošljejo Republiki Latviji. Zainteresirana stran, ki predloži pripombe, lahko pisno zaprosi za zaupno obravnavo svoje identitete in navede razloge za to.

BESEDILO POVZETKA

Postopek

1. Komisija je 15. septembra 2010 ([1]) odobrila načrt prestrukturiranja banke AS Parex. V skladu z načrtom prestrukturiranja naj bi se banka AS Parex razdelila na banko AS Citadele in banko AS Reverta ([2]). Komisija je 10. avgusta 2012 odobrila spremembe treh zavez iz sklepa o odobritvi načrta za prestrukturiranje ([3]).

2. Od takrat je Komisija v okviru spremljanja odobrenega načrta prestrukturiranja in povezanih zavez ugotovila, da je Latvija dodelila pomoč, ki presega ukrepe pomoči, ki jih je že odobrila sama.

([1]) Sklep Komisije C 26/2009 (UL L 163, 23.6.2011, str. 28).
([2]) Slaba banka je po razdelitvi 1. avgusta 2010 sprva obdržala ime Parex banka, od maja 2012 pa je bila registrirana pod imenom „AS Reverta“.
([3]) Odločitev Komisije SA.34747 (UL C 273, 21.9.2013, str. 1).

Opis ukrepov

3. Na podlagi dokumentov, ki jih je prejela Komisija, je razvidno, da je Latvija izvedla naslednje ukrepe, ne da bi predhodno obvestila Komisijo:

(i) 22. maja 2009 je Latvija banki AS Parex odobrila podrejeni dolg, ki se kvalificira za kapital 2. reda, z rokom zapadlosti sedmih let, kar presega najdaljši rok zapadlosti petih let, ki ga Komisija dopušča v skladu s pravili o državni pomoči;

(ii) 27. junija 2013 je Latvija banki AS Citadele odobrila 18-mesečno podaljšanje roka zapadlosti za neporavnani znesek tega podrejenega dolga;

(iii) od leta 2011 Latvija banki AS Reverta zagotavlja likvidnostno pomoč, ki presega najvišjo zgornjo mejo, ki jo je Komisija odobrila v sklepu z dne 15. septembra 2010.

4. Poleg tega se je izkazalo, da Latvija ni izpolnila svoje zaveze, da bo do predvidenega roka prekinila dejavnosti upravljanja premoženja banke AS Citadele.

Ocena ukrepov

5. Poleg ukrepov pomoči, ki jih dopušča Komisija v skladu s pravili o državnih pomočeh, je Latvija banki AS Parex in pozneje bankama AS Citadele in AS Reverta namenila še dodatne ukrepe.

6. Ker:

(i) tako prvotni sedemletni rok zapadlosti in podaljšani rok zapadlosti podrejenega dolga kot tudi povečana likvidnostna pomoč predstavljata jasno dodatno prednost glede na že odobrene ukrepe pomoči, s tem pa tudi dodatno pomoč (vsa ostala merila iz člena 107(1) Pogodbe še vedno veljajo), ter

(ii) ker dodatni ukrepi pomoči niso bili priglašeni Komisiji, Komisija ugotavlja, da zadevni trije ukrepi predstavljajo nezakonito pomoč.

7. Komisija na podlagi trenutno razpoložljivih informacij ugotavlja, da Latvija ni predložila nobenih argumentov, ki bi dokazovali združljivost pomoči, ki izhaja iz prvotnega sedemletnega roka zapadlosti podrejenega dolga in dodatnega 18-mesečnega podaljšanja zapadlosti.

8. Komisija tudi ugotavlja, da Latvija ni predložila argumentov, ki bi dokazovali združljivost dodatne likvidnostne pomoči banki AS Reverta.

9. Latvija je potrdila, da ni prekinila dejavnosti upravljanja premoženja v predvidenem roku. To pomeni kršitev končne odločitve v zvezi z banko Parex, s tem pa tudi zlorabo dodeljene pomoči.

10. Komisija v zvezi z zgornjo nezakonito pomočjo ugotavlja, da se na podlagi trenutno razpoložljivih informacij porajajo dvomi glede njene združljivosti z notranjim trgom. Komisija se je zato odločila, da bo začela formalni postopek preiskave v skladu členoma 13(1) in 4(4) Uredbe (ES) št. 659/1999.

11. Poleg tega Komisija ugotavlja, da neizpolnitev zaveze glede prenehanja dejavnosti upravljanja premoženja predstavlja zlorabo pomoči. Komisija se je zato odločila, da bo začela formalni postopek preiskave tudi v zvezi z zlorabo pomoči v skladu členom 16 Uredbe Sveta (ES) št. 659/1999.

V skladu s členom 14 Uredbe (ES) št. 659/1999 se lahko vse nezakonite pomoči izterjajo od prejemnika.

BESEDILO DOPISA

'The Commission wishes to inform Latvia that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("the Treaty").

1. **PROCEDURE**

(1) On 10 November 2008 Latvia notified to the Commission a package of State aid measures in favour of AS Parex banka ("Parex banka"), designed to support the stability of the financial system. The Commission approved those measures on 24 November 2008 ([1]) ("first rescue Decision") based on Latvia's commitment to submit a restructuring plan for Parex banka within six months.

(2) Following requests from Latvia, the Commission approved two sets of changes to the aid measures concerning Parex banka, the first on 11 February 2009 ([2]) ("second rescue Decision") and the second on 11 May 2009 ([3]) ("third rescue Decision").

(3) On 11 May 2009 Latvia notified a restructuring plan for Parex banka. By decision of 29 June 2009 ([4]) the Commission came to the preliminary conclusion that the notified restructuring measures constituted State aid to Parex banka and expressed its doubts that such aid could be found compatible. As a result the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty and required Latvia to provide information needed for the assessment of the compatibility of the aid.

(4) Between 11 May 2009 and 15 September 2010, several information exchanges and discussions occurred between Latvia and the Commission concerning the restructuring plan for Parex banka. Latvia provided information and clarifications on several occasions throughout the investigation procedure, and the restructuring plan of Parex banka was also updated six times.

(5) On 1 August 2010, some assets of Parex banka were transferred to a newly established so-called "good bank" named AS Citadele banka ("Citadele"), in line with the restructuring plan. The restructuring plan envisaged a split of Parex banka into Citadele, which would take over all core assets and some non-core assets ([5]), and a so-called "bad bank" ("Reverta" ([6])) which kept the remaining non-core and non-performing assets.

(6) By decision of 15 September 2010 ([7]) ("the Parex Final Decision"), the Commission approved the restructuring plan of Parex banka, based on a commitment paper submitted by the Latvian authorities on 3 September 2010.

(7) On 10 August 2012, at the request of the Latvian authorities, the Commission approved amendments to three commitments included in the Parex Final Decision ("the Amendment Decision") ([8]). Those amendments: 1) extended the disposal deadline for the CIS loans ([9]) until 31 December 2014; 2) increased the limit of minimum capital adequacy requirements allowed for Citadele at the level of the bank and the group before the asset remuneration described in the Parex Final Decision would be triggered; and 3) allowed carry-over of previous years' unused caps on lending, whilst respecting market share caps.

(8) On 1 October 2013 Latvia notified a requested for a further amendment of the Parex Final Decision, asking for the postponement of the divestment deadline for one of the divisions of Citadele, the Wealth Management Business ([10]). While analysing Latvia's submissions in support of that amendment request, the Commission identified aid that had been granted by Latvia over and beyond the aid measures already approved by the Commission.

(9) Between […] ([*]) and 4 March 2014, several information exchanges have taken place between Latvia and the Commission with regard to the additional aid measures. Latvia submitted information and documents on 30 October 2013, 31 January 2014 and 4 March 2014 (including a revised restructuring plan of Parex banka).

([1]) Commission Decision NN 68/2008, OJ C 147, 27.6.2009, p. 1.
([2]) Commission Decision NN 3/2009, OJ C 147, 27.6.2009, p. 2.
([3]) Commission Decision N 189/2009, OJ C 176, 29.7.2009, p. 3.
([4]) Commission Decision C 26/2009 (ex N 189/2009), OJ C 239, 6.10.2009, p. 11.
([5]) In particular, performing loans to borrowers located in the Commonwealth of Independent States, the Lithuanian subsidiary, branches in Sweden and Germany and the wealth management business, with the latter including the Swiss subsidiary.
([6]) The bad bank initially kept the name of Parex banka after the split that took place on 1 August 2010, but has been registered since May 2012 under the corporate name "AS Reverta".
([7]) Commission Decision C 26/2009, OJ L 163, 23.6.2011, p. 28.
([8]) Commission Decision SA.34747, OJ C 273, 21.9.2013, p. 1.
([9]) Meaning loans to borrowers located in the Commonwealth of Independent States.
([10]) The Wealth Management Business consists of the private capital management sector of Citadele, asset management subsidiaries and AP Anlage & Privatbank AG, Switzerland.
([*]) Confidential information.

(10) Since 11 November 2013, the Commission has also received monthly updates regarding Latvia's progress in selling Citadele, a process it began in October 2013.

(11) The Latvian authorities have informed the Commission that for reasons of urgency they exceptionally accept that this Decision is adopted in the English language.

2. DESCRIPTION

2.1. The undertaking concerned

(12) Parex banka was the second-largest bank in Latvia with total assets of LVL 3,4 billion (EUR 4,9 billion) as of 31 December 2008. It was partially nationalised in November 2008.

(13) In April 2009, the European Bank for Reconstruction and Development ("EBRD") acquired 25 % of the share capital of Parex banka plus one share. Following the split of Parex banka into a good bank and a bad bank in 2010 along with subsequent changes in the shareholding structure, the shareholders of Citadele are now Latvia (75 %) and the EBRD (25 %), while the shareholders of Reverta are Latvia (84,15 %), the EBRD (12,74 %) and others (3,11 %).

(14) A detailed description of Parex banka up to the time of the Parex Final Decision can be found in recitals 11 to 15 of that decision. Parex banka was authorised to receive a series of aid measures (including liquidity support, guarantees and recapitalisation and asset relief measures) which are specified in the Parex Final Decision. Those measures were approved by the Commission in the first, second and third rescue Decisions (the "Rescue Decisions") and the Parex Final Decision.

2.2. The aid measures approved for Citadele and Reverta

(15) The restructuring plan approved by the Commission with the Parex Final Decision provided that the rescue aid previously approved by the Commission was to be extended over the restructuring period and split between Citadele and Reverta. The Parex Final Decision also approved additional restructuring aid for Reverta and Citadele. It also laid down a utilisation mechanism for the aid which had been provisionally approved through the Rescue Decisions after Parex banka was split, in regard to:

a) liquidity support in the form of State deposits for both Citadele and Reverta ([1]);

b) State guarantees on liabilities of Citadele and Reverta ([2]);

c) a State recapitalisation for Reverta and Citadele ([3]); and

d) an asset relief measure for Citadele ([4]).

2.3. The commitments given by Latvia in the Parex Final Decision and the Amendment Decision

(16) In order to enable the Commission to find the restructuring aid compatible with the internal market Latvia provided commitments to ensure full implementation of the restructuring plan and limit distortions of competition that result from the restructuring aid ("the commitments").

(17) The main commitments regarding Citadele are described in recitals 73 to 83 of the Parex Final Decision. They include: a commitment to divest the CIS loans; a commitment to divest the Wealth Management Business within fixed deadlines (one which applied to divestment by Citadele itself and another which applied to divestment under the control of a Divestment Trustee); the preservation of viability, marketability and competitiveness; a hold-separate obligation in relation to the Wealth Management Business; a commitment to sell Citadele within a fixed deadline; caps on new lending and deposits in the Baltic countries; caps on the deposits in the German and Swedish branches; no increase in the number of branches; remuneration in respect of the asset relief measure; an acquisition ban; and a ban on making new CIS loans.

(18) The main commitments regarding Reverta are described in recitals 84 to 87 of the Parex Final Decision. They include commitments that there would be no new activities; there would be a wind-down or divestment of activities; and a cap on the total amount of capital that would be provided by Latvia in whatever form.

(19) Recitals 88 to 93 of the Parex Final Decision describe the commitments jointly applying to Reverta and Citadele. They provide for: a dividend and coupon ban; a ban on any reference to State support in advertising; a separation between Citadele and Reverta; and the appointment of Monitoring and Divestiture Trustees.

([1]) Recitals 55-57 of the Parex Final Decision.
([2]) Recitals 58-61 of the Parex Final Decision.
([3]) Recitals 62-68 of the Parex Final Decision.
([4]) Recitals 69-70 of the Parex Final Decision.

(20) As recalled in recital 16, the Commission subsequently amended three of the commitments applicable to Citadele under the Parex Final Decision. That approval was based on new commitments undertaken by Latvia and Citadele to compensate for any distortion of competition.

2.4. **The additional measures implemented by Latvia for Parex banka, Citadele and Reverta**

(21) Based on the report submitted on 29 August 2013 by the Monitoring Trustee ([1]) and based on documents and information submitted by Latvia since October 2013, it appears that Latvia has put into effect the following measures without prior notification to the Commission:

(i) on 22 May 2009, Latvia granted to Parex banka a subordinated loan of LVL 50,27 million (qualifying as Tier 2 capital) with a maturity of seven years (i.e. until 21 May 2016). The duration of that subordinated loan exceeds the maximum five-year maturity set in first rescue Decision and confirmed in the Parex Final Decision;

(ii) on 27 June 2013, Latvia granted Citadele an additional 18-month extension of the maturity for an amount of LVL 37 million of subordinated debt (out of the total of LVL 45 million held by Latvia at that time) ([2]). Table 1 gives an overview of the subordinated debt maturity changes, as of 31 December 2013. Latvia did not notify the extension of the maturity of that subordinated debt to the Commission;

Table 1

Issuer	Principal (LVL million)	Maturity approved by the Parex Final Decision	Maturity date throughout the restructuring period	Extended Maturity (granted in 2013)
LPA ([3])	7,87	May 2014 (five years starting from 2009)	8.8.2016	—
LPA	37,34		21.5.2016	20.12.2017
[…]	[…]		[…]	[…]
Total	50,27			

(iii) in addition, since 2011 Latvia has provided Reverta with liquidity support in excess of the maximum limit set and approved by the Commission in the Parex Final Decision, both for the base case and for the worst case scenario (presented in Table 2 ([4])). The actual amounts of liquidity support from which Reverta has benefited were communicated by the Latvian authorities through the revised restructuring plan submitted in January 2014 and are reflected in Table 3:

Table 2

Liquidity caps for Reverta as reflected in the Parex Final Decision

LVL million	1.8.10	31.12.10	31.12.11	31.12.12	31.12.13
Base case	458	446	419	349	315
Best case	458	446	419	356	322
Worst case	458	446	419	344	307

([1]) The Monitoring Trustee was appointed through a Mandate signed by Reverta, Citadele and the Latvian authorities on 28 February 2011. The Monitoring Trustee has submitted bi-annual monitoring reports covering the preceding semester, starting with the one ending 31 December 2010.

([2]) Following the split of Parex banka, Citadele was established on 1 August 2010. The Parex Final Decision approved the transfer to Citadele of all of the subordinated loans previously granted to Parex banka. No Tier 2 capital was provided to Parex banka by Latvia at the time of the split or could have been provided by Latvia after the split.
On 3 September 2009 the EBRD agreed to refinance part of the subordinated loan previously granted by Latvia to Parex banka. As of 31 December 2009 the subordinated loans granted by Latvia to Parex banka amounted to LVL 37 million, while the subordinated loan granted by the EBRD amounted to LVL 13 million.
At the time of the split Latvia took over LVL 8 million out of the LVL 13 million subordinated loan held by the EBRD. As of 1 August 2010, the total amount of subordinated loans held by Latvia was LVL 45 million (with different maturities), while that held by the EBRD was LVL 5 million.

([3]) The Latvian Privatisation Agency, owned by Latvia.

([4]) That information is contained in Table 6 of the Parex Final Decision.

Table 3

Actual amounts of liquidity from which Reverta has benefited

Outstanding of liquidity support					
	1.8.10	31.12.10	31.12.11	31.12.12	31.12.13
LVL million	446,32	446,32	427,82	384,86	362,52

In light of those developments and findings, the Commission has asked Latvia to provide additional information and explanations.

(22) Latvia has confirmed through the submissions set out in recital 9 that those additional measures have already been put into effect.

2.5. **The breach of the commitment to divest the Wealth Management Business of Citadele**

(23) Latvia has failed to comply with its commitment to divest the Wealth Management Business of Citadele by 30 June 2013 without a Divestiture Trustee, or by 31 December 2013 with a Divestiture Trustee, which was recorded in the Parex Final Decision [1]. Therefore that commitment to divest the Wealth Management Business by those deadlines has been breached.

3. **POSITION OF THE LATVIAN AUTHORITIES**

3.1. **On the un-notified maturity extensions of the subordinated debt**

(24) In its submissions of information regarding the un-notified aid which are mentioned in recital 9, as well as in the revised restructuring plan, the Latvian authorities submit that the Commission had been informed of the possibility of the maturity extension of the subordinated debt on a number of occasions. In consequence, Latvia considers that the longer maturity of the subordinated debt does not entail un-notified State aid.

(25) More specifically, Latvia expresses the view that:

(i) the Commission had been informed of the possibility of the maturity extension of the subordinated debt on a number of occasions, as it was expressly referred to in the restructuring plan and the reports of the Monitoring Trustee;

(ii) according to the final version of the restructuring plan, it was not planned that the subordinated debt would be fully repaid by 2017. In addition, the restructuring plan assumed when determining the eligible capital for calculating capital adequacy that the maturity of the subordinated financing would be extended to avoid suffering from a 20 % amortisation rate starting from the fifth year and until maturity;

(iii) in line with those provisions, the Parex Final Decision provided that the subordinated loans were expected to mature in the period 2015-18, thus envisaging a prospective extension of the subordinated debt [2];

(26) Moreover, Latvia has argued that the payment by Citadele of interest rates in excess of market conditions allays any State aid concerns that could exist.

(27) Finally, Latvia notes that discussions […] are currently being held […].

3.2. **Regarding the un-notified liquidity support granted to Reverta**

(28) Latvia explained that it provided Reverta with liquidity in excess of the support limits in the Parex Final Decision because the deposits from the State were not transformed into capital support by capitalising the principal of State treasury deposits to the extent that had been envisaged in that Decision. That transformation did not occur because after Reverta's banking licence had been revoked the relevant Latvian legislation no longer required statutory capital to be maintained. The Parex Final Decision had mentioned capitalising LVL [40-110] million of principal in the base case, whereas in fact only LVL 12,4 million of principal was capitalised.

(29) Latvia argues that capitalising less principal benefitted the State because:

(iv) Latvia receives interest on liquidity aid but has no income from capital aid;

(v) Latvia remains a senior secured creditor rather than junior equity holder, which ensures higher recoverability of funds in case of insolvency or liquidation, given that the State Treasury will have priority towards proceeds collectable within the insolvency process;

[1] See recital 73 of the Parex Final Decision.
[2] In that respect, Latvia points to recital 148 of the Parex Final Decision.

(vi) the capital invested as Tier 1 will not be recovered by the State ([1]); and

(vii) there is more burden-sharing by legacy minority stakeholders as a result of interest payments by Reverta to the State.

3.3. **Regarding the breach of the commitment for Wealth Management Business divestment**

(30) Latvia states that the return of Citadele as a stand-alone entity to the private sector would have been put at risk if Citadele had divested the Wealth Management Business by 30 June 2013 as foreseen in the restructuring plan of 2010 or, in any event before Latvia had divested its stake in Citadele. Latvia claims that Citadele without the Wealth Management Business has no viable business model.

(31) The Latvia has therefore requested the Commission to amend the Parex Final Decision in order to allow Citadele to retain the Wealth Management Business until after the entire bank passes to the private sector.

(32) Such a request was first made in August 2012 in discussions between Latvia and the Commission before the Amendment Decision was taken. During those discussions the Latvian authorities ultimately decided not to request an extended deadline for divesting the Wealth Management Business.

4. **ASSESSMENT**

(33) Pursuant to Article 13(1) in conjunction with Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([2]) the Commission may open a formal investigation procedure if it finds that doubts are raised as to the compatibility with the internal market of an unlawful aid measure ([3]).

4.1. **Existence of unlawful aid**

(34) Article 107(1) of the Treaty provides that, save as otherwise provided in the Treaty, 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 is in so far as it affects trade between Member States, be incompatible with the internal market.

(35) As described in recital 21, Parex banka and subsequently Citadele and Reverta have obtained measures from Latvia in addition to the aid measures examined in the Rescue Decisions and the Parex Final Decision.

(36) ***With regard to the subordinated debt,*** the fact that such a measure contains State aid was established in the first rescue Decision, when the Commission approved the issuance of subordinated debt with five years maturity as a compatible aid measure. The Commission decided at that time that a market economy investor would not have granted subordinated debt with a five-year maturity ([4]).

(37) The measure which was in fact granted by Latvia in favour of Parex banka was identical with the measure approved by the Commission except for the fact that it had a longer maturity. As such, the measure which was in fact granted would also be State aid unless the longer maturity eliminated any advantage to Parex banka. However, subordinated debt with a seven-year maturity would give the borrower a greater advantage since the risk perceived by an investor for any given investment increases as the maturity of the investment is extended. When the subordinated debt with a seven-year maturity was granted, it would have been even less likely for a market economy investor to grant the subordinated debt under those extended terms than it would for it to have done so for five years. For that reason, the longer maturity of the subordinated debt represented an additional advantage for Parex banka compared to the form of the subordinated debt that was approved in the Rescue Decisions and the Parex Final Decision.

(38) The maturity of the subordinated debt was later further extended by an additional 18 months. As the risk perceived by an investor for any given investment increases as the maturity of the investment is extended, a market economy investor would not have granted the subordinated debt under those extended terms in the absence of any countervailing payment fully offsetting the investor's increased risk. For that reason, the longer maturity of the subordinated debt represents an additional advantage for Citadele compared to the form of the subordinated debt that was approved in the Rescue Decisions and the Parex Final Decision.

(39) Latvia justifies granting subordinated loans with a longer maturity than approved by claiming that the Commission had been informed of a possible maturity extension through the restructuring plan and submissions of the Monitoring Trustee.

([1]) Recital 49 of the Parex Final Decision.
([2]) OJ L 83, 27.3.1999, p. 1.
([3]) Under Article 1 of Regulation (EC) No 659/1999, unlawful aid means new aid put into effect in contravention of Article 108(3) of the Treaty — i.e. without notification to the Commission of aid measures before they are put into effect.
([4]) Recital 40 of the first rescue Decision.

(40) The Commission does not accept that argument. The possible need to extend the maturity of the subordinated loan was only incidentally mentioned, for information, by the Monitoring Trustee in previous monitoring reports (e.g. that of 30 June 2012) as an option under consideration by Latvian authorities. A mention of the possibility that additional aid may be granted by a Member State does not constitute or substitute for a formal notification of aid measures, within the meaning of Article 108(3) of the Treaty.

(41) Latvia also contends that the recital 148 of the Parex Final Decision explicitly provided that the subordinated loans were expected to mature in the period 2015-18, thus envisaging a prospective extension of the subordinated debt.

(42) The Commission does not share that interpretation. Recital 148 of the Parex Final Decision refers to the subordinated loans by legacy shareholders in Parex, and not to the subordinated loans granted by Latvia.

(43) ***With regard to the liquidity support granted to Reverta***, it was initially approved as part of the compatible State aid measures approved in the first rescue Decision, in the form of State deposits. At that time, the Commission noted that Parex banka lacked liquid collateral and that Latvia had deposited the funds, taking into account the bank's liquidity needs, when no market investor was willing to provide liquidity in view of the fragile situation of Parex banka ([1]).

Following the Parex Final Decision (and the split in a good and a bad bank) the liquidity aid was subsequently transferred to Citadele and Reverta. The former has already repaid in full its share of the liquidity support, whereas the latter had to limit the amounts of liquidity support it received, as set out in recital 21(iii). However, the amount of liquidity support actually granted to Reverta exceeds even the worst case scenario level approved within the Parex Final Decision. That additional liquidity support provides a supplementary advantage for Reverta compared to the aid approved by the Rescue Decisions and Parex Final Decision. None of the other features of the liquidity support apart from its quantity have been altered and so the Commission concludes that the measure constitutes State aid.

(44) None of those three additional measures (the seven-year subordinated loan; the 18-month extension; and the additional liquidity support) had been notified to the Commission. Latvia has therefore not complied with the standstill obligation under Article 108 of the Treaty.

(45) Based on the facts that:

— both the longer initial maturity and the extended maturity of the subordinated debt and the increased liquidity support clearly represent additional advantages compared to the approved aid measures, and therefore are additional aid (as all of the other criteria under Article 107(1) of the Treaty are still in place), and

— the absence of any notification to the Commission for those additional aid measures,

the Commission therefore considers that the measures described in recital 21 represent unlawful aid.

4.2. **Compatibility of the aid**

4.2.1. *The subordinated loans with extended maturity*

(46) In line with the 2008 Banking Communication ([2]) which was in force when the subordinated loan was initially granted and when it was subsequently extended, in order for aid to be compatible, it had to comply with several conditions:

— appropriateness (to be well targeted to its objective, e.g. to remedy a serious disturbance in the economy, and take the most appropriate form for that purpose to remedy the disturbance),

— necessity (to be necessary to achieve the objective, and remain at the minimum necessary to do that),

— proportionality (the positive effects of the aid must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives).

(47) The objective of granting a subordinated loan qualifying as Tier 2 capital to Parex banka was to enable it to continue to satisfy the capital adequacy ratio and to ensure that it is sufficiently capitalised so as to better withstand potential losses, in order to avoid a serious disturbance in the Latvian economy.

([1]) Recital 41 of the first rescue Decision.

([2]) Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis OJ C 270, 25.10.2008.

(48) In the first rescue Decision, the Commission noted that the subordinated debt for Parex banka was limited to the minimum necessary in scope and time. Among other elements, the limitation to the minimum necessary was based on the commitment of the Latvian authorities to grant subordinated debt with a maximum maturity of five years. In that regard, the Commission noted in that decision that the minimum maturity for the subordinated debt to qualify as Tier 2 capital under Latvian legislation was five years. The aid measure was therefore qualified as compatible.

(49) The second and third rescue Decisions, the Parex Final Decision and the Amendment Decision did not alter the assessment of the first rescue Decision in that respect, concerning the limitation to the minimum necessary.

(50) The Commission notes that Latvia has not brought forward arguments to demonstrate the compatibility of the aid stemming from the extended maturity of the subordinated loans.

(51) Therefore, based on the information available to Commission at this time, the un-notified aid measure concerning the subordinated debt issued with a maturity of seven years instead of five years as initially approved cannot be qualified as compatible, considering that: a) the existing assessment is that a five-year maturity of the subordinated debt was what ensured limitation to the minimum necessary and b) no new arguments have been presented for justification of compatibility.

(52) Equally, based on the information available to Commission at this time, the un-notified aid measure concerning the additional prolongation of the subordinated debt maturity by 18 months cannot be qualified as compatible, considering that: a) the existing assessment is that a five-year maturity of the subordinated debt was what ensures limitation to the minimum necessary and b) no new arguments have been presented for justification of compatibility.

(53) The Commission invites Latvia and any interested parties to present it with additional elements relevant to whether the seven-year duration of the subordinated loan and its subsequent extension by 18 months constitutes aid which was limited to the minimum necessary.

4.2.2. *The liquidity support measure*

(54) The assessment of the restructuring plan in the Parex Final Decision was based on assumptions presented at that time regarding the expected inflows of liquidity into Reverta which would allow it to start repaying the liquidity support granted in the form of State deposits, up to a certain level [1].

(55) The amounts expected to remain unpaid, as described in the Parex Final Decision, ranged from LVL […] million (the base case scenario) to LVL […] million (the worst case scenario). As explained in recital 21, the actual amounts from which Reverta has benefited have constantly exceeded those laid out in the Parex Final Decision.

(56) The Commission notes that Latvia has not brought forward arguments to demonstrate the compatibility of the aid stemming from the additional liquidity support.

(57) In view of this, and considering also the fact that the revised restructuring plan presented by Latvia includes numerous other adjustments compared to the plan approved through the Parex Final Decision, the Commission is not in the position at this time to qualify the additional liquidity support as compatible with the internal market. A more in-depth assessment of the impact the revised levels of liquidity support will have to be carried out, taking into account the revised restructuring plan in its entirety.

4.3. **The breach of the commitment to divest the Wealth Management Business**

(58) Pursuant to Article 16 of Regulation (EC) No 659/1999 the Commission may open a formal investigation procedure if aid is misused, i.e. if the beneficiary used aid in contravention of a decision taken pursuant to Article 7(3) of that Regulation.

(59) In the Parex Final Decision [2] Latvia committed that Citadele would divest the Wealth Management Business by certain deadlines.

(60) Latvia confirmed that the Wealth Management Business has not been divested within the agreed deadlines. This constitutes a breach of the terms of the Parex Final Decision and hence a misuse of the aid granted. The Commission invites Latvia and interested parties to comment on that conclusion and to present any elements which would allow the Commission to consider whether aid obtained by Citadele could be considered compatible with the internal market if the Wealth Management Business were not to be divested separately from Citadele.

[1] Recital 55 of the Parex Final Decision.
[2] See recital 73 of the Parex Final Decision.

5. **CONCLUSION**

The Commission concludes, in regard to the unlawful aid described in recital 21, that doubts are raised as to the compatibility with the internal market based on the information available at this time. The Commission therefore has decided to open a formal investigation procedure pursuant to Articles 13(1) and 4(4) of Regulation (EC) No 659/1999.

Moreover, the Commission concludes that the breach of commitment described in recital 23 constitutes misuse of aid. The Commission therefore has decided to open a formal investigation procedure also for misuse of aid pursuant to Article 16 of Regulation (EC) No 659/1999.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Latvia to submit its comments and to provide all such information as may help to assess the measures (in particular the compatibility of the un-notified aid), within ten working days of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission would draw your attention to Article 14 of Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Latvia 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 publication of 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 ten working days of the date of such publication.'

ISSN 1977-1045 (elektronska različica)
ISSN 1725-5244 (tiskana različica)

Urad za publikacije Evropske unije
2985 Luxembourg
LUKSEMBURG

SL