COMMISSION DECISION

of 30 November 1994

concerning the transfer by the Netherlands of a pilot school to the Royal Dutch Airline KLM (C31/93)

(Text with EEA relevance)

(Only the Dutch text is authentic)

(94/996/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62 (1) (a) thereof and Protocol 27 thereto,

Having, in accordance with the abovementioned Article of the Treaty, given notice to the parties concerned to submit their comments and having regard to those comments,

Whereas:

I

By letter of 17 May 1991 and subsequent letters, the Commission was notified of a complaint by the Association of Dutch Aviation Undertakings (hereinafter referred to as 'VNLO') against aid granted by the Netherlands in respect of the privatization and sale of the Public Aviation School (Rijksluchtvaartschool — hereinafter referred to as 'RLS') to the Royal Dutch Airline (hereinafter referred to as 'KLM').

The aid was registered as non-notified aid on 18 July 1991.

On 14 August 1991 the Commission requested the Netherlands to communicate the financial agreements entered into with KLM during the transfer of the RLS to the private sector. The Netherlands has duly replied to the Commission's request for information.

The Commission requested supplementary information on 26 November 1991, 28 January and 15 June 1992. This information was provided by letters registered on 16 January, 28 February and 21 August 1992 respectively.

The Netherlands provided the Commission with:

— the text of the amendments to the privatization agreement,

— several valuation reports on the flying school.

On 10 February 1993 the Commission held a meeting in Brussels with representatives of the Netherlands. In reply to the Commission's oral requests, the Netherlands provided further information by letter of 15 April 1993.

On the basis of the information in its possession the Commission decided to open the Article 93 (2) procedure and informed the Netherlands of this decision by letter of 15 October 1993. The letter was published in the Official Journal [1] and third parties were invited to comment on the case within one month of publication. KLM and VNLO commented on the case and their comments were duly transmitted to the Netherlands. The Netherlands replied by letter of 6 April 1994. Additional information was provided by the Netherlands in a number of meetings, the last of which was held on 9 November 1994 in Brussels by the Netherlands, KLM and the Commission. Further to the meeting the Netherlands provided the Commission with further information by letter of 11 November 1994.

II

The RLS was created shortly after the Second World War to meet the training requirements for highly qualified pilots; it operated in the public sector until July 1991. The school pursued mainly the following activities:

— organizing and providing a high grade course of training to qualify students as airline pilots in international and national civil aviation,

— providing services (training and transport) on behalf of the Royal House and the Government.

Besides those activities the school at present provides aircraft maintenance and servicing (including repair and air taxi services).

[1] OJ No C 293, 29. 10. 1993, p. 4.

In 1985 the Netherlands Council of Ministers decided to carry out a feasibility study on the privatization of the RLS.

On 26 February 1991 the Netherlands Government and Koninklijke Luchtvaartschool bvio (hereinafter referred to 'KLS') lawfully represented by KLM, concluded the contract for the privatization of the RLS (hereinafter referred to as 'the contract'). As a consequence of the contract, on 1 July 1991 the RLS was transferred to KLS, a company formed and entirely owned by KLM.

VNLO applied to the Arrondissementsrechtbank (District Court) of the Hague for an injunction to restrain the Dutch Government from giving effect to the agreement concluded with KLM on the privatization of the school. The President of the Dutch Court, by judgment of 5 July 1991, rejected the complainant's application [1].

The Netherlands Government has imposed on KLM the condition that it shall maintain the existing staff levels (some 150 employees as of 1 July 1992) and conditions of employment for a period of five years (1991 to 1996).

Furthermore, the contract imposes the following obligations on KLM (Article 2):

(a) to provide *high-grade pilot training* (Article 2.2a);

(b) to provide a *course of retraining for flight engineers* of KLM to qualify them as airline pilots (Article 2.2b);

(c) to provide services and make goods available for the *training of military pilots and instructors of the Koninklijke Marine (Dutch Royal Navy)* (Article 2.2c and 2.2d);

(d) to carry out *flights for the Government and the Royal House* (Article 2.2e);

(e) to carry out *test flights for the privatized Directie Luchtverkeersbeveiliging (Air Traffic Control Directorate) of the Rijksluchtvaartdienst (State Aviation Service)* (Article 2.2f);

(f) to provide a course for *retraining military pilots* for commercial flying.

At present the services mentioned in (c), (d), (e), and (f) are rendered by KLM at commercial rates.

The contract provides for considerable financial facilities for both KLM and the school:

(i) KLM will take over all the assets of RLS for the symbolic sum of Fl 1 (Article 3.3);

(ii) payment of FL 17 000 000, as a contribution to the estimated deficits of the school over the first five years (Article 5.1). The contribution is to be paid in five instalments:

— 1991: 7 700 000,

— 1992: 3 000 000,

— 1993: 2 100 000,

— 1994: 2 100 000,

— 1995: 2 100 000;

(iii) payment of a lump sum of Fl 9 700 000 into the Guarantee Fund (Article 6.9 of the contract as amended on 14 May 1992) with the proviso that, should the fund cease to exist, the remaining balance would revert to the State. The purpose of the fund is to help students to meet their financial commitments provided that they are not able to finish the training or have not, through no fault of their own, found a suitable employment after the completion of the training;

(iv) payment of a sum of Fl 5 700 000 transferring the contributions from students selected in 1990 and 1991 (totalling some 50 students), from the State to KLS. The sum was to be paid in two equal instalments in December 1991 and December 1992 (Article 7). This sum represents the amount of the students' contributions for the intake of students selected in 1990 and the first intake of 1991;

(v) the Netherlands has committed itself to pay the pension commitments for all personnel who have already reached pensionable age before taking service with the school (Article 8.8). The amount of these payments is FL 13 500 000, to be paid in five annual instalments of Fl 2 700 000.

III

The Commission decided to open the Article 93 (2) procedure because it considered that the contribution by the Netherlands to the operating deficits made over five years by the school was aid and that the FL 1 transfer price contained aid elements. Moreover, the Commission had doubts as to the compatibility of such aid measures with the common market.

The comments made by the Netherlands and by KLM in the course of the Article 93 (2) procedure may be summarized as follows:

— the purchase price correctly reflects the negative going concern value of the school as of the transfer date,

[1] The Commission cannot attach great importance to this judgment since it was delivered in the context of summary proceedings where the complainant merely sought an interim measure. Given the complexity of the case, the President of the Dutch Court was not in a position to address the substance of the case and appreciate all the merits of the applicant's arguments based on Article 92 of the Treaty and Article 61 of the EEA Agreement.

— the fixed amount of FL 17 000 000 was agreed with KLM, after rigorous negotiations, to compensate the negative cashflows that the school is forecast to generate. This amount is meant to offset contributions to be made by the purchaser,

— the Netherlands decided to privatize the school on the assumption that the school would continue to be located in Eelde, which is an economically depressed area compared with the rest of the country,

— the evaluation of the school should not be carried out on the basis of the liquidation method because the Netherlands has never considered the option of winding-up. The evaluation must take place on a going-concern basis. In any case it is wrong to assume that the school had a liquidation value of Fl 17 000 000 since this amount does not take into account the expenses involved in the liquidation, such as those necessary to lay off the staff.

IV

Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement (hereinafter referred to as the Agreement) provide that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States and the Contracting Parties, be incompatible with the common market and the Agreement.

The Commission does not regard as aid measures:

— payment of a lump sum of Fl 9 700 000 into the guarantee fund. This contribution is a social measure which represents a direct advantage for the students and is not an aid to KLM,

— payment of a sum of FL 5 700 000 transferring the contributions from students selected in 1990 and 1991, from the State to KLS. The Commission is of the opinion that the payment of this sum does not constitute aid because it aims at refunding the school the students' contributions for the aforementioned intakes, which were paid to the State as former owner of the school,

— payment of the pension commitments. The Commission does not consider this payment to be aid, because it refers exclusively to the past, that is to pension rights that were accumulated before the personnel were re-assigned to the new owner.

With regard to the payment of Fl 17 000 000 as a contribution to the estimated deficits of the school, the Commission considers that this amount is not justified when compared with the obligations imposed on the school. The obligation mentioned in Chapter II, point (a), namely maintaining high-grade pilot training, appears to be a false obligation. It goes without saying that the maintenance of high grade training is mostly in KLM's interest because all the students of the school are offered employment by KLM as pilots.

These conclusions are also valid for the obligation contained in Chapter II, point (b), which refers to KLM's engineers to be retrained as airline pilots according to an agreement between KLM and the Netherlands.

The obligations mentioned in Chapter II, points (c), (d), (e) and (f) represent genuine burdens imposed on KLM. In order to assess the cost burden of these public service obligations on KLM, the Commission requested from the Netherlands information on the actual cost of those services. The Netherlands, which has not forwarded information on the specific costs of the services, has informed the Commission that the services are rendered by the school at market rates and are being paid separately. The possibility that KLM makes a profit in implementing the aforementioned obligations cannot be ruled out.

The Commission is therefore of the opinion that the payment of FL 17 000 000 represents aid for the school. However, KLS belongs to and is run by KLM as the school where a significant number of its pilots and engineers are trained. KLS has no decision-making autonomy because it is entirely owned and controlled by KLM (Article 1.5 of the contract provides that KLM shall be the sole shareholder of KLS). Therefore all subsidies for the benefit of the school would represent indirect aids to KLM, which should be considered the final beneficiary of the aid.

As regards the FL 1 purchase price, it must be recalled that the Commission's policy as regards ascertaining whether the privatization of State-owned companies gives rise to aid is now well established. If the sale takes place as the result of an open and unconditional bidding procedure [1] then, generally, no aid is involved in the disposal process. However, if the sale is made on any other basis or if conditions are attached thereto, then a presumption of aid arises.

Similarly, the Commission has to consider what a market economy investor would do in circumstances similar to

[1] See Commission decisions in the cases of DEKO N 11/91, Treuhandanstalt NN 108/91 and E 15/02 and Portuguese ptivatization programme NN 140/91.

those faced by the Netherlands in February 1991. Such an investor, which in this case is the Netherlands State, being the sole shareholder of RLS, would have to make a decision either to sell the school or to seek its liquidation. According to the Netherlands, the liquidation value should not be taken into account, as the State has never considered the option of winding up the school, such option being unacceptable in the Dutch socio-economic environment. The Commission considers that for the purpose of the application of the market economy investor principle the behaviour of the State must be compared to that of a private owner of a company, and thus the considerations of the State as public authority must be disregarded. The private owner who wants to dispose of a company may either wind up the company or sell it off. In normal commercial circumstances this private owner will choose the more profitable option. In the present case, the Netherlands State has chosen to sell the school even though, on the basis of the information available to the Commission, this would appear to be the more expensive option and which, therefore, would not presumably have been accepted by a market economy investor.

This is demonstrated by the fact that the Netherlands decided to grant Fl 17 000 000 to KLM to cover RLS's operating losses for the first five years following its sale rather than immediately liquidating the school. In the light of information provided by the Netherlands, such a liquidation could have raised, on the other hand, some FL 16 920 000 for the Netherlands.

This amount is based on the depreciated replacement cost of the school's assets as at July 1991, calculated by the Ministry of Finance's Land Inspectorate, which amounted to FL 48 400 000 million. To this sum must be added a flight simulator belonging to the school, whose replacement cost was FL 8 000 000. The total of FL 56 400 000 has then to be reduced by an appropriate factor to reflect the forced nature of a liquidation sale and then by a further amount to take account of the school's liabilities.

The Netherlands has stated in its correspondence that if the State had decided to liquidate the school it would have had to bear the redundancy costs imposed by Dutch law. These costs, whose amount would exceed the value of the assets, are related to the compensation of the civil servants who would be dismissed if the school were liquidated, and to the other legal claims linked to the liquidation (e.g. the claims of the students who would not have been able to finish their training). The Netherlands has neither proved that the school had outstanding legal liabilities nor provided the Commission with the amount of those alleged liabilities as at July 1991. Lacking such evidence, the Commission has to consider that the value of the school's liabilities as of 1 July 1991 was zero. Then, in order to calculate the liquidation value of the school, it is simply necessary to reduce the gross value of the assets of FL 56 400 000 noted above to their direct realizable value. Given the special business of the school it is unlikely that many purchasers would be interested in buying such equipment and a sizeable discount factor is therefore necessary. Consequently, a factor of 70 % is believed to be an appropriate ratio by which to reduce the depreciated replacement cost of the school's assets to their liquidation value.

On the basis of the above reasoning the Commission considers that the Netherlands has not reacted in the same way as a market economy investor in deciding to dispose of its interest in RLS.

Consequently, it is necessary to investigate the disposal process in greater detail and, specifically, to consider whether the price for which the school was sold represented its market value.

In the present case, although discussions were held with several interested parties during 1987, no open bidding procedure was followed to establish a market value for RLS. Furthermore, the Netherlands has imposed a condition on KLM that it shall retain the school's existing level of staff with their current conditions of employment until 1996.

However, the additional operating costs of this condition are presumably negated by the operating aid of FL 17 000 000 referred to above. Moreover, KLM plans to increase the output of pilots trained by the school, by 1996, from 40 a year to 60 a year. The effect of this increase is to improve staff utilization and productivity and thereby decrease the unit cost of training by 1996. On this basis KLM believes that the school will be viable by this date and therefore KLM will have acquired an asset on which it will not have had to meet any restructuring costs or to incur any of its operating losses before it becomes profitable.

Therefore, according to the Commission's established principles there is a presumption that State aid has been

granted to KLM by allowing this company to purchase a State asset at a bargain purchase price.

The determination of a market value for a company is always a subjective and difficult matter. In the present case a number of valuations have been presented by the complainant and the Netherlands to justify the actual sales price of FL 1.

— **Valuation by complainant**

According to the complainant a bid of FL 30 000 000 was made on the same conditions as that of KLM. However, the Commission has to treat this bid with caution as it was submitted after the closing date for the submission of bids. Therefore, its use in establishing a value for RLS is limited.

— **Valuation by KLM**

KLM commissioned a firm of external consultants to value RLS. This was completed on the basis of the present value of future cashflows and was calculated to be — FL 43 000 000, i. e. KLM should have been paid to acquire RLS from the State.

The Commission has doubts regarding such a valuation. The school has regularly generated a negative cashflow due to the fact that revenues from student pilots have not matched the costs of their training.

Furthermore, this value has been based on a 20-year time-scale notwithstanding the fact that KLM can reform the school's structure, and therefore its cost and revenue structure, with effect from 1996. Finally, such a value does not take into account any strategic considerations KLM may have had for acquiring the school.

— **Depreciated replacement cost value**

As stated above the school's assets were valued, as at July 1991 by the Ministry of Finance's Land Inspectorate, at FL 48 400 000. To this must be added the replacement cost of a flight simulator, belonging to the school, of FL 8 000 000, giving a total of FL 56 400 000.

This amount does not represent the open market value of the business but rather the cost of replacing its assets by replacement equipment having had the same degree of wear and tear as the existing assets. Consequently, this is also considered by the Commission to be an inappropriate value.

— **Sales price of FL 1**

As this is a nominal amount neither representing the value of the assets nor the worth of the business it may be discounted.

The Commission considers that the school should have been valued on an open-market going-concern basis, i.e. the value of the company to a willing buyer who would continue in the same business. This would be calculated taking into account the purchaser's strategic interest in the business and foreseen growth for the school. Such a value has not been submitted to the Commission by the Netherlands and consequently the Commission is unable to comment thereon.

However, the Commission, at this stage, is able to assess the aid content in the bargain purchase price of FL 1. Given that it is believed that the school had a liquidation value, as at July 1991, of FL 16 920 000, as indicated above, it is possible to conclude that this would be the minimum value of the business to KLM at the date from which it is free to sell the school's assets, namely 1996. As all business losses incurred by the school will be covered by the State between 1991 and 1996 it can be assumed that no further diminution in the value of these assets will occur.

In accordance with the position taken by the Commission in its letter opening the procedure, it is also necessary to take account of the time value of money, i.e. the fact that KLM will not receive the proceeds until 1996. Using a discount factor of 9 % (the Dutch 'reference rate' for 1991) the present value of FL 16 920 000 receivable in 1996 amounts to FL 11 000 0000.

According to the Netherlands, the Commission, in calculating the liquidation value, should take into account the costs and expenses involved in the liquidation, such as those linked to the lay-offs. In particular, KLM would be obliged to offer redundancy payments to at least 61 employees on 1 July 1996. For these employees KLM, in order to avoid separate legal claims, should develop a social plan in agreement with the unions. The Netherlands has demonstrated to the Commission that, according to the methodology approved by the Netherlands courts, the minimum amount of these redundancy payments, including social charges, would be FL 5 750 000. Moreover, KLS would be confronted with several other claims, in particular from the students who would not be able to complete their training because of the liquidation of the school.

The Netherlands has not provided any estimate of the value of these claims in order to enable the Commission to assess the cost.

The Commission considers that the payments to the 61 employees would represent legal liabilities for KLM to be met in case of liquidation of the school. Therefore, in order to estimate the liquidation value of the school this amount must be deducted from the value of the assets (FL 16 920 000 - FL 5 750 000 = FL 11 170 000). Using the 9 % discount factor (see above) the present liquidation value in 1991 is FL 7 260 000. This may therefore be taken to represent the benefit to KLM of its being granted a bargain purchase price and therefore the amount of aid involved. This is aid to KLM, as this company benefits from the fact that it would not have to bear the full cost of an asset acquired from the State.

Therefore, the Commission considers that the total amount of aid, granted by the Netherlands to KLM at date of transfer of the school, is FL 7 260 000 (present value of the aid involved in the FL 1 transfer price) plus FL 17 000 000 (contribution to the operating subsidies of the school), giving a total of FL 24 260 000.

The aid measures in question distort competition, as the competitive position of other European air carriers which run their own schools without receiving subsidies or which have to bear the full cost of their pilots' training will be harmed by the acquisition and the covering of the losses. In other Member States (for example Belgium, Germany and the United Kingdom) pilot schools, even those in which national airlines hold shareholdings, are not subsidized.

In the liberalized EEA an aid to an air carrier operating European routes has an effect on trade.

On the basis of the information available to the Commission, the aid, which does not fall within the scope of an approved aid scheme, should have been notified to the Commission according to Article 93 (3) of the Treaty. The Netherlands, by not notifying the aid in advance, before putting it into effect, has granted the aid illegally and failed to fulfil its obligations pursuant to Article 93 (3).

The aid to KLM cannot be considered compatible with the common market and the Agreement pursuant to Article 92 (2) of the Treaty and Article 62 (2) of the Agreement, as the aid does not correspond to any of the contingencies envisaged in those provisions.

Article 92 (3) of the Treaty and Article 61 (3) of the Agreement list those aids which may be considered compatible with the common market and the Agreement. Article 92 (3) (a) and (c) of the Treaty and 61 (3) (a) and (c) of the Agreement provide for exemptions in respect of aid to promote or facilitate the development of certain regions. However, whilst a major element of the aid granted is to maintain employment at the school, the aid does not qualify for the exemption laid down in Article 92 (3) (a) of the Treaty and Article 61 (3) (a) of the Agreement. Neither Schiphol airport nor Eelde, where the school is located, are zones where the standard of living is abnormally low or where there is serious underemployment. Nor can the aid be described as intended to facilitate the development of certain economic areas, as provided in Article 92 (3) (c) of the Treaty and Article 62 (3) of the Agreement, since they are not located within a region eligible for regional aid, as specified in the Commission guidelines for regional aid. In any case the aid is not linked to any open regional aid scheme and its purpose does not consist in promoting a lasting development of the region of Eelde.

As for Article 92 (3) (b) of the Treaty and Article 61 (3) (b) of the Agreement the evidence suggests that the aid in question was not intended to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Dutch economy. Indeed, the Netherlands has not cited this provision.

With regard to the exception pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement for aid for facilitate the development of certain economic activities, the Commission follows certain specific criteria for the evaluation of State aid in the aviation sector. A number of conditions have to be met if aid is to be considered compatible with the common market and the Agreement as aid to facilitate the development of the air transport sector. In the present case the aid is in favour of KLM, but is aimed at financing the restructuring of the pilot school KLS, which is a small non-core unit within the KLM group. In fact, inside the KLM group, the economic importance of the school is negligible if compared with the core air transport activity. For these reasons, the restructuring of the school cannot be treated as a restructuring of the KLM group. The Commission considers that the conditions provided for in the Treaty and the Agreement as applied by the Commission in the

air transport sector for evaluating the compatibility of aid pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) of the Agreement should be interpreted in order to take into account the particular circumstances of this case. In this respect it should be noted that the conditions refer in principle to the general restructuring of airlines, which is why they should be adapted for the assessment of certain activities which, as in this case, are peripheral to air transport, such as pilot training. The Commission may consider restructuring aid to be compatible with the common market if it meets a number of conditions. Those conditions must be seen essentially in the context of the two main principles enshrined in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement — namely that the aid must be required for developing the activity from the standpoint of the EEA and that the aid may not adversely affect trading conditions to an extent contrary to the common interest.

In the course of the procedure the Netherlands provided information to the effect that the aid is linked to a restructuring plan devised and carried out by KLS since the date of transfer. The programme objective is to create a full market-economy enterprise as from 1 July 1996. The programme which is to be finalized by 1 July 1996 aims at lowering costs and increasing productivity. By successfully implementing the programme KLS will employ less than 75 employees (155 employees before the privatization) and will train more than 70 pilots per year (less than 40 trained pilots per year before the privatization).

The programme provides for the following measures:

1. Consultancy services: Since the date of transfer consultants have been working with KLS management in areas in which KLS did not have expertise. These areas involve personnel and organization, logistics, business planning, function re-evaluation, and other organization studies. The cost of these services, which was borne in 1991/92, amounted to FL 1 250 000.

2. Restructuring ground-training: The previous class teaching method was replaced by individual training by means of audio-visual training tools. The cost was met in 1991/92 and amounted to FL 200 000.

3. Computer-based training: KLS will invest in hardware and software to improve the theoretical training programme. The investment will be carried out in 1995/96 and the cost is estimated at Fl 1 300 000.

4. System for selecting military pilots: In 1993 KLS bought Frasca simulators to provide standardization and cooperation with the Ministry of Defence on the selection of military pilots. The cost was Fl 540 000.

5. Accommodation: Most of the accommodation dates from the beginning of the 1950s and must be demolished, reconstructed and developed. The expenses will be met in 1995. In particular:

   (i) the cost of demolition and removal of buildings and materials is estimated at Fl 1 500 000;

   (ii) a central building will be created in which all the primary functions will be housed, of which the estimated cost is Fl 8 500 000;

   (iii) KLS is a campus and the increasing number of students, as a consequence of the increase in productivity due to the restructuring, will require several investments in housing and student facilities. The forecast cost is Fl 3 000 000.

6. Platform: As a consequence of the shifting of the central building, the adjustment of the platform requires an investment, to be made in 1995, whose cost is estimated at Fl 600 000.

7. Replacement of flight simulator: The training programme which will be based on the newly standardized JAR-Flight Crew Licensing, will be run on a second-hand Boeing 737 simulator, which requires an estimated investment of some US $ 8 000 000. The present simulator (C-500) will be sold. The expected selling price will be some US $ 1 500 000. Including replacement and instalment, the net cost to be met in 1995 is estimated at US $ 6 500 000, equivalent to FL 11 700 000.

8. Social plan: As a result of the restructuring, KLS will develop a social plan with the unions, providing for redundancy payments. The estimate cost is Fl 3 000 000.

9. Outplacement and re-training of redundant personnel. The costs to be borne in 1994/95 are estimated at Fl 950 000.

The Commission considers that all the expenses are necessary to achieve the objectives of the restructuring programme. The total of the restructuring costs is Fl 32 540 000. In order to compare this value with the value of the aid measures one has to compare the present value of the costs as at 1991 with the present value of the aid measures at the same date. The present value of the restructuring costs as at 1991 , FL 24 000 000, using the 9 % discount factor is higher than the present value as at 1991 of the aid measures involved in the privatization of the school (Fl 22 560 000). Therefore the aid is not disproportionate to the restructuring needs of the school.

The Commission considers that the restructuring programme may restore the economic viability of KLS, without further aid. The maintenance in operation of efficient pilot schools which can provide high-standard training courses, maintaining a high standard of safety, can only promote the mobility of pilots within the EEA. This could offset the current shift in pilot training to countries outside the EEA, thereby promoting the development of EEA-based pilot training, and thus facilitating the development of an economic activity in conformity with Article 92 (3) (c) of the Treaty and Article 61 (3) (c) and the Agreement.

The aid, the amount of which is lower than the restructuring costs, is a contribution by the State, exclusively addressed and restricted to the expenses necessary for restructuring the school. The restructuring of the school, where students will be able to pursue their training as pilots, is in conformity with the common interest. The restructuring plan foresees a considerable reduction in personnel. KLM is firmly committed to maintaining the school in operation. This is evidence that KLM will not incorporate the school's activity into its own business or use its assets to expand the scale of its operations to the detriment of its competitors. On the basis of all these elements the Commission has reached the conclusion that the aid is compatible with the common market since it does not affect trading conditions to an extent contrary to the common interest.

The Commission has to ensure that the aid is effectively used to finance the restructuring of KLS and not to cross-subsidize KLM's core air transport business. For this reason, the Commission requires the Netherlands to provide by June 1996 a report on the progress of the restructuring programme, demonstrating that it has been executed as planned and as communicated to the Commission, in accordance with this Decision.

Accordingly, the Commission considers that the aid measures granted by the Netherlands to KLM in connection with the privatization of KLS are aid to facilitate the development of an economic activity, pursuant to Article 92 (3) of the Treaty and Article 61 (3) of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The payment of FL 17 000 000 by the Netherlands to the pilot school KLS, by way of contribution to the operating deficits incurred by the school over the period 1991 to 1996, and the said elements involved in the transfer price of FL 1 paid by KLM for the school assets are aid measures which have been illegally granted; however, they are compatible with the common market and the EEA Agreement as aid to facilitate the development of certain economic activities according to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the EEA Agreement.

Article 2

By June 1996, the Netherlands shall provide the Commission with a report demonstrating that the restructuring programme has been implemented in accordance with this Decision.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 November 1994.

For the Commission

Marcelino OREJA

Member of the Commission