COMMISSION DECISION

of 19 September 2012

on the State aid SA.30908 (11/C, ex N 176/10) implemented by the Czech Republic for České aerolinie, a.s. (ČSA — Czech Airlines — Restructuring plan)

(notified under document C(2012) 6352)

(Only the Czech text is authentic)

(Text with EEA relevance)

(2013/151/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the TFEU [1] in respect of the aid SA.30908 (C 11/C, ex N 176/10) [2],

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

Whereas:

1. PROCEDURE

(1) By letter dated 12 May 2010, the Czech Republic notified the Commission of the restructuring aid to České aerolinie, a.s. (hereinafter referred to as "ČSA"). The Commission requested additional information by letters dated 6 June 2010 and 25 November 2010, to which the Czech authorities replied by letters dated 15 and 24 September 2010, 15 December 2010 and 28 February 2011.

(2) By letter dated 23 February 2011, the Commission informed the Czech Republic that it had decided to initiate the procedure laid down in Article 108(2) of the TFEU in respect of the aid (hereinafter referred to as "the opening decision"). The Czech Republic provided comments on that decision by letter dated 28 April 2011. The Commission asked further questions by letters dated 26 July 2011, 15 March 2012, 7 May 2012 and 11 July 2012, to which the Czech Republic replied on 22 August 2011, 15 September 2011, 7 October 2011, 16 November 2011, 23 November 2011, 12 December 2011, 3 January 2012, 16 April 2012, 22 May 2012, 14 June 2012, 5 July 2012, 10 July 2012, 20 July 2012 and 10 August 2012.

(3) The opening decision was published in the *Official Journal of the European Union* on 23 June 2011. The Commission called on interested parties to submit their comments.

(4) The Commission received comments from two interested parties on 30 June 2011, 19 July 2011, 15 August 2011, 25 November 2011 and 13 December 2011. It forwarded them to the Czech Republic, which was given the opportunity to react; its comments were received by letters dated 31 August 2011 and 3 February 2012.

2. DESCRIPTION OF THE MEASURE AND THE RESTRUCTURING PLAN

2.1. RESTRUCTURING AID

(5) The total notified restructuring aid measures were (i) a CZK 2 500 million loan by the State-owned company Osinek, a.s. (in case it were to be considered state aid); (ii) the de-collateralisation and a debt-for-equity swap of the Osinek loan; and (iii) a guaranteed bank credit in the amount of EUR 20,8 million to finance the acquisition of an aeroplane. The total notified envisaged restructuring costs amount to CZK [8,9-10,5] (*) billion [3] (EUR [360–410] million).

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

[2] Commission Decision C(2011) 994 final of 23 February 2011 (OJ C 182, 23.6.2011, p. 13).

(*) Business secret

[3] The amount of the restructuring costs following a revision of the restructuring plan (from 3 January 2012). In the notification the restructuring costs amounted to CZK [7,60-9,20] billion.

(6) On 21 March 2012, the Commission adopted a decision in case SA.29864 – Possible State aid implications of a loan provided by Osinek, a.s.. The conclusion of the investigation was that the Osinek loan did not constitute State aid and even if it did, such aid would be compatible with the Community Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis [1] (hereinafter referred to as "the Temporary Framework"). Therefore, the present restructuring case no longer deals with that measure. The guaranteed bank credit in the amount of EUR 20,8 million was abandoned because ČSA was able to secure a financial lease provided by […]. Hence the only restructuring aid measure that remains to be assessed is the debt-for-equity swap of the Osinek loan preceded by the loan's de-collateralisation.

De-collateralisation and debt-for-equity swap

(7) On 3 May 2010, the Czech Government adopted Resolution No 333 on the restructuring plan of ČSA (hereinafter referred to as "Resolution No 333") by which the Czech Government instructed the Ministry of Industry and Trade [2] to implement the release of pledges over some of the collaterals before the increase of ČSA's registered capital. The debt-for-equity swap was legally based on that Resolution and implemented on 30 June 2010.

2.2. BENEFICIARY

(8) ČSA has been the national air carrier of the Czech Republic since 1923. In 2009, it carried 37 % of passengers who started or finished their journey in Prague. ČSA is a State-owned company, with 95,69 % of its shares owned by the Czech Republic through its Ministry of Finance. Minority shareholders are Česká pojišťovna a. s. (2,26 %), the Capital City of Prague (1,53 %) and the Capital City of Bratislava (0,51 %). It is a member of the Sky Team Alliance and offers scheduled air transport services (104 destinations in 44 countries). In 2009 ČSA carried 4,7 million passengers and generated CZK 14,9 billion (EUR 96 million) in revenues.

(9) Table 1 shows the development of ČSA's financial data from 2006 to the first half of 2011.

Table 1

Czech Airlines financial data (according to Czech Accounting Standards)

'000 CZK	2006	2007	2008	2009	2010	06/2011
Profit/loss	– 396 951	206 600	470 057	– 3 756 125	76 159	[– 710 000 – (– 630 000)]
Turnover	23 375 950	23 399 853	22 581 692	19 789 620	16 547 753	[6 250 000 – 7 250 000]
Cash flow from operating activities	– 533 192	– 275 234	– 1 762 376	– 3 066 694	– 1 205 542	N/A
Debt	6 476 911	4 391 070	6 494 752	6 581 325	2 819 915	[2 550 000 – 2 900 000]
Net interest	– 94 374	– 55 254	– 14 263	N/A	N/A	N/A
Net asset value	11 679 439	10 161 647	10 418 871	7 948 571	6 632 836	[5 450 000 – 6 225 000]

Table 2

Development of key criteria in 2009 (according to Czech Accounting Standards)

'000 CZK	31.3.2009	30.6.2009	30.9.2009
Losses	[– 1 320 000 – (– 1 190 000)]	[– 1 840 000 – (– 1 660 000)]	[– 2 625 000 – (– 2 365 000)]
Turnover	[4 385 000 – 4 820 000]	[9 265 000 – 10 235 000]	[14 300 000 – 15 830 000]
Debt	[5 685 000 – 6 285 000]	[5 550 000 – 6 065 000]	[6 290 000 – 6 960 000]
Net asset values	[8 340 000 – 9 255 000]	[8 990 000 – 9 920 000]	[8 470 000 – 9 390 000]

[1] OJ C 16, 22.1.2009, p. 1.

[2] Accounts receivable from ČSA arising from the Osinek loan agreement were assigned to the Ministry of Industry and Trade in September 2009. This arrangement allowed for the liquidation of Osinek.

(10) The numbers demonstrate that, despite certain negative developments, ČSA still made a profit in 2007 and 2008. However, the business result deteriorated significantly in 2009 due to the impact of the economic crisis. The turnover diminished slightly over the observed period whereas cash flow was declining considerably. The level of debt, calculated as the sum of long-term and short-term liabilities and bank loans, was more or less stable. The value of assets decreased significantly, notably in 2009.

(11) Table 2 shows the quarterly development in 2009. It shows that the losses of the company increased considerably, especially between June and September – by CZK [705–785] million as opposed to CZK [470–520] million between March and June. The change in turnover equalled CZK [4,88–5,42] billion between March and June and CZK [5,04–5,59] billion in the June-September period. The change does not vary significantly, therefore it cannot imply that the situation of the company worsened particularly in the first half of the year. The debt of the company decreased in the period March-June and increased by CZK [0,89–1,05] billion in June-September. Finally, the total value of ČSA 's assets increased in the first observed period (March–June) and decreased by CZK [75–85] million in June-September.

(12) The Czech authorities claim that, while ČSA's financial situation deteriorated as a consequence of the global economic recession as early as late 2008, it had reason to believe that significantly better results should be achieved in the 2009 summer season, when revenues in the airline industry commonly peak. Based on this prognosis, supported by its experience from previous years, ČSA expected that it would create sufficient reserves to enable it to stabilise cash flow and prevent further losses.

(13) None the less, the 1st half 2009 results, reported to the management in mid-August 2009, showed a significant decline in average revenue in June. It became clear that the company was no longer able to run its business without immediate cost-cutting measures and financial assistance from external sources. The company's Board of Directors thus established a working group, instructed to prepare the company's restructuring plan. Therefore, in August 2009 ČSA's management adopted measures for the initiation of the restructuring process and the focus of ČSA moved from day-to-day operational measures to the overall restructuring of the company's business.

(14) The Czech authorities therefore submit that, in the light of the developments described above, ČSA can be considered a firm in difficulties within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [1] of 2004 (hereinafter "the R&R Guidelines") starting from August 2009.

[1] OJ C 244, 1.10.2004, p. 2. The validity of the Guidelines was prolonged in 2009 (OJ C 156, 9.7.2009, p. 3).

Czech Aeroholding

(15) Upon completion of the restructuring process, the Czech Republic aims at finding a strategic partner for ČSA. The current time frame for the entry of a strategic investor in ČSA is November 2013 at the latest. In preparation for the planned privatisation, the Czech Government decided to create a new corporate structure under the umbrella of Český Aeroholding, a.s. (hereinafter referred to as "ČAH").

(16) ČAH currently includes the following companies: ČSA, Prague Airport, a.s. (hereinafter referred as "Prague Airport") and ČSA's former subsidiaries, i.e. Czech Airlines Handling, a.s., HOLIDAYS Czech Airlines, a.s. (hereinafter referred to as "HCA"), Czech Airlines Technics, a.s. and ČSA Services, s.r.o. (see Figure 1). ČAH's purpose is to restructure the companies grouped within the holding company, to facilitate their access to commercial financing, and to prepare them for the upcoming privatisation.

(17) Czech Airlines Handling, a.s. provides passenger and aircraft handling services, cleaning of aircraft and buildings as well as a ground transport service both for ČSA and other airlines operating scheduled flights to and from Prague. Czech Airlines Handling, a.s. is the only operator in the aircraft cleaning market at Prague-Ruzyně Airport. In ground handling, Czech Airlines Handling competes at Prague-Ruzyně Airport with Prague Airport and other ground handling companies such as Menzies Aviation.

(18) HCA operates charter flights. In this market it competes with Travel Service, a.s. and a number of other smaller charter airlines operating from Prague-Ruzyně Airport, e.g. Grossman Jet, ABS Jet, Silesia Air and several others, which have only a small market share at Prague-Ruzyně Airport.

(19) Czech Airlines Technics, a.s. carries out light and heavy aircraft maintenance on all Boeing B737 and Airbus A320 family aircraft. It also performs extensive checks on ATR 42/72 aircraft and has certificates to perform checks on Airbus A310 aircraft. This subsidiary mainly serves ČSA. However, [17,5–19,5]% of its revenue comes from services provided to third parties, e.g. Lufthansa Technik, SAS Norway, Air Berlin, Air France-KLM, Transavia Airlines, Travel Service, Ural Airlines and Aerosvit.

(20) Czech Airlines Services, s.r.o. operates a call centre and a recruitment centre, [88-98]% of its services being provided to ČSA.

(21) At the beginning of the restructuring period, ČSA also held a majority stake in a number of other companies, specifically:

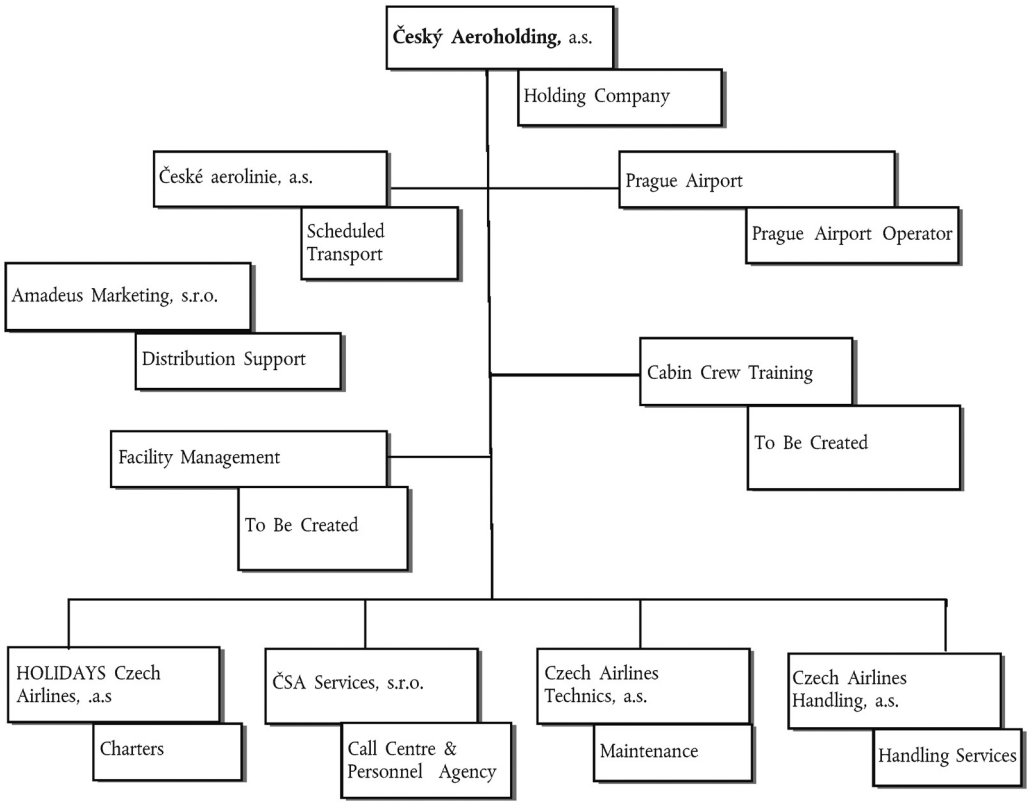
— Amadeus Marketing ČSA, s.r.o. (65 % ownership), which supplies the Amadeus global distribution system for the Czech and Slovak Republics;

— Slovak Air Service, s.r.o. (100 %); and

— ClickforSky (100 %).

Figure 1

Structure of Český Aeroholding, a.s.



(22) The creation of ČAH was approved by the Czech competition authority on 25 October 2011 with a number of conditions which focus on potential threats to competition arising due to the merger of ČSA and Prague Airport from both vertical overlaps and horizontal overlaps (in particular in the ground handling area) of the activities of the merging parties.

(23) The conditions are of both a behavioural and a structural nature and oblige ČAH to maintain transparent, non-discriminatory and equal access to airport infrastructure at Prague-Ruzyně Airport on commercially reasonable terms to all interested parties. In particular, the commitments deal with unbundling of the Prague-Ruzyně Airport operator from other activities run within ČAH, the exchange of commercially sensitive information between the entities involved in ČAH, slot allocation at Prague-Ruzyně Airport, the sale of Prague Airport's ground handling activities to an independent acquirer and transparent and equal access to services provided by entities within ČAH to all market operators interested in providing ground handling services and/or repair and maintenance at Prague-Ruzyně Airport ([1]).

2.3. RESTRUCTURING PLAN

(24) In May 2010, the Czech authorities notified to the Commission the restructuring plan (hereinafter "RP") which was then updated in subsequent submissions

([1]) Decision of the Czech competition authority No S178/2011/KS-16953/2011/840/RP.

of information. The RP concentrates on measures concerning ČSA 's core business, scheduled air passenger transport. Other business sectors are either scheduled to be sold or to be outsourced within the structure of the holding company.

(25) The origins of ČSA's difficulties lie in an inflated network expansion in 2004-2006 and the entry of low-cost carriers at Prague-Ruzyně Airport. Furthermore, the company suffered from the historic operating inefficiencies of an old incumbent company as it entered into the global economic recession which brought lower passenger demand and high fuel costs.

(26) The updated version of the RP dated 3 January 2012 aims to restore ČSA's long-term viability by 2014. The restructuring period spans the period from August 2009 to June 2014 (5 years in total).

(27) In line with recent developments in the airline industry, the Czech authorities updated their assumptions for ČSA's projected path to viability and presented new scenarios for the base, best and worst case. ČSA considers the below estimates as a conservative basis for its future development. The estimates do not take into account the planned entry of a private investor which would probably have a positive effect on ČSA's performance and further strengthen its long-term viability.

(28) The most important external factors affecting the performance of ČSA are the following: (i) increasing fuel price (increased by nearly 40 % compared with the scenarios included in the opening decision), (ii) significantly lower demand, (iii) intensified competition, and (iv) a drop in revenues from ticket sales.

(29) The base-case scenario is built upon the assumption that the market will evolve according to the macroeconomic forecasts of the Czech National Bank and the International Monetary Fund. The entry of low-cost carriers is considered to be the main factor that will affect ČSA's market share performance.

(30) External factors include:

— a fuel market price of 1 000 USD/mT;

— FX rates: USD 17,0 CZK/USD, EUR 24,5 CZK/EUR;

— yield [2–2,2], Seat Load Factor [66–73]%.

(31) Internal factors include:

— restructuring of aircraft ownership and maintenance costs;

— additional improvement of passenger costs (reduction of global distribution system and catering costs);

— further improvement in crew productivity on the Airbus fleet;

— optimizing of crew costs for the regional (ATR) fleet, higher fleet utilisation;

— partial densification of the A320 and B 737 fleets (increased number of seats);

— reduced average fuel consumption – follow-up in the renewal of the fleet;

— revenue management system optimisation – [0,95–1]% increase in yield;

— negative impact of emissions allowance purchase offset in average passenger revenue;

— as of summer 2012, operations will continue with a fleet consisting of ATR (7 aircraft), Airbus (15 aircraft), and Boeing (5 aircraft).

(32) As a consequence of the restructuring, ČSA expects the following development of its return on capital employed (ROCE):

Table 3

Expected return on capital employed

ROCE	2011	2012	2013	2014	2015
Base-case scenario	– 23,6 %	[– 2,5 – (– 3)]%	[0,9–1,1]%	[1,7–1,85]%	[2,1–2,4]%
Best-case scenario	– 23,6 %	[– 0,95–(– 1,1)]%	[3,6–3,9]%	[4,8–5,2]%	[4,8–5,2]%
Worst-case scenario	– 23,6 %	[– 13,5–(– 12,1)]%	[– 9,5 – – 8,9]%	[0,7–0,75]%	[0,98–1,1]%

(33) The Czech authorities take the base-case scenario as a realistic prediction and argue that the ROCE achieved at the end of 2014 of [1,7–1,85]% is to be considered acceptable.

(34) The best–case scenario considers that the fuel price will be reduced by 1–2 % (in 2012–2013) and 3 % in (2014–2015); it is further based on faster–than–predicted implementation of restructuring measures and a faster demand growth as compared with the base-case scenario. On the other hand, the worst-case scenario is based on an increased fuel price (3–5 % higher in 2012–2013) compared with the base–case scenario; it further factors in delays in implementation of the planned restructuring measures and lower benefits from revenue management initiatives (fully implemented only in 2014).

(35) The plan assumes that it will be possible to return to profitability by financial year (FY) 2013. According to the base-case scenario, ČSA will make a net profit after tax of CZK [95–112] million ([3,8–4,3] million) in 2014 and achieve a return on capital employed (ROCE) of [1,7–1,85]% by 2014 and [2,1–2,4]% by 2015.

Table 4

Profit and loss 2008-2014 (in CZK million) (according to Czech Accounting Standards)

Financial year	2007	2008	2009	2010	2011(f)	2012(f)	2013(f)	2014(f)
Revenues	23 400	22 582	19 790	16 548	13 585	[12 900–13 100]	[12 900–13 100]	[12 900–13 100]
Profit/Loss before tax	206	470	– 3 756	76	– 244	[– 220 – 180]	[68–75]	[85–110]

To achieve these results, ČSA proposes the following key actions:

(36) *Optimised network model and fleet rightsizing*: At the beginning of its restructuring process, ČSA was flying to 67 destinations. This network will be reduced by [18–20]% and ČSA now focuses solely on markets within the range of its short–haul/medium–haul fleet. Flights to New York and Canada were discontinued back in 2009. The expected reduction in passenger traffic measured in revenues per passenger-kilometre as compared with 2009 is [22,5–25,5]%, while the revenue per available seat-kilometre ("ASK") is expected to increase by [3,8–4,4]%. Both profitable and loss-making routes were discontinued.

(37) The aircraft fleet should be reduced by more than 50 %, resulting in 20 to 23 aircraft as opposed to 49 aircraft before restructuring. The overall number of flights will be reduced by [36–40]% and ASK by [21–24]%. Consequently the seat-load factor should improve and reach [66–73]% under the base-case scenario.

(38) The fleet structure should be simplified and modernised by way of a gradual replacement of older aircraft types (Boeing B737-400 and B737-500) by Airbus planes only. The modernisation of ČSA's fleet will increase the competitiveness of ČSA, which will obtain more advanced and more reliable aircraft offering greater passenger comfort. Other benefits of this measure are the reduction of costs of fleet operation, including savings resulting from fleet unification and optimisation of transportation capacity.

(39) *Revenue initiatives*: ČSA introduced a new revenue management system to optimise fare-setting and availability, aiming at an increase in revenue per ASK by [3–3,5]% in 2011. A further revenue increase is predicted in connection with the expected rise of sales through the website of ČSA – [20–22]% of tickets are to be sold online by 2012 against [7–8]% in 2009. This should be accompanied by revenues from sales of associated own products, such as second baggage fees, premium seat assignment fees and on-board sales, as well as products from third parties, such as hotels, car rentals and travel insurances. Revenue management is expected to contribute to profits in the amount of CZK [500–560] million by the end of 2012.

(40) *Cost reduction initiatives*: In 2009, ČSA generated 3 200 jobs directly and more than 1 600 jobs through its subsidiaries. Under the restructuring, ČSA generates 1 730 jobs directly and 1 974 jobs in its subsidiaries, which amounts to a reduction of more than 1 000 jobs achieved by mid-2012. ČSA reduced the number of pilots and cabin crew to the regulated minimum. It further reduced catering costs in economy class, in-flight entertainment, the cost of irregularities and fuel consumption. Moreover, rental, IT and telecommunication costs should be reduced. Finally, the representation offices abroad and in the Czech Republic should be downsized. Cost reduction initiatives are expected to save CZK [275–310] million and contribute to revenues in the amount of CZK [650–725] million by the end of 2012. Costs of sales per passenger were already reduced by [14,5–16,5]% in 2010.

(41) *Organisational changes*: The Czech Republic has twice attempted to privatise ČSA in the past [1]; however, both of these attempts failed. The Czech authorities believe that the creation of ČAH constitutes an efficient way to sell ČSA and its subsidiaries to a new private investor. Firstly, non-core activities that were previously carried on by ČSA were transferred to its subsidiaries in 2010. This enabled ČSA to focus on its core business. Secondly, these subsidiaries were sold to ČAH on market terms. Finally, both ČSA and Prague Airport will be incorporated into ČAH.

(42) This structure should not only make the companies more attractive to potential investors but also ensure a competitive pricing of intra-group services and stimulate the profit-making of all subsidiaries as well as their orientation towards external customers.

(43) *Sale of non-core assets*: In addition to the sale of subsidiaries to ČAH, ČSA has sold a considerable number of other assets in the course of its restructuring, as shown in Table 5. All of these assets were sold either through an open, transparent and non-discriminatory tender or on the basis of independent appraisal reports.

Table 5

Sale of ČSA's assets in the course of restructuring

	Amount in CZK million
Sale of Duty-Free business to Aelia Czech Republic, s.r.o.	[760–840]
Sale of slots at London-Heathrow to British Airways	[450–530]
Sale of aircraft to various airlines	[1 950–2 200]
Sale of Slovak Air Services, s.r.o. to Skyport, a.s.	[17,5–19,5]
Sale of land and buildings to Prague Airport	[1 620–1 850]
Sale of subsidiaries to Český Aeroholding, a.s.	[2 350–2 600]
Total	[7 150–8 025]

2.4. STATE AID AND FINANCING OF THE RESTRUCTURING COSTS

(44) Given the total restructuring costs of CZK [8,9–10,5] billion (EUR [360–410] million) which include in particular the cost of fleet rightsizing and severance payments, the Czech Republic recapitalised the beneficiary with CZK 2 500 million of State aid in the form of a debt-for-equity swap (i.e. [23–26]% of the restructuring costs), according to Resolution No 333, on 30 June 2010.

(45) ČSA proposes the remaining amount, i.e. the own contribution of [74–77]%, to be financed by the sale of assets set out in Table 5.

(46) ČSA sold its duty-free business for CZK [760–840] million to Aelia Czech Republic, s.r.o. in February 2010. The business was sold following a two-round tender procedure organised by UniCredit Czech Republic, a.s.

(47) ČSA swapped two slots at London-Heathrow Airport with British Airways Plc. ("BA") for a financial consideration in July 2010. The slot exchange agreement provides that ČSA and BA are to transfer to each other by way of exchange their respective slots [2] for a financial consideration of GBP [17–19] million (around CZK [450–530] million). The exchange of slots was carried out in 2010 and BA paid the consideration to ČSA in two instalments in November and December 2010.

(48) ČSA sold 15 aircraft under the following conditions: In 2010, ČSA sold five Boeing B737-400s to BLF Limited, which is a special-purpose vehicle of the Russian carrier UTair, for the price of USD [54–60] million and two Boeing B737-500s to Mauritanian Airlines International for the price of USD [12,5–15] million. In 2011, ČSA sold three Boeing B737-500s to Mika Limited for the total price of USD [21–25] million. In 2011 ČSA sold two ATR72-202s to Helitt Lineas Aéreas S.A. for the price of USD [7,9–8,9] million, two ATR72-200s to EUROLOT S.A. for the price of USD [7,9–8,9] million and one ATR42-320 to Regourd Aviation for the price of USD [1,6–1,9] million. The total revenue from the sales of aircraft amounts to approximately USD [105–120] million, or CZK [1,950–2,2] billion [3].

(49) On 30 September 2010, ČSA sold Slovak Air Services, s.r.o., a provider of air services in the Slovak Republic, to the company Skyport, a.s. for the purchase price of CZK [17,5–19,5] million. The bidder offered the highest price in an open tender procedure.

[1] In 1992, Air France acquired 19 % of the shares in ČSA but disposed of them again in 1994. In April 2009, a tender for the sale of the State's equity stake in ČSA was organised, but as no adequate bid was submitted to the Czech Government, the Czech Government eventually instructed the Minister for Finance to cancel the tender in October 2009.

[2] i.e., the slots allocated to them for the summer 2011 scheduling period (27 March 2011–29 October 2011) and the winter 2010/2011 scheduling period (31 October 2010–26 March 2011).

[3] At the exchange rate of 18,5 CZK per USD as calculated by the Czech Republic. (According to the Czech National Bank, the quarterly exchange rate average of USD-CZK varied between 18,3 and 20,2 CZK per USD in 2010 and between 16,9 and 18,78 CZK per USD in 2011.)

(50) ČSA generated CZK [1,62–1,85] billion from the sale of land and buildings to the State-owned Prague Airport. A summary of the sales is described in Table 6 below.

Table 6

Sale of land and property of ČSA to Prague Airport

Plot/Asset	Purchase agreement	Price ('000 CZK)	Expert appraisal
2570/4	2.2.2010	[48 000–58 000]	Proscon, s.r.o., dated 8.12.2009
2570/13	2.2.2010	[15 500–17 000]	
Parking on plots 2570/4 and 2570/13	2.2.2010	[65 500–74 500]	
2570/14	9.12.2009	[16 000–19 000]	
APC office building	9.12.2009	[554 000–625 000]	
2586/1	13.5.2010	[15 000–17 500]	YBN Consult dated 10.5.2010
2587	13.5.2010	[69 500–80 000]	
2588/3	13.5.2010	[14 250–16 000]	
2589/1	13.5.2010	[2 600–3 000]	
2590/25	13.5.2010	[87 250–95 000]	
Hangar F	13.5.2010	[700 000–800 000]	
Total:		**[1 620 000–1 850 000]**	

(51) The Government of the Czech Republic has expressed its strategic interest in acquiring ČSA's airside properties. The Czech authorities justify these transactions with the use they will make of the properties. According to the Czech authorities, the property is strategically important for Prague Airport with a view to the new runway to be built at the airport. The Czech Republic also noted that Prague Airport is renting another hangar (Hangar E) to Travel Service, a.s. which shows the potential of obtaining revenues from marketing real estate no longer needed by ČSA.

(52) The sale of the property described in Table 6 was not carried out by way of an open, transparent and non-discriminatory tender. However, in line with its general policy and the legal national requirements, all property acquisitions by a State-owned company have to be done at a fair open-market value which reflects the price that would be paid on an arm's-length basis by a private investor. The value of this property is based on an independent external valuation by court-registered experts which uses recognised standards.

(53) The most important part of the company's own contribution comes from the sale of subsidiaries of ČSA to ČAH. These sales took place at the end of 2011/beginning of 2012 and consisted of the sale of Czech Airlines Handling, a.s. (CZK [700-800] million), the sale of ČSA Services, s.r.o. (CZK [25–28] million), and the sale of HCA (CZK [500–580] million) and Czech Airlines Technics, a.s. (CZK [1-1,15] billion). The sales were not carried out by way of an open, transparent and non-discriminatory tender; however, the value of the subsidiaries was established by independent appraisal reports provided by Deloitte Advisory, s.r.o. and PriceWaterhouseCoopers Česka republika, s.r.o.

2.5. THE OPENING DECISION

(54) On 23 February 2011, the Commission opened the formal investigation procedure. In its opening decision, the Commission expressed doubts relating to several conditions of the R&R Guidelines. In particular, the Commission did not exclude that ČSA had been in difficulties according to the R&R Guidelines already before the second half of 2009, i.e. before the start of the restructuring process as claimed by the Czech authorities.

(55) The Commission also expressed doubt regarding the point whether the difficulties of ČSA were too serious to be dealt with by ČAH. The Commission also wondered whether it would be possible under Czech law for Prague Airport to contribute financially to the restructuring process of ČSA and its subsidiaries. Also, the Czech authorities were invited to comment on whether the business transactions between ČSA and Prague Airport, as of the date of implementation of the merger, had taken place on market terms which excluded the transfer of possible State aid from a beneficiary of rescue or restructuring aid to another entity within ČAH.

(56) Regarding the return to long-term viability, the Commission invited third parties to comment on the underlying assumptions concerning the external factors. The Commission also invited the Czech Republic to clarify whether all of the structurally loss-making activities would be abandoned after restructuring. Furthermore, the Commission questioned whether long-term viability could be achieved by the end of 2012, which was the notified end of the restructuring period, and whether the envisaged most likely scenario (which was also the "best-case scenario") was indeed the most realistic one to be achieved. Also, the Commission doubted whether ČSA would be able to secure (from its own financial means or from external resources) commercial loans and possible commercial guarantees for the planned purchase of 7 aircraft contracted for the years 2013 and 2014.

(57) Regarding compensatory measures, the Commission expressed doubts as to whether the proposed measures were not merely closure of loss-making activities which would in any case be necessary in order to achieve viability. Such measures would then not qualify as genuine compensatory measures. The Commission also noted that only compensatory measures taking place within the restructuring period could be accepted. Therefore, the discontinuation of the Toronto and New York JFK flights would fall outside the proposed restructuring period, which was from the second half of 2009 until 2012.

(58) Regarding the level of own contribution of ČSA, the Commission invited the Czech Republic to clarify the proposed ČAH structure. It also questioned whether the totality of the proposed own contribution could be considered real (in relation to the transactions that had not yet taken place at the time of adoption of the opening decision).

3. COMMENTS FROM THE CZECH REPUBLIC

(59) In its reply to the Commission's opening decision, the Czech Republic submitted comments and clarifications regarding all of the points raised in the Commission's opening decision, indicating that the notified RP complied with all the conditions imposed by the R&R Guidelines. Moreover, the Czech Republic also provided an update regarding the restructuring process, demonstrating that a number of restructuring measures had already been implemented and that significant progress had already been made.

(60) As regards the point of time when ČSA entered into difficulties, the Czech Republic asserted that ČSA was in difficulties as of August 2009 because this was when management realised that even the usually profitable performance of the company in the summer season had been negatively impacted. The Czech Republic also provided quarterly results and additional information demonstrating why it considered that ČSA had entered into difficulty only in August 2009.

(61) As regards the ČAH holding structure, the Czech authorities clarified that the purpose of ČAH was to "unbundle" the companies and to improve their access to commercial financing and prepare them for the planned privatisation. Relations between the companies within the holding company would be regulated by contract, on an arm's length basis, and in accordance with the applicable provisions of the Czech Commercial Code and the Income Tax Act governing relations between related parties.

(62) As regards the impossibility of resolving ČSA's difficulties within the ČAH group, the Czech Republic clarified that all of the companies within ČAH were controlled by the State and therefore any assistance would be subject to State aid rules. Moreover, any financial assistance would also have to meet the requirements of the Czech Commercial Code and tax laws. Also, the problems ČSA faced arose before the creation of the ČAH structure and thus could not be the result of "arbitrary distribution of costs within the current ČSA group" and were hence intrinsic in nature to ČSA.

(63) As regards any possible contribution to the restructuring of ČSA by Prague Airport, the Czech Republic asserted that the airport was not contributing to ČSA's restructuring in any way, and that the Czech Republic, as sole shareholder in Prague Airport, did not envisage any such contribution in the future either. Transactions between ČSA and Prague Airport were carried out on the standard terms offered by Prague Airport to its business partners. Rents and other pecuniary considerations were based on its applicable price lists.

(64) Apart from compliance with legal statutory requirements, the companies within ČAH would enjoy substantial business autonomy in so far as the parent company, ČAH, would not interfere with the business management of its subsidiaries. Since all relations between the companies within ČAH would be conducted on an arm's length basis, in compliance with legal requirements, as stated above, the Czech Republic asserted that any transfer of the restructuring aid granted to ČSA by any company within ČAH was impossible.

(65) Regarding the doubts about the return to long-term viability, the Czech Republic presented amended forecasts regarding the future scenario of viability of ČSA, presenting an amended base-case scenario. The new base-case scenario anticipated a slower growth rate following a revisited demand development as well as more conservative estimates of future oil prices. As regards the discontinuation of unprofitable activities, the Czech Republic confirmed that all subsidiaries with the exception of Czech Airlines Technics generated a profit, and as such could be sold as well-functioning and viable businesses. Czech Airlines Technics would also be sold to ČAH at the price of its assets, as evaluated by an independent external expert. As regards the financing of the aircraft to be delivered after the restructuring period, the Czech Republic believed that, upon implementation of the RP and the expected entry of a private investor, the company would be able to secure private financing for the contracted planes.

(66) As regards compensatory measures, the Czech Republic asserted that the sale of assets (including its subsidiaries), the reduction of ASK and the reduction of ČSA's presence at Prague Airport constituted a sufficient compensatory measure in view of the fact that ČSA

was a regional carrier with a small fleet and a limited number of destinations. It was exposed to competitive pressure from large companies and low-cost carriers and hence any further compensation could jeopardise ČSA's ability to become viable within a reasonable timescale. The Czech Republic asserted that the Toronto and New York JFK flights had been discontinued in November 2009, hence within the notified restructuring period.

(67) The Czech Republic provided information about a private loan amounting to CZK [125–140] million granted by Komerční banka which was proposed as an own contribution of ČSA. The loan consisted of a credit line based on a framework agreement. The framework agreement providing for a credit line of CZK [480-540] million had already been concluded on 31 March 2009 and amended in June and December 2009.

(68) Regarding the own contribution of ČSA to its restructuring, the Czech Republic presented proofs of sale of already divested assets. Furthermore, the Czech Republic confirmed that the notified State aid in the form of a guarantee would not be needed as ČSA was able to obtain private financing of the aircraft which was procured in the form of a financial lease that was provided by […]. The aircraft was delivered to ČSA in May 2011.

4. COMMENTS FROM INTERESTED PARTIES

(69) During the investigation procedure the Commission received only one substantiated comment from a competitor ([1]) and one comment from a local civic association ([2]). The competitor is Travel Service, a.s. and Icelandair Group hf (hereinafter referred to as "TS"), a company that competes with ČSA mainly in the charter travel market. TS argues that the aid to ČSA cannot be considered compatible because it does not fulfil the conditions of the R&R Guidelines.

(70) Regarding the return to long-term viability of ČSA, TS criticizes the RP, stating that it lacks a clear business model ([3]) for the company and that several of the key assumptions of the best-case scenario are overly optimistic (fuel price, exchange rates, capacity utilisation). TS also criticises the compensatory measures offered on the ground that they constitute mere abandonment of activities necessary to the survival of the company. TS also claims that the sales of assets claimed as an own contribution were carried out and the funds spent before any restructuring process began and cannot thus be considered a real contribution to the costs of restructuring.

(71) Also, TS claims that the State aid received by ČSA has enabled the expansion of its business and its subsidiaries. Allegedly, ČSA was able to (i) expand its charter business, although ČSA was going to abandon it because it was previously loss-making, and (ii) renew its fleet, which provides ČSA with a competitive advantage hardly to be gained by any comparable competitor at a time of financial crisis.

(72) Indeed, TS claims that ČSA has used the State aid it received to expand its charter-business subsidiary HCA, which can offer flights at a price 20 % lower than the standard prices on the market ([4]). TS also claims that ČSA raised the registered capital of HCA by CZK 162 million in May 2010.

(73) Further advantages allegedly granted to ČSA consist of the possibility of operating the Prague-Tel Aviv route. TS argues that this possibility was apparently negotiated by the authorities of the Czech Republic exclusively for ČSA in a way circumventing legal regulations and providing ČSA with an advantage over its competitors.

(74) TS argues as well that, even before the creation of ČAH, a de facto concentration of Prague Airport and ČSA took place because joint management of the two companies was established. Indeed, TS claims that the chief executive officer (CEO) of ČSA has been remunerated by Prague Airport and that cross-subsidisation of IT services provided to ČSA takes place.

(75) Furthermore, Prague Airport then bought assets (buildings and land) from the airline which it allegedly did not need and leased them back to the airline. Such a privileged relationship between Prague Airport and ČSA resulted in preferential treatment such as price discrimination regarding airport services and access to commercially sensitive information. Moreover, TS argues that the creation of ČAH has a negative impact on competition due to the vertical integration between the airport and the main carrier. According to TS, the main reason for the creation of ČAH is to enable the granting of State aid to ČSA through the acquisition of its subsidiaries by ČAH.

([1]) The comment was supplemented by two additional submissions and a complaint.

([2]) The civic association "Pro Hanspaulku" alleges that the aid granted to Czech Airlines serves to maintain artificially the airline as a customer of Prague Airport, which is planning to build another runway. The civic association is mainly concerned about the environmental as well as the social impact of this project.

([3]) In particular, TS argues that ČSA takes wrong business decisions such as the opening of loss-making routes such as the new Prague–Abu Dhabi route in September 2011.

([4]) For assessment, see recitals 171-174.

5. COMMENTS FROM THE CZECH REPUBLIC ON THE OBSERVATIONS OF INTERESTED PARTIES

(76) The Czech Republic addressed in detail all of the arguments raised by third parties in their comments. In particular, as to the return to long-term viability, the Czech Republic stressed that it had updated the RP [1] and thus addressed a number of comments in the updated assumptions. Furthermore, it noted that the State aid amount had decreased significantly in the course of the proceedings in view of the abandoned project for the State-aid-guaranteed purchase of an aircraft.

(77) As regards the possible use of State aid funds for anti-competitive conduct of the charter division of ČSA, the Czech Republic stated that the charter business was already independent and separate from scheduled transport at the time when the State aid was granted. ČSA never made any monetary contribution to HCA's [2] registered capital. HCA's registered capital was increased by an in-kind contribution of a part of ČSA's business involved in the operation of charter transport. This part of the business was evaluated by an independent expert.

(78) As regards the alleged advantage received by ČSA for operating the Tel Aviv route, the Czech Republic explained that, although TS was chosen (pursuant to an open tender; starting from the winter flight schedule for 2011/2012) as the sole air carrier with transportation rights for ten years for the provision of agreed services on the Prague–Tel Aviv route in accordance with applicable law [3], TS received no guarantee to the effect that no other carrier would be authorised to operate the route for the duration of that term. The Czech authorities stated that it was a general policy of the Ministry of Transport of the Czech Republic not to maintain existing restrictions but, on the contrary, to expand the opportunities for air carriers in terms of market access in order to liberalise the markets for air transport services.

(79) As regards the opening of the Prague–Abu Dhabi route, the Czech Republic explained that this route was not operated by ČSA on its own but as a code-share flight [4] operated in cooperation with Etihad Airways. The route focused on transfer passengers who could use many different connecting long-distance flights from Abu Dhabi operated by Etihad Airways. This cooperation thus improved ČSA's sales options and contributed to the restoration of its long-term viability at very low additional costs.

(80) The sale and lease-back of the APC office building was, according to the Czech Republic, a standard market practice which enabled the seller to obtain liquid funds, while the purchaser obtained a stable source of future rental income. Moreover, the land sold was of strategic importance in view of the construction of a new runway that was to be built at Prague Airport. For this reason Prague Airport was interested in purchasing the property. Also, according to the Act on the Ownership of Prague-Ruzyně Airport [5], Prague Airport, including any adjacent or related land, could only be owned by the Czech Republic or a legal entity domiciled in the Czech Republic and wholly owned by the State. This requirement limited the number of suitable purchasers to fully State-owned companies only. The operator of Prague Airport was such an entity and had, moreover, a strategic interest in acquiring the land.

(81) The Czech Republic repeatedly stated that the commercial relations between ČSA and Prague Airport were and always had been in accordance with national and Union law (see recitals 61-64). As regards ČAH, the Czech Republic explained that, pursuant to Government resolution No 848 of 24 November 2010, ČAH did not represent permanent vertical integration of infrastructure and air carriers but merely a merger (between ČSA and Prague Airport) of limited duration and function, the objective of which was to sell ČSA and its subsidiaries on the best terms possible.

(82) Finally, as regards the comments presented by the civic association Pro Hanspaulku, the Czech Republic commented that the civic association had not proved the existence of legitimate interest nor could such an interest be inferred from the objection submitted which related to completion of a new runway at Prague Airport which was allegedly to be used primarily by the restructured ČSA. To this, the Czech Republic answered that, in compliance with the RP, the presence of ČSA at Prague Airport would actually be reduced and thus the comments submitted by the civic association were not founded.

[1] Following the opening of the formal investigation procedure, the Czech Republic submitted two updated versions of the RP (dated 15 September 2011 and 3 January 2012) to the Commission.

[2] Pre-restructuring HCA was only providing travel agency services which ČSA planned to close down in its first version of the RP. However, in the revised RP, the HCA travel agency was maintained and ČSA's charter business division was included.

[3] Act No 49/1997 on Civilian Aviation and amending Act No 455/1991 on Trade Licensing (the Trade Licensing Act), as amended, and the Treaty between the Government of the Czech and Slovak Federal Republic and the Government of the State of Israel on Air Transport, signed in Jerusalem on 24 April 1991.

[4] Code-sharing is a common form of cooperation between air carriers whereby a flight operated by a particular carrier is offered by other carriers to improve their sales options. This form of cooperation enables carriers to expand their networks of destinations on offer.

[5] Act No 69/2010 on the ownership of Prague–Ruzyně Airport.

6. ASSESSMENT OF THE AID

6.1. EXISTENCE OF STATE AID

(83) By virtue of Article 107(1) of the TFEU, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threaten to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between the Member States, be incompatible with the internal market.

(84) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it ([1]).

(85) In this context, the notified capital injection in the form of the debt-for-equity swap of the Osinek loan has to be seen as State aid. The capital injection involves State resources and constitutes a selective advantage to ČSA, since it improves its financial situation.

(86) According to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States where that undertaking operates in a market open to trade at Union level ([2]). The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in its normal course of business, points to a possible distortion of competition ([3]). Therefore, aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned ([4]).

(87) The measure at hand affects trade between Member States and competition as ČSA is in competition with other European Union airlines, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1993. The measure in question enables ČSA to continue operating so that it does not have to face the consequences usually deriving from its poor financial results and therefore it distorts competition.

([1]) See judgment of the Court of 16 May 2002, Case C-482/99 *France* v *Commission* ("*Stardust Marine*") [2002] ECR I-4397.

([2]) See in particular judgment of the Court of 13 July 1988, Case 102/87 *French Republic* v *Commission of the European Communities* [1988] ECR 4067.

([3]) Judgment of the Court of 17 September 1980, Case 730/79 *Philip Morris Holland BV* v *Commission of the European Communities* [1980] ECR 2671.

([4]) See in particular judgments of the Court of 15 December 2005, Case C-66/02 *Italy* v *Commission* [2005] ECR I-10968, para. 117 and of 15 June 2006, Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5332, para. 35.

(88) Therefore, the notified capital injection in the form of the debt-for-equity swap constitutes State aid within the meaning of Article 107(1) of the TFEU. This conclusion is not disputed by the Czech authorities.

6.2. LEGALITY OF THE AID

(89) Article 108(3) of the TFEU provides that a Member State shall not put an aid measure into effect before the Commission has adopted a decision authorising the measure. The Commission observes that the Czech authorities implemented the aid, i.e. the debt-for-equity swap of the Osinek loan, as of 30 June 2010. The Commission thus regrets that the Czech Republic did not comply with the stand-still obligation and has therefore violated its obligation under Article 108(3) of the TFEU.

6.3. COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET UNDER THE R&R GUIDELINES

(90) Article 107(3)(c) of the TFEU lays down that aid can be authorised where it is granted to promote the development of certain economic sectors and where this aid does not adversely affect trading conditions to an extent contrary to the common interest.

(91) The Commission considers that the present measure constitutes restructuring aid which must be assessed in the light of the criteria under the R&R Guidelines in order to establish whether it is compatible with the internal market pursuant to Article 107(3) of the TFEU.

6.3.1. **Eligibility**

(92) Regarding eligibility, point 33 of the R&R Guidelines states that the firm must qualify as a firm in difficulty within the meaning of points 9 to 13 of those Guidelines.

Firm in difficulty

(93) According to point 9 of the R&R Guidelines the Commission regards a firm as being in difficulty when it is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

(94) Subsequently, point 10(a) of the R&R Guidelines clarifies that a limited liability company is regarded as being in difficulty where more than a half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months.

(95) The Czech authorities claim that ČSA, a joint-stock company under Czech law and therefore a limited liability company in terms of point 10(a) of the R&R Guidelines, entered into serious difficulties as of August 2009 when the financial crisis severely impacted even the high season – the summer flight schedule. At the time, operating cash flow sunk to CZK [– 2,4 – – 2,1] billion, which had a dramatic impact on the company's assets.

(96) Indeed, in August 2009 the company fulfilled the conditions of point 10(a) of the R&R Guidelines. The total registered capital of ČSA amounted to CZK 2 735 million. According to the Czech accountancy standard, ČSA's equity was negative by August 2009 (amounting to CZK [– 1 000–(– 900)] million at the end of July 2009) and more than one quarter of its registered capital had been lost over the preceding 12 months since the equity amounted to CZK [900–1 000] million in July 2008. Therefore, from August 2009 ČSA started its restructuring process. Hence, the company was indeed a firm in difficulty within the meaning of the R&R Guidelines at the time of granting of the restructuring aid in June 2010.

Newly created firm

(97) Point 12 of the R&R Guidelines states that a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is unsecure. A firm is in principle considered to be newly created for the first three years following the start of operations in the relevant field of activity.

(98) ČSA was created in 1923 and cannot therefore be considered a newly created firm.

Business group

(99) Point 13 of the R&R Guidelines states that a firm belonging to or being taken over by a larger business group is not usually eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Where a firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in point 13 of the R&R Guidelines.

(100) At the time of granting of the restructuring aid in 2010, ČSA formed a group with a number of companies that are active in air-transport-related fields [1]. The accounts of the group show that the airline, despite being part of a larger group of companies, in fact accounts for the predominant part of the turnover (94 %) and therefore there is no possibility for any other part of the group to finance the restructuring of the airline. Furthermore, the accounts demonstrate that the airline's losses are intrinsic to the airline itself and are therefore not attributable to any part of the group.

(101) The Commission thus considers that the difficulties of ČSA are not the result of an arbitrary allocation of costs within the group but are mostly due to weak revenues in its core business. The difficulties are too serious to be dealt with by the group itself especially because the positive contribution by profitable subsidiaries is far too small to compensate for the losses in ČSA's core business.

(102) The Commission notes that the creation of ČAH (end 2011/beginning 2012), which in principle constitutes a business group in terms of point 13 of the R&R Guidelines, was carried out after the granting of the restructuring aid and can therefore be regarded as a part of the restructuring which has no impact on the eligibility for restructuring aid. Furthermore, the Commission notes that all business relations between the member companies of ČAH will be carried out on an arm's length basis in compliance with the relevant provisions of Czech law [2], hence no contribution to the restructuring process of ČSA by other members of the group is possible.

6.3.2. **Restoration of long-term viability**

(103) First, according to point 35 of the R&R Guidelines, the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions.

(104) Pursuant to point 36 of the R&R Guidelines the plan must describe the circumstances that led to the company's difficulties and take account of the present state and future market prospects with best-case, worst-case and base-case scenarios.

(105) The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be high enough to enable the restructured firm to compete in the marketplace on its own merits (point 37 of the R&R Guidelines).

[1] These were: Amadeus Marketing ČSA, s.r.o. (65 % ownership), ČSA Services, s.r.o. (100 % ownership), Holidays Czech Airlines, a.s. (100 % ownership), Slovak Air Service, s.r.o. (100 % ownership), Czech Airlines Handling, s.r.o. and Czech Airlines Technics, a.s. (100 % ownership).

[2] Articles 66a and 196a of Act No 513/1991 (Commercial Code) and Section 23 (7) of Act No 586/1992 (Income Tax Act).

(106) The Commission notes that the RP, as summarised in section 2.3 above, describes the circumstances that led to the company's difficulties. It takes into account present and future prospects on the main market of the ČSA, namely scheduled passenger air transport, and it presents scenarios based on best-, worst- and base-case assumptions, as well as ČSA' strengths and weaknesses. The Commission thus notes that the RP deals with all formal aspects required by point 36 of the R&R Guidelines.

(107) The current RP assumes that a return to long-time viability will be achieved by June 2014. The revised restructuring period of five years is relatively long. However, according to the base-case scenario ČSA will generate profit already in 2013. Also, most of the restructuring measures have already been implemented, including the downsizing of the company and generating the own contribution. The Czech authorities have demonstrated that the strategy in the RP is set out over five years after a careful assessment of the shortest time required to restore the long-term viability of ČSA, keeping in mind possible future operating conditions. Furthermore, the Commission notes that, especially in the air transport sector in the current economic circumstances, the stabilisation of operational and services performance has to be achieved in order to ensure a *long-term* viability as a solid base for future growth and not only a short-term turnaround. This takes by its very nature several years. The Commission further notes that in previous cases a restructuring period of five years or more has been accepted ([1]). Therefore, on balance, the Commission considers the five-year restructuring period to be acceptable.

(108) To enable a turnaround for ČSA, the RP envisages significant cost reductions, (especially through the reduction of capacity and staff and the downsizing of the company's fleet and the operated network) as well as a number of revenue initiatives.

(109) The Commission notes that ČSA has significantly reduced the number of pilots and cabin crew – more than 1 000 jobs have already been cut. The cost reduction initiatives are expected to generate net proceeds of CZK [390–425] million by the end of 2012. The costs of sales per passenger were already reduced by [15,5–17]% in 2010.

(110) The Commission further notes that the downsizing of both the fleet (by 30 %) and the network (by [18–20]%) is expected to result in an increase of the revenue per ASK by [3,9–4,3]%. Consequently the seat-load factor is to improve to [66–73]% under the base-case scenario. The renewal of the fleet as well as the replacement of Boeings by Airbuses will lead to lower operating and maintenance costs which will bring more efficient business management of the fleet. The network and fleet downsizing is expected to generate net proceeds of CZK [195–215] million by the end of 2012.

(111) The Commission also notes that ČSA introduced a new revenue-management system aiming at an increase in revenue per ASK by [3–3,5]% in 2011. Coupled with revenues from sales of associated own products as well as products from third parties, the revenue management is expected to contribute to profits by CZK [500-560] million by the end of 2012.

(112) The Commission, on the basis of its knowledge of the sector in other airline restructuring cases, considers these initiatives to be capable of enabling ČSA to reduce its costs and generate additional revenues in order to achieve a return to long-time viability by June 2014.

(113) The forecast results are based on realistic assumptions, especially growth rates, inflation, fuel prices and USD/CZK exchange rates. In its comments on the opening decision, the Czech Republic addressed the Commission's doubts on the underlying assumptions by providing further clarifications, especially:

— Apart from prolonging the initial restructuring period, the Czech Republic has revisited its predictions for the development of a return to viability, basing itself on a revisited base-case scenario rather than the best-case scenario which was the original plan. ČSA now aims at achieving a ROCE of [1,7–1,85]% by 2014 instead of [3–3,5]% in the original version of the RP.

— ČSA has rescheduled the delivery of 7 aircraft from years 2013 and 2014 to 2014 to 2016. It confirms that it will fund the purchase of all of these aircraft through commercial financing, without any State assistance.

— The Czech Republic has confirmed that ČSA is abandoning all activities which are loss-making.

(114) The Commission notes positively that, following the opening decision, the underlying assumptions for the internal and external factors have been revised, such as anticipating a slower growth rate in demand between 2010 and 2013 and higher fuel costs. The revision and

([1]) See Commission decisions in cases *Austrian Airlines* (C 6/09), OJ L 59, 9.3.2010, p. 1, recital 296 (six-year restructuring period), *Royal Mail Group* (SA.31479), C(2012) 1834 final, recital 217 (five-year restructuring period) and *Air Malta* (SA.33015), C(2012) 4198 final, recital 93 (five-year restructuring period).

the adaptation of a number of key assumptions has led to revised financial projections resulting in a drop in the predicted profit for 2013 from CZK [123–135] million to CZK [68–75] million. The adapted assumptions now give a more realistic and sound picture of ČSA's future development.

(115) In addition, ČSA has provided a scenario analysis including, besides the above-mentioned most realistic assumptions (base-case scenario), a best-case and a worst-case scenario with modified assumptions on several key drivers.

(116) Under the base-case scenario, ČSA forecasts achieving a positive operating margin from 2013. Even in the worst-case scenario ČSA would achieve profitability by 2014.

(117) However, the company's ROCE should return only to modest levels (around [1,9-2,2]%) by 2015. Such returns are quite low but seem to be realistic in view of the fact that ČSA's peer group (AF-KLM, AA, Finnair, SAS, BA, Croatia Airlines, LH) reached a ROCE between [– 1,2 – 1]%–[5,4–6,3]% in the years 2003 to 2009. A positive ROCE in this group was achieved only by Lufthansa ([5,3–6]%), British Airways ([4,9–5,7]%) and AF-KLM ([2–2,3]%). On the other hand, the low-cost carriers achieved a ROCE of [5,5 – 6,5]–[15,5–17]% in the years 2004-2007 ([1]).

(118) ČSA's targeted ROCE will thus stay below the most efficient low-cost carriers or large major carriers mentioned above that benefit from economies of scale. ČSA with its restructured fleet (20-23 aircraft) remains a small regional player whose long-term development can best be secured with the entry of a private investor.

(119) In view of the fact that the Czech Republic as the owner of the company is well aware of the situation and in favour of timely privatisation, this modest return to viability appears to be acceptable. Moreover, the fact that ČSA has managed to obtain a privately funded lease for the new aircraft, instead of a State-guaranteed bank credit as originally envisaged, is a sign that the markets believe in the feasibility of the return to viability of the company.

(120) Furthermore, the Commission notes positively that ČSA has made significant progress in its restructuring process up to now and that the implementation of the envisaged initiatives has already had a positive impact on ČSA in 2011: while [15,5–17]% of flights had been discontinued on a year-on-year basis, the year-on-year drop in traffic revenue was only [8–9]%. In the first quarter of 2012 there was a [7,9–8,4]% growth in the volume of point-to-point passengers which had in turn a positive impact on revenues per available seat kilometre (RASK), which increased by [12,5–14]%. In 2011, ČSA also managed to reduce its catering costs by CZK [115–130] million and the unit cost per passenger by [14,5–16]%. Due to the implementation of cost-saving measures, the costs related to the utilisation of the Global Distribution System dropped by CZK [68–75] million in 2010 and CZK [89–96] million in 2011 on a year-on-year basis.

(121) ČSA has already implemented the envisaged reduction of staff and the sale of assets, as well as the spin-off of its non-core services into subsidiaries that were then sold to ČAH.

(122) In view of the significant restructuring measures undertaken and the progress already made to date, the Commission considers that the revised RP will enable ČSA to restore its long-term viability within a reasonable timescale.

6.3.3. **Avoidance of undue distortion of competition (compensatory measures)**

(123) Secondly, according to point 38 of the R&R Guidelines, compensatory measures must be taken in order to ensure that the adverse effects on trading conditions are minimised as much as possible. These measures may comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned (point 39 of the R&R Guidelines).

(124) In this regard, closure of loss-making activities which would in any case be necessary to restore viability will not be considered a reduction of capacity or market presence for the purposes of the assessment of the compensatory measures (point 40 of the R&R Guidelines).

(125) ČSA proposes the following compensatory measures:

— capacity reduction;

— surrender of landing slots at coordinated European airports, including sale of slots at London-Heathrow;

— sale of assets.

(126) In the opening decision the Commission expressed doubts concerning certain compensatory measures offered by ČSA in the sense that these seemed to be mere viability measures. The Czech Republic has clarified this point and provided a justification demonstrating the relevance of the measures listed above.

([1]) Market study prepared by the Boston Consulting Group.

Capacity reduction

(127) ČSA has planned to reduce its fleet by 50 %, which will in turn have an impact on the route network. The total capacity of the company in 2009 was [8–9] billion ASK. At the end of the restructuring process, ČSA plans to offer [6,2–7] billion ASK, i.e. the network will be reduced by [2–2,2] billion ASK (representing [20–25]%).

(128) ČSA has also agreed that other measures should be considered mere viability measures such as the decision to cancel the routes to New York and Toronto. This decision was taken by the management board of ČSA in July 2009 (i.e. before the beginning of the restructuring period). The flights were discontinued as of November 2009. However, the fact that ČSA took the decision to discontinue the routes before the start of the restructuring period indicates that this business decision was taken in order to improve the viability of the airline rather than with the aim of minimising any distortive effects of the State aid on trading conditions.

(129) In its revised RP, ČSA proposes to eliminate six profitable routes [1] and to reduce the ASK capacity of an additional 10 profitable routes [2] as compensatory measures. The discontinuation and proposed capacity reduction will lead to a reduction of offered capacity by [900–1 000] million ASK, which corresponds to a [10–11]% [3] capacity reduction of scheduled transport compared with 2009. ČSA has confirmed that it will maintain the reduced capacity offered as compensatory measures until the end of the restructuring period.

(130) Routes are considered profitable if they had a positive C1 contribution margin in 2009. The C1 contribution takes account of flight, passenger and distribution costs (i.e. variable costs) attributable to each individual route. It is calculated as (route revenues-route variable costs)/route revenues. Therefore, all routes which have a positive C1 contribution generate sufficient revenues to not only cover the variable costs of a route but also to contribute to the fixed costs of the company.

(131) From the Commission's point of view, the C1 contribution margin appears to be the appropriate figure since it takes into account all costs which are directly linked to the route in question. The Commission notes that a similar margin has been accepted in a comparable case [4].

(132) As regards the argument of the third party (TS) which alleges that ČSA opened new loss-making routes such as the Prague-Abu Dhabi route, the Commission notes that, following the clarification provided by the Czech authorities, this route is a code-share flight operated in cooperation with Etihad Airways. In any event, although new routes might be opened, ČSA has committed itself to decreasing its total network by [20-25]% (in ASK) and to maintaining this reduced network until the end of the restructuring period. Moreover, ČSA has offered to eliminate or reduce its capacity on 16 profitable routes in order to compensate its competitors.

Surrender of landing slots at coordinated European airports

(133) The Commission notes that, as a result of the changes in the network, a number of ČSA slots at coordinated airports [5] will be surrendered. The surrender of landing slots will enable other competing airlines to increase their capacity at those coordinated airports (regardless of the actual route that has been withdrawn) and thus represents a reduction of entry barriers on the market to the benefit of ČSA's competitors.

Sale of assets

(134) Moreover, ČSA claims that the sale of its non-loss-making assets such as the sale of slots at London-Heathrow (see recital 47) and of 15 aircraft (see recital 48) as well as the sale of its duty-free business (see recital 46) and the sale of subsidiaries to ČAH (see recital 53) should be also considered a compensatory measure. However, in view of the fact that the compensatory measures should take place in particular in the market where the firm will have a significant market position after restructuring, only the measures related to the passenger air transport market are relevant.

(135) Hence, besides the [10–11]% capacity reduction on profitable routes and the surrender of slots at coordinated airports, only the sale of slots at London-Heathrow and of 15 aircraft can be taken into account as appropriate compensatory measures, whereas the sale of the duty-free business and the sale of subsidiaries of ČSA to ČAH cannot because they do not affect the position of ČSA in its core market.

Appropriateness of the proposed compensatory measures

(136) When assessing whether the compensatory measures are appropriate, the Commission will take account of the market structure and the conditions of competition to ensure that any such measure does not lead to deterioration in the structure of the market (point 39 of the R&R Guidelines).

[1] […].
[2] […].
[3] Net reduction without the withdrawal of loss-making routes which are necessary to restore viability, also considering the envisaged capacity expansion between FY2010 and FY2013.
[4] See Commission decision in the case *Air Malta* (SA.33015), C(2012) 4198 final, recital 111.
[5] The majority of these slots is at coordinated airports (airports where the slots are allocated by a coordinator under Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports flight (OJ L 14, 22.1.1993, p. 1)).

(137) The compensatory measures must be in proportion to the distortive effects of the aid and, in particular, to the size and the relative importance of the firm on its market or markets. The degree of reduction must be established on a case-by-case basis (point 40 of the R&R Guidelines).

(138) The Commission notes that, although ČSA still has a leading position in the Czech aviation market, ČSA's share of the entire European airline industry's productive capacity and output (in terms of passengers) is only 1-2 %. For a relatively small carrier like ČSA, a further reduction of its fleet size might have a negative effect on its viability, without providing any meaningful market opportunities for competitors.

(139) As to the most important part of the own contribution, the capacity reduction, the Commission considers a reduction of [10–11]% to be sufficient, in particular when compared with other airline restructuring cases [1].

(140) Against this background, the Commission considers the above-mentioned compensatory measures to be sufficient under the R&R Guidelines in order to ensure that the adverse effects on trading conditions are minimised as much as possible.

6.3.4. **Aid limited to the minimum (own contribution)**

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

(142) For large firms, the Commission usually considers a contribution of at least 50 % of the restructuring costs to be appropriate. However, in exceptional circumstances and in cases of particular hardship, the Commission may accept a lower contribution (point 44 of the R&R Guidelines).

(143) The own contribution must be real, i.e. actual, excluding all future profits such as cash flow (point 43 of the R&R Guidelines). Inherently, the own contribution must not include any further State aid.

(144) In view of total restructuring costs of CZK [8 900–10 500] million, the proposed own contribution of ČSA is composed of

— a private bank loan granted by Komerční banka (CZK [125–140] million) and

— sale of assets (land, property, aircraft and subsidiaries) [2].

(145) The own contribution of ČSA proposed by the Czech authorities would represent [70-80]% of the total restructuring costs. Furthermore, the Commission notes that ČSA obtained a private lease agreement for an aircraft (USD [25–30] million) which can also be regarded as an own contribution.

Aircraft lease

(146) ČSA was able to obtain a privately financed lease agreement for the acquisition of an Airbus A319 aircraft and two engines in May 2011. The lease is granted under market conditions by […]. The lease agreement corresponds to a loan which amounts to USD [25–30] million (approximately CZK [520–600] million, or [5,3–5,9]% of the restructuring costs).

(147) The lease company will provide the aircraft supplied to ČSA to be used under a financial lease for a period of 10 years; upon payment of all the instalments in full, ČSA will become the owner of the aircraft. In addition to the down-payment of [29-33]% of the price of the aircraft, ČSA will make quarterly lease payments to the lessor, such payments being calculated from the aircraft price plus the equivalent of the interest on the loan provided by the bank to the lease company (3 months London Interbank Offered Rate (LIBOR) plus margin). The payment of the lease payments, (or rather repayment of the loan granted by […] to the lease company) will be secured in particular by a pledge on the aircraft in favour of the bank, subsisting for the duration of the lease.

(148) The Commission notes that that lease agreement demonstrates that ČSA was already able to obtain external financing on market conditions without any assistance from the Czech authorities. Such financing shows that the market believes in the feasibility of the envisaged return to viability. The Commission hence considers the CZK [520-600] million lease to be part of the own contribution.

[1] In the Air Malta case (Commission decision SA.33015, C(2012) 4198 final) the reduction in the capacity of profitable routes amounted to 5 %. In previous airline restructuring decisions the compensatory measures accepted referred to an overall reduction in capacity - Austrian Airlines: 15 % (Commission decision C 6/2009, OJ L 59, 9.3.2010, p. 1, recital 323) LTU: 28 % (Commission decision N 428/2002, OJ C 148, 25.6.2003), or a decrease of market share – Cyprus Airways: 3 % (Commission decision C10/2006, OJ L 49, 22.2.2008, p. 25, recital 129).

[2] For details, see Table 5.

Private bank loan by Komerční banka

(149) The proposed loan granted by Komerční banka consists of a credit line based on a framework agreement. The Commission notes that the framework agreement providing a credit line of CZK [480–540] million was already concluded on 31 March 2009 and that, owing to the deteriorating financial situation of ČSA, the credit line has been reduced in subsequent amendments of the framework agreement. The latest amendment of the framework agreement of December 2009 provided a credit line of only CZK [200–220] million until 30 June 2010. The Commission understands that the proposed own contribution of CZK [125–140] million is the latest balance of this credit line.

(150) The own contribution should demonstrate that the market believes in the feasibility of the envisaged return to viability. Since the relevant loan agreement was concluded long before the beginning of the restructuring period and given the fact that Komerční banka reduced the credit line successively, the Commission does not accept this private loan as an own contribution in terms of point 43 of the R&R Guidelines.

Sale of assets

(151) The sales of assets can be divided into three groups – (i) sales to private market operators, (ii) sales of immovable assets to Prague Airport and (iii) sales of subsidiaries to the Czech State (ČAH).

(i) Sales to private market operators

(152) A part of these sales was carried out on the basis of an open, transparent and unconditional tender such as the sale of the duty-free business and the sale of Slovak Air Services, s.r.o.. Another part was sold after individual negotiations to private entities such as the aircraft and London-Heathrow slots which were sold to various airlines and British Airways respectively. These sales took place in July 2010 and generated CZK [3–3,5] billion ([31–35]% of the total restructuring costs).

(153) The Commission notes that this part of the contribution to the restructuring costs comes indeed from the own resources of the company and is real and actual as required by point (43) of the R&R Guidelines. The Commission thus accepts these proceeds as an own contribution.

(ii) Sale to Prague Airport

(154) Land and property located in the perimeter of Prague-Ruzyně Airport was sold to Prague Airport on 9 December 2009, 2 February 2010 and 13 May 2010. The sale of these assets amounted to CZK [1 620–1 850] million ([15–17]% of the total restructuring costs).

(155) The Czech Republic has enacted a law on the ownership of Prague-Ruzyně Airport by which all land and property in the perimeter of Prague-Ruzyně Airport must be owned by a State-owned company in view of their strategic importance. According to the Czech authorities, the property is strategically important to Prague-Ruzyně Airport in view of the new runway to be built there.

(156) All of these assets were sold at a price established in appraisal reports written by independent experts from the Czech Republic [1] before the respective transactions took place. The Commission has analysed the submitted appraisal reports and found them to be sufficiently sound. The evaluations give no cause for concern since no errors have been detected, accepted methodologies are applied and the evaluations are based on credible assumptions. The Commission also notes that the appraisal reports were produced before the respective transactions took place and do not take into account the monopsony situation of the State as the only possible buyer. Therefore, the Commission considers that the results of the present appraisal reports are an appropriate approximation for the realistic market prices of the assets.

(157) The appraisal report did not take into account any pledges or other forms of encumbrance. As to pledges, especially securing the Osinek loan, the Czech authorities have confirmed that all pledges were lifted before the sales took place. In two of the three sale contracts, dated 9 December 2009 and 2 February 2010, the parties agree that the property will be transferred without any encumbrances. Only the third contract, dated 13 May 2010, contains a provision under which the property transferred includes the encumbrances and easements listed in the land registry. The relevant encumbrances are the following:

(a) easement in favour of Prague Airport for the usage of transformers and distribution points (on plot No 2587);

(b) easement in favour of ČSA for the use of the land for operating purposes (plot No 2588/3);

(c) easement in favour of PREdistribuce, a.s. for maintenance of a cable network and the right to enter the property (plot No 2586/1).

[1] These experts (YBN Consult–Znalecký ústav, s.r.o. and PROSCON, s.r.o.) are registered in the Register of Expert Institutes maintained by the Ministry of Justice of the Czech Republic and have experience in the field of the evaluation of assets.

(158) The Commission considers that encumbrances and easements can in principle reduce the value of real estate. However, the Commission notes that the easement in point (a) in recital 156 ceased to exist at the time when the property was transferred as the easement was in favour of the buyer itself. The Czech authorities have confirmed that the easement in point (b) in recital 156 did not exist any more at the time when the property was transferred. The third easement, in point (c) in recital 156, is still in place but this easement is one of the conditions for connecting Prague Airport to the electricity distribution network operated by PREdistribuce, a.s.

(159) In view of the vital nature of the only easement transferred with the property, the Commission considers that the above-described easements did not have an impact on the value of the assets sold.

(160) In the light of the above, the Commission accepts the proceeds from the land sale amounting to CZK [1 620–1 850] million as an own contribution.

(iii) Sale of subsidiaries to ČAH

(161) Another part of sales to the State consists of the sale of ČSA's subsidiaries to ČAH. These were HCA (CZK [500–580] million); Czech Airlines Handling, a.s. (CZK [700–800] million); ČSA Services, s.r.o. (CZK [25–28] million) and Czech Airlines Technics, a.s. (CZK [1–1,15] billion). The total value of these sales is CZK [2,35–2,6] billion ([24–26]% of the total restructuring costs).

(162) The sales values were established on the basis of the appraisal reports by Deloitte Advisory, s.r.o. and PriceWaterhouseCoopers Česká republika, s.r.o. referred to in recital 53. The Commission has analysed the submitted appraisal reports and found them to be sufficiently sound. The evaluations give no cause for concern since no errors have been detected, accepted methodologies are applied and the evaluations are based on credible assumptions. Therefore, the Commission considers that the results of the present appraisal reports are an appropriate approximation for the realistic market prices of the assets. The Commission also notes that the appraisal reports were produced before the respective transactions took place.

(163) The creation of ČAH was the target of the comments by the competitor, stating that the purpose of such a structure is only to provide ČSA with additional funds. However, the Commission notes that the Czech Republic has declared that the creation of ČAH has reasons other than a mere transfer of capital to ČSA. The major objective of ČAH is to make the State-owned companies more attractive to potential investors. With the ČAH structure in place it will indeed be easier to privatise individual subsidiaries of ČSA to different investors separately. Furthermore, the creation of ČAH should ensure a competitive pricing of intra-group services and stimulate the profit making of all subsidiaries as well as their orientation towards external customers.

(164) Finally, the creation of ČAH in its current form was approved by the Czech competition authority (with commitments) and, the sales of the subsidiaries were carried out on the basis of the above-mentioned appraisal reports.

(165) In the light of the above, the Commission notes that the total own contribution including the sales of the subsidiaries would amount to [78–85]% of the total restructuring costs. In the present case, however, it is not necessary to take this measure into account as even without it ČSA has provided a sufficient own contribution to cover its restructuring costs (consisting of the sale to private market operators, the sale of land and property to State-owned Prague Airport and the aircraft lease), which amounts to CZK [5,2–5,8] billion or [55–60]% of the restructuring costs [1].

(166) Therefore, the Commission considers that the requirements of point 43 of the R&R Guidelines have been fulfilled and hence the amount of aid is limited to the strict minimum of the restructuring costs necessary.

6.3.5. **'One time, last time' principle**

(167) Finally, the aid must respect the condition that it is 'one time, last time'. Point 72 of the R&R Guidelines provides that a company that has received rescue and restructuring aid in the past ten years is not eligible for rescue or restructuring aid.

(168) In the opening decision the Commission had doubts about the possible State aid elements involved in the Osinek loan. However, in its final decision in case

[1] The notified aid element is 2 500 million. The aircraft lease (CZK [520–600] million), the sale to private market operators (CZK [3–3,5] billion) and sale of land and property to the State (CZK [1,62–1,85] billion) add up to CZK [5,2–5,8] billion. Hence, even if the sale of subsidiaries to ČAH was considered aid, the aid element would be CZK [4,5–5] billion (CZK 2 500 million plus CZK [2,35–2,6] billion). This aid element is lower than the amount of the own contribution (CZK [5,2–5,8] billion), which would thus cover more than 50 % of the total restructuring costs of CZK [8,9–10,5] billion.

SA.29864 – Possible State aid implications of a loan provided by Osinek, a.s. the Commission concluded that the Osinek loan did not constitute State aid, and even if it did this aid would be compatible under the TF ([1]). Furthermore, the Czech authorities have confirmed that ČSA has not benefited from any rescue or restructuring aid in the past 10 years. The Commission therefore considers that the 'one time, last time' principle is respected.

6.3.6. **Other possible State aid issues**

(169) In the course of the formal investigation procedure third parties raised a number of additional potential state aid issues, namely concerning the sale of HCA, cross-financing of the remuneration of the CEO of ČSA by Prague Airport, and a possible advantage granted to ČSA for the operation of the Prague-Tel Aviv route.

Sale of HCA

(170) In its comments, TS claimed that ČSA has used the State aid it received to expand its charter business (conducted through its subsidiary HCA), which would offer flights at a price 20 % lower than the standard prices on the market.

(171) The Commission has requested detailed information regarding the sale and future operation of HCA. The Czech Republic has clarified that no aircraft was contributed into HCA upon the transfer of the charter transport business and confirmed that all aircraft leases are carried out on market terms in accordance with either an expert opinion on transfer pricing ([2]) or lease rates set on the basis of the Lease Rate Digest published by the International Bureau of Aviation ([3]), which specializes in estimates of market rates of operating leases for individual types of aircraft and years of production.

(172) Regarding any potential transfer of employees, the Czech authorities have clarified that a small number of administrative staff (approximately 20) were transferred to HCA from ČSA in 2010 in connection with the contribution of ČSA's charter business and in accordance with rules set out in the Czech Commercial Code. The majority of staff, including all pilots and cabin crew, has joined HCA following a new selection process. All staff that were previously employed by ČSA terminated their contracts and concluded new ones with HCA. No seniority rights were transferred with the new contracts.

(173) Finally, the Czech Republic has confirmed that there is no diversion of a part of ČSA's fleet to HCA where it would be used to operate ČSA flights. HCA has not expanded since 2009 and is merely returning to the original volume of flights operated by ČSA's charter division in the years 2008 to 2009. It will not take over the operation of scheduled flights to destinations discontinued by ČSA, but will only offer charter flights.

(174) In the light of the information provided, the Commission does not consider that any cross-subsidisation of activities between ČSA and HCA is taking place and that the selective advantage provided to ČSA has not been passed on to HCA.

Cross-financing of CEO remuneration

(175) ČSA's CEO was also the CEO of Prague Airport and received a salary from both in 2010 and 2011. As regards the claim concerning the potential advantage given to ČSA in the form of the salary of its CEO, the Czech Republic has explained that the remuneration of the CEO was set on the basis of two separate management agreements concluded between the CEO and ČSA and Prague Airport respectively. Furthermore, the Czech Republic has asserted that Prague Airport was not providing any compensation for the payment of remuneration for the activities of the CEO in ČSA. Under the two management agreements, the remuneration consisted of two components, a base salary and a performance-based bonus. The base component in the ČSA contract was reduced to CZK 1 per month until ČSA attains positive operating results. The amount of performance-related bonuses was, however, still set at twelve times the non-reduced base component per year.

(176) The Commission has verified the CEO's salary overview which shows that, indeed, the salary and bonuses paid by ČSA to the CEO amounted to approximately […] of his annual income, the other […] coming from his employment with Prague Airport. This difference is justified in particular by the different performance of the two companies in the relevant period.

(177) Since the CEO was remunerated for his work in both companies in a way that reflected their performance, the Commission finds that no State aid has been granted to ČSA by the way its CEO was remunerated for his work.

([1]) State aid granted under the TF serves a different purpose, namely to facilitate the access of a firm to external finance to remedy serious disturbance in the economy of a Member State under Article 107(3)(b) TFEU and does not, therefore, constitute rescue and restructuring aid within the meaning of the R&R Guidelines under Article 107(3)(c) TFEU.

([2]) Expert opinion dated 3 June 2011, carried out for the ČSA Group by Ernst&Young Valuations, s.r.o.

([3]) http://www.ibagroup.com/publications/lease-rate-digest.

Tel Aviv route

(178) In its comments, TS alleges that the Czech Republic negotiated the possibility of operating the Prague-Tel Aviv route for more than one carrier especially for the benefit of ČSA. The negotiations, which involved a change in the bilateral Air Transport Agreement (hereinafter referred to as "the Agreement") between the Czech Republic and the State of Israel [1], took place shortly after the conclusion of an open tender to operate this route which was won by TS (see recital 73).

(179) The Commission notes that the Czech Republic had the legal right to initiate negotiations with the State of Israel for extension of rights for access to the transportation market for air carriers of both parties until such time as a uniform European-Mediterranean Aviation Treaty is concluded between the EU and its Member States of the one part, and the State of Israel of the other part.

(180) In the process of consultations preceding the conclusion of the Agreement, the aviation authorities agreed, inter alia, on a temporary extension of access to the transportation market by permitting "special flights" which was followed by amendment of the Agreement.

(181) The Czech authorities have explained that the extension of access to the Czech-Israeli transport market was not negotiated solely for ČSA's benefit and that the extension of access was undertaken in full compliance with domestic legal regulations and was not in conflict with the Decision of the Department of Civilian Aviation of the Ministry of Transport of the Czech Republic granting transportation rights for the operation of the route to Travel Service [2].

(182) The Commission considers that it is indeed a right of the Member State to initiate a change in the bilateral Agreement at any time if the subject matter is not in conflict with the provisions of Union law. Furthermore, the decision by which TS was awarded the right to operate the Prague-Tel Aviv route does not provide that similar rights might not be awarded to another operator if this is in compliance with the provisions of the Agreement.

(183) Finally, the Commission notes that Paragraph 1 of Article III of the revised Agreement lays down that "*Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes*." Therefore, ČSA is not the only air carrier that could benefit from the change of the Agreement. Indeed, the revision of the Agreement seems to constitute a market-opening measure which can be regarded as pro-competitive. It cannot therefore be concluded that this measure favours ČSA specifically and therefore constitutes State aid.

6.4. CONCLUSION

(184) The notified measure constitutes State aid within the meaning of Article 107(1) TFEU. The Commission regrets that the Czech authorities did not comply with the standstill obligation under Article 108(3) TFEU. However, in view of the above, the Commission considers that the granted aid amounting to CZK 2 500 million and the RP are compatible with the conditions of the R&R Guidelines. The Commission therefore considers the aid to be compatible with the internal market under Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring aid notified by the Czech Republic consisting in granting CZK 2 500 million to České aerolinie, a.s. (Czech Airlines) in the form of a debt-for-equity swap of a loan, constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Implementation of this State aid is compatible with the internal market on the basis of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 19 September 2012.

For the Commission
Joaquín ALMUNIA
Vice-President

[1] Treaty between the Government of the Czech and Slovak Federal Republic and the Government of the State of Israel on Air Transport, signed in Jerusalem on 24 April 1991.
[2] Decision of the Department of Civilian Aviation of the Ministry of Transport of the Czech Republic No 278/2011-220-SP/18 of 30 June 2011.