COMMISSION DECISION (EU) 2015/494

of 9 July 2014

on the measures SA.32715 (2012/C) (ex 2012/NN) (ex 2011/CP) implemented by Slovenia for Adria Airways d.d.

(notified under document C(2014) 4543)

(Only the Slovenian text is authentic)

(Text with EEA relevance)

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 regards to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid SA.32715 (2012/C) (ex 2012/NN) (ex 2011/CP) ([1]),

Having called on interested parties to submit their comments pursuant to those provisions and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By SANI notification No 5628 of 11 March 2011, registered on the same day, Slovenia notified to the Commission rescue aid to Adria Airways d.d. (hereinafter 'Adria' or 'the company'), in the form of a State guarantee and a soft loan in the amount of EUR 6,2 million.

(2) The Slovenian authorities provided supplementary information by letters of 31 March 2011 and 12 April 2011. The Commission requested additional information by letter of 29 April 2011 to which the Slovenian authorities did not reply. A meeting with the Slovenian authorities and their advisors took place on 13 July 2011, where it was explained to the Commission that the notified rescue aid would not be sufficient in view of the unfavourable financial situation of the company and that Slovenia planned to inject EUR 50 million in cash into Adria. Slovenia withdrew its rescue aid notification on 1 August 2011.

(3) Following information that Slovenia had nevertheless carried out the above cash injection on 30 September 2011, the Commission decided to continue its preliminary investigation *ex officio* and asked for further information by letters of 12 September 2011, 28 November 2011 and 17 April 2012, to which the Slovenian authorities replied by letters of 11 October 2011, 27 December 2011, 13 January 2012 and 18 May 2012. In addition, the Slovenian authorities submitted a memorandum prepared by the legal representatives of Adria by e-mail of 7 November 2012.

(4) At the request of the Slovenian authorities, a meeting was held on 12 July 2012 with the participation of representatives of Adria and the State-owned holding PDP, ([2]) one of the shareholders of Adria. In that meeting, the Slovenian authorities and the representatives of Adria and PDP presented clarifications and arguments as regards the measures under scrutiny.

(5) By letter dated 20 November 2012, the Commission informed Slovenia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid (hereinafter 'the opening decision'). Slovenia submitted comments on the opening decision by letter dated 21 January 2013. The Commission requested additional information from Slovenia by letter of 5 March 2013, to which Slovenia replied on 19 April 2013. Slovenia submitted further information on 16 September 2013. The Commission requested additional information to Slovenia by letter of 6 November 2013, to which Slovenia replied on 4 December 2013, 6 and 17 January 2014. Meetings with the Slovenian authorities and their legal representatives took place on 25 March and 5 December 2013 and 8 January 2014.

([1]) State aid — Slovenia — State aid SA.32715 (2012/C) (ex 2012/NN) — Alleged aid to Adria Airways — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 69, 8.3.2013, p. 53).

([2]) PDP is a holding company established in May 2009. It is fully owned by three 100 % State-owned funds: Kapitalska družba d.d. (hereinafter 'KAD'), Slovenska Odskodninska družba d.d. (hereinafter 'SOD') and Družba za svetovanje in upravljanje d.o.o. (hereinafter 'DSU').

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([3]) on 8 March 2013. The Commission invited interested parties to submit their comments on the measures.

(7) The Commission received observations from one interested party, namely Ryanair on 8 April 2013. It forwarded them to Slovenia, which was given the opportunity to react; Slovenia's comments were received by letter dated 13 May 2013.

2. THE SLOVENIAN AIR TRANSPORT MARKET

(8) Adria is the national air carrier of Slovenia and the main airline at Ljubljana's airport. In 2011, it carried 73,4 % of the passengers flying via Ljubljana's airport and since then this figure has decreased to 71,3 % in 2012 and to 69,8 % in 2013 ([4]).

(9) Although the presence of low-cost carriers in Slovenia is limited (easyJet operates only one route from Ljubljana while Wizz Air operates two), they accounted for 12,6 % of public transport passengers in 2013 ([5]). Currently, there are five other competitors flying from Ljubljana to their main hubs, namely Air France, Finnair, Turkish Airlines, Montenegro Airlines and Air Serbia.

3. THE BENEFICIARY

(10) Adria is a large company with approximately 450 employees. In 2013 it had a turnover of EUR 142,3 million and incurred losses of EUR 3 million (estimated data). It has a fleet of 11 aircraft, mainly regional jets. At present, Adria is owned, inter alia, at 69,9 % by the Republic of Slovenia, 19,6 % by the Bank Assets Management Company (BAMC) (to whom certain assets of Nova Ljubljanska Banka d.d. ([6]) (hereinafter 'NLB') were transferred), 4,7 % by ABANKA d.d. and 2,1 % by PDP.

(11) Adria's financial situation has constantly deteriorated from 2008 onwards, having reduced sales, negative EBT (earnings before tax) and negative own equity. For additional details on the financial situation of Adria between 2007 and 2011, see Section 7.1 below.

(12) On 1 August 2012, Slovenia together with PDP, NLB, Abanka Vipa d.d., Hypo Alpe-Adria Bank d.d., and Unicredit Bank of Slovenia d.d. began the privatisation process of Adria by seeking bids for 74,87 % of the company's shares. On that day, the Capital Assets Management Agency of the Republic of Slovenia (AUKN) published a public invitation to investors for submission of non-binding expression of interest in the process of sale of a majority block of shares of the company ([7]). It however appears that this process was cancelled and that the privatisation process of Adria will start afresh at a later point in time.

4. DESCRIPTION OF THE MEASURES AND THE RESTRUCTURING PLAN

4.1. Measure 1: the 2007 capital increase

(13) As of 31 December 2006, the capital of Adria had the following shareholding structure:

Table 1

Adria's shareholder structure before the 2007 capital increase

Name	%
KAD	55,0
SOD	20,0

([3]) Cf. footnote 1.
([4]) Annual report of Aerodrom Ljubljana d.d. for 2013, available at http://www.lju-airport.si/pripone/1966/Letno%20porocilo%20AL%202013%20ang.pdf
([5]) *Ibid.*
([6]) See http://www.dutb.eu/en/about-us As of 31 December 2010, Slovenia owned (directly or indirectly) 48,8 % of NLB. However, after a rescue recapitalisation of NLB, approved by Commission Decision of 7 March 2011 (SA.32261), Slovenia owned (directly or indirectly) a stake of NLB of approximately 55,7 %.
([7]) See http://www.sdh.si/sl-si/Novica/294

Name	%
NFD 1 delniški investicijski sklad d.d. (1)	9,7
NFD Holding d.d. (2)	7,2
Infond d.o.o. (3)	4,9
Others (incl. individual shareholders)	3,2

(1) NFD 1 delniški investicijski sklad d.d. is a 48,5 % subsidiary of NFD Holding (see footnote below). The rest of the owners appear to be mainly private companies — see the annual accounts (in Slovenian only) at http://www.nfd.si/dokumenti?lang=en

(2) NFD Holding d.d. is a publicly traded joint stock company whose main activity is managing financial investments. It appears to be privately owned — see the annual accounts (in Slovenian only) at http://www.nfdholding.si/dokumenti.php

(3) Infond d.o.o. is a Slovenian investment fund management company. It is 72 % owned by Nova KBM, a bank that at the time was 42,3 % owned by Slovenia, 4,8 % by KAD and 4,8 % by SOD. See http://www.nkbm.si/financial-reports-and-documents

(14) On 19 February 2007, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 10,9 million. The State-owned fund KAD subscribed approximately 99,6 % of the increase, while the rest was subscribed by individual shareholders. All shares were subscribed by 5 April 2007.

(15) The price paid was EUR 27 per share. A valuation report dated […] (*) set the shares' value at EUR […] per share in September 2006.

(16) Subsequent to the 2007 capital increase, the capital ownership of Adria was as follows:

Table 2

Adria's shareholder structure after the 2007 capital increase

Name	%
KAD	77,3
SOD (1)	10,0
NLB (2)	8,5
Infond d.o.o.	2,4
Others (incl. individual shareholders)	1,8

(1) Slovenian State-owned fund

(2) On the basis of the information available, it appears that at some point in time before the 2007 capital increase, NLB acquired the shareholding of NFD 1 delniški investicijski sklad d.d. and NFD Holding d.d

4.2. **Measure 2: the 2009 capital increase**

(17) On 13 January 2009, the Management Board of Adria decided to increase the capital of Adria by issuing new shares. As a result, the capital of Adria was increased by EUR 2,36 million. KAD subscribed approximately 99,5 % of the increase, while the rest was subscribed by individual shareholders. All shares were subscribed by 20 July 2009.

(18) The price paid was EUR 22 per share. A valuation report dated […] set the value of the shares at EUR […] per share in September 2008.

(*) Business secret.

(19) Subsequent to the 2009 capital increase, the capital ownership of Adria was as follows:

Table 3

Adria's shareholder structure after the 2009 capital increase

Name	%
KAD	78,6
SOD	8,8
NLB	7,5
Infond d.o.o.	2,2
Others (incl. individual shareholders)	2,9

4.3. **Measure 3: the 2010 capital increase**

(20) On 2 September 2010, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 2,5 million. The holding company PDP (the successor of KAD and SOD), subscribed approximately 80 % of the increase. Two private tourist agencies: Kompas d.d. and Palma d.o.o. subscribed the remaining 20 % (10 % each). All shares were subscribed by 1 October 2010.

(21) The price paid was EUR 12 per share. A valuation report dated […] set the shares' value at EUR […] per share in June 2009.

(22) Subsequent to the 2010 capital increase, the capital ownership of Adria was as follows:

Table 4

Adria's shareholding structure after the 2010 capital increase

Name	%
PDP	86,0
NLB	6,1
Kompas d.d.	1,9
Palma d.o.o.	1,9
Infond d.o.o.	1,7
Others (incl. individual shareholders)	2,4

4.4. **Measure 4: the 2011 capital increase**

(23) On 21 September 2011, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 69,7 million. The Republic of Slovenia subscribed EUR 49,5 million in cash and PDP subscribed EUR 0,5 million, also in cash. The rest of the capital increase (i.e. EUR 19,7 million) took the form of debt-to-equity swap by a number of banks: (a) EUR 13,83 million by NLB; (b) EUR 3,35 million by Abanka Vipa d.d.; (c) EUR 1,24 million by Unicredit Bank of Slovenia d.d.; and (d) EUR 1,28 million by Hypo Alpe-Adria Bank d.d. The capital increase was carried out on 30 September 2011.

(24) The agreed price was EUR 1 per share, the minimum allowed by Slovenian law. There was no valuation report.

(25) Subsequent to the 2011 capital increase, the capital ownership of Adria was as follows:

Table 5

Adria's shareholder structure after the 2011 capital increase

Name	%
Republic of Slovenia	69,9
NLB	19,6
Hypo Alpe-Adria Bank d.d.	1,8
Abanka Vipa d.d.	4,7
Unicredit Bank of Slovenia d.d.	1,8
PDP	2,1
Others (incl. individual shareholders)	0,1

The restructuring plan of September 2011

(26) According to the Slovenian authorities, the State, PDP and the banks decided to participate in the 2011 capital increase on the basis of a plan entitled 'Financial and Business Restructuring Programme' ('the restructuring plan') dated September 2011. That plan included necessary measures for the financial and business restructuring of Adria, which would allow the latter to return to viability. The plan was clearly written for the purpose of a restructuring aid notification as it refers to concepts such as 'own contribution' and 'distortion of competition' which are not normally found in a business plan.

(27) According to the restructuring plan as originally submitted, Adria would achieve viability in 2013 (basic and optimistic scenarios) or 2014 (pessimistic scenario). Also, according to the restructuring plan as originally submitted, Adria's difficulties were caused by: (a) […].

(28) The restructuring plan as originally submitted established a number of measures aimed at restructuring Adria and returning it to viability: (a) […].

(29) Also according to the restructuring plan as originally submitted, the 2011 capital increase of EUR 69,7 million would cover Adria's negative equity of EUR […], the repayment of obligations of EUR […] (EUR […] of overdue obligations to suppliers and EUR […] for early repayment of bank loans), and the financing of restructuring measures of EUR […].

(30) On the other hand, the total costs of the restructuring would amount to EUR […], which were partly funded by the EUR 50 million cash injection from the Slovenian State and PDP. The contribution of Adria to its restructuring costs ('own contribution') would amount to EUR […] from a debt-to-equity conversion of bank loans (EUR 19,7 million), […]. Finally, the restructuring plan as originally submitted considered the sale of AAT and the cancellation of scheduled routes as compensatory measures.

(31) In view of the doubts expressed by the Commission in the opening decision, Slovenia submitted a number of updates to the restructuring plan. In particular, the restructuring plan currently foresees duration of the restructuring until 2015 and includes several additional restructuring measures in order to ensure a more sustainable viability. The additional restructuring measures, together with their financial effect for 2014-2015, are the following: (a) […].

4.5. **Measure 5: the acquisition of Adria Airways Tehnika d.d. in 2010-2011**

(32) AAT, a 100 % subsidiary of Adria, was founded in 2010. Until then it had been Adria's in-house maintenance unit known as SVL. AAT is active in the aircraft maintenance sector for Adria and other clients.

(33) In the period November 2010 to March 2011, PDP and Aerodrom Ljubljana (the majority State-owned manager of Ljubljana's airport) respectively acquired 52,3 % and 47,7 % of AAT from Adria in two stages. At a first stage, PDP purchased a stake of 18,24 % in AAT in the form of 2 676 346 preference shares with no voting rights at EUR 1 per share. At the same time, Aerodrom Ljubljana acquired a 31,16 % stake in AAT (4 570 881 shares) through conversion of debt into preference shares with no voting rights for an amount of approximately EUR 4,6 million. At a second stage in early 2011, Adria sold its remaining shares in AAT as follows: PDP acquired 5 000 000 ordinary shares at EUR 1 per share and increased its stake in the company to 52,33 %, while Aerodrom Ljubljana increased its stake in AAT to 47,67 % by converting EUR 2,2 million of receivables from Adria.

(34) The total price paid was thus EUR 14,7 million, i.e. EUR 1 per share. A valuation report dated April 2010 had set the value of AAT as Adria's maintenance unit at a range between EUR 14,4 million and EUR 14,9 million in December 2009.

5. **THE OPENING DECISION**

(35) On 20 November 2012, the Commission decided to open the formal investigation procedure. In its opening decision, the Commission's preliminary view was that Adria could be considered a firm in difficulty at the time the measures identified were provided or at the very least since 2008. The Commission also expressed doubts as regards the five measures under assessment and came to the preliminary conclusion that all of them entailed State aid.

(36) As regards measures 1 and 2, the Commission was in its opening decision of the view that the Slovenian State had had a clear and direct influence on KAD and preliminarily concluded that the participation of KAD to the 2007 and 2009 capital increases consisted of State resources and were imputable to Slovenia. Although the price of the shares actually paid by KAD was below the value determined by two valuation reports, the Commission expressed doubts on the reports having regard to the significant time gap between the moment when the shares were valued and the moment when the capital injections took place. Bearing in mind that KAD was majority shareholder of Adria at the time, the Commission considered that the 2007 and 2009 capital increases were aimed at financing an existing investment for KAD in a company which could be considered to be in difficulty.

(37) When assessing measure 3, the Commission noted that PDP is the successor of KAD and SOD, whose actions the Commission preliminarily considered were imputable to the State. In addition, the Commission highlighted as elements of imputability to the State the fact that the Slovenian State indirectly owns 100 % of PDP (through KAD, SOD and DSU (100 % State-owned company for management of assets)) and referred to some indirect evidence of imputability in the sense of the *Stardust Marine* case-law ([8]). Similarly to measures 1 and 2, although the price of the shares actually paid by PDP was below the value determined by a valuation report, the Commission expressed doubts on the report having regard to the significant time gap of 15 months between the moment when the shares were valued and the moment when the capital injection took place. The Commission also preliminarily considered that the participation to the 2010 capital injection of two private tourist agencies (Kompas d.d. and Palma d.o.o.) alongside PDP was per se not sufficient to remove the Commission's doubts about a possible advantage for Adria ([9]).

(38) In relation to measure 4, the Commission noted that the investment by Slovenia clearly entailed State resources and reiterated its preliminary conclusion that PDP's actions were imputable to the State. The Commission also expressed doubts about NLB's participation to measure 4, which could be seen as imputable to the State in view of the fact that: (a) NLB was at the time majority-owned by the State; (b) the State had majority of votes in the Management Board and Supervisory Board of the bank; and (c) the behaviour of a State-controlled bank could be influenced by the public authorities.

(39) When assessing whether measure 4 entailed an undue selective advantage to Adria, the Commission noted in the opening decision that the fact that the banks agreed to the debt-to-equity conversion only in the case that the State would inject cash into Adria, and in particular the different nature of the contributions of the State and PDP when compared to that of the banks (cash v conversion of debt), was sufficient to create reasonable doubts about whether the 2011 capital increase was *pari passu*. The Commission also noted that, contrary to the previous capital increases, the 2011 capital increase took place without a valuation report.

([8]) Case C-482/99 *France* v *Commission (Stardust Marine)* [2002] ECR I-4397.
([9]) See Cases T-358/94 *Compagnie nationale Air France* v *Commission* [1996] ECR II-2109, paragraphs 148-149 and T-296/97 *Alitalia — Linee aeree italiane SpA* v *Commission* [2000] ECR II-3871, paragraph 81.

(40) As regards the claim of the Slovenian authorities that they had decided to participate in measure 4 on the basis of the restructuring plan dated September 2011, the Commission observed that the restructuring plan was in principle not sufficient to satisfy the private investor criteria since some of the restructuring plan's predictions appeared to be based on uncertain or unclear assumptions. The Commission moreover highlighted that a private investor would have considered the risk that the previous capital increases constituted illegal State aid and would have assessed the impact of the risk of a possible recovery order by the Commission on the profitability of the investment. Finally, the Commission observed that the banks may have decided to participate in the capital injection because of the interest showed by Slovenia in Adria much before the date when the 2011 capital increase was decided.

(41) In relation to measure 5, the Commission reiterated its preliminary view that the actions of PDP were imputable to the State and that State resources were involved. Regarding Aerodrom Ljubljana, the Commission came to the same preliminary conclusion in view of the fact that it was majority State-owned already at the time of the acquisition of AAT. The Commission also considered it unlikely that the public authorities were not involved in important decisions taken by Aerodrom Ljubljana, the manager of Ljubljana's airport, due to the latter's strategic importance for the country as the main gate for international flights.

(42) Given that the first stage of the acquisition of shares of AAT took place immediately after the 2010 capital increase, the Commission was of the view that both measures should not be assessed in isolation but as part of a larger operation aimed at supporting Adria. When examining the report fixing the value of ATT's shares, the Commission noted that it valued AAT as being part of Adria's maintenance unit (it was at the time SVL) and that it took into account the synergies derived from this when assessing the value of AAT. However, the Commission considered that the report should have assessed the value of SLV/AAT as a stand-alone entity discarding intra-group synergies, since AAT was spun-off from Adria in 2010 and sold as a separate entity. In addition, the Commission also expressed concerns about the considerable gap between the time of the valuation and the time of the sale of the shares of AAT.

(43) The Commission also expressed doubts on the **compatibility with the internal market** of the five measures under assessment, in particular since the Slovenian authorities did not provide any possible grounds for compatibility.

(44) In view of the nature of the measures at issue and of the fact that Adria could be considered a firm in difficulty at the time of the granting of the measures, the Commission noted that the compatibility of the measures could only be assessed under Article 107(3)(c) TFEU, and in particular in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([10]) ('the R&R Guidelines'). The Commission first noted that the conditions for rescue aid laid down in Section 3.1 of the R&R Guidelines did not seem to be met. In relation to restructuring aid as defined in Section 3.2 of the R&R Guidelines, the Commission highlighted that the measures identified had been granted before notification to the Commission and in the absence of a credible restructuring plan satisfying the conditions laid down in the R&R Guidelines, a circumstance that in itself would be sufficient to exclude compatibility of the measures with the internal market ([11]).

(45) The Commission also expressed doubts on the restructuring plan, since it appeared not to be sufficiently solid to restore the long-term viability of Adria, as some of its predictions are based on non-quantified, uncertain or unclear assumptions. The Commission also considered doubtful whether the compensatory measures foreseen in the restructuring plan could be considered appropriate and/or sufficient, given that they appeared to be necessary to restore the viability of Adria. Regarding the sale of AAT, it took place several months before the restructuring plan was approved, at a time — end of 2010, beginning of 2011 — when Adria apparently was in dire need of financing. Also, the cancellation of scheduled routes did not appear to be acceptable as compensatory measures given that most of these routes (27 out of 31) were reported in the restructuring plan to be loss-making and their termination would in any case be required to ensure viability of the company. The Commission also had doubts on whether the proposed own contribution from Adria of EUR […] could be fully accepted, in particular, since it is unclear whether the amounts from the sale of AAT and the debt-to-equity conversion of bank loans could be counted as own contribution. Given that Adria seemed to be in difficulty at the time the measures were granted and that firms in difficulty can only receive rescue and/or restructuring aid, the Commission also raised doubts on whether the 'one time, last time' principle would be respected, notably as regards the 2011 capital increase.

([10]) OJ C 244, 1.10.2004, p. 2.

([11]) See in this sense the judgment of the EFTA Court in joined cases E-10/11 and E-11/11 *Hurtigruten ASA, Norway* v *EFTA Surveillance Authority*, not yet published, paragraphs 228 and 234-240.

6. COMMENTS ON THE OPENING DECISION

6.1. Comments from Slovenia

(46) In its comments on the Commission's opening decision, Slovenia maintains that measures 1, 2 and 3 did not entail State aid because the decisions of KAD and PDP cannot be deemed imputable to the State. In particular, Slovenia noted that a 100 % shareholding of the State is not sufficient to conclude that the measures are imputable to the State. Slovenia moreover notes that the valuation reports determining the value of the shares were appropriate and that on that basis the market economy investor principle ('MEIP') was met, thereby excluding an advantage to Adria. Concerning in particular measure 3, Slovenia argues that the *pari passu* subscription of 20 % of the shares by two private tourist agencies alongside PDP was significant and showed that the market did not doubt about Adria's viability, which would exclude the presence of State aid.

(47) In relation to measure 5, Slovenia reiterates that the actions of PDP cannot be deemed imputable to the State. As regards Aerodrom Ljubljana's actions, Slovenia considers that the State influence on its decision to purchase AAT cannot be inferred from the fact that certain members of the Supervisory Board were proposed by the State, KAD and SOD. Slovenia furthermore considers that the valuation report dated April 2010,which had set the value of AAT as Adria's maintenance unit at a range between EUR 14,4 million and EUR 14,9 million, cannot be deemed outdated and that there is no indication that the valuation report took into consideration the synergies with Adria. In addition, Slovenia claims that the minutes of the boards of both PDP and Aerodrom Ljubljana demonstrate that the decision to acquire ATT was taken on the basis of economically-rational considerations. For these reasons, the presence of State aid in measure 5 would be excluded.

(48) Slovenia also contests the qualification of Adria as a firm in difficulty and considers that Adria would be in difficulty only as of January 2011, i.e. at the time of measure 4.

(49) Concerning measure 4, Slovenia excludes the presence of aid arguing that the debt-to-equity swap of NLB is not imputable to the State. Moreover, Slovenia is of the opinion that the outstanding loans converted into equity were fully collateralised with pledges on aircraft and buildings and that, by converting them into equity, the banks assumed new business risk. In this sense, the debt-to-equity conversion would be equivalent to a cash injection. Slovenia also notes that the banks and the State influenced each other in order to take the investment decision, which — in Slovenia's view — was based on a reliable restructuring plan, and concludes that the investment decisions were concomitant, thereby excluding any undue advantage to Adria.

(50) Since Slovenia considers that measures 1, 2, 3 and 5 did not entail State resources, it did not advance any compatibility grounds for these measures. However, it advanced compatibility grounds for measure 4 in case the Commission would conclude it amounts to State aid. Since, according to Slovenia, Adria would be in difficulty only as of January 2011 (see recital 48), measure 4 would constitute compatible restructuring aid under Section 3.2 of the R&R Guidelines on the basis of the submitted restructuring plan.

(51) As regards **return to viability**, Slovenia considers that the restructuring plan ensures the long-term viability of Adria and highlights that, in accordance with the R&R Guidelines, the restructuring plan includes a market survey and an analysis of the causes that led to the company's difficulties, and that it foresees the abandonment of activities which would remain structurally loss-making after restructuring. As indicated in recital 31, Slovenia submitted a number of updates to the restructuring plan, which currently foresees duration of the restructuring until 2015 and includes several additional restructuring measures in order to ensure a more sustainable viability. Slovenia also highlights that the updated restructuring plan ensures the long-term viability of the company by end of 2015 even in the worst-case scenario with a return on equity (ROE) of […] % in 2014 and of […] % in 2015, higher than the levels accepted by the Commission in the Air Malta decision ([12]).

(52) Slovenia is of the view that the capacity reduction (in the form of cancellation of scheduled services) of […] % and […] % in winter and summer seasons, the release of slots at certain airports, including coordinated (congested) airports, and the sale of AAT are appropriate and proportionate **compensatory measures**. Slovenia

([12]) Commission Decision 2012/661/EU of 27 June.2012 on the State aid No SA.33015 (2012/C) which Malta is planning to implement for Air Malta plc. (OJ L 301, 30.10.2012, p. 29).

also claims that the routes cancelled were actually profitable on the basis of the so-called 'gross margin' (positive C1 contribution) which the Commission had accepted in the Air Malta and Czech Airlines ([13]) cases.

(53) In relation to aid limited to the minimum (**own contribution**), in line with what has been explained above, Slovenia claims that the sale of AAT is free of aid and therefore its proceeds, amounting to EUR 14,7 million, should be accepted as own contribution. Slovenia also considers that the debt-to-equity swaps of the banks should count as own contribution for their entire amount, i.e. EUR 19,7 million. Slovenia has also submitted the values of the aircraft pledged for the loans in question, together with the relevant AVAC report ([14]) demonstrating the values of those aircraft. Adding to this the sale of a number of assets […] the amount of own contribution would exceed [50-54] % on the basis of the updated restructuring plan.

(54) Finally, as regards the **'one time, last time' principle**, Slovenia is of the view that it was respected since measures 1, 2, 3 and 5 — which predated measure 4 — did not entail State aid to Adria.

6.2. **Comments from interested parties**

(55) During the formal investigation procedure, the Commission only received comments from Ryanair, who supports the Commission's preliminary findings that the measures under assessment entailed aid and were incompatible with the internal market.

(56) Ryanair however argued that the Commission's assessment of the MEIP was not complete in the opening decision, since the Commission should have considered whether a private investor would have opted for liquidating Adria upfront instead of providing it with additional capital. ([15]) Ryanair argues that the Commission should have assessed in its opening decisions whether the liquidation of Adria was more profitable for the State than the provision of additional funds. Although Ryanair considered that it had no sufficient information to comment on the restructuring plan, it noted its doubts that Adria would return to profitability.

(57) Ryanair also argued that any aid to Adria would harm Ryanair's market position, since it frustrates Ryanair's efforts at developing its market and inflicts loss of revenue on Ryanair.

6.3. **Observations from Slovenia on the comments of interested third parties**

(58) Slovenia addressed in detail the arguments raised by Ryanair in its observations. In particular, Slovenia noted that not only the State had participated to the capital injections in favour of Adria, but also private investors as well as entities whose actions, according to Slovenia, cannot be imputed to the State. In addition, Slovenia considers that Ryanair misinterpreted the case-law when it claims that the State should have favoured bankruptcy over Adria's restructuring and long-term viability. According to Slovenia, the test advanced by Ryanair was flawed since it would only be applicable to Adria's creditors but not investors: since Slovenia had no credits against the company, it could not ask for its liquidation.

(59) Slovenia noted that the Commission had addressed the assumption of Adria's restructuring plan and highlighted that Ryanair's doubts whether Adria could return to viability are unfounded. Finally, Slovenia argued that the alleged harm to Ryanair's market position was not substantiated.

7. **ASSESSMENT OF THE MEASURES**

(60) This decision addresses as a preliminary point the issue of whether Adria is a firm in difficulty in the sense of the R&R Guidelines (Section 7.1 below). It then analyses whether the measures under scrutiny entail State aid to Adria in the meaning of Article 107(1) TFEU (Section 7.2 below) and then whether such aid, were it to be present, is lawful (Section 7.4 below) and compatible with the internal market (Section 7.5 below).

([13]) Commission Decision 2013/151/EU 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) (OJ L 92, 3.4.2013, p. 16).

([14]) The AVAC report is the report issued periodically by the Aircraft Value Analysis Company, which sets the values of aircraft of all brands and models.

([15]) Ryanair referred to Case C-405/11 P, *Buczek Automotive*, not yet published, paragraphs 55-57.

7.1. **Difficulties of Adria**

(61) Adria's financial situation has constantly deteriorated from 2008 onwards, having reduced sales, negative EBT (earnings before tax) and negative own equity. Adria's key financial parameters between 2007 and 2011 were as follows, according to the information provided by the Slovenian authorities:

Table 6

Adria's key financial data 2007 — June 2011 (EUR million)

	2007	2008	2009	2010	June 2011
Turnover	179,2	205,4	161,4	148,7	71,1
Net result	0,4	– 3,2	– 14,0	– 63,1	– 2,2
EBT+DA	0,4 (*)	10,9	1,6	– 50,9	1,8
Registered capital	6,8	6,8	7,7	9,4	9,4
Own equity	41,8	32,5	29,3	– 35,4	– 35,9
Debt/Equity (ratio)	2,8	3,7	4,0	– 3,9	– 3,6
Cash flow from operating activities	16,9	18,5	6,1	1,7	– 21,6 (**)

(*) EBT
(**) Data from December 2011

(62) Adria closed the financial year 2011 with losses of EUR 12 million ([16]) while in 2012 the losses reached EUR 10,8 million ([17]). It also appears that in 2013 Adria narrowed the losses to EUR 3,1 million ([18]).

(63) Point 10(a) of the R&R Guidelines stipulates that a company is in difficulty when 'more than half of registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months'. This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term (as stipulated in point 9 of the R&R Guidelines).

(64) As indicated in the opening decision, between 2007 and June 2011, the registered capital was not lost but it actually increased. However, the Commission notes that the company's equity turned negative in 2010 and 2011. At the same time, the company did not adopt appropriate measures in order to tackle the decrease of its own equity. In earlier cases ([19]), the Commission concluded that, where a company has negative equity, there is an *a priori* assumption that the criteria of point 10(a) of the R&R Guidelines are met, which would be the case for Adria since at least 2010. The General Court also concluded in a recent judgment ([20]) that a company with negative equity is a company in difficulty.

(65) In addition, it also appears that by the end of 2010 the difficulties of Adria were at its peak. The press at that time mentioned the possibility of Adria's going into receivership or even filing for bankruptcy ([21]). This could be seen as a sign that, at least at that time, Adria fulfilled the criteria for being the subject of collective insolvency proceedings under Slovenian law in the sense of point 10(c) of the R&R Guidelines.

([16]) See Adria's financial report for 2011, available at http://www.adria.si/assets/Uploads/Annual-Report-2011-part-two-Financial-Report.pdf
([17]) See Adria's financial report for 2012, available at https://www.adria.si/assets/Letna-porocila/SLO/AA-Letno-porocilo-2012-V1.pdf
([18]) See for instance http://atwonline.com/finance-amp-data/adria-airways-narrows-net-loss-2013
([19]) Commission Decision in case C 38/2007 *Arbel Fauvet Rail* (OJ L 238, 5.9.2008, p. 27).
([20]) Joined Cases T-102/07 *Freistaat Sachsen* v *Commission* and T-120/07 *MB Immobilien and MB System* v *Commission*, [2010] ECR II-585, paragraphs 95 to 106.
([21]) See http://www.rtvslo.si/gospodarstvo/adria-airways-v-prostovoljno-poravnavo/246290 (in Slovenian) or http://www.bloomberg.com/news/2010-12-15/slovenia-s-adria-airways-may-file-for-bankruptcy-tvs-reports.html (in English).

(66) For the reasons above, in line with the opening decision, the Commission concludes that Adria was a firm in difficulty in the sense of point 10(a) and/or point 10(c) of the R&R Guidelines in 2010 and 2011, i.e. at the time when measures 3, 4 and 5 were granted.

(67) In addition, Table 6 in recital 61 suggests that in 2010 and 2011 Adria could also be deemed to be in difficulty in the sense of point 11 of the R&R Guidelines, which states that a firm may be considered to be in difficulty 'where the usual signs […] are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value'.

(68) However, the Commission is of the view that Adria did not show the usual signs of firms in difficulty as per point 11 of the R&R Guidelines between 2007 and 2009. With regard to 2008, Adria incurred losses of EUR 3,2 million for the first time in the period under consideration. As Slovenia correctly points out, in 2008 Adria's revenues and cash flow increased when compared to the previous year (from EUR 179,2 million to EUR 205,4 million and from EUR 16,9 million to EUR 18,5 million, respectively). In addition, its registered capital remained stable at EUR 6,8 million.

(69) The Commission also observes that in 2008 and 2009, Adria had net EBT of EUR 3,2 million and EUR 14 million. In the same years, when excluding depreciation, the company's economic result was positive, reaching EBT+DA of EUR 10,9 million and EUR 1,6 million, respectively (see Table 6 in recital 61). From 2010 onwards, Adria's EBT+DA turned negative. Since measure 2 was decided in January 2009 and the shares were fully subscribed in July 2009, the Commission cannot conclude with certainty that at the time there was a clearly identifiable trend of negative results allowing it to conclude that Adria was a firm in difficulty in the sense of the R&R Guidelines.

(70) Accordingly, the Commission is of the view that Adria would not qualify as a firm in difficulty in 2007-2009, i.e. when measures 1 and 2 were provided.

7.2. **Existence of State aid**

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

(72) In order to conclude whether State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for each of the five measures under assessment.

7.2.1. Measures 1 and 2: the 2007 and 2009 capital increases

(73) The Commission will first analyse whether measures 1 and 2 conferred a selective undue advantage to Adria.

(74) In its opening decision, the Commission noted in this respect that the price of the shares paid by KAD was below the value determined by two valuation reports. KAD acquired the new shares of Adria in February 2007 at a price of EUR 27 per share, below the value determined by a valuation report of EUR […] per share as of […] (see recital 15). In January 2009, KAD acquired the shares at a price of EUR 22 per share, below the value determined by a valuation report of EUR […] per share as of […] (see recital 18). However, the Commission expressed doubts on the reliability of these reports, inter alia, because there was a significant time gap between the moment at which the capital increases took place (February 2007 and January 2009, respectively) and the time at which the shares of the company were valued ([…] and […], respectively).

(75) The Commission has assessed the data and evidence submitted by Slovenia about these reports after the opening of the formal investigation procedure. As regards measure 1, Slovenia has explained that the data on which the report was based dates from 30 September 2006 and was the latest available data at the time the valuer prepared the report. As regards measure 2, it results that the valuation report was commissioned at the same time as the general assembly of Adria had decided to proceed to a capital increase. In addition, the Commission has no reason to believe that the valuer (P&S Capital) was not fully independent.

(76) In addition, although it is true that there was a time gap of […] months between the moment at which the shares of the company were valued and the moment at which the capital increases took place, the Commission has found no evidence proving that this gap actually had an impact on the estimated value of the shares of Adria.

(77) The Commission observes that the valuation method used in the reports (net present value of expected free cash flows ([22])) is widely accepted for cases of acquisitions. Moreover, it results from a detailed analysis of the reports that the formulas used therein were adequate for the purposes of the valuation and had been adequately applied, and that the assumptions and the projections on turnover growth and profitability seemed realistic. In particular, in the valuation report for the capital injection of 2007 (measure 1), the projected average rates of revenue growth and profitability are within the range of the observed past ones. In the valuation report for the capital injection of 2009 (measure 2), the projected rates of revenue growth and profitability are lower than the observed past ones, because of: (a) the high economic growth in 2008 was mainly the result of the Slovenian EU Presidency; (b) the slow world economic growth; and (c) the strained situation of the financial markets. The rest of the assumptions used in the reports also seem realistic. Moreover, the Commission notes that KAD was majority shareholder of Adria already before the capital increases ([23]) and that the capital increases aimed at financing an existing (and profitable) investment for KAD.

(78) On the basis of the above, the Commission observes that 2007 and 2009 capital increases can be considered market-conform and did not entail an undue advantage to Adria.

(79) Therefore, the Commission concludes that measures 1 and 2 constituted investments that a market economy investor in comparable circumstances ([24]) would have undertaken and therefore excludes the presence of State aid, without it being necessary to assess further whether the rest of the cumulative conditions of Article 107(1) TFEU would be met.

7.2.2. Measure 3: the 2010 capital increase

(80) As noted in recital 73, one of the necessary conditions for State aid to be present is that the measure confers an undue selective advantage to the beneficiary. In what follows the Commission will assess whether this condition is met in relation to measure 3.

(81) In its opening decision, the Commission noted that although the price of EUR 12 per share that PDP and the private tourist agencies paid for the shares of Adria was below the price of EUR […] per share determined by a valuation report. As in measures 1 and 2, Commission expressed doubts on the reliability of this report, mainly because there was significant time gap of […] months between the moment of the capital increase (September 2010) and the moment for which the report valued the shares ([…]).

(82) The information submitted by the Slovenian authorities, has to some extent alleviated the doubts of the Commission in this respect. However, irrespective of this, the Commission recalls that on the basis of the same information and valuation, two private tourist agencies (Kompas d.d. and Palma d.o.o.) participated in the 2010 capital increase in a proportion of 20 %, while PDP injected the remaining 80 % of the capital. The private tourist agencies and PDP participated under the same conditions and subscribed the shares on the same date. Moreover, the private participation and the contribution of PDP were both carried out by injecting cash. In its opening decision, the Commission highlighted that a private participation of 20 % could in principle be seen as a sign that the investment in question was supported by the market, although the operation was to be seen in the broader context of the situation of Adria at the time and the fact that measure 3 was the third capital increase within a time spam of approximately 3,5 years.

(83) The Commission first observes that Slovenia has provided evidence showing that Kompas d.d. and Palma d.o.o. are fully private companies in which the State did not exercise any type of control or influence. In addition, as indicated in recital 79, measures 1 and 2 did not amount to State aid. On this basis, it seems that investment decisions which a private investor would have taken cannot be seen as having an influence on the decisions of the private tourist agencies to invest into Adria. The Commission also notes that the private tourist agencies subscribed the shares of Adria on the same date as PDP, they paid the same price, their investment was made under the same terms and conditions, and the increase from PDP and the private tourist agencies was done in cash.

([22]) The expected free cash flow is the cash left after all expenses of the company are paid, i.e. cash left at the disposal of the company's shareholders.
([23]) Before the 2007 and 2009 capital injections, KAD respectively owned 55 % and 77,3 % of Adria (see Tables 1 and 2).
([24]) Case T-296/97 *Alitalia — Linee aeree italiane SpA* v *Commission* [2000] ECR II-3871, paragraph 81.

(84) In any event, even if the Commission were to conclude that PDP's participation would entail State resources and be imputable to the State (see in this sense recitals 89 to 91), a private participation of 20 % cannot be considered negligible by comparison to the public intervention in the sense of settled case-law ([25]). Moreover, bearing in mind the above, the Commission cannot conclude that the decision of the private tourist agencies to invest into Adria was actually influenced by the conduct of PDP. The fact that Adria was considered as being in difficulty in 2010 (see Section 7.1) does not alter this conclusion.

(85) In addition, from the evidence submitted by Slovenia it does not appear that the private tourist agencies had motivations to invest in Adria other than profit-seeking. In this respect, the Commission points out to a report provided by Slovenia on the strategic orientations of Adria for the period 2009-2014 — which apparently was at the disposal of the investors at the time of taking their investment decision — according to which Adria was expected to make profits between 2010 and 2104, on the basis a capital injection of approximately EUR 2,5 million and the implementation by Adria of certain measures, including higher average income on passenger and cost reductions. This report could be seen as an additional indication that the private tourist agencies were indeed convinced of the profitability of their investment.

(86) Therefore, the Commission is of the view that the decision of the private tourist agencies to invest in Adria was made *pari passu* with that of PDP and that their investment was significant. In addition, the Commission has no reasons to doubt that the private tourist agencies decided to invest in Adria for profit-seeking motives. On this basis, the Commission concludes that measure 3 did not entail an undue advantage to Adria and therefore excludes the presence of State aid, without it being necessary to assess further whether the rest of the cumulative conditions of Article 107(1) TFEU would be met.

7.2.3. Measure 4: the 2011 capital increase

(87) On 30 September 2011, Slovenia subscribed in cash 70 % (EUR 49,5 million) of the 2011 capital increase of Adria. Slovenia invested the money through the Capital Assets Management Agency of Slovenia (AUKN). In addition, PDP subscribed in cash an additional 1 % (EUR 0,5 million). The rest of the increase (i.e. EUR 19,7 million) took the form of debt-to-equity swap by several banks: 20 % by NLB, 5 % by Abanka Vipa d.d., 2 % by Unicredit Bank of Slovenia d.d. and 2 % by Hypo Alpe-Adria Bank d.d.

(88) The AUKN was established by the Law on Corporate Governance of Capital Investments of the Republic of Slovenia ([26]), its Management Board was appointed by the National Assembly, it was a direct user of the budget of the Republic of Slovenia and it was staffed with public employees. ([27]) It is thus clear that AUKN's actions were imputable to the State and that they entailed State resources, which moreover is not contested by Slovenia. As an additional element, the Commission highlights a press release of 23 June 2011 of the Office of the Prime Minister of Slovenia: 'At today's session, the Government […] decided that [AUKN] would contribute EUR 49,5 million to the equity of Adria Airways, d. d., and the joint stock company [PDP] would pay EUR 500 000 […]. With its active engagement in this process, the Republic of Slovenia would also in the future like to meet its interests in the field of scheduled air services provided by a carrier with the seat in Slovenia' ([28]).

(89) In relation to PDP, the Commission considers that there are a number of indicators in the sense of the *Stardust Marine* case-law ([29]) which allows it to conclude that PDP was set up to carry out policies decided by the Slovenian public authorities and that its decision to invest in measure 4 is imputable to the State and entails State resources. In the first place, the Commission notes that the Slovenian State indirectly owns 100 % of PDP (through KAD, SOD and DSU). In this sense, the Commission reminds its decision in the *ELAN* case ([30]) in which it concluded that the actions of KAD and DSU, two of the owners of PDP, were imputable to the State. In addition, the State has the totality of votes in the shareholders' committee, which in turn appoints the Board of Directors of the company. Following Article 19 of the Articles of Association of PDP, the Board of Directors must authorise the purchase of securities when the value of the transaction exceeds EUR 500 000.

([25]) Case T-358/94 *Air France* v *Commission* [1996] ECR II-2109, paragraphs 148-149.
([26]) It appears that AUKN no longer exists and that it has been replaced by SOD.
([27]) See AUKN's Annual Report for 2011, available at http://www.so-druzba.si/doc/ENG-News/Archive/Annual_report_2011.pdf
([28]) Available at http://www.nekdanji-pv.gov.si/2008-2012/nc/en/press_centre/news/article/252/5487/
([29]) See footnote 8.
([30]) Commission Decision 2014/273/EU of 19 September 2012 on the measures in favour of ELAN d.o.o. SA.26379 (C 13/10) (ex NN 17/10) implemented by Slovenia (OJ L 144, 15.5.2014, p. 1).

(90) The Commission also reminds, in line with its opening decision, the statement of former Slovenian Minister of Finance at the end of his term on 28 October 2011 (i.e. after measure 4 had taken place): 'With the establishment of the special restructuring company (PDP) we provided Slovenian firms with new sources of finance, knowhow and expertise based on cases of good practice for the restructuring of firms. Adria Airways and Unior are definitely the most resounding successes' ([31]). This statement can be considered indirect evidence of imputability to the State in the sense of the *Stardust Marine* case-law. The arguments provided by Slovenia that this statement should be seen in the political context of the end of term of the Minister of Finance as a 'bold and simple enough [statement] to be successfully communicated through the media' do not appear convincing. Finally, the Commission adds as an additional indirect evidence the press release of 23 June 2011 of the Office of the Prime Minister of Slovenia (see recital 88), which shows that the Slovenian Government had decided that PDP would contribute EUR 0,5 million to the 2011 capital increase.

(91) In light of the above, the Commission is of the view that the participation of PDP to the 2010 capital increase entailed State resources and that PDP's actions are imputable to the State.

(92) With regard to the banks, the Commission observes, in line with its opening decision, that Abanka Vipa d.d., Unicredit Bank of Slovenia d.d. and Hypo Alpe-Adria Bank d.d. are purely private entities. In relation to NLB, at the time when measure 4 took place, it was majority-owned by the State, either directly (45,62 % of the shares) or indirectly through SOD (4,07 %) and KAD (4,03 %) ([32]), with KBC Bank as the only other significant shareholder (25 %). The State's majority ownership of NLB, which translates into majority of votes in the Management Board and Supervisory Board, is an indication of the imputability of the measures to the State. However, from the Articles of Association of NLB the Commission cannot conclude with certainty that its decision to invest in Adria was imputable to the State. Also, the Commission has not identified from the management structure of NLB any interference on the side of the public authorities. The Commission did not find either any indirect evidence in this respect in the sense of the *Stardust Marine* case-law. For the reasons above, the Commission considers that NLB's decision to participate in measure 4 is not imputable to Slovenia.

(93) Once clarified that the actions of AUKN and PDP are imputable to the State, the Commission must assess whether they entailed a selective undue advantage to Adria.

(94) Slovenia first claims that the decision of the banks to invest into Adria was concomitant to the decision of the State, which per se would exclude the presence of advantage.

(95) The Commission first reminds its conclusion that Adria was a firm in difficulty in 2011, at the time when measure 4 was granted (see recital 66).

(96) In addition, the Commission notes that the participation of the banks to the 2011 capital injection took the form of a conversion into equity of 26 % of their existing claims against Adria. On the other hand, the State and PDP injected cash. Slovenia argues that out of the total of EUR 19,7 million converted into equity, EUR [10-20] million would be equivalent to a cash injection because that part of the loans was fully collateralised. According to Slovenia, the banks would have assumed new risk with the conversion, which could be seen as equivalent to an injection of fresh money of EUR [10-20] million.

(97) The Commission has assessed the information provided by Slovenia and concludes that indeed EUR [10-20] million out of the EUR 19,7 million converted into equity were fully and adequately collateralised with pledges mainly on aircrafts owned by Adria. In order to establish the value of these aircraft, Adria relied on the 'Aircraft Value Reference' report published in April 2011 by the independent company Aircraft Value Analysis Company ('AVAC'). This report provides current and future values and lease rentals of multiple types of aircraft, with high and low value boundaries. In order to assess the aircraft pledged as security, values considerably below the AVAC high value were used. The Commission is of the opinion that the report constitutes a reliable basis for determining the value of the aircraft, given the independent character of AVAC and its widespread use in the sector.

([31]) See speech by the former Minister of Finance of Slovenia (Dr Franc Križanič) at the end of his term on 28 October 2011, uploaded in the web page of the Slovenian Ministry of Finance: http://www.mf.gov.si/si/medijsko_sredisce/novica/article/3/1054/8a67f745b4/ (in Slovenian).

([32]) In addition 2,53 % of NLB was in the hands of Zavarovalnica Triglav d.d., which in turn was 62,54 % owned by the State through KAD, SOD and SPIZ.

(98) However, EUR [0-10] million of debts converted into equity were not fully collateralised. For this part, the Commission cannot conclude that it was equivalent to a cash injection and that the banks assumed new risk. Moreover, the terms of the remaining debt improved and the overall level of risk significantly decreased, given that the outstanding (unconverted) part of the debts remained with the same level of collateral as before the conversion. This overall risk is further reduced by the fact that as a pre-condition for the debt-to-equity conversion, Adria had to […]. In addition, in some cases, the conditions of the outstanding debt (interest rate, repayment schedule, etc.) […].

(99) On the other hand, Slovenia assumed full risk for at least EUR 49,5 million since it only became shareholder of Adria upon the 2011 capital injection. The banks assumed new risk but not at the same level as Slovenia, given that they saw their position improved as a result of the debt conversion. On this basis, it appears that when the banks decided to invest into Adria they were not in a comparable position to the State.

(100) Also, it cannot be excluded that the decision of the banks to invest into Adria was influenced by the behaviour of the State. Adria's 2011 annual report notes that '[t]he Government of […] Slovenia clearly formulated its opinion on 20 January 2011 and took a position on the importance of Adria Airways as the national air carrier for the Slovenian economy, Slovenian citizens and guests from abroad. In its decision the Government set out its plan for Adria Airways to remain Slovenia's national air carrier […]'. This decision, taken well before the adoption of the restructuring plan in September 2011, could have eased the decision of the banks to invest, given that they State had already signalled its strong interest in supporting Adria ([33]).

(101) On the basis of the arguments above, the Commission excludes the arguments of Slovenia that the State and the banks invested on *pari passu* terms.

(102) However, the Commission must analyse whether Slovenia's investment in Adria would be market-conform. Slovenia claims that it decided to participate in measure 4 on the basis of the restructuring plan of September 2011, which should be considered MEIP-conform.

(103) The Commission preliminarily notes that, contrary to the previous capital increases, the 2011 capital increase took place without any valuation report. In addition, according to the case-law, a private investor contemplating a recapitalisation of an undertaking with significant debts would have required a restructuring plan capable of making the company viable ([34]). In the case at hand, the Slovenian authorities claim that they decided to participate in the 2011 capital increase on the basis of the restructuring plan of September 2011.

(104) However, the Commission has already concluded that Adria was in difficulty in 2011 (see recital 66). In itself, this makes it unlikely that the State could expect Adria to produce a normal return on the capital invested within a reasonable time. Moreover, the Commission maintains its views of the opening decision that the restructuring plan cannot be deemed sufficient to justify the 2011 capital increase as MEIP-conform. First, the restructuring plan (in its original version of September 2011) foresaw viability in 2013 with very low profit (EBT) margins (the realistic scenario foresaw profit margins of […] % in 2013, […] % in 2014 and […] % in 2015). The insufficient return for the shareholders is also demonstrated by the fact that the plan forecasted particularly low levels of equity for the same period, in the range of EUR […] in 2011 to EUR […] in 2015. This would mean that the capital injected in September 2011 — EUR 69,7 million — was significantly reduced during the restructuring period and thus would not bring any actual return.

(105) Slovenia provided a number of interim reports prepared by Airconomy and Adria dated April-September 2011 (i.e. predating the restructuring plan of September 2011), which were supposed to include the quantifications missing in the restructuring plan and which apparently were provided to all shareholders of Adria at the time as well as to the State. However, the Commission observes that the interim reports refer to the period 2011-2012, whereas the restructuring plan included forecasts until 2015, […]. On this basis, the Commission is of the opinion that the interim reports did not provide the necessary missing information in order for the restructuring plan to fulfil the MEIP test.

([33]) See Commission Decision 2006/621/EC of 2 August 2004 on the State Aid implemented by France for France Télécom (Case C13a/2003) (OJ L 257, 20.9.2006, p. 11) paragraph 227 and the Opinion of Advocate General Geelhoed, Joined Cases C-328/99 and C-399/00 *Italy* v *Commission* and *SIM 2 Multimedia SpA* v *Commission (Seleco)* [2003] ECR I-4035, paragraph 53: 'it may therefore be assumed that those private investors were prepared to [provide capital to the beneficiary] only after the government had adopted new measures of support. It is not relevant how far private investors were prepared to take part — the point is rather what a private investor would have done had […] [the public entities] not been prepared to inject new capital'.

([34]) Joined cases T-126/96 and C-127/96, *BFM and EFIM* v *Commission*, ECR II-3437, paragraphs 82-86.

(106) On the basis of the above, the Commission concludes that the 2011 capital increase conferred an undue advantage to Adria. This advantage was selective in nature given that its sole beneficiary was Adria.

(107) Finally, the Commission has to consider whether measure 4 was likely to distort competition and affect trade between Member States, by providing Adria with an advantage over competitors not receiving public support. It seems clear that measure 4 was able to affect intra-EU trade and competition as Adria competes with other EU airlines, in particular since the entry into force of the third stage of liberalisation of air transport ('third package') on 1 January 1993. In addition, for travels of relatively shorter distances within the EU, air travel is in competition with road and rail transport, and therefore road and rail carriers might also be affected.

(108) Measure 4 thus enabled Adria to continue operating so that it does not have to face, as other competitors, the consequences normally deriving from its difficult financial results.

(109) On account of the arguments above, the Commission concludes that measure 4 involved State aid for the benefit of Adria within the meaning of Article 107(1) TFEU.

7.2.4. Measure 5: the sale of AAT in 2010-2011

(110) In its opening decision, for the reasons stated in recitals 41 and 42, the Commission came to the preliminary conclusion that the acquisition of shares of AAT by PDP and Aerodrom Ljubljana conferred an undue advantage to Adria.

(111) Given the different nature of the contributions of PDP and Aerodrom Ljubljana (cash v debt-to-equity conversion), and in view of the reasoning in relation to measure 4 (see recitals 94 to 101), the Commission concludes that the *pari passu* line of argumentation can be excluded for measure 5 *mutatis mutandis*.

(112) The Commission must nonetheless assess whether the investment decisions of PDP and Aerodrom Ljubljana were economically rational, in the sense that a prudent operator in a market economy in comparable circumstances would have acted in the same way. In this respect, the Commission observes in the first place that the total price paid by Aerodrom Ljubljana and PDP, i.e. EUR 14,7 million, was within the value range set in the valuation report of AAT. However, the Commission raised doubts about the valuation report, alleging that it should have assessed the value of AAT (at the time Adria's maintenance unit known as SVL) as a stand-alone entity discarding intra-group synergies. The Commission also noted that there was a significant time gap between the moment when AAT/SVL was valued ([…]) and the sale of AAT (November 2010-March 2011).

(113) The Commission must first note that the valuation report was prepared by an independent expert (KPMG) and there are no reasons to believe that the expert did not carry out its task in full independence. As regards the time gap between the moment of the valuation and the sale of the shares, Slovenia has explained that the valuation report was based on the financial situation of Adria as of 31 December 2009, i.e. the latest externally audited data. The Commission notes that measure 5 was first implemented in November 2010, i.e. less than a year after the value date of AAT according to the valuation report. In addition, while the valuation report of AAT takes into account the negative forecasts of Adria, it assessed in detail the maintenance, repair and overhaul services business segment and concluded that the negative trend of the company did not apply to AAT and that ATT constituted a profitable unit. Furthermore, a detailed assessment of the valuation report shows that it assessed AAT/SVL as a separate business unit without actually considering the potential synergies with Adria. In this respect, it appears that the valuation report was prepared at a time when it was known that AAT would start performing maintenance, repair and overhaul services for other external clients, notably Spanair, which would eventually replace Adria as the main client of AAT. On the basis of the above, given that the report included the latest available audited financial data on AAT, that it was prepared by an independent expert and that it was credibly based on all relevant business aspects, its use as reference for the measure in question is acceptable. Finally, although it is true that the crisis was not yet over, it appears that 2009 was the year when the Slovenian economy was hit the hardest. Indeed, in November 2010, when PDP and Aerodrom Ljubljana decided to purchase AAT, the forecasts of GDP growth for Slovenia for 2010, 2011 and 2012 were back to positive figures (1,1 %, 1,9 % and 2,6 % respectively) ([35]). In these circumstances, a private investor would not necessarily carried out a new valuation, as it could assume that the valuation report based on 2009 figures, provided an accurate view of the business.

([35]) See European Economic Forecast — autumn 2010 for Slovenia of DG Economic and Financial Affairs, available at http://ec.europa.eu/economy_finance/eu/forecasts/2010_autumn/si_en.pdf

(114) More importantly, Slovenia has provided evidence showing that AAT was profitable, had no overdue debt and its debt could be serviced by its profits at the time when measure 5 was carried out. In addition, Slovenia has provided the forecasts of AAT until 2014, which show that AAT would make profits after tax of EUR […] in 2010 and would remain profitable thereafter, reaching profits of approximately EUR […] in 2014. It appears that these forecasts were available to PDP and Aerodrom Ljubljana when making their investment decisions.

(115) Slovenia has also provided evidence that Aerodrom Ljubljana took its decision to invest on AAT on the basis of economic considerations. In August and September 2010, the Management and Supervisory Boards of Aerodrom Ljubljana assessed the possibility of acquiring shares in AAT. Aerodrom Ljubljana assessed the convenience of settling a number of outstanding claims against Adria in view of the terms of the operation, which included a fixed return of 8 % on AAT preference shares, […]. Although another valuation suggested a lower price for the shares, the Supervisory Board of Aerodrom Ljubljana concluded that the terms of the conversion ([…]) justified a higher share price.

(116) As for the second stage of the sale of AAT, the minutes of the meeting of the Supervisory Board of Aerodrom Ljubljana of 21 January 2011 indicate that the advantages and disadvantages of different share prices and the termination of Aerodrom Ljubljana's put option were discussed. In particular, the put option was waived at the time of acquiring the ordinary shares in early 2011, but the Supervisory Board of Aerodrom Ljubljana nonetheless concluded that it was economically rational to do so because in exchange of waiving the put option Aerodrom Ljubljana managed to obtain equal co-management of AAT despite having fewer shares than PDP. In addition, the Supervisory Board noted that buying AAT would have a positive impact for Aerodrom Ljubljana: if Adria were to stop operations, this would have reduced the airport's estimated revenue in 2011 by […] %.

(117) Slovenia has also provided evidence that the management of PDP decided to acquire the preferential shares and the ordinary shares of AAT on the basis of economically rational grounds. Indeed, the minutes of the management meetings of PDP show that it carried out its own valuation of AAT, which suggested a price of between EUR […] and EUR […], within the range of the of the valuation report referred to in recital 34. Although the internal rate of return of PDP's investment would amount to […] %, PDP managed to get better conditions from AAT, including a fixed dividend of 8 %.

(118) The Commission therefore concludes that the decisions of PDP and Aerodrom Ljubljana to participate in measure 5 did not entail an undue advantage to Adria, since both investors behaved as prudent market operators and adopted their investment decisions on economically sound grounds. It is therefore not necessary to assess whether the rest of the cumulative conditions of Article 107(1) TFEU would be met.

7.3. **Conclusion as regards the existence of aid**

(119) On the one hand, for the reasons stated above, the Commission concludes that measures 1, 2, 3 and 5 did not entail State aid to Adria.

(120) On the other hand, as explained in Section 7.2.3, Commission considers that measure 4 involved State aid and will therefore assess its lawfulness and compatibility with the internal market.

7.4. **Legality of the aid — measure 4**

(121) Article 108(3) TFEU states that a Member State shall not put an aid measure into effect before the Commission has adopted a decision authorising this measure. The Commission observes that Slovenia participated to the 2011 capital injection (measure 4) without notifying it previously to the Commission for approval. The Commission regrets that Slovenia did not comply with the stand-still obligation and has therefore violated its obligation according to Article 108(3) TFEU.

7.5. **Compatibility of the aid — measure 4**

(122) Slovenia considers that if the Commission were to find State aid in measure 4 it would be compatible with the internal market on the basis of Article 107(3)(c) TFEU, and in particular as restructuring aid under the R&R Guidelines.

(123) Article 107(3)(c) TFEU states 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. As indicated in the opening decision, the Commission considers that the compatibility of measure 4 can only be assessed under Article 107(3)(c) TFEU, in particular under the provisions on restructuring aid of the R&R Guidelines.

7.5.1. Eligibility

(124) According to point 33 of the R&R Guidelines, only firms in difficulty within the meaning of points 9 to 13 of the R&R Guidelines are eligible to receive restructuring aid. In this sense, the Commission has already concluded that Adria was a firm in difficulty in 2011, at the time when measure 4 was granted (see recital 66).

(125) 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 as newly created for the first three years following the start of operations in the relevant field of activity. Adria was founded in 1961 and cannot be regarded as a newly created firm. Also, Adria does not belong to a business group in the sense of point 13 of the R&R Guidelines

(126) The Commission therefore concludes that Adria is eligible for restructuring aid.

7.5.2. Restoration of long-term viability

(127) According to point 34 of the R&R Guidelines, the grant of restructuring aid must be conditional on implementation of a restructuring plan which must be endorsed by the Commission in all cases of individual aid. Point 35 explains that 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.

(128) 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.

(129) 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).

(130) As indicated in the opening decision, the Commission had doubts as to whether the restructuring plan was sufficiently solid in order to restore the long-term viability of Adria, as some of its predictions appeared to be based on non-quantified, uncertain or unclear assumptions. In addition, the Commission was uncertain whether the company would reach viability by the end of 2013, as indicated in the original restructuring plan.

(131) During the formal investigation procedure, Slovenia has submitted a number of updates to the restructuring plan. According to the updated plan, Adria will return to viability in 2014 or 2015. The duration of the restructuring is thus of a maximum of 5 years, in line with previous case-practice in the passenger air transport sector ([36]). The Commission furthermore observes 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, which by nature takes several years.

(132) The restructuring plan highlights that the main goal of restructuring process of Adria is a long-term viability, whose primary aim is to adopt a clear strategy and market orientation with several key objectives: increased financial strength and no losses from 2013 onwards, reduction of complexity costs and achieving a clear, competitive and sustainable unique selling proposition. According to the plan, by achieving these objectives, the company […].

(133) The restructuring plan also describes the circumstances that led to Adria's difficulties, which were mainly caused by the global financial crisis, the small size of Adria's primary market (Slovenia and neighbouring countries), the low capacity of its fleet (mainly CRJ200 aircraft), […].

([36]) See Decision in case SA.30908 — *CSA — Czech Airlines — Restructuring plan*, at recital 107 and Decision in case SA.33015 — *Air Malta plc.*, recital 93. See as well Commission Decisions 2010/137/EC of 28 August 2009 on State aid C 6/09 (ex N 663/08) — Austria Austrian Airlines — Restructuring Plan (OJ L 59, 9.3.2010, p. 1), paragraph 296 and Commission Decision 2012/542/EU of 21 March 2012 on the measure SA.31479 (2011/C) (ex 2011/N) which the United Kingdom plans to implement for Royal Mail Group (OJ L 279, 12.10.2012, p. 40), paragraph 217.

(134) Moreover, the restructuring plan includes best-case, worst-case and base-case scenarios as well as an analysis of the risks that could have an impact on the restructuring of Adria, like for instance changes in the price of fuel, risk deriving from changes on the currency exchange rate or potential risks regarding the fleet. In all cases Adria is expected to return to viability by the end of the restructuring period. Under the base-case scenario, Adria is expected to reach a net profit margin of […] % in 2014 and of […] % in 2015, a debt-to-equity ratio of […] in 2014 and of […] in 2015; and a return-on-equity ratio of […] % in 2014 and of […] % in 2015. In the worst-case scenario, the net profit margins would decrease to […] % in 2014 and to […] % in 2015, the debt-to-equity ratio would go up to […] in 2014 and to […] in 2015, while the return-on-equity ratio would be of […] % in 2014 and of […] % in 2015.

(135) The main focus of the plan is to restructure and reduce Adria's network, which was loss-making due to overcapacity in fleet, flying personnel and other staff. In order to do so, the restructuring plan foresees a significant reduction of routes and frequencies, as well as a reduced and more fuel-efficient fleet consisting of […] aircraft by 2015 ([…]), mostly […].

(136) The restructuring plan foresees the closure of […] routes and additional reduction of frequencies. The number of scheduled routes would also decrease significantly to reach […] in 2015. Overall, during the restructuring period, Adria would have reduced its capacity by [11-14] % in terms of ASK. ([37])

(137) The restructuring measures foreseen in the plan as regards cost reductions (e.g. […], etc.) and revenue increases (e.g. […] etc.) are an additional step in the right direction to reach a more sustainable viability. In addition, the additional restructuring measures (see recital 31) foresee increased revenues and reduced costs with a total positive effect of EUR […] in 2014 and EUR […] in 2015, thus strengthening Adria's return to viability. The Commission is therefore of the view that the initiatives on cost reductions and revenue increases are capable to enable Adria to achieve the return to long-time viability by 2015.

(138) In addition, the evidence provided by Slovenia shows that Adria currently is on track to meet most of the objectives fixed in the restructuring plan, which is an additional indicator of the reliability of the plan.

(139) As regards return to viability, on the basis of the updates to the restructuring plan submitted by Slovenia, the Commission concludes that the impact of the different restructuring measures is duly quantified and viability is foreseen at adequate levels under all scenarios for the entire restructuring period until 2014 and 2015. Therefore, in view of the significant restructuring measures undertaken and the progress made to date, the Commission considers that the restructuring plan will enable Adria to restore its long-term viability within a reasonable timescale.

7.5.3. Avoidance of undue distortions of competition (compensatory measures)

(140) 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).

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

(142) Slovenia proposes the following compensatory measures for Adria: (a) […] scheduled routes; (b) surrender of slots at several airports, including coordinated airports; (c) reduction of fleet; and (d) the sale of AAT.

([37]) ASK stands for available seat kilometre (seats flown multiplied by the number of kilometres flown). ASK is the most important capacity indicator of an airline as employed by the air transport industry and by the Commission itself in previous restructuring cases in the air transport sector.

(143) Slovenia has provided evidence which demonstrates that the routes cancelled under the restructuring plan were profitable on the basis of the C1 contribution margin, following the Commission's practice in previous cases ([38]). Indeed, the C1 contribution margin takes account of flight, passenger and distribution costs (i.e. variable costs) attributable to each individual route. 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. From the Commission's point of view, the C1 contribution margin appears to be the appropriate figure for assessing whether a particular route contributes to the profitability of the airline.

(144) As regards capacity, the restructuring plan provides that the total capacity of the company was […] ASK in 2011, while at the end of the restructuring period in 2015, Adria's capacity is expected to be around […] ASK, i.e. a reduction of approximately [11-14] %. When routes with a negative C1 contribution are excluded, this figure goes down to [6-8] %.

(145) The Commission moreover observes that as a result of the alterations to the route network, Adria has released several airport slots, some of which are coordinated ([39]) airports like for instance Dublin and Copenhagen. These slots allow competing airlines to operate certain routes and to increase their capacity.

(146) Finally, as regards the reduction of fleet, the Commission notes that Adria has reduced its fleet from […] aircraft in 2011 to […] aircraft, which according to the restructuring plan should remain unchanged until the end of the restructuring period in 2015. In relation to the sale of AAT, the Commission considers that this measure is acceptable as a compensatory measure, in particular bearing in mind the conclusion reached in recital 118 that it does not entail State aid.

(147) 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). 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).

(148) The Commission first notes that Adria has a market share of the entire Union airline industry's productive capacity and output (in terms of passengers) of only 0,15 % (1,17 million passengers in 2011). For a small carrier like Adria, further fleet and capacity reductions might have a negative effect on its viability, without providing any meaningful market opportunities for competitors.

(149) As to the most important part of the compensatory measures, the capacity reduction, the Commission considers a reduction on profitable routes of approximately [6-8] % between 2011 and 2015 to be sufficient, in particular when compared to other airline restructuring cases ([40]). This capacity reduction on profitable routes is higher than in the Air Malta case. Moreover, the overall capacity reduction of [11-14] % is similar to the 15 % reduction accepted in the Austrian Airlines case ([41]).

(150) Finally, the Commission observes that Slovenia is an assisted area for regional investment aid purposes under Article 107(3)(a) TFEU ([42]). According to point 56 of the R&R Guidelines, 'the conditions for authorising aid [in assisted areas] may be less stringent as regards the implementation of compensatory measures and the size of the beneficiary's contribution. If needs of regional development justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas'.

(151) Against this background, the Commission considers the compensatory measures proposed by Slovenia to be sufficient and proportionate under the R&R Guidelines in order to ensure that the adverse effects on trading conditions resulting from the granting of restructuring aid to Adria are minimised as much as possible.

([38]) See footnote 13.
([39]) Coordinated airports are 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 (OJ L 14, 22.1.1993, p. 1).
([40]) In the Air Malta case, the reduction in the capacity of profitable routes amounted to 5 %, while in the Czech Airlines decision, the Commission accepted a capacity reduction of [10-11] %.
([41]) Decision in Case C-6/09 — *Austrian Airlines*.
([42]) See Commission Decision of 13 September 2006 in State aid case N 434/2006 — *Slovenia — Regional aid map 2007-2013*.

7.5.4. Aid limited to the minimum (own contribution)

(152) 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 at market conditions.

(153) 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. 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).

(154) In view of total restructuring costs of EUR […], the proposed own contribution of Adria is composed of EUR […], i.e. approximately [50-54] % of the total restructuring costs. The own contribution breaks down as follows in accordance with the restructuring plan:

(a) […].

(b) the totality of the sale of AAT (i.e. EUR 14,7 million);

(c) the totality of the debt-to-equity conversion carried out by the banks under measure 4 (EUR 19,7 million).

(155) As regards point (a) of recital 154, the Commission considers that these measures are acceptable and appear justified as own contribution. Most of the assets have actually been sold and therefore the proceedings resulting for the sale clearly can be counted as own contribution. In addition, Slovenia has provided evidence that the rests of assets are currently in the process of being sold and their value has been determined in accordance with external valuations, including the AVAC valuation in the case of aircraft (see recital 97).

(156) In relation to point (b) of recital 154, since the Commission has concluded in recital 118 that measure 5 does not entail State aid, it appears reasonable to consider that the proceeds from the sale of AAT should be considered as an element of own contribution.

(157) Finally, as regards the debt-to-equity conversion referred to in point (c) of recital 154), Slovenia considers that the totality of the debt-to-equity conversion carried out by the banks under measure 4 should count as own contribution. In this respect, the Commission is of the view that the conversion of unsecured debt would normally not demonstrate the confidence of the market into the company, as the unsecured creditors do not assume new risks related to the implementation of the restructuring plan. However, in Adria's case, Slovenia has shown that the debt converted into equity was fully collateralised to a significant extent, i.e. EUR [10-20] million out of the total of EUR 19,7 million (see recital 97). Thus, had Adria been liquidated, the banks would have been able to recover the fully-collateralised amount. It follows that the banks gave up a fully-collateralised claim, which they would have been able to fully recover, and replaced it with equity of Adria of equal value. Therefore, the banks assumed new risk by converting the debt into equity for at least EUR [10-20] million, since they have no certainty that their investment in Adria will be profitable.

(158) On this basis, the Commission considers that the debt-to-equity conversion of the fully-collateralised loans, i.e. EUR [10-20] million, is acceptable as own contribution.

(159) Taking the above into account, the level of own contribution of Adria would reach EUR […] or [46-48] % of the restructuring costs. For a large firm like Adria, the level of own contribution should normally be 50 %. However, according to point 56 of the R&R Guidelines, the Commission may be less stringent as regards the size of the own contribution in assisted areas, as was the case for Slovenia at the time the measures were provided (see recital 150). In previous cases like Air Malta, the Commission has accepted a level of own contribution around 45 %.

(160) Therefore, the Commission considers that requirements of point 43 of the R&R Guidelines have been fulfilled.

7.5.5. The 'one time, last time' principle

(161) Finally, the aid must respect point 72 of the R&R Guidelines, which provides that a company that has received rescue and restructuring aid in the past 10 years is not eligible for rescue or restructuring aid (the 'one time, last time' principle).

(162) Since measures 1, 2, 3 and 5 do not entail State aid and since it appears that Adria has not benefited from any rescue or restructuring aid in the past 10 years, the Commission concludes that the 'one time, last time' principle is respected in relation to measure 4.

7.6. **Conclusion as regards measure 4**

(163) In view of the above, the Commission finds that Slovenia unlawfully implemented in 2011 a capital injection in favour of Adria, in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the Commission considers that the measure and the restructuring plan meet the conditions required by the R&R Guidelines. The Commission hence considers the aid compatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

The capital increases of Adria Airways d.d. in 2007, 2009 and 2010, which the Republic of Slovenia has implemented for Adria Airways d.d., do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

The acquisition of Adria Airways Tehnika d.d. by PDP and Aerodrom Ljubljana d.d. in 2010 and 2011 does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

The capital injection of EUR 50 million in favour of Adria Airways d.d. which the Republic of Slovenia implemented in 2011 constitutes aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

That aid is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 9 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President