



EUROPEAN COMMISSION

Brussels,
C (2012)

Subject: State aid SA.33993 (2011/N) – Austria – Aid for the provision of certain combined transport services by rail in Austria

Excellency,

1. PROCEDURE

- (1) On 2 December 2011, the Austrian authorities notified the above mentioned measure to the Commission. By letters of 1 February and 26 April 2012, the Commission requested further information, which was provided by the Austrian authorities by letters of 29 February and 6 June 2012, the latter following an agreement on a delay extension.

2. GENERAL FEATURES OF THE NOTIFIED AID SCHEME

- (2) In order to create a modern transport system, Austria's transport policies are aimed at avoiding unnecessary journeys and, in particular, shifting heavy goods transport from roads to more environmentally friendly modes of transport such as rail, combined transport and inland waterway navigation.
- (3) The objectives of the aid scheme under consideration are to support rail services in the following three forms of freight rail transport, i.e. the following three production forms of freight rail transport: single wagonload traffic ("SWT"), unaccompanied combined transport ("UCT") and accompanied combined transport ("RoLa"); and to compensate additional costs faced by rail transport but not by road transport.
- (4) SWT refers to consignments smaller than the quantity of a full train that require the switching or shunting of wagons at departure or destination stations and at any intermediate stations.

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- (5) UCT refers to a method whereby instead of the freight itself, an intermodal transport unit is transferred (e.g. a freight container, swap body, semi-trailer or 'Mobiler'), most of the route is covered by rail and the stretches covered by road ahead of and following the rail journey are kept to a minimum. Also, the intermodal transport unit is not accompanied by a driver.
- (6) RoLa means the transportation of lorries by rail on low-loader wagons, whereby the lorries drive onto the wagon at the start and drive off it at the end of their rail journey.
- (7) The Austrian authorities aim to support the above mentioned production forms, because these are the main railway production forms in Austria. However, they are at a disadvantage as compared to road freight traffic, due to higher production costs inherent to the railway system. Without public support, these production forms would either be offered only to a limited extent or would not be offered at all, both of which is contrary to Austria's freight transport policy
- (8) Rail freight transport has traditionally had a high share in the Austrian modal split (more than twice as high as the EU 27 average).¹ The notified scheme aims to preserve this high share of rail transport and to encourage a further modal shift from road to rail in freight transport.

2.1. Legal basis

- (9) The legal bases of the notified aid scheme are the Special Guidelines on aid to certain types of rail freight transport in Austria (*Sonderrichtlinien Beihilfeprogramm für die Erbringung von Schienengüterverkehrsleistungen in bestimmten Produktionsformen in Österreich*) and the General Guidelines on Subsidies from State budget (*Allgemeine Richtlinien für die Gewährung von Förderungen aus Bundesmitteln (ARR 2004), BGBl. II 51/2004 in der Fassung BGBl. II 317/2009*).

2.2. Duration and budget

- (10) The measure will be put in place between 3 December 2012 and 31 December 2017, following the approval by the Commission. The maximum total budget over the 5-year period is EUR 220 million per year (total budget: EUR 1118 million) from the Austrian central budget. The Austrian authorities highlighted that due to constraints in the Austrian central budget, the actual aid amounts disbursed under the scheme will be clearly below the maximum of EUR 220 million per year.

2.3. Beneficiaries

- (11) The aid will be available to any rail carrier offering or planning to offer cargo services in Austria. A carrier registered in any other EEA state will be able to benefit from the same treatment as those registered in Austria without any discrimination.
- (12) The estimated number of beneficiaries ranges from 11 to 50 undertakings.
- (13) In order to ensure that the economic advantage is passed on to the railway undertakings, the subsidy contracts will be published on the website of the Federal Ministry for Transport, Innovation and Technology (*Bundesministerium für Verkehr, Innovation und*

¹ Modal Split of domestic freight transport in Austria, see: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdtr220>

Technologie (bmvit)). In this manner, business partners of the beneficiaries will be informed of the amount of aid received by the latter, which they will be able to claim in their business negotiations. In addition, final customers will be made aware of the aid on the invoices.

2.4. Costs of freight rail transport, eligible costs, aid intensities and maximum aid amounts of the notified aid scheme

(14) The Austrian authorities address the notified aid scheme to rail carriers offering or planning to offer cargo services in Austria. In line with paragraph 107 of the Community Guidelines on State aid for railway undertakings ("Railway Guidelines"),² the Austrian authorities intend to grant state aid with the following maximum aid intensities:

- a. For aid for rail infrastructure use: 30 % of the total cost of rail transport and up to 100 % of the eligible costs.
- b. For aid for reducing external costs: 30% of the total cost of rail transport and up to 50% of the eligible costs.

(15) In order to determine the costs of freight rail transport in Austria (hereinafter referred to as "production costs") as well as the eligible costs, i.e. the costs for the use of infrastructure and the external costs of freight rail transport, and the maximum aid amounts for the envisaged aid scheme, the Austrian authorities have commissioned three studies. To this end, average door-to-door costs for both road and rail were calculated. The figures were based on the costs incurred by Austria's largest railway carrier in 2010, and the assumption was made that its competitors had similar cost structures.³

(16) In order to better target the envisaged aid program and to limit the overall aid amounts, the Austrian authorities distinguish within the three forms of freight rail transport also among the three different types of railway freight traffic in Austria, namely domestic transport, import/export and transit, as they entail different production costs. For 2010, the following actual production costs were calculated for the three transport modes:

	SWT	UCT	RoLa	Road
Domestic transport	104.3	97.2	119.8	56.0
Import/Export	62.1	84.4	81.8	56.0
Transit	-	50.1	103.5	56.0

(17) The eligible costs for aid for the use of infrastructure are derived from the following table:

² OJ C 184, 22/7/2008, p.13

³ Competing carriers have criticized this method as they claimed to have higher costs than the incumbent. However, this does not alter the appreciation of the aid scheme since calculating with lower costs reduces the difference between the costs of rail and road and thus the aid amount.

Table 2: Production costs and derived costs for the use of infrastructure for SWT, UCT, RoLa and Road in different traffic types based on 2010 data in EUR / 1000 tkm								
		SWT		UCT			RoLa	Road
		Domestic Transport	Import/Export	Domestic Transport	Import/Export	Transit	Total traffic	
1	Production costs main leg without costs for the use of infrastructure	60.5	38.8	49.7	32.7	21.2	36.7	44.0
2	Costs for the use of infrastructure (IBE + shunting / toll)	26.2	14.7	20.8	13.1	7.4	16.7	12.1
3 = 1+2	Total production costs RCA	86.74	53.5	70.4	45.8	28.6	53.4	
4	Total costs private carriages	4.4	2.8	0.2	0.8	0.8	0	
5	Production costs Terminal*	0	0	9.9	8	3.5	4.5	
6	Additional costs RoLa carriage	0	0	0	0	0	18.9	
7	Operational costs of the connecting railway*	1	0.7	0	0	0	0	
8	Local Shunting*	1.2	0.9	0	0	0	0	
9 = 3+4+5+6+7+	Total railway production costs	93.2	57.9	80.6	54.6	32.9	76.8	
10	Pre- and Post leg Production costs	11.1	4.2	16.6	29.8	17.2	0	
11	Fixed and personnel costs lorry on RoLa	0	0		0	0	25.7	
12 = 9+10+11	Total costs of production	104.3	62.1	97.2	84.4	50.1	102.5	56.0
13 = 2+5+7	Total costs for use of infrastructure	27.2	15.4	30.7	21.0	10.9	21.2	12.1
	* costs in EUR/tkm of main leg							

As regards the use of infrastructure, the eligible costs are calculated as the difference between the total costs for the use of infrastructure per production form and traffic type and the total costs for the use of infrastructure for road freight transport, e.g. for SWT Domestic Transport, the eligible costs are 27.2 minus 12.1 = EUR 15.1 per 1000 tkm.

- (18) The eligible costs for aid for reducing external costs are derived from the following table:

Table 3: External Costs of freight transport in EUR / 1000 tkm based on 2009 data								
	Climate	Air	Noise	Accidents	Landscape impairment	Soil and water pollution	Up- and Downstream	Total
Road Transport (lorries >3,5 t)	2.17	10.56	8.26	3.3	4.2	1.43	2.88	32.8
Rail freight transport	0.07	0.26	1.24	0.43	3.73	0.03	0.33	6.09
Difference road - rail	2.1	10.3	7.02	2.87	0.47	1.4	2.55	26.71

As regards the reduction of external costs, the eligible costs are calculated as the difference between the total external costs of road freight transport and the total external costs of rail freight transport, i.e. 32.8 minus 6.09 = EUR 26.71 / 1000 tkm.

- (19) When the eligible costs are placed into an annual perspective through the multiplication of those costs with the annual Tonne-Kilometres, the maximum aid amounts can be computed as follows:⁴

⁴ The figures in table 4 are rounded to whole-numbers.

Table 4: Maximum aid amounts per year based on 2010 data									
		Mio. Net-net-tkm 2010	Production costs rail (EUR/1000 tkm) 2010	Production costs rail (million EUR)	30% of productions costs rail (million EUR)	100% of eligible costs for rail infrastructure use (million EUR)	50% of eligible costs for reducing external costs (million EUR)	Cumulation of both types of eligible costs	Maximum Aid Amount p.a. (million EUR)
SWT	Domestic Transport	2364	104	247	74	36	32	67	67
	Import/Export	3223	62	200	60	11	43	54	54
UCT	Domestic Transport	1187	97	115	35	22	16	38	35
	Import/Export	1174	84	100	30	11	16	26	26
	Transit	1163	50	58	17	0	16	16	16
RoLa	Total traffic	1005	102	103	31	9	13	23	23
Total	SWT	5587		447	134	47	75		121
	UCT	3524		273	82	33	47		76
	RoLa	1005		103	31	9	13		23
	Total	10116		822	247	88	136		219

- (20) In the case of SWT, the aid is computed per net tonne-kilometre and differentiated by type of traffic (domestic transport or import/export). If necessary, the aid will be broken down by distance categories.
- (21) The reason for discrimination among distance categories lies in the economies of scale of the fixed costs, which are typical for rail transport. The high fixed costs of rail transport decrease significantly with an increasing transport distance. Consequently, rail transports over a longer distance have to bear lower fixed costs per kilometre. Higher aid amounts for shorter distances should incentivise railway companies to offer also short distance freight transport services.
- (22) In the case of UCT, the aid is computed per intermodal transport unit carried. The aid is determined by the size and weight of the unit, the distance covered by rail in Austria and the special production factor of mountainous terrain.
- (23) For the same reasons as mentioned above, aid for UCT will also be broken down into different distance categories. The reason to consider the mountainous terrain in the notified aid scheme lies in Austria's mountainous topography. Traction costs are higher in mountainous regions, as ascending tracks require multiple locomotives for heavy freight trains. Therefore, aid for UCT also takes the increased costs caused by the alpine topography into account, broken down to the different sizes of transport.
- (24) In case of RoLa the aid is calculated per lorry carried and varies according to the route used and whether the transport takes place by day or by night. The reason to take into account the geographic location of different routes for RoLa aid is twofold. First, the routes cross different Austria regions. The Brenner route leads through the Unterinntal and the Wipptal, which are both highly sensitive mountainous regions. Moreover, the Unterinntal between Innsbruck and Kufstein is a densely populated area. Second, on the Brenner route a maximum of 18 lorries can be transported with one train.
- (25) A comparison of the Brenner route with two other mountainous RoLa routes shows that the Phyrn-Schober route and the Tauern route also cross sensitive alpine regions, albeit the population density there is much lower than in the Unterinntal. In addition, one RoLa train can transport up to 21 lorries on these routes, thus reducing the costs per lorry.
- (26) Finally, the Danube route follows in principle the river Danube and does not cross mountainous regions. Moreover, trains on the Danube route can transport up to 27 lorries, i.e. 33% more than on the Brenner route, which means that the transport costs and the envisaged aid amount on this route are the lowest for RoLa traffic.

- (27) The envisaged support for RoLa discriminates also between day and night traffic, because the road charge (*Maut*) also varies between day and night. As the road charge for night traffic use is double the amount of the charge for using the road throughout the day, the RoLa aid for night transport is lower.
- (28) Furthermore, a quality component is factored in the special guidelines (*Sonderrichtlinien*) to ensure a high quality of service to be delivered. If the service is not sufficiently punctual, the aid beneficiary has to pay a compensation fee.

2.5. Cumulation of aid

- (29) The aid can be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible expenses as long as the applicable maximum aid intensities are respected. Additional funding will be deducted from the aid granted under the present aid scheme.

3. ASSESSMENT OF THE NOTIFIED AID SCHEME

3.1. Existence of State aid within the meaning of Article 107(1) TFEU

- (30) Pursuant to 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 is, in so far as it affects trade between Member States, incompatible with the internal market*".

- (31) As the examined measures

- a. constitute State resources, because the aid is financed from the Austrian central budget;
- b. confer an economic advantage, by guaranteeing reduced infrastructure access charges and support for external costs avoided;
- c. is selective in nature, because it is confined to certain segments of the transportation services market (rail freight transport); and
- d. has the potential to distort competition and trade between Member States, since it concerns markets which have been liberalised,

they should be classified as State aid within the meaning of Article 107(1) TFEU.

- (32) In addition, Article 108(3) of the TFEU provides that Member States may not implement new State aid measures before they have been approved by the Commission.

3.2. Compatibility assessment

- (33) Article 93 TFEU provides that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*".

- (34) As noted in points 20 and 83 Railway Guidelines, after the entry into force of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70⁵, Article 93 TFEU became directly applicable as the legal basis for establishing the compatibility of aid not covered

⁵ OJ L 315 of 3.12.2007, p.1.

by that regulation and, in particular, of aid for the coordination of freight transport. Since the aid measure at issue is not covered by Regulation (EC) No 1370/2007, its compatibility will be assessed directly under Article 93 TFEU.

- (35) Article 93 TFEU states that State aid shall be compatible if it “meets the needs of co-ordination of transport”. The concept of aid meeting the needs of co-ordination of transport refers to the need for government intervention arising in the absence of a competitive market or in the presence of market failures. In this regard, the Commission notes that measures of co-ordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose to the society.
- (36) As stipulated in the Commission's White Paper on the European Transport Area,⁶ the fundamental principle of infrastructure charging is that the charge for using infrastructure must cover not only infrastructure costs, but also external costs, that is, costs connected with accidents, air pollution, noise and congestion. This approach has been applied in a number of the Commission's State aid decisions over the last years⁷. It also reflects the fact that, in view of Articles 3, 6, 191 TFEU⁸, the environmental objectives of the Treaty have to be pursued *inter alia* through the Common Transport Policy.
- (37) As regards railway undertakings, rules for the interpretation of Article 93 TFEU have been set out in Section 6 of the Railway Guidelines. Since the notified aid measures concern a modal shift from road to rail, the compatibility assessment will be conducted in light of the criteria laid down in chapters 6.2 and 6.3 of the Railway Guidelines.
- (38) According to point 95 of the Railway Guidelines, aid which meets the needs of transport coordination has to be considered compatible with the Treaty. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to ‘meet the needs’ of transport coordination, it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Community.
- (39) According to the Railway Guidelines, as regards the railway industry more specifically, aid for the needs of transport coordination can take several forms. One of those forms is aid for infrastructure use, that is to say, aid granted to railway undertakings which have to pay charges for the infrastructure they use, while other undertakings providing transport services based on other modes of transport do not have to pay such charges (point 98(a) of the Railway Guidelines).
- (40) As regards aid for rail infrastructure use, the eligible costs are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode (point 102 of the Railway Guidelines).
- (41) Another form of aid is aid for reducing external costs, which is designed to encourage a modal shift of freight transport to rail because rail transport generates lower external

⁶ White Paper of the European Commission: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM (2011) 144 of 28.3.2011

⁷ See e.g. N 588/98 DK, N 219/01 AUT, N 638/01 IT, N 287/02 DK, N 335/03 IT, N 810/02 IT, N 64/03 IT, N 551/03 IT, N 249/04 BE, N 496/03 IT, N 427/06 UK, N 720/06 BE, NN46B/2006, SA.33417 (2011/N) HU.

⁸ Until 30 November 2009 – Articles 2, 6 and 174 EC Treaty.

costs than other modes of transport, such as road transport, both in terms of accident costs and air pollution (point 98(b) of the Railway Guidelines).

- (42) As regards aid for reducing external costs, the eligible costs are that part of the external costs which rail transport makes it possible to avoid compared with competing transport modes (point 103 of the Railway Guidelines).
- (43) According to point 107 of the Railway Guidelines, the Commission considers that there is a presumption of necessity and proportionality of the aid, when the intensity of the aid stays below the following values:
- a. For aid for rail infrastructure use: 30 % of the total cost of rail transport and up to 100 % of the eligible costs.
 - b. For aid for reducing external costs: 30% of the total cost of rail transport and up to 50% of the eligible costs.
- (44) Point 105 of the Railway Guidelines require a transparent, reasoned and quantified cost analysis between rail transport and the alternative options based on other modes of transport. Furthermore, the methodology used and the calculations performed must be made publicly available.
- (45) The Commission is of the opinion that the studies submitted by the Austrian authorities, which have been drafted by independent consultants, fulfil the requirement of point 105 of the Railway Guidelines. In addition, the Austrian authorities have committed to publish the methodology and the calculations on the websites of the Federal Ministry for Transport, Innovation and Technology⁹ and of the Austrian Railway Infrastructure Services Company (*Schieneinfrastruktur-Dienstleistungsgesellschaft mbH (SCHIG mbH)*)¹⁰ following the adoption of this decision.
- (46) Based on the tables mentioned in recitals (16) to (19), the Commission concludes that the maximum aid intensities of the notified aid scheme are in compliance with point 107 of the Railway Guidelines. The conditions related to the necessity and proportionality of the aid are therefore met.
- (47) With reference to point 109 of the Railway Guidelines, the Commission observes that for the notified aid scheme, both the aid for rail infrastructure and the aid for reducing external costs are strictly limited to compensation for the opportunity costs connected with the use of rail transport rather than with the use of a more polluting mode of transport.
- (48) The Railway Guidelines do not prohibit a cumulation of aid for the use of infrastructure and aid for reducing external costs. In that regard, the Austrian authorities ensure by a requirement laid down in the applicable special guidelines (*Sonderrichtlinien*) that the applicable maximum aid intensities will be respected for each beneficiary and for each type of aid granted.
- (49) The Railway Guidelines do not foresee any discrimination into different production forms or types of traffic. However, the Commission welcomes the intention of the

⁹ <http://www.bmvit.gv.at/index.html>

¹⁰ <http://www.schig.com/index.php?id=1&L=0&type=0>

Austrian authorities to design the notified aid scheme with the objective of granting less and better targeted state aid.

- (50) As described in recitals (23) to (26), the notified aid scheme distinguishes between mountainous and non-mountainous regions in Austria. A positive discrimination of alpine regions is in line with the objectives of the Alpine Convention. By Council Decision 96/191/EC,¹¹ the European Union concluded this Convention on the Protection of the Alps. The Council decision 2007/799/EC¹² concerns the Protocol on the Implementation of the Alpine Convention in the field of transport (Transport Protocol). Therein, the EU has committed itself to reduce the actual and potential harmful effects of intra-alpine transport and to take into account, in the management of the Alpine region, the risks and harmful effects associated with traffic, such as pollution (noise or chemical), and the security of people and property.
- (51) Point 110 of the Railway Guidelines stipulates that "where the aid recipient is a railway undertaking it must be proved that the aid really does have the effect of encouraging the modal shift to rail. In principle this will mean that the aid has to be reflected in the price demanded from the passenger or from the shipper, since it is they who make the choice between rail and the more polluting transport modes such as road."
- (52) The Commission notes that the notified aid scheme does not foresee an explicit obligation for the beneficiaries to pass on the aid to the final users. However, as mentioned in recital (13), the subsidy contracts and the aid amount will be publicly accessible. In addition, the attention of the business partners of the beneficiaries will be drawn to the aid on the invoices.
- (53) It can therefore be expected that business partners of the beneficiaries will demand to participate in the advantage granted to the railway companies during the business negotiations. In addition, given the fact that the Austrian rail freight market is open to new entrants, who could benefit from the notified aid scheme if they fulfil all the necessary requirements, the incumbents will probably reduce their prices in order to remain competitive.
- (54) The Commission therefore concludes, taking into account the observations of the Austrian government, that point 110 of the Railway Guidelines is met.
- (55) Point 111 of the Railway Guidelines specifies that as regards aid for the use of rail infrastructure and for reducing external costs, there must be realistic prospects of keeping the traffic transferred to rail so that it leads to a sustainable transfer of traffic.
- (56) According to the Austrian authorities, in the absence of aid, the demand for freight transport would clearly shift away from rail to road transport. This development would be against the objectives of the Austrian and European transport and environmental policy.

¹¹ OJ L 61, 12.3.1996

¹² OJ L 323, 8.12.2007

- (57) As the studies of the independent consultants show, minor price changes in the rail freight market in Austria would have a high impact on the Austrian freight transport modal split, because the demand of rail freight services is highly price elastic. [...] ¹³
- (58) As mentioned in recital (8), Austria has traditionally had a high share of rail freight transport in the freight transport modal split. This is due to the rail freight aid schemes currently in force and shall be preserved further by the notified aid scheme. In addition, the notified aid scheme aims to support rail freight traffic in a tailor made way, dependent on its respective competitive situation.
- (59) The Commission observes that with the notified aid scheme there are realistic prospects of keeping the traffic transferred to rail. Hence, the notified scheme complies with point 111 of the Railway Guidelines.
- (60) As mentioned in recital (29), the aid received under this aid scheme may be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible expenses as long as the individually applicable maximum aid intensities are respected. Additional funding will however be deducted from the aid granted under the notified aid scheme and thus overcompensation will be avoided.
- (61) The Commission therefore concludes that the cumulation rules as laid down in section 6 of the Railway Guidelines are respected.
- (62) The scheme is transparent - the conditions for benefiting from the aid will clearly be stipulated in the underlying legal basis (*Sonderrichtlinien, ARR 2004*).
- (63) Access to aid will also be granted in a non-discriminatory manner. Austria has confirmed that aid will be available to any rail carrier offering or planning to offer cargo services in Austria. A carrier registered in any other EEA state will be able to benefit from the same treatment as those registered in Austria without any discrimination.
- (64) As explained in recital (10), the aid scheme is time limited – it will be put in place for five calendar years starting with 3 December 2012 following the approval of the Commission. This is in line with the time limitation imposed by point 97 of the Railway Guidelines. In addition, the Austrian authorities have respected their obligation under Article 108(3) of the TFEU.
- (65) As regards competition between different transport modes, the measure is limited to reducing imbalances between railway transport on one hand and road transport on the other hand. The Commission therefore concludes that the aid scheme in question does not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines and the decision-making practice of the Commission.

¹³Business secret in the sense of the Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297 of 09/12/2003 p. 6 - 9

4. DECISION

In light of the above, the Commission has accordingly decided to consider the notified aid scheme to be compatible with the internal market under Article 93 TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Yours faithfully,
For the Commission

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