EUROPEAN COMMISSION
DG Competition

Brussels, 20 March 2013

C(2013) 1522 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

COMMISSION DECISION

of 20 March 2013

ON STATE AID MEASURE

No SA. 33113 (2012/C) (ex 2011/NN, 2011/CP)

awarded by Poland

for Nauta S.A.

(Only the Polish version is authentic)

(Text with EEA relevance)

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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 called on interested parties to submit their comments pursuant to those provisions[1],

Whereas:

I. THE PROCEDURE

(1) On 6 November 2008 the Commission adopted two recovery decisions[2] concerning unlawful state aid to the shipyards in Gdynia and Szczecin ('Gdynia Shipyard' and 'Szczecin Shipyard') allowing a special sales procedure. The Polish authorities were given an opportunity to sell the yards' assets in packages in open, transparent, unconditional and non-discriminatory tenders.

(2) The Commission, when following up the recovery process, requested clarifications on the tender procedures. A request for information was sent by the Commission on 10 June 2010 to which the Polish authorities replied on 9 July 2010 with subsequent information being sent on 30 July 2010, 3 September 2010, 4 October 2010 and 16 December 2011.

[1] OJ C 213 of 19 July 2012 p.30.

[2] Commission Decision of 6 November 2008 on State aid C 19/05 (ex N 203/05) granted by Poland to Stocznia Szczecińska, OJ L 5, 8.1.2010, p.1, and Commission Decision of 6 November 2008 on State aid C 17/05 (ex N 194/05 and PL 34/04) granted by Poland to Stocznia Gdynia, OJ L 33, 4.2.2010, p.1.

(3) The Commission met the Polish authorities on 15 July 2010, 10 September 2010, 22 October 2010 and 6 December 2011. An exchange of letters between Vice-President Almunia and the Minister for the Treasury, Mr Grad, on the liquidation procedure took place on 28 June 2011, 18 July 2011, 7 October 2011 and 25 October 2011.

(4) By letter dated 25 January 2012, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty' or 'TFEU') in relation to the acquisition of some of the assets of Gdynia Shipyard by Nauta S.A. Repair Shipyard ('Nauta' or 'the company').

(5) The opening decision was published in the Official Journal of the European Union[3]. The Commission did not receive any comments from third parties on the measures.

(6) Poland submitted its comments on 27 February 2012. Further information was provided by Poland on 26 October, 8 November and 5 December 2012.

II. DESCRIPTION

1. THE BENEFICIARY

(7) Nauta, which was created in 1926, is one of the oldest Polish shipyards. Between 1945 and 2010, Nauta was fully and directly owned by the Treasury. On 28 October 2009 a notarial deed was signed by which the State-owned Industrial Development Agency ('the IDA') purchased 93.15% of shares in Nauta for PLN [80-140][*] million[4] (ca. EUR [20-35] million[5]). The transaction was completed on 12 January 2010, when the Treasury handed over the shares in Nauta to the IDA, after which the IDA became the majority shareholder of Nauta[6].

(8) The main activity of the company is the repair and rebuilding of small and medium-sized ships. It also builds small specialist vessels and manufactures steel structures.

(9) Nauta is the parent company of a group comprising 13 subsidiaries and associates. The activities of the subsidiaries and associates relate mainly to the shipyard business. Nauta operates within the group as administrative centre in the following areas: marketing, acquisition of orders, maintenance of energy systems and other resources, project management.

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[3] See footnote 1.

[*] Business secret.

[4] Nauta's value was estimated at PLN [90-150] million in an expert evaluation dated April 2009 and at PLN [90-150] million in an update on 21 April 2010.

[5] EUR 1= PLN 4 approx.

[6] The remaining 6.85% of share capital belonged to the Treasury. On 30 September 2010 the IDA transferred its stake in Nauta to its wholly owned subsidiary MS Investment Fund ('MS TFI'). On 25 October 2010 MS TFI transferred the shares to its sub-fund MARS Investment Fund. As a result of those transactions the IDA remains the majority shareholder in Nauta. The current minority shareholders are Nauta's employees (3.19%) and the Treasury (3.66%).

(10) Selected financial data for Nauta before and after the bond issue (see recital 19; 'pre-transaction' and 'post-transaction') are presented in Table 1 below.

Table 1 Selected financial data for Nauta in 2006-11 (PLN thousand)

	Pre-transaction results				Post-transaction results	
	2006	**2007**	**2008**	**2009**	**2010**	**2011**
Sales revenue	127 121	87 954	136 988	93 576	94 666	163 817
Costs	114 538	81 546	132 528	84 305	76 495	138 900
Profit from sales	12 583	6 408	4 460	9 271	18 171	24 916
Return on sales	9.9%	7.3%	3.3%	9.9%	19.2%	15.2%
Other operating income	5 448	533	545	1 361	4 005	78 038
Other operating costs	561	26	1 026	126	21 989	1 978
Financial income	3 628	5 085	9 334	2 317	7 990	542
Financial costs	1 441	639	13 236	12 554	17 474	12 479
Gross profit / loss	19 123	11 363	83	285	-38 514	53 468
Net profit / loss	**14 294**	**8 318**	**248**	**531**	**-33 308**	**44 091**

(11) The company's financial situation deteriorated in 2009 and 2010 as a result of the global financial crisis and exchange rate fluctuations. Additionally, in 2010 the company set aside a provision for the modernisation of the assets acquired in 2009 (see recital 17 below) which contributed to an increase in other operating costs.

2. BENEFICIARY'S BUSINESS STRATEGY FOR 2009-12

2.1. Summary of the beneficiary's business strategy

(12) According to the Polish authorities, Nauta's business strategy for 2009-12 can be broken down into the following steps:

a) Nauta issues bonds to a value of PLN 120 million (EUR 30 million approx.), subscribed by the IDA;

b) Nauta purchases assets of Gdynia Shipyard;

c) Nauta's place of business is transferred to the area where the purchased assets are located;

d) the land on which Nauta currently operates is sold;

e) the bonds are redeemed from the IDA in November 2011 at the latest.

2.2. Valuations of the land on which Nauta currently operates

(13) The company owns the land on which it currently operates. The land is located in the centre of Gdynia and covers 84 497 square metres. According to the Polish authorities, the business rationale for acquiring Gdynia Shipyard's assets was based on the assumption that the area where Nauta is currently located would be redefined as a business and services ('non-industrial' or 'commercial') area instead of an industrial one pursuant to Gdynia City Council Resolution No XVII/400/08 dated 27 February 2008 approving the urban development study for Gdynia ('the study').

(14) According to the Polish authorities, in the light of the study and in view of the ongoing process of changing the urban development plan for Gdynia, the estimated market value of the land in 2011 amounted to PLN [>2 000] (EUR [>500]) per square metre, i.e. PLN [>168] million (EUR [>42] million).

(15) The only pre-transaction valuation of this land was performed on 21 October 2009 by […], a certified surveyor. It estimated the value at PLN [>168] million (EUR [>42] million), which corresponds to a value of PLN [>1 900] (EUR [>475]) per square metre. The valuation assumed that the urban development plan for Gdynia would be changed so that the land could be sold as commercial land.

(16) Other valuations were performed *ex post* in 2010 and 2011. A summary of all the valuations conducted by independent surveyors (*ex ante* and *ex post*) is set out in Table 2 below.

Table 2 Value of Nauta's land estimated by independent surveyors

Appraisal date	Assumption regarding land use	Estimated total value, PLN	Estimated value per square metre, PLN
Pre-transaction			
21.10.2009	Non-industrial	[>168 000 000]	[>1 900]
Post-transaction			
8.12.2010	Non-industrial	[>130 000 000]	[>1 500]
4.10.2011	Industrial	[>70 000 000]	[>800]
17.10.2011	Non-industrial	[>140 000 000]	[>1 700]

2.3. Purchase of the assets of Gdynia Shipyard

(17) In order to implement the Commission's recovery decision of November 2008 concerning unlawful state aid to Gdynia Shipyard, which allowed for a special sale procedure, the Polish authorities organised open tenders to sell the assets of that shipyard. In November 2009 Nauta acquired some of these assets ('acquired assets') by way of an open tender for PLN 57.7 million (EUR 14 million), including:

(a) an outfitting area (2 quays with infrastructure, prefabrication hall, cranes, social facilities for workers including a canteen) for which it paid PLN 34.6 million;

(b) an outside area (with cranes to produce three-dimensional sections) for PLN 5 million;

(c) a section of a building and outfitting facilities with cranes, including two production halls for PLN 18.1 million.

(18) The purchase was financed through a 2-year bond issue subscribed by the IDA at an actual interest rate of 5.28%. The bonds were not redeemed by Nauta as originally scheduled on 30 November 2011. The IDA agreed to postpone the redemption date until 30 November 2013 at an increased interest rate of 8.46% p.a.

3. DESCRIPTION OF THE MEASURES

The first measure

(19) The purchase of assets was financed through a 2-year bond issue acquired by the IDA for PLN 120 million (EUR 30 million)[7], at an actual annual interest rate of 5.28% (5.15% in the 1st year and 5.42% in the 2nd year) with a maturity date of 30 November 2011 ('the first measure' or 'the transaction'). The issue was secured by a mortgage on the land on which the company operated (see Section 2.2 above). Nauta planned to redeem the bonds using the proceeds from the sale of the land.

The second measure

(20) Since the new location to which Nauta's place of business was to be transferred following adaptation and modernisation of the acquired assets was not ready by the date initially envisaged, Nauta did not sell the land, and did not redeem the bonds purchased by the IDA. A new contract between the IDA and Nauta was signed in November 2011 to extend the maturity of the bonds until 30 November 2013. The interest rate was increased to 1 month WIBOR[8] plus a margin of 3.7 percentage points (8.46% as of 14 December 2011) and additional collateral was given, including a mortgage on the acquired assets, in order to cover an increased default risk.

4. DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE

The first measure

(21) In the opening decision the Commission expressed doubts as to whether Nauta would have been able to obtain such financing on similar terms on the market. Particular reference was made to:

(a) optimistic assumptions regarding an increase in revenues;

(b) optimistic assumptions regarding the future sale of land;

(c) the rate at which the bonds were issued.

(22) Based on the information available at the time, the Commission viewed the revenue growth forecasts as over-optimistic, given competition on the ship repair market (the company's core business), potential overcapacity and the economic crisis.

[7] The proceeds from the bond issue were intended to cover not just the purchase of the assets but also their adaptation and modernisation deemed necessary before Nauta could move its operations to a new location. The value of the bonds was higher than the value of the assets acquired to provide for this additional expenditure.
[8] Warsaw Interbank Offered Rate.

(23) The Commission had doubts as to whether the risk associated with the sale of the land on which Nauta operated had been properly assessed by the IDA. The urban development plan which classified the land as ‘industrial’ or ‘commercial’ had not been adopted and the duration of the adoption process had not been duly taken into account. Therefore the Commission questioned whether the assumed ‘commercial’ value of the land (PLN [>168] million) was justified. As the process of adopting the urban development plan was not complete, a private investor would probably be more conservative in assessing the value of the land.

(24) The Commission was also concerned that the IDA had accepted rather optimistic assumptions concerning the value of Nauta’s assets used as collateral for the bonds. Although the only pre-transaction valuation amounted to [PLN >168 million], post-transaction valuations (in 2010 and 2011) had estimated the value to be within the range of PLN [70-90] million to PLN [140-160] million, depending on land use.

(25) The actual annual interest rate of 5.28% offered for the bonds appeared to be low. The Polish authorities did not provide a credit rating for Nauta and did not specify the level of collateral within the meaning of the Communication from the Commission on the revision of the method for setting the reference and discount rates[9] (‘the reference rate Communication’). According to that Communication, the margin applied to the bonds corresponded to a ‘high’ collateralisation and at least a ‘good’ (BBB) rating of the company. The Commission questioned whether this was a faithful reflection of the situation.

The second measure

(26) While the opening decision noted the higher interest rate applied and the additional collateral provided under the new contract, the Commission did not have sufficient information on the business rationale for extending the maturity of the bonds by 2 years. Therefore the Commission doubted whether this extension would have been accepted by a private investor.

III. COMMENTS FROM POLAND

(27) In their comments the Polish authorities provided clarifications and additional contemporaneous evidence for both measures.

1. THE FIRST MEASURE

(28) As regards the doubts concerning the acquisition of the bonds by the IDA at an actual annual interest rate of 5.28%, the Polish authorities provided additional information, including forecasts for Nauta’s financial results, the prospects for the ship repair market and the value of Nauta’s assets to be sold. The Polish authorities also submitted an *ex post* private investor test conducted by […].

[9] OJ C 14 of 19.1.2008, p. 6.

Optimistic assumptions regarding an increase in revenues

(29) The Polish authorities argued that the purchase of Gdynia Shipyard's assets was based upon the real business needs of Nauta and had been preceded by a proper business plan, prepared by Nauta's management board with the participation of an independent consultant. Poland claimed that the business plan submitted to the Commission clearly demonstrated the profitability of the investment.

(30) With regard to the optimistic forecasts of growth in Nauta's sales revenue, the Polish authorities pointed out that despite the decreasing profitability of Nauta, it was still making a profit, had positive return on equity (ROE), return on sales (ROS) and return on assets (ROA) and significant cash reserves, and did not use interest-bearing debt. The growth forecast was confirmed *ex post* as Nauta's revenues in 2011 were higher than forecast. Also, as forecast, the company recorded a profit in 2011 and 2012.

(31) Poland also provided more information on the ship repair market, for which the outlook was positive in its view. Poland referred to growing demand for ship repairs associated with an increase in the total number of commercial ships. An OECD forecast for ship repairs in 2007-15 was invoked as evidence that the market was expected to grow by 110%.

(32) Poland also described Nauta's market position and good commercial relationship with partners in Scandinavia. According to Poland, Nauta's services are of high quality and can successfully compete with the cheaper but lower quality services provided by shipyards in Russia.

Optimistic assumptions regarding the future land sale

(33) Replying to the Commission's concerns regarding the assumed value of the Nauta assets used as collateral for the transaction, the Polish authorities stressed that (i) the IDA relied on one pre-transaction valuation prepared by a certified independent surveyor, (ii) the post-transaction valuations of 2011 were based on different land use assumptions (industrial or commercial) and therefore gave different values, (iii) similar transactions concerning nearby plots of land with similar land use restrictions had taken place before and the values obtained were similar to the value of the pre-transaction valuation and were known to the surveyor.

(34) With regard to the risk associated with the land sale, according to the Polish authorities the fact that the development plan had not been adopted by the city of Gdynia was not a real obstacle for the land forming the object of the sale to be classified as commercial and not industrial land. The Polish authorities explained the steps to be followed under Polish law prior to the adoption of the development plan, the town-planning study being part of that process. They referred to a ruling of the Supreme Administrative Court of Poland dated 6 August 2009 which stated that in practice, the study adopted by Gdynia was virtually equivalent to a local development plan. The court stated that administrative decisions such as construction permits should not contradict a study established for a particular city area. The study provided for the non-industrial use of Nauta's land.

(35) The Polish authorities also provided documents to substantiate their claim, which stated that a commercial price had been obtained in 2009 in two sales of land neighbouring the assets of Nauta. The first case concerned contemporaneous evidence of the public sale of a nearby plot in April 2009 where the auction starting price quoted in the press announcement corresponded to the commercial value of Nauta's land per square metre as indicated in the 2009 valuation. The second case concerned the sale of another plot neighbouring the assets of Nauta in which a relatively small parcel of 0.5 hectare achieved a similar price per square metre.

Rate at which the bonds were issued

(36) As regards the low interest rate at which the bonds were acquired by the IDA, the Polish authorities claimed that despite the lack of a formal credit rating, the interest rate properly reflected the risk involved. The IDA performed an analysis of the financial situation of Nauta prior to the transaction and concluded that the proposed interest rate guaranteed a sufficient risk-adjusted return. The Polish authorities drew the attention of the Commission to the following: (i) Nauta had made a profit in the 3 years prior to the transaction and had good financial perspectives, (ii) it had a large cash surplus and no interest-bearing debt, (iii) the value and quality of the collateral justified a low-risk premium, (iv) a higher interest rate would jeopardise the objective of maximising the return on the IDA's capital investment in Nauta (shares).

(37) The Polish authorities also referred to the rating of the Crist Shipyard prepared by the IDA, before a transaction that was assessed by the Commission in a no aid decision dated 25 July 2012[10]. The Polish authorities even claimed that Nauta represented a slightly lower risk than Crist and therefore deserved the same (BBB) rating. Poland stated that the IDA's investment in Nauta bonds was an intra-group investment as the IDA was soon to become the majority shareholder in Nauta (see recital 7 above).

(38) To further support the claim that the IDA's investment in Nauta bonds was profitable, the Polish authorities provided an *ex post* study by […]. Based on pre-transaction data, the study concludes that the return on the investment, including interest income and an increase in the value of the company, amounts to [>20%]. In addition, […] underlines that intra-group investors would be ready to accept a lower risk-adjusted return than a third party. Overall, […] confirmed that the transaction passed the private investor test.

[10] Commission Decision C(2012) 5057 final of 25 July 2012 on the State aid SA.33114 (2012/C) (ex. 2011/NN) Alleged aid to CRIST Shipyard, OJ L12 of 16 January 2013, p. 38-50.

2. THE SECOND MEASURE

(39) Concerning the Commission's doubts as regards the economic rationale behind the 2-year extension of the bond redemption by Nauta in 2011, Poland also supplied new information. It stated that in agreeing to postpone the redemption date the IDA took into account the following factors:

- the IDA's investment strategy for Nauta as the owner of the company;
- the positive financial situation of Nauta when the decision was taken to extend the maturity and the favourable forecast for the future;
- the improvement in the quality of the collateral following the addition of new property; the total value as appraised by a certified surveyor thus reached an estimated PLN [>190] million;
- the fact that seven buyers expressed an interest in purchasing the land from Nauta even though Gdynia's development plan for the shipyard area was not yet complete;
- the likelihood that the Gdynia city authority would agree to adopt the development plan for the shipyard area before 2013.

IV. ASSESSMENT

1. EXISTENCE OF STATE AID WITHIN THE MEANING OF ARTICLE 107 (1) OF THE TREATY

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

(41) The classification of a national measure as state aid presupposes that the following cumulative conditions are met: (1) the measure confers an advantage through state resources; (2) the advantage is selective; and (3) the measure distorts or threatens to distort competition and is capable of affecting trade between Member States.

1.1. Existence of an advantage

(42) In order to determine whether the measure under investigation constitutes aid, it is necessary to establish whether Nauta received an economic advantage which it would not have obtained under normal market conditions, i.e. the conditions in which a private investor or operator would have provided financing to Nauta (the market economy investor principle or 'MEIP').

The first measure

(43) In order to determine whether the measure under examination is compatible with the MEIP, the Commission assessed whether, on the basis of the information available to the IDA at the time the decision was taken, a private operator would have bought Nauta's bonds under similar conditions.

Analysis of the financial standing of Nauta

(44) The Commission notes that before a decision to acquire Nauta's bonds was taken the IDA performed an analysis of the financial standing of the company and concluded that the proposed interest rate guaranteed a sufficient risk-adjusted return. The scope of the analysis included: the business strategy of Nauta, the historical and forecast financial data as well as the risk assessment. The Commission analysed the soundness of the assumptions underlying this analysis.

(45) First, on the basis of the OECD's external publications of 2007, the Commission observes that the ship repair market on which Nauta conducts its main business activities had good prospects for growth. An OECD forecast for ship repairs showed that in 2007-15 the market would grow by 110%. The company was well-positioned to benefit from this market growth thanks to well-established commercial relationships with customers in Scandinavia and high-quality services that could successfully compete with the services provided by the cheaper but lower-quality shipyards in Russia. In this context, Nauta's investment in the assets of Gdynia Shipyard appeared to be justified by a reasonable expectation of expansion.

(46) The validity of the assumptions contained in the business plan of 2009 was confirmed by the actual results of the company in the post-transaction period i.e. in 2010 and 2011. Whereas, as a result of the economic crisis, sales revenues in 2010 were lower than planned, the company reported a sales profit of more than PLN 18 million although the business plan predicted a loss of PLN 33 million. The company exceeded its sales revenue forecast in 2011 and again reported a much bigger sales profit than expected, PLN 25 million instead of the forecast PLN 10 million. These results confirm that the financial forecasts were not overly optimistic and that Nauta was able to compete successfully on the market despite an unfavourable overall economic situation.

(47) Secondly, on the basis of the financial statements of the company, Nauta's business activity was profitable in the pre-transaction period of 2006-08 as well as in 2009 – the year of the transaction (see Table 1 above). The company had a positive return on equity (ROE), return on sales (ROS) and return on assets (ROA). Financial projections suggested that the company would increase its sales revenue and sales profit. In view of the market prospects and the business strategy of the company this forecast appeared reasonable.

(48) Thirdly, the risk associated with the investment was limited since prior to the transaction Nauta had a large cash surplus (more than PLN 34 million at the end of 2008) and no interest-bearing debt.

(49) For the above reasons, the Commission concludes that the *ex ante* analysis performed by the IDA was based on reasonable assumptions and that the IDA behaved in the same way as a private investor.

(50) Apart from assessing the analysis performed by the IDA prior to the investment, the Commission has also analysed whether the interest rate on the bonds was in line with the applicable reference rate. The interest rate at which Nauta's bonds were acquired by the IDA amounted to 5.15% in the first year and 5.42% in the second year, i.e. effectively 5.28% p.a. Given that the base rate for Poland in November 2009 amounted to 4.53%, the rate accepted by the IDA for the investment in Nauta's bonds would be higher than the applicable reference rate (composed of the base rate and relevant margin) provided that the rating of Nauta when the measure was applied was at least 'good' (BBB) and the collateral 'high'.

Nauta's rating

(51) The Polish authorities could not communicate to the Commission Nauta's contemporaneous credit rating as the company did not have any interest-bearing debt when the bonds were issued. Therefore, the Commission compared the rating Nauta could have obtained with the rating attributed by the IDA to another Polish shipyard (Crist) prior to a transaction in 2010, which had been previously assessed by the Commission[11]. The Polish authorities argued that the situation of Nauta was similar to the situation of Crist and therefore Nauta could have received the same rating.

(52) The Commission first notes that Nauta's main market, the ship repair market, had good growth prospects. Like Crist, Nauta had been present on the market for a long time and had an established customer network and competitive position.

(53) Secondly, although Crist reported higher net profits in the 3-year period prior to the transaction, Nauta recorded better profitability than Crist, as measured by ROA and ROS, during that period.

(54) Thirdly, Crist was highly indebted while Nauta did not have any interest-bearing debt, therefore the risk of default of the latter was lower. In addition Nauta had at the time of the transaction a significant cash surplus of more than PLN 34 million whereas Crist's cash surplus was less than PLN 9 million.

(55) Fourthly, as discussed below, in both cases the value of the collateral covered the risk of the financing with a Loss Given Default (LGD) of between 0-30%.

[11] See footnote 10.

(56) In the light of the above, the Commission considers that it was not unreasonable for the IDA to consider that Nauta's rating in 2009 could be assessed as similar to the rating of Crist, which was assessed by the IDA as BBB.

Value of the collateral

(57) As regards the value of the collateral, Poland claimed that it should be assessed as 'high'. A high value of collateral should represent a LGD value of between 0 and 30%. As the transaction's nominal value was PLN 120 million, the collateralisation would be high if the value of the collateral provided corresponded to a range between PLN 84 million and PLN 120 million.

(58) The only *ex ante* appraisal of Nauta's land available to the IDA indicated a price of PLN [>168] million on the basis of the assumption that the land could be used for commercial purposes, as envisaged by the city of Gdynia in its approved urban development study. This appraisal had been prepared by […], a certified surveyor using the comparative method. This is one of the generally accepted methods for valuing land and is provided for in Polish law. The Commission notes that the valuation was based on similar transactions and that the surveyor was aware that similar values per square metre had been achieved in sales of neighbouring plots of land.

(59) As the evaluation was based on the classification of the land as 'commercial', the Commission also analysed whether that assumption was founded. In that respect, the Commission takes note of the judgment of the Polish Supreme Administrative Court of 6 August 2009 which confirms that the urban development study prepared by the city of Gdynia constituted an important stage in amending the local development plan. The Court stated that administrative decisions such as construction permits issued for the land covered by the study should not be incompatible with the findings of that study. The study provided for the non-industrial use of Nauta's land.

(60) The Commission also notes that in the sales of the plots of land bordering Nauta's land the prices achieved corresponded to the value of non-industrial land.

(61) However, in view of the fact that the process of adopting the development plan had not been completed, the Commission considers that a hypothetical private investor would probably base its assessment not on the full value of the land after the change in the local development plan, but on a value that could be achieved quickly. The Commission notes that in order to establish a fire sale value for similar land in Gdynia the independent surveyors applied a coefficient of 0.5 to the market value[12]. Whereas this ratio appears conservative, if it was applied to the land of Nauta it would still result in a value of PLN [>84] million. Thus, even given very prudent assumptions, the LGD would be below 30% and the collateral should be considered as high.

(62) The Commission therefore concludes that the collateral accepted by the IDA was 'high'.

[12] Valuation of land belonging to Gdynia Shipyard dated 4 March 2009.

Conclusion on the first measure

(63) The Commission concludes that the assumptions underlying the analysis of the financial standing of Nauta performed prior to the investment were reasonable and that the results of this analysis justified the conclusion that the proposed interest rate on the bonds guaranteed a market-conform risk-adjusted return.

(64) Additionally, according to the reference rate Communication, considering a BBB rating, the high collateralisation and the reference rate of 4.53% for Poland in November 2009, the bonds which the IDA acquired in 2009 should have been subject to an interest rate of 5.28% (4.53% + 75 bps), which is the effective rate actually accepted by the IDA.

(65) The first measure therefore does not entail an advantage for Nauta.

(66) The study conducted by […] 3 years after the transaction, which shows the considerable profitability of the IDA's investment in Nauta bonds is not decisive in view of its *ex post* nature, but confirms this assessment.

The second measure

(67) In line with the private investor test the Commission has analysed whether a hypothetical private creditor would have agreed to the extension of the bonds' maturity until November 2013. The Commission compared the expected return in two scenarios (1) forced redemption of the bonds in 2011 and (2) redemption in 2013.

(68) The Commission observes that in the first scenario the expected return would be equal to the value of the collateral. As mentioned in recital 61 above, a private creditor would probably base its assessment not on the full value of the land but on a value that could be achieved quickly, i.e. PLN [>84] million.

(69) In the second scenario the expected return equals the full nominal value of the bonds, i.e. PLN 120 million plus interest of 8.46% p.a. for 2 years (the interest applicable in this case equalled 1M WIBOR[13] plus 3.7%, which for the WIBOR in December 2011 resulted in a total interest rate of 8.46%). The Commission notes that the expected return would be higher if the redemption period is extended until 2013. Even if Nauta defaulted in 2013 the collateral's value at that time is likely to be higher than in 2011. Firstly, the quality of the collateral was improved by adding a new property. The total value thus reached an estimated PLN [>190] million, as appraised by the certified surveyor. Secondly, the completion of the administrative procedures to change the local development plan (or progress in that direction) should lead to an increase in the price towards the full commercial value of the land as legal uncertainty for potential investors decreases.

(70) It should also be taken into account that at the time of the initially planned bond redemption, the IDA was already the owner of Nauta and, as such, was also interested in maximising the return from the capital investment. Forced redemption in 2011 could undermine the viability of the overall strategy based on the acquisition of new assets and

[13] Warsaw Interbank Offered Rate.

transfer of the business to a new location and lead to a decrease in the value of the whole company.

Conclusion on the second measure

(71) In the light of the above, the Commission considers that a hypothetical private creditor would have preferred to agree to the extension of the bonds' maturity rather than forcing immediate redemption. The second measure therefore does not entail an advantage for Nauta.

1.2. Conclusion on the advantage

(72) On the basis of the new elements put forward by the Polish authorities and in view of the above findings, the Commission concludes that the company did not derive any undue advantage from the conditions under which the bonds were acquired by the IDA in 2009 and from the extension of the bonds' maturity in 2011.

(73) In view of the fact that the elements indicating the existence of state aid within the meaning of Article 107(1) TFEU are cumulative, the absence of any one of them is decisive. There is therefore no need to analyse the other elements identified in recital 41 above.

HAS ADOPTED THIS DECISION:

Article 1

The measure which the Republic of Poland has implemented in favour of Nauta S.A. in the form of acquisition of bonds worth PLN 120 million at an effective interest rate of 5.28% in 2009-11 and 8.46% in 2011-13 does not constitute state aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Commission

Joaquín ALMUNIA
Vice-President

Notice

If the decision contains confidential information which should not be published, 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 publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

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