EUROPEAN COMMISSION

Brussels, 04.02.2014
C (2014) 459 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.

Subject: State aid SA.36868 (2014/C) (ex 2013/N) – Estonia
Restructuring aid to Estonian Air

Sir,

The Commission wishes to inform Estonia that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU"). In relation to the sale-and-lease-back agreement of an office building between Estonian Air and Tallinn Airport from April 2013, the Commission has decided to consider that it does not constitute State aid in favour of Estonian Air.

1. PROCEDURE

(1) On 20 February 2013, the Commission decided to open the formal investigation procedure in case SA.35956 (2013/C) in relation to a rescue loan granted by Estonia to AS Estonian Air ("Estonian Air" or "the airline") of EUR 8.3 million ("the rescue opening decision"). This procedure also covers three capital injections in favour of Estonian Air carried out in 2009 (EUR 7.3 million), 2010 (EUR 19.9 million) and 2011/2012 (EUR 30 million), as well as the sale of Estonian Air's ground handling business to Tallinn Airport in 2009. On 16 April 2013, the Commission extended the formal investigation procedure as regards an increase of the rescue loan by EUR 28.7 million.

(2) Following informal contacts with the Commission, Estonia notified a restructuring plan – including a recapitalisation of the airline amounting to EUR

40.7 million – on 20 June 2013, by SANI notification number 8513. The notification was registered with number SA.36868 (2013/N).

(3) The Commission requested additional information by letters dated 16 July and 28 October 2013, to which the Estonian authorities replied by letters dated 28 August and 25 November 2013. Estonia submitted additional information by e-mail of 22 December 2013.

(4) In addition, the Commission received a complaint from Ryanair dated 23 May 2013 concerning the plans of the Estonian Government to increase the capital of Estonian Air as well as a sale-and-lease-back agreement between Estonian Air and Tallinn Airport regarding an office building owned by Estonian Air. On 25 June 2013, the Commission forwarded the complaint to the Estonian authorities. The comments of the Estonian authorities were submitted by letter dated 5 August 2013.[1]

2. BACKGROUND INFORMATION

2.1. The beneficiary

(5) Estonian Air, a stock company under Estonian law, is the flag carrier airline of Estonia, based in Tallinn Airport.

(6) The airline was formed as a State-owned company after the independence of Estonia in 1991 from a division of the Russian airline Aeroflot. After privatisation efforts and subsequent changes in the airline's shareholding structure, Estonian Air is currently owned by Estonia (97.34%) and the SAS Group (2.66%).

(7) Estonian Air participates in two joint ventures: Eesti Aviokütuse Teenuste AS (51% share), which provides refuelling service to aircrafts at Tallinn Airport, and AS Amadeus Eesti (60% share), which provides Estonian travel agencies with booking systems and support. Estonian Air sold its share in AS Amadeus Eesti to Amadeus IT Group, S.A. in early 2014.[2] Estonian Air also had a 100%-owned subsidiary, AS Estonian Air Regional, which operated commercial flights to neighbouring destinations in cooperation with Estonian Air. This subsidiary was sold in June 2013 to Fort Aero BBAA OÜ, a private jet operator.[3]

(8) Estonian Air has been heavily loss-making since 2006. More than half of the airline's equity disappeared between 2010 and 2011. In this period, the airline lost more than one quarter of its capital. Despite capital injections in 2011 and

1 Given that the complaint was submitted on 23 May 2013, before Estonia notified Estonian Air's restructuring plan on 20 June 2013, the complaint was registered under the rescue aid case, i.e. SA.35956. However, given that the complaint relates to the plans of the Estonian authorities to recapitalise the airline, it will be dealt with under the present restructuring case SA.36868.

2 See http://estonian-air.ee/en/about-us/news/press-releases/estonian-air-sold-its-share-in-amadeus-estonia-to-amadeus-it-group-sa/.

3 See http://estonian-air.com/en/about-us/news/press-releases/in-the-second-quarter-the-airlines-revenue-was-eur-195m-and-net-loss-09m/. At the time of the sale, AS Estonian Air Regional was dormant and had no aircraft, no employees, and no assets.

2012, the airline's financial situation continued deteriorating in 2012. In May 2012, when calculating the financial results for April, a monthly loss of EUR 3.7 million was found, above the budgeted loss of EUR 0.9 million. In June 2012, Estonian Air revised its forecast for 2012 and forecasted EUR 25 million in operational losses for the year (the original budget, finalised in January 2012, forecasted an annual loss of EUR 8.8 million). By the end of July 2012, Estonian Air had reached a state of technical bankruptcy under Estonian law. In financial year 2012, the airline made losses of EUR 49.2 million.

(9) During the first half of 2013, Estonian Air made losses of EUR 5.8 million. In the second quarter of 2013, Estonian Air's revenue increased by 20% from the previous quarter to EUR 19.5 million and the net loss decreased by 80% to EUR 0.9 million.[4] Despite making profits of EUR […] in November 2013, the accumulated losses of the airline for the period January-November 2013 reached EUR […] million.

2.2. Support measures in the past (case SA.35956)

(10) In 2009, Estonian Air benefited from a EUR 7.3 million capital injection by its shareholders in proportion to their stakes – at the time it was 34% owned by Estonia (blocking stake), 49% by SAS and 17% by a local investment bank (measure 1 in the rescue opening decision). Also in 2009, Estonian Air sold its ground handling business to the State-owned Tallinn Airport at a price of EUR 2.3 million without following an open, transparent and unconditional tender or the opinion of an independent expert (measure 2 in the rescue opening decision).

(11) At the end of 2010, Estonia injected EUR 17.9 million in the airline while SAS converted into equity a loan of EUR 2 million. As a result, Estonia became majority owner of the airline with 90% of the shares, while SAS was diluted to 10% (measure 3 in the rescue opening decision).

(12) In November 2011, Estonia decided to invest EUR 30 million in Estonian Air, which was done in two equal segments: EUR 15 million in December 2011 and EUR 15 million in March 2012 (measure 4 in the rescue opening decision). As a result, Estonia increased its shareholding in the airline to 97.34%, while SAS was further diluted to 2.66%. Since then, the shareholding structure of Estonian Air has not changed.

(13) In December 2012, Estonia notified a rescue loan of EUR 8.3 million to Estonian Air at an interest rate of 15%.[5] The rescue loan was disbursed to the airline on 20 December 2012 without prior Commission authorisation (measure 5 in the rescue opening decision).

---

[4] See footnote 3 above.

[5] On 5 December 2013, Estonia decided to lower the interest rate of the rescue loan from the initial 15% to 7.06% as from July 2013 at the request of Estonian Air. According to the Estonian authorities, the reason for the decision was that the airline's risk profile had changed since the rate was set in December 2012. The Commission will take this element into consideration in its assessment of the rescue loan in the context of case SA.35956.

(14) On 20 February 2013, the Commission decided to open the formal investigation procedure on the abovementioned five measures. In the rescue opening decision, the Commission expressed its doubts whether these measures were carried out under market conditions. The Commission further noted that Estonian Air would qualify as a firm in difficulty on the basis of point 11 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[6] ("the R&R Guidelines") at the time when the measures above were provided. In addition, Estonian Air would also seem to fulfil the requirements of points 10(a) and 10(c) of the R&R Guidelines since July 2012. The Commission therefore assessed the measures under the R&R Guidelines and expressed doubts about whether these measures would comply with the "one time, last time" principle of the R&R Guidelines.

(15) On 28 February 2013, the Estonian Government decided to increase the rescue loan granted to Estonian Air by EUR 28.7 million, of which EUR 16.6 million were already provided to the airline on 5 March 2013. Therefore, on 16 April 2013, the Commission decided to extend the formal investigation procedure so as to cover the increase of the rescue loan.

3. DESCRIPTION OF THE MEASURES

(16) Estonia has notified restructuring aid of EUR 40.7 million to Estonian Air in the form of equity, on the basis of a restructuring plan ("the plan"), covering a five-year restructuring period from 2013 to 2017.

3.1. The restructuring plan

Return to viability by 2016

(17) The plan aims at restoring Estonian Air's long-term viability by 2016. The plan assumes that it will be possible to turn around the existing level of losses from earnings before taxes (EBT) of EUR 49.2 million in 2012 to break-even level by 2015 and to profitability by 2016. According to the plan's assumptions, Estonian Air will generate EBT of EUR […] by 2016.

[6] OJ C 244, 1.10.2004, p. 2. The validity of the R&R Guidelines was initially set until 9 October 2009. However, the Commission decided to extend their validity first until 9 October 2012 (Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, OJ C 156, 9.7.2009, p. 3) and then, in the context of the State aid modernisation (SAM) initiative, until such time as the R&R Guidelines are replaced by new rules on State aid for rescuing and restructuring firms in difficulty (Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004, OJ C 296, 2.10.2012, p. 3).

Table 1: Profit and loss 2009-2017 (in EUR million)

	2009	2010	2011	2012	2013(f)	2014(f)	2015(f)	2016(f)	2017(f)
Revenues	62.759	68.583	76.514	91.508	[…]	[…]	[…]	[…]	[…]
EBITDA	2.722	3.181	(6.830)	(10.037)	[…]	[…]	[…]	[…]	[…]
EBT	(4.434)	(2.617)	(17.325)	(49.218)	[…]	[…]	[…]	[…]	[…]
EBT margin	(7%)	(4%)	(23%)	(54%)	[…]	[…]	[…]	[…]	[…]
Total equity	7.931[7]	23.958	36.838	(14.683)	[…]	[…]	[…]	[…]	[…]

(18) Concerning profitability, the plan aims at achieving a return on capital employed (ROCE) of [(0.0%) – 10.0%] and a return on equity (ROE) of [5.0% – 15.0%] by 2016.

Table 2: ROE and ROCE 2013-2017

	2013	2014	2015	2016	2017
ROE	[(40.0%) – (30.0%)]	[(15.0%) – (5.0%)]	[(5.0%) – 5.0%]	[5.0% – 15.0%]	[5.0% – 15.0%]
ROCE	[(10.0%) – (0.0%)]	[(5.0%) – 5.0%]	[(0.0%) – 10.0%]	[(0.0%) – 10.0%]	[(0.0%) – 10.0%]

Restructuring measures

(19) To achieve these results, the plan foresees a number of key actions. For instance, Estonian Air will decrease the size of its fleet, passing from 11 aircraft in December 2012 to 7 planes as of August 2013. The airline will also rationalise the fleet: from the initial aircraft mix (including four Embraer E170, three Bombardier CRJ900, three Saab 340 and one Boeing 737), […]. Of these seven aircraft, five will be used to serve the airline's route network and the remaining two will be wet leased or chartered.

(20) Estonian Air has downsized its route network, passing from the 24 routes available in 2012 to the current 12 routes, of which two are seasonal.[8] The airline thus discontinued 12 routes,[9] which are designated as compensatory measures. The downsizing of the route network entails a capacity reduction of

7 Exchange rate EUR 1 = EEK 15.65.

8 The plan maintains the following 10 "core" routes: Amsterdam (AMS), Stockholm (ARN), Brussels (BRU), Copenhagen (CPH), Kiev (KBP), Saint Petersburg (LED), Oslo (OSL), Moscow Sheremetyevo (SVO), Trondheim (TRD) and Vilnius (VNO). The seasonal routes are Paris Charles de Gaulle (CDG) and Nice (NCE). However, it appears that Estonian Air is operating an additional seasonal route beyond the ones contained in the plan, namely Munich (MUC), and will also operate a seasonal route to Split (SPU) as of May 2014.

9 The discontinued routes are Hannover (HAJ), Helsinki (HEL), Joensuu (JOE), Jyväskylä (JYV), Kajaani (KAJ), Riga (RIX), London Gatwick (LGW), Tartu (TAY), Tbilisi (TBS), Kuressaare (URE), Venice (VCE) and Vienna (VIE).

37% in terms of ASK[10] and 35% in terms of seats offered (in 2013 figures compared to 2012). Furthermore, Estonian Air reduced by 23% the ASK in those routes maintained as core.

(21) Estonian Air has already reduced its headcount from 337 employees in April 2012 to 197 in March 2013 and 154 in November 2013, beyond the original plan to reduce staff down to 164 employees. Furthermore, Estonian Air sold to Tallinn Airport an office building and a hangar.

(22) Estonian Air also plans to implement a new pricing model (fewer booking classes/price groups and fare regulations, as well as product disaggregation aimed at generating higher levels of ancillary income) and a number of measures to improve the quality of its services, including the channels through which they are sold. […].

(23) In addition, Estonian Air plans to implement a number of measures to reduce costs, including the signing of a collective agreement regarding pay scale increases, vacation and pilot utilisation; the introduction of a multifunctional employee concept, especially in back office staff; increased fuel efficiency via improved flight operations, including reduced take off power and fine tuning, reduced distribution and commission costs; efficiencies from the single type fleet; and contractual renegotiations such as […]. These measures should yield EUR […] million in the next five years.

(24) Furthermore, the plan foresees the reorganisation of the airline's senior management team, including the recruitment of a new CEO and a new COO.

Funding of the restructuring

(25) The plan quantifies the total restructuring costs of Estonian Air at EUR 78.7 million. These costs will be funded by restructuring aid granted by Estonia in the amount of EUR 40.7 million in the form of equity, part of which will allegedly be used to repay the rescue loan. The plan further assumes that Estonian Air will be able to generate funding of EUR […] million from the planned sale of […] aircraft in 2015, EUR 7.5 million from the sale of property, EUR […] million from the sale of other non-core assets as well as EUR […] million from a new loan to be provided by Swedbank.

Risk and scenario analysis

(26) The plan provides a scenario analysis including, beside the base case on which the plan is based, a best case ('high case') and a worst case ('low case') scenario. On the one hand, the high case assumes an annual GDP growth in Europe of 5%, a growth in ancillary revenues of EUR […] million resulting from improved product positioning and a 5% average passenger increase. According to the plan, the high case would result in positive EBT already in 2014. On the other hand, the low case is based on the assumption that GDP growth in Europe will continue to be low until 2017 which will lead to a 12% decrease in the number of passengers. The negative consequences of the fall in the number of

---

[10] 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.

passengers would however be mitigated by a number of management actions, […]. Taking into consideration the mitigating management actions, the low case would result in slightly positive EBT in 2017 but still negative net cash before financing. In none of the cases additional funding would be needed.

Table 3: Scenario analysis 2013-2017 (in EUR million)

		2013	2014	2015	2016	2017
High case	EBT	[…]	[…]	[…]	[…]	[…]
	Net cash before financing	[…]	[…]	[…]	[…]	[…]
Low case	EBT	[…]	[…]	[…]	[…]	[…]
	Net cash before financing	[…]	[…]	[…]	[…]	[…]

(27) The plan also provides a sensitivity analysis upon the base case which covers selected factors: 5% or 10% decrease in yield targets, 5% decrease in the number of passengers, 5% or 10% increase in fuel costs, 5% or 10% decrease in the target sale price for the aircraft to be sold in 2015 (see recital (25) above) and 5% appreciation and depreciation in the USD/EUR exchange rate. The plan considers the impact that each factor individually considered would have on the recovery of the airline and concludes that additional funding between […] and […] would be needed in all cases (except in case there is a 5% USD/EUR exchange rate appreciation). In addition, in most of the cases, break-even would not be reached by the end of the planned restructuring period, i.e. 2017.

3.2. The sale-and-lease-back agreement of an office building with Tallinn Airport

(28) As indicated in recital (4) above, the Commission received a complaint from Ryanair dated 23 May 2013 concerning the plans of the Estonian Government to increase the capital of Estonian Air as well as a sale-and-lease-back agreement between Estonian Air and Tallinn Airport regarding an office building previously owned by Estonian Air.

(29) The first issue raised in the complaint relates to the restructuring of the airline (see section 3.1 above). As regards the sale-and-lease-back of an office building agreed between Estonian Air and Tallinn Airport, the plan explains that in April 2013 the airline sold an office building and a hangar at Tallinn Airport. The price paid was EUR 7.5 million, which is considered as part of the own contribution of the airline. The complainant considered the price paid by Tallinn Airport as "*wildly excessive*" and thus constituting aid to Estonian Air.

Comments of the Estonian authorities

(30) The Estonian authorities have explained that Estonian Air owned a building complex comprising of a four-story office building, garages and a hangar right next to Tallinn Airport. Along with the building complex, Estonian Air owned a right of superficies/building right. The sale process involved both the building complex and the right of superficies (jointly referred to as "the building").

(31) Estonian Air used the building as collateral for a working capital line of EUR 5 million and a EUR 3.3 million long-term loan from Swedbank. In addition,

according to the contract establishing the right of superficies, Tallinn Airport held a right of first refusal on any sale transaction under which Tallinn Airport could match any other offer and purchase the building.

(32) As part of Estonian Air's restructuring efforts, the new management decided to sell the building at the end of 2012 and marketed it through several channels, i.e. direct contact with several potentially-interested parties, either directly or through Swedbank, and by charging the real estate company Colliers to seek out potential purchasers. On 28 January 2013, Colliers estimated the value of the building at EUR 7.745 million.

(33) On 24 January 2013, Tallinn Airport made a first offer for the building of EUR […] million, which was rejected by Estonian Air for it being too low. On 11 February 2013, the private company AS Leonarda Invest made a purchase offer "as is" in the amount of EUR 7.5 million. Using its right under the contract establishing the right of superficies, Tallinn Airport decided to match the offer of AS Leonarda Invest and on 19 February 2013 made an offer to Estonian Air to purchase the building for EUR 7.5 million.

(34) As Swedbank held a mortgage on the building, the sale agreement was a tri-partite agreement between Estonian Air, Tallinn Airport and Swedbank. At the same time, Estonian Air and Tallinn Airport negotiated a two-year lease agreement for two floors in the building and some additional space in the airport terminal for crew.

(35) Estonia is of the view that the sale took place at market price, thereby excluding an advantage to Estonian Air. This would be so in view of the valuation of the independent expert Colliers (see recital (32) above), who valued the building at EUR 7.745 million, i.e. above the price paid by Tallinn Airport. As regards the rental agreement, Estonia explains that the price is in market terms as it is based on the market rental rates included in the valuation carried out by Colliers.

4. ASSESSMENT

4.1. Existence of State aid

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

(37) To be State aid, a measure must stem from State resources and be imputable to the State. In principle, State resources are the resources of a Member State and of its public authorities as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.

(38) In order to determine whether an economic advantage in favour of Estonian Air was present in the different measures under assessment and therefore whether

these measures involve State aid, the Commission must assess whether the airline received an economic advantage which it would not have obtained under normal market conditions. To examine this question the Commission applies the so-called market economy investor principle ("MEIP") test. According to the MEIP test, no State aid would be involved where, in similar circumstances, a private investor of a comparable size to that of the bodies concerned in the public sector, operating in normal market conditions in a market economy, could have been prompted to provide to the beneficiary the measures in question. The Commission therefore has to assess whether a private investor would have entered into the transactions under assessment on the same terms. The attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return.

(39) Finally, the measures in question must distort or threaten to distort competition and be liable to affect trade between Member States.

(40) Inasmuch as the measures under assessment entail State aid within the meaning of Article 107(1) TFEU, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article (see section 4.2 below). According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met.[11]

The capital injection notified as restructuring aid

(41) The decision of the Estonian authorities to inject EUR 40.7 million into Estonian Air in the form of equity has to be considered State aid. The capital injection comes directly from the State budget and thus constitutes State resources. Moreover, since it exclusively benefits one undertaking (i.e. Estonian Air) and is provided at conditions that a prudent market economy investor would normally not accept, the planned capital injection entails a selective advantage to Estonian Air. Moreover, the measure affects trade between Member States and has an impact on competition since Estonian Air competes with other European Union airlines, in particular in view of the third stage of liberalisation of air transport which entered into force on 1 January 1993. The measure in question thus enables Estonian Air to continue operating so that it does not have to face, as other competitors, the consequences normally deriving from its poor financial results.

(42) Under these conditions, the capital injection constitutes State aid within the meaning of Article 107(1) TFEU. This is not disputed by the Estonian authorities.

(43) The Commission understands that the capital injection has not yet been carried. Thus, it seems Article 108(3) TFEU has been respected in relation to the notified restructuring measure.

[11] See, for instance, Case C-364/90 *Italy v Commission* [1993] ECR I-2097, at paragraph 20, and Case T-257/10 *Italy* v *Commission* judgment of 27 September 2012, not yet published in ECR, at paragraph 135.

The sale of the building to Tallinn Airport

(44) The Commission must also assess whether the sale of the building to Tallinn Airport occurred in April 2013 entailed State aid in favour of Estonian Air.

(45) The Commission first observes that the sale was not done through an open, transparent and unconditional tender. However, the sale was preceded by a valuation of the building carried out by Colliers, an internationally recognised independent expert, and the offer of Tallinn Airport was below the market price estimated by Colliers. This is a first indication that the price paid was in line with the MEIP and did not entail an undue advantage to Estonian Air.

(46) In addition, the offer of Tallinn Airport was made in order to match the offer of AS Leonarda Invest, something to which it was entitled under the contract establishing the right of superficies (see recital (31) above). The Commission has no grounds to doubt that the offer of AS Leonarda Invest was a purely independent offer made by a private company. This also indicates that the offer of Tallinn Airport was in line with the MEIP.

(47) Hence there is no advantage in the sense of Article 107(1) TFEU. The Commission therefore concludes that the sale of the building to Tallinn Airport did not entail State aid to Estonian Air.

4.2. Compatibility with the internal market

(48) Article 107(3)(c) TFEU provides that State 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.

(49) The Estonian authorities have notified the capital injection for Estonian Air as restructuring aid in order to establish whether it may be compatible with the internal market pursuant to Article 107(3) TFEU. In view of the difficulties of Estonian Air (see section 4.2.1 below), the Commission does not consider that other compatibility grounds would apply and will thus assess the notified capital injection as restructuring aid.

4.2.1. Difficulties of Estonian Air

(50) In order to be eligible for restructuring aid, Estonian Air must qualify as a firm in difficulty within the meaning of the R&R Guidelines.

(51) Point 10 of the R&R Guidelines clarifies that a limited liability company is regarded as being in difficulty where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months (point 10(a) of the R&R Guidelines), or where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings (point 10(c) of the R&R Guidelines).

(52) Point 11 of the R&R Guidelines adds that, even if the conditions in point 10 are not satisfied, a firm may be considered to be in difficulty in particular where the usual signs of a firm being in difficulty 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.

(53) As mentioned in recital (8) above – concerning the rescue aid case SA.35956 –, Estonian Air has been heavily loss-making since 2006. At least since 2009, the airline has showed the usual signs of a firm in difficulty. More than half of the airline's equity disappeared between 2010 and 2011. In this period, the airline lost more than one quarter of its capital. By the end of July 2012, Estonian Air had reached a state of technical bankruptcy under Estonian law. In spite of improvement as of the second quarter of 2013, the financial situation remains stressed.

(54) In the rescue opening decision, the Commission concluded that Estonian Air qualified as a firm in difficulty on the basis of point 11 of the R&R Guidelines since 2009. In addition, Estonian Air also fulfilled the requirements of points 10(a) and 10(c) of the R&R Guidelines as of July 2012.

(55) This conclusion is also valid for the present case. In particular, the Commission notes that the main reason why the situation of Estonian Air improved as of the second quarter of 2013 is the rescue loan provided by Estonia. In any event, as of the date of notification of the restructuring aid, i.e. 20 June 2013, Estonian Air would still be loss-making and the plan forecasts a return to profitability only in 2016 (see recital (17) above).

(56) For the reasons above, the Commission concludes for the purposes of the restructuring aid notification that Estonian Air would qualify as a firm in difficulty in the sense of the R&R Guidelines. The Estonian authorities do not contest this.

4.2.2. Restoration of long-term viability

(57) According to point 35 of the R&R Guidelines, "*[t]he 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*". Moreover, on the basis of point 36 of the R&R Guidelines, the restructuring plan must contain scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses. It must enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.

(58) The plan notified by Estonia covers a restructuring period of five years (2013-2017), which is a duration that has been accepted by the Commission in other restructuring cases in the aviation sector.[12] The plan aims at achieving return to profitability by 2016 with an EBT of EUR […], resulting in a ROCE of [(0.0%) – 10.0%] and a ROE of [5.0% – 15.0%].

(59) When compared with similar cases assessed by the Commission,[13] the base case of the plan and the assumptions underlying it *prima facie* appear to constitute a

---

[12] See, for instance, the Commission's decisions in SA.33015 (2012/C) – Air Malta plc, at recital 93 and SA.30908 (2012/C) – ČSA - Czech Airlines - Restructuring plan, at recital 107.

[13] In recent final decisions in airline restructuring cases (for instance, SA.33015 (2012/C) – Air Malta plc and SA.30908 (2012/C) – ČSA - Czech Airlines - Restructuring plan), the Commission

reasonable basis for the restoration of the long-time viability of Estonian Air. However, both the scenario analysis and the sensitivity analysis show significant weaknesses about the plan's ability to restore Estonian Air's long-term viability.

(60) Indeed, the low case assumes a 12% decrease of passengers due to the assumption that GDP growth in Europe will continue to be low until 2017. In the low case, Estonian Air would reach slightly positive EBT in 2017 but still negative net cash before financing only after additional restructuring measures are adopted by the management of the airline (see details in recital (26) above). Moreover, the sensitivity analysis provided shows that relative minor changes in the assumptions would result, on a stand-alone basis, in need of additional funding except in one case (see recital (27) above). In addition, in most of the cases, break-even would not be reached by the end of the restructuring period.

(61) The Commission observes that the assumptions used in the low case, as well as the relative minor changes to the assumptions under the sensitivity analysis, do not appear to be unrealistic. Indeed, a 5% decrease in yield targets or a 5% decrease in the number of passengers, to name just two examples, appear plausible in the competitive market environment in which airlines operate, which in addition is subject to the current economic conditions at global and European level. The additional funding needs seriously question the ability of the plan to restore Estonian Air's long-time viability by the end of the restructuring period.

(62) On this basis, the Commission doubts whether the plan provides a sound basis for restoring the long-term viability of Estonian Air.

4.2.3. *Avoidance of undue distortions of competition*

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

(64) The plan foresees several compensatory measures. In the first place, according to the plan, Estonian Air will release slots in a number of coordinated airports (capacity-constrained airports), namely 12 weekly slots in both Saint Petersburg (LED) and Moscow Sheremetyevo (SVO), 3 weekly slots in Trondheim (TRD), 2 weekly slots in Paris Charles de Gaulle (CDG), 25 weekly slots in Helsinki (HEL), 4 weekly slots in London Gatwick (LGW) and one daily slot in Vienna (VIE). Estonian Air will also forego any grandfather rights on these slots. In order to assess whether these slots can be accepted as compensatory measures, the Commission would require additional information from the Estonian authorities on the capacity-constrained nature of the airports and the economic value of the slots.

---

accepted ROCE figures of 2% to 5% after a 5-year restructuring period as sufficient indicators of restoration of profitability.

(65) The plan also foresees the discontinuation of 12 routes (see recital (20) above), which are considered as compensatory measures and which would amount to a reduction of capacity measured in ASK of 18%. For these routes, Estonia provided the following data:

Table 4: Routes designated as compensatory measures

Destination	Load factor (2012)	Level 1 contribution (2012)	DOC contribution[14] (2012)	Profitability margin (2012)	Capacity given up in ASK (% compared to total capacity pre-restructuring)
Hannover (HAJ)	[…]	[…]	[…]	[…]	[…]
Helsinki (HEL)	[…]	[…]	[…]	[…]	[…]
Joensuu (JOE)	[…]	[…]	[…]	[…]	[…]
Jyväskylä (JYV)	[…]	[…]	[…]	[…]	[…]
Kajaani (KAJ)	[…]	[…]	[…]	[…]	[…]
Riga (RIX)	[…]	[…]	[…]	[…]	[…]
London Gatwick (LGW)	[…]	[…]	[…]	[…]	[…]
Tartu (TAY)	[…]	[…]	[…]	[…]	[…]
Tbilisi (TBS)	[…]	[…]	[…]	[…]	[…]
Kuressaare (URE)	[…]	[…]	[…]	[…]	[…]
Venice (VCE)	[…]	[…]	[…]	[…]	[…]
Vienna (VIE)	[…]	[…]	[…]	[…]	[…]

(66) At this stage, it is unclear to the Commission how the Level 1 and DOC contributions and the profitability margin have been calculated. It also appears that the difference between these profitability indicators is very pronounced. It is thus unclear to the Commission whether Estonian Air would have had to give up the routes in any event in order to return to viability, in which case the proposed cancelled routes would not be acceptable as compensatory measures.

(67) In particular, the Commission notes that all routes have a 'profitability margin' below 0. Estonia nonetheless considers that the 'profitability margin' should not be used to assess the profitability of the routes, given that until 2012 the airline was using a hub-and-spoke network in which the high percentage of transfer passengers (30%) dragged the average yield down to EUR 92.8. With the restructured point-to-point network in 2013, Estonian Air would have cut in half the percentage of transfer passengers for the first half of 2013 and would have increased the average yield to EUR 114.8. The Commission does not share the views of the Estonian authorities, given that the main purpose of the restructuring process is to change the business model if it does not allow the company to reach profitability. In any event, the Estonian authorities have not

[14] The plan defines DOC contribution as total revenue less passenger, round trip and fuel-related costs over total revenue.

demonstrated that each of the abandoned routes would be profitable under the new business model.

(68) If the Commission were to use the 'DOC contribution level' for assessing the profitability of the routes designated as compensatory measures, it results that only two routes, i.e. […], would have a 'DOC contribution level' above 0. The discontinuation of the routes from/to […] correspond to a rather small capacity decrease of around 1% in terms of ASK. The Commission notes that the capacity cuts which has been accepted by the Commission in similar restructuring cases were significantly higher.[15]

(69) Finally, the Commission observes that Estonia is an area eligible for assistance under Article 107(3)(a) TFEU.[16] According to point 56 of the R&R Guidelines, the conditions for authorising restructuring aid in assisted areas may be less stringent as regards the implementation of the compensatory measures. However, if the Commission were to conclude that the routes proposed as compensatory measures are not acceptable for them not being profitable, it would then appear that the proposed cancellation of routes are not sufficient to compensate for the undue distortions of competition.

4.2.4. Aid limited to the minimum

(70) 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 to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs, a significant contribution to the restructuring plan by the beneficiary from its own resources is necessary. This includes the sale of assets that are not essential to the firm's survival or external financing at market conditions.

(71) The proposed own contribution of Estonian Air consists of EUR […] million from the planned sale of […] aircraft in 2015, EUR 7.5 million from the sale of property, EUR […] million from the sale of other non-core assets, and EUR […] million from a new loan to be provided by Swedbank. Given the total restructuring costs of EUR 78.7 million, the amounts above (totalling EUR 38 million) would correspond to an own contribution of 48.3%.

(72) Estonian Air is a large firm,[17] for which the Commission normally requires an own contribution of at least 50% of the restructuring costs. However, in exceptional circumstances and in cases of particular hardship, the Commission may accept a lower contribution (point 44 of the R&R Guidelines). Moreover,

---

15 In recent decisions, the Commission accepted as compensatory measure a reduction of capacity (related to profitable routes) of 5% (Air Malta, SA.33015) and 10.8% (Czech Airlines, SA.30908). In previous airline restructuring decisions the compensatory measures accepted referred to an overall reduction in capacity [for instance, 15% in the case of Austrian Airlines (C 6/2009), 28% in the case of LTU (N 428/2002)] or a decrease of market share [3% in the case of Cyprus Airways (C10/2006)].

16 Commission Decision N 466/2006 of 13 September 2006 on the regional aid map 2007-2013 for Estonia, OJ C 286, 23.11.2006, p. 6.

17 In the sense of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.05.2003, p. 36.

in assisted areas the conditions for authorising aid may be less stringent as regards the size of the beneficiary's contribution (point 56 of the R&R Guidelines).

(73) Against this background, the own contribution in the present case of 48.3% would in principle appear acceptable.

(74) In this respect, the Commission observes that the main part of Estonian Air's own contribution according to the plan originates from the sale of […] aircraft […] in 2015, with a value to be realised of EUR […] million. In order to justify this figure, the Estonian authorities submitted a valuation carried out by SkyWorld Aviation dated August 2013, which concludes that Estonian Air should be able to sell […] for […], thus totalling USD […] million (approximately EUR […] million). However, the valuation appears to be a theoretical one, not taking into consideration any possible specificities of […] owned by Estonian Air. Moreover, the valuation concludes that the market for […] has historically been short on transactions and that it will be challenging to sell the […] by a particular date. Therefore, the Commission is uncertain whether the realisation value is realistic, in particular bearing in mind that the plan itself considers the possibility of not reaching the target sale price in the sensitivity analysis (see recital (27) above). On this basis, at this stage the Commission has doubts about whether the planned sale of […] aircraft […] in 2015 would be acceptable as own contribution.

(75) Without the sale of aircraft, Estonian Air's own contribution would amount to only 13% of the restructuring costs which does not constitute a 'significant' contribution to the restructuring plan by the beneficiary from its own resources.

(76) As regards the rest of the measures proposed as own contribution, the Commission first observes that the own contribution must not include any further State aid. The Commission notes in this respect that the EUR 7.5 million from the sale of property would not entail State aid, as concluded in recital (47) above. The sale of property can be accepted as own contribution, given that it does not involve State aid.

(77) The Commission also notes that Estonian Air has already reached an agreement on a new loan with Swedbank, amounting to EUR […] million. Since a legally binding agreement has been concluded, the Commission considers at this stage that this external financing could be acceptable in terms of own contribution

(78) The Commission notices that the plan foresees the divestment of subsidiaries which are not core to Estonian Air's business. As regards the sale of Estonian Air's 60% stake in AS Amadeus Eesti, the plan assumed a realisation value of EUR […] million. In their last submission of 22 December 2013, just before the sale to Amadeus IT Group, S.A. in early 2014,[18] the Estonian authorities noted that the expected sales price was […]. The Commission has no grounds to consider that the sale to Amadeus IT Group, a private company, would not be on market terms. On this basis, even though the actual sales price has not yet been communicated to the Commission, the Commission considers at this stage

[18] See paragraph (7) and footnote 2 above.

that the sale of Estonian Air's 60% stake in AS Amadeus Eesti can be accepted as own contribution.

(79) The plan also foresees the sale of AS Estonian Air Regional. It appears that this subsidiary was sold in June 2013 to a private jet operator (see recital (7) above). The plan assumed a realisation value of […], but it at this stage it is unclear to the Commission what the actual sales price was, in particular bearing in mind that at the time of the sale, AS Estonian Air Regional was dormant and had no aircraft, no employees, and no assets.[19] Finally, the plan also foresees the sale of Estonian Air's 51% stake in Eesti Aviokütuse Teenuste AS with a realisation value of […] without however providing any valuation of the stake. Although the plan foresaw the sale of this stake by end of Q2 2013, the Commission has not been informed whether the sale actually took place and at what sales price. On the basis of the foregoing, the Commission at this stage has doubts whether the sale of AS Estonian Air Regional and of Estonian Air's 51% stake in Eesti Aviokütuse Teenuste AS would be acceptable as own contribution.

4.2.5. The 'one time, last time' principle

(80) Finally, the aid must respect the so-called 'one time, last time' principle. Point 73 of the R&R Guidelines provides that a company that has received rescue and restructuring aid in the past ten years cannot be eligible for additional rescue or restructuring aid.

(81) The Commission recalls its doubts in the rescue opening decision as regards the compatibility of several aid measures granted by Estonia to Estonian Air between 2009 and 2012, including the rescue loan. As explained in detail in sections 5.2 to 5.5 of the rescue opening decision, the Commission cannot exclude that the measures granted to Estonian Air between 2009 and 2012 constitute unlawful and incompatible State aid. If that were so, the notified restructuring measure would likely be in breach of the 'one time, last time' principle.

(82) The Estonian authorities did not provide any justification which would allow for an exception to the 'one time, last time' principle in the sense of point 73 of the R&R Guidelines. The Commission notes that Estonia's concern on the impact for the national economy of an eventual disappearance of Estonian Air as well as other general considerations such as an eventual lack of connectivity due to Estonia's peripheral geographical situation, are in principle not apt, on their own, to justify a derogation from the 'one time, last time' principle.

5. CONCLUSION

In relation to the sale-and-lease-back agreement of an office building between Estonian Air and Tallinn Airport from April 2013, the Commission has accordingly decided to consider that it does not constitute State aid in favour of Estonian Air. In relation to the notified restructuring measure the Commission doubts whether it complies with the R&R Guidelines and would thus be compatible with the internal market.

[19] See footnote 3 above.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests Estonia to submit its comments and to provide all such information as may help to assess the capital injection notified as restructuring aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Estonia that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Estonia that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union* as well as the full text of the letter in the authentic languages on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter 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 this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
1049 Brussels
Belgium

Fax No: +32-2-296-1242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president of the Commission