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Subject: State aid SA.38634 (2014/N) – Blue Panorama Airlines S.p.A. – Italy

Sir,

1. PROCEDURE

- (1) By notification of 17 April 2014 and further information sent on 2 May 2014, Italy notified rescue aid to Blue Panorama Airlines S.p.A. (hereinafter "BPA" or "the Company").

2. DESCRIPTION

2.1. The beneficiary

- (2) BPA is an Italian airline company which is active since 1998 in the air passenger transport sector, serving mainly touristic flights, both in "low cost" and "executive" segments. Most routes served by BPA are seasonal or occasional. Its share in total air passenger traffic in Italy is 2.6% (and less than 0.2% of the EU). BPA serves both local (Calabria, Sicily), European (Greece, Spain) and international routes (mostly to popular touristic destinations such as Mexico, Cuba, Brazil, etc.)¹. BPA operates its flights mainly from Rome Fiumicino and Milan Malpensa airports where it accounts for respectively 2.29% and 0.89% of the passenger traffic.

¹ See Company's profile: <http://www.blue-panorama.it/it/about.html> .

BPA is 100% owned by Formula Blue S.r.l. with headquarters in Rome, in liquidation since 6 June 2013. BPA was declared insolvent by the Court of Rome on 17 March 2014.

- (3) BPA has its headquarters in Rome (Lazio region), a region not eligible for regional aid during the period 2007-2013.² BPA employs around 450 employees. The Italian authorities explained that due to the economic and financial crisis, the aviation sector suffered at all levels (passenger transport companies, freight, handling and maintenance companies, etc.). As a consequence, the labour market is also strongly affected by the crisis with very limited perspectives for the employees of BPA to find new jobs.

2.2. The notified measure

- (4) Italy intends to provide aid to BPA through the Ministry of Economic Development. The measure consists of a 6-month State guarantee issued by the Ministry of Economics and Finance for lines of credits (overdraft facilities and bid/performance/advance payments) in order to meet liquidity needs of EUR 12 million.
- (5) The exact conditions of the credit lines are not yet defined, but the Italian authorities declare that the interest rates for these lines of credit will be in line with normal banking conditions for active undertakings, and will not be lower than the Commission's reference rate.³
- (6) Moreover, Italy has undertaken to ensure that the guarantee will expire six months after the disbursement of the first instalment of the lines of credit to the beneficiary, and that it shall submit a restructuring plan or a liquidation plan, or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated within six months of the authorisation of the rescue aid measure.
- (7) Finally, the Italian authorities indicated that BPA has not received any rescue or restructuring aid in the past.

3. ASSESSMENT

3.1. Existence of State aid

- (8) Article 107(1) TFEU stipulates that 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 and affects trade among Member States is incompatible with the

² The current map of assisted regions in Italy is established through State aid case N 324/2007 – Italy – Regional aid map 2007-2013, OJ C90, 11.04.2008, p. 4, and following amendments, the validity of which has been prolonged until 30 June 2014 through case SA.37407 Prolongation of the Italian regional aid map 2007-13 until 30 June 2014, available at http://ec.europa.eu/competition/state_aid/cases/250043/250043_1482619_55_2.pdf.

³ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p.6.

internal market. It follows that, for a State measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: use of State resources; selective advantage to the beneficiary; and (potential) distorting effects on competition as well as intra-EU trade.

State origin of the measure

- (9) The notified measure, i.e. the State guarantee, is granted by the Italian Ministry of Economy and Finance, through the Ministry of Economic Development. Therefore the guarantee involves State resources in case of borrower default and is imputable to the Italian State.

Selective advantage to the beneficiary

- (10) The notified measure is selective, as the State guarantee will be issued to the benefit of one specific undertaking, i.e. BPA. The State guarantee confers an economic advantage on the beneficiary by allowing access to credit lines that it would not have been able to obtain on the market, given its financial condition.

Distortion of competition and effect on trade

- (11) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.⁴
- (12) The market for touristic flights is open to competition in the EU. BPA is active on the popular touristic routes within Italy, Europe and abroad (Africa, Asia, South America), sometimes in direct competition with other European providers (see recital (2) above).
- (13) By granting BPA access to liquidity at conditions which it would not otherwise obtain, the State guarantee is liable to improve the competitive position of BPA in relation to its competitors in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

Conclusion on the existence of aid

- (14) In light of the above, the Commission considers that the measure constitutes State aid pursuant to Article 107(1) TFEU. The Italian authorities share the same view.

3.2. Compatibility of the aid

- (15) The Commission may authorise rescue aid as compatible with the internal market pursuant to Article 107(3)(c) TFEU if it complies with the

⁴ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, para.11; Case C-53/00 *Ferring* [2001] ECR I-9067, para.21; Case C-372/97 *Italy v Commission* [2004] ECR I-3679, para.44.

compatibility criteria laid down in the 2004 Rescue and Restructuring Guidelines⁵ (hereinafter "the R&R Guidelines").

Eligibility for rescue aid

- (16) According to points 12(a) and 14 of the R&R Guidelines, only firms in difficulty are eligible for rescue aid.
- (17) According to point 10 of the R&R Guidelines, a firm is considered to be in difficulty in the following circumstances:

(...)

(c) Whatever the type of company concerned, when the criteria under domestic law for being the subject of collective insolvency proceedings are met.
- (18) As explained in recital (3), an Italian court has already declared BPA insolvent. BPA thus qualifies as a firm in difficulty pursuant to point 10(c) of the R&R Guidelines.
- (19) According to point 12 of the R&R Guidelines, a newly-created firm having started operations in its relevant field of activity less than three years prior to the notification is not eligible for rescue aid. BPA is not a newly-created firm. Its activities date back to 1998.
- (20) Finally, point 13 of the R&R Guidelines establishes that a firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. As explained in recital (3) above, BPA's sole shareholder is a mere holding, currently under liquidation. Therefore, it can be concluded that the firm's difficulties are intrinsic and not the result of an artificial intra-group cost allocation. Such difficulties cannot be dealt by the group itself, since the owner is in a similar state of liquidation.

Compatibility conditions in point 25 of the R&R Guidelines

- (21) Rescue aid must meet the conditions set out in point 25 of the R&R Guidelines in order to be declared compatible with the internal market.
- (22) According to points 15 and 25(a) of the R&R Guidelines, the rescue aid must consist of liquidity support in the form of a loan or a guarantee. The loan must be granted at an interest rate at least comparable to that observed for loans for healthy firms. Any loan must be reimbursed and any guarantee must come to

⁵ Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p.2, prolonged in 2009, OJ C 156, 9.7.2009, p.3 and in 2012, OJ C 296, 02.10.2012, p.

an end within a period of not more than six months after the disbursement of the first instalment to the firm.

- (23) The notified measure is a State guarantee covering 100% of credit lines up to EUR 12 million, to be used by the Company in order to meet liquidity needs, keep the firm in business and support the plan to sell the company's assets. As indicated in recitals (5) and (7) above, Italy undertakes that the interest rates for the credits backed by the State guarantee will be in line with normal banking conditions for active undertakings, and in any case will not be lower than the Commission's reference rate applicable for the period during which the said credit lines will be granted.⁶ Italy also undertakes that the guarantee shall expire within six months after the disbursement of the first instalment of any loan to BPA. The notified measure therefore meets the compatibility conditions laid down in point 25(a) of the R&R Guidelines.
- (24) According to point 25(b) of the R&R Guidelines, rescue aid must be warranted on the grounds of serious social difficulties and have no undue spill-over effects on other Member States. In the present case, if the company ceased its operations, this would – on the basis of the information provided by Italy – have serious social consequences, a direct loss of up to 450 jobs at BPA, but also an indirect effect on a considerable number of jobs that are related to the activity of BPA (freight, handling, and maintenance companies). As explained above under recital (4), the economic crisis had a considerable impact on the air transport sector in terms of companies closed and decrease of job opportunities. In light of these considerations, the aid appears to be warranted on grounds of serious social difficulties. In addition, BPA is active on international and European routes but has a relatively limited presence on the Member States where it is active. Its share in total air passenger traffic in Italy is 2.6% (and less than 0.2% of EU traffic). Such a small percentage appears to indicate that the aid does not create undue adverse spill-over effects on other Member States. On the basis of the above, it can be concluded that the aid is in line with point 25(b) of the R&R Guidelines.
- (25) Point 25(c) of the R&R Guidelines stipulates that the Member State notifying a rescue aid has to communicate to the Commission not later than six months after the rescue aid is authorised, a restructuring or liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated. In their notification, the Italian authorities committed to communicating to the Commission a restructuring plan or a liquidation plan, or proof that the guarantee has been terminated, not later than six months after the authorisation of the rescue aid measure to BPA. Consequently, the notified measure is in line with point 25(c) of the R&R Guidelines.
- (26) According to point 25(d) of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. The amount necessary should be based on the liquidity needs of the company stemming from losses. In determining this amount,

⁶ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p.6.

regard will be had to the outcome of the application of the formula set out in the Annex to the R&R Guidelines,⁷ and any amount exceeding the result of that calculation would have to be duly explained.

- (27) Based on the financial reports of the company for the years 2012/3, the outcome of the calculation of the formula in the case of BPA (EBIT 2013 + depreciation + (working capital of 2013 – working capital of 2012)), excluding the provisions at the level of the operating results (EUR 3.7 million), is EUR – 24.4 million. This result has to be divided by 2 since the company will need to stay in business for a six-month period (the period during which the aid is authorised). The final outcome of this formula is therefore EUR – 12.2 million.
- (28) Since the outcome of the formula is negative, the first pre-condition for rescue aid to BPA is satisfied. Second, the notified EUR 12 million of the rescue aid for liquidity needs of BPA is slightly lower than the figure resulting from the application of the formula. Therefore, the aid is indeed restricted to the minimum amount necessary as required by point 25(d) of the R&R Guidelines.
- (29) Finally, with reference to compliance with the "one time, last time" principle set out in section 3.3 and point 25(e) of the R&R Guidelines, the Italian authorities have confirmed that BPA has not received rescue or restructuring aid over the last ten years. Therefore, the notified aid also complies with point 25(e) of the R&R Guidelines.
- (30) In the light of the foregoing, the notified aid meets the compatibility conditions resulting from point 25 of the R&R Guidelines.
- (31) Moreover, Italy declares that BPA did not receive any unlawful aid with respect to which the Commission has adopted a negative decision with a recovery order. Therefore, the notified aid also meets the condition set out in point 23 of the R&R Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified State aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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

⁷ The formula takes into account the beneficiary's EBIT (earnings before interest and taxes) in the year preceding to notification (2012), depreciation in the same reference year, and the variation in the beneficiary's working capital (calculated as the difference between current assets and current liabilities) with respect to the year preceding the reference year. The sum of all these elements is then divided by 2, so as to approximate the liquidity needs of the company over a six-month period – i.e. the duration of the rescue aid.

full text of the letter in the authentic language on the Internet site
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president