EUROPEAN COMMISSION
Competition DG

Brussels, 7.7.2015
C(2015) 4569 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.36574 (2015/NN, ex 2013/CP) – France – Alleged aid to Altrad

Monsieur le Ministre,

1. PROCEDURE

(1) On 23 April 2013, Wilhelm Layher GmbH & Co. KG ("the Complainant") lodged a complaint alleging unlawful state aid was granted in favour of Altrad group.

(2) On 24 May 2013, the Commission forwarded a non-confidential version of the complaint to the French authorities. Following a delay extension requested on 27 June 2013, the French authorities replied with a letter dated 22 July 2013 which was received on 23 July 2013. A non-confidential version of the reply was provided by the French authorities on 15 October 2013.

(3) The Commission sent a preliminary assessment letter to the Complainant on 17 December 2013 stating that on the basis of a *prima facie* examination the measure subject to the complaint is in line with the market investor principle and, *a priori*,

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does not constitute aid under Article 107(1) Treaty on the Functioning of the European Union ("TFEU").

(4) On 17 January 2014, the Complainant provided initial comments to the Commission's preliminary assessment letter and indicated that further comments and economic evidence would be submitted within the following weeks. After a reminder by the Commission on 19 February 2014, the Complainant submitted further comments and evidence on 28 March 2014.

(5) A meeting between the Complainant and officials from the Directorate General for Competition was held on 24 June 2014. Following the meeting, on 26 June 2014 the complainant provided additional comments.

(6) On 2 July 2014 the Commission sent a second request for information to the French authorities. Following a delay extension requested by the French authorities on 23 July 2014, the reply was received on 17 September 2014.

(7) The Complainant sent additional information on 1 April 2015. In response to the questions sent by the Commission on 29 April 2015, the Complainant supplemented its submission with additional information on 11 May 2015.

(8) In its letter of 11 May 2015, the Complainant also formally called upon the Commission to take action in the present case as provided for in Article 265(2) TFEU.

2. BACKGROUND

2.1. Altrad group

(9) The company was created in 1985 by Mr. Mohed Altrad and is based in Montpellier, France. It has expanded internationally and is currently active in a number of European and several non-European countries. In 2014, only 34% of its turnover was realised in France.

(10) Le groupe Altrad exerce ses activités principalement dans le domaine de la fabrication, la vente et la location de échafaudages, bétonnières et d'autres équipements utilisés dans la construction (des produits tubulaires, étais, brouettes, etc.).

(11) The development of the main financial data for Altrad group before and after the measures complained of is summarised in the following table:

Table 1: Financial data for Altrad group (mil. EUR, as of 31 August of each year)

	2008	2009	2010	2011	2012	2013	2014
No. of employees	n.a.	2851	n.a.	3919	4990	6217	6826
Turnover	443.3	366.3	417.2	493.9	605.0	710.0	861
EBITDA	43.1	37.2	46.1	55.3	69.8	88.0	135
Résultat opérationnel	23.7	9.6	20.9	33.0	42.7	46.1	88.8
Résultat net	11.6	1.4	10.3	20.0	28.0	29.4	49
Capitaux propres	83.8	74.9	85.5	147.0	185.8	204.7	261
Endettement net	64.6	64.1	16.6	-55.9	33.9	88.7	176.9

Sources: Comptes consolidés for 2009-2013, Altrad webpage for 2014

(12) As demonstrated by the figures, even though Altrad was in 2009 affected by the slow-down of the construction sector due to the financial crisis, it remained profitable and managed to grow substantially, in particular due to external growth.

2.2. The Complainant

(13) Layher is a competitor to Altrad in production and sale of scaffolding systems and related products based in Germany but active worldwide and employing more than 1,500 employees.

2.3. The Complaint and the alleged State aid measures

(14) The Complaint relates to a subscription to Altrad's capital stock by Fonds stratégique d'investissement (FSI) in the amount of EUR 45 million together with an option for additional EUR 25 million within the next 12 months. By this capital increase of 9 June 2011, FSI acquired 10.87% of the company Altrad Investment Authority, a "*holding patrimonial*" established in December 2010 and owning 100% of shares of the operational holding Altrad SA. Following this transaction, the remaining shares of Altrad Investment Authority were held by Mr. Mohed Altrad (77.78%) and by three financial investors that subscribed to the capital of Altrad already on 7 March 2011 (CM-CIC Capital France, Synergie Finance and BNP Paribas Développement holding together 11.35% of shares).

(15) According to the Complaint lodged in 2013 the subscription to Altrad's capital stock by FSI of June 2011 together with an option for additional investment constitutes state aid within the meaning of Article 107(1) TFEU and is granted in breach of Article 108(3) TFEU.

(16) The Complaint claims that the measure is not in line with the market economy investor principle (MEIP) and thus provides economic advantage to Altrad. First, the Complaint claims that the price per share paid by FSI in June 2011 (EUR 4.2 million per 1%-stake) significantly exceeded the price per share paid by Mr. Altrad to an existing minority shareholder Crédit Agricole Private Equity (CAPE) in January 2011 (EUR 1.9 million per 1%-state) and by three commercial banks in March 2011 (EUR 3.9 million per 1%-stake).

(17) Secondly, according to the complainant the publicly available financial data do not support the high valuation of Altrad (in total about EUR 420 million) implied by the price paid by FSI for Altrad's shares. The Complainant submitted an economic study establishing an indicative price and value range of the shares of Altrad group based on publicly available data using four different methodologies (discounted cash-flow analysis, trading multiple analysis, transaction multiple analysis and analysis of share price development). The study concludes that while the price per 1%-share of Altrad paid by Mr. Mohed Altrad to CAPE in January 2011 could (under most preferable parameters) be supported by market data, the prices allegedly paid by the financial investors and FSI are well above the established indicative value range.

(18) Furthermore, the complainant argues that the entry in the capital of Altrad by three commercial banks (CM-CIC Capital France, Synergie Finance and BNP Paribas Développement) shortly before FSI intervention was closely coordinated with FSI and mainly construed to serve as a defence on the basis of the *pari passu* principle to counter allegations on FSI's investment being State aid. The complainant argues that there is no proof that FSI's investment on the one hand and the investment of the three private banks on the other hand were based on equal terms and conditions. Further, the complainant considers that the 12 % capital stock acquired by the three banks cannot be considered as a significant participation. The complainant also speculates that it cannot be excluded that the three banks' investment in Altrad was accompanied by some additional incentives and/or safeguard measures granted by FSI or other French entities.

(19) The Complainant further argues that the investment by the three financial investors cannot be considered *pari passu* with FSI's contribution since all three investors had a particular interest in their capital injection due to their existing financial relationships with Altrad. All three investors are linked to either Crédit Mutuel or BNP Paribas, both of which were allegedly involved in large loans (amounting to EUR 224 million) granted to Altrad.

(20) In its submissions following the Commission's preliminary assessment letter of 17 December 2013, the Complainant provided further arguments and evidence to support its claim that the measure is not in line with MEIP. It argues that the very nature of FSI casts doubts of the conformity of its funding with MEIP and it is up to the French authorities to provide unequivocal evidence in this respect. It claims that FSI mission is to invest in circumstances where no private investor is available. Further, the public interest mission of FSI is also reflected in the rating system for evaluating possible investments which includes both market investor criteria and public interest criteria (e.g. role in the industry, impact on employment, innovation or international exposure). Since these criteria have the same weight, the whole methodology is in contradiction to MEIP. The Complainant thus argues that it is up to the French authorities to demonstrate that the result of this rating system in the current case is in line with the standard MEIP application. Further, it argues that the investment of the three financial investors was coordinated with FSI and the price paid by them in March 2011 was already significantly distorted by the prospect of the public intervention via FSI.

(21) In addition, the Complainant questioned the reliability of the value assessment of Altrad's shares by a small, local consultancy company CapSud. It also argues that since CapSud's expertise was realised several months before FSI was approached, it was obviously ordered by Altrad group itself and cannot be considered as a

solid basis for an investment decision by a prudent market economy investor. The Complainant also doubts whether the results of valuation based on net present value calculations were confirmed by using also other valuation methods, as it is the standard practice. It also questions the capability of the small consultancy CapSud to conduct a transaction multiple analysis commonly used to corroborate the results of the discounted cash flow method.

(22) Further, the Complainant considered as unacceptable the assumptions underlying the valuation of Altrad, in particular the forecasted EBIT margin of 9% and the expected annual turnover growth of 20% between 2011 and 2015 (mainly through external growth). It argued that the actual EBIT margins of Altrad before the investment were much lower, amounting to 4.3% on average. Further, it considers that it is unrealistic to presume such strong external growth while achieving such significant EBIT margin in an industry where majority of companies are barely profitable. The implausibility of these assumptions is allegedly confirmed by the fact that the actual EBIT margins and annual turnover growth rates for years 2011-2013 were significantly lower (actual EBIT margin between 6.49% and 7.05% and actual annual turnover growth of 17%).

(23) In addition, the Complainant argued that the scaffolding manufacturer Plettac has already in the past tried the business model on which Altrad's new business plan is based (rapid growth involving entry into scaffolding renting and erecting business) and failed. An informed market investor would thus have been sceptical towards Altrad's strategy of vertical expansion.

(24) Finally, the Complainant maintains that the acquisition of shares by Mr. Mohed Altrad from a minority shareholder CAPE in January 2011 for less than half the price paid by FSI five months later constitutes a relevant value benchmark. It presumes that under the Shareholder Pact concluded in 2005, CAPE had an option to sell its shares back to Altrad. CAPE would have not chosen to exercise this option if it considered that the price calculated on the basis of the return on investment rate provided for in the shareholders pact was lower than the market price.

(25) The Complaint further claims that FSI investment is attributable to the State and constitutes State resources due to the fact that FSI is a subsidiary of the French State and a French public body (établissement public) the Caisse des Dépôts et Consignations.

(26) In its subsequent submissions, the Complainant also refers to the report on the participations transferred to the FSI published on 8 June 2011 by the French Senate ("*Rapport Fourcade*"), which indicates that FSI should be clearly distinguished from private investment funds and should provide "a public response" ("*réponse publique*") to the financial needs of undertakings. The Complainant also refers to the Commission decision to initiate proceedings in case Trèves[1].

(27) Finally, the Complaint claims that the measure is selectively provided only to Altrad and affects competition and trade between member States since it favours a

[1] See Commission decision of 29.01.2010 in case C 4/2010 (ex NN 64/2009, ex CP 146/2009) – France – Aide présumée en faveur de l'entreprise Trèves, recital 51.

"national champion" active in all EU-Member States and competing intensively with other companies in the scaffolding market with tight profit margins.

(28) In view of the above, according to the Complainant the subscription by FSI of Altrad's stock amounted to an illegal State aid for which there is no valid compatibility basis. The Complainant thus demands that the aid is declared incompatible and is recovered from the beneficiary.

(29) In its submission of 1 April 2015, the Complainant claims that additional funding was provided to Altrad through a subscription by Bpifrance (a successor organisation to FSI) to convertible bonds for EUR 52 million issued by Altrad. The transaction is part of an EUR 100 million convertible bonds emission, where the remaining EUR 48 million has been subscribed by the three financial investors in Altrad (EUR 30 million by CM-CIC Capital Finance, EUR 11 million by Arkéa, the successor of Synergie Finance, and EUR 7 million by BNP Paribas Développement). In addition, the Complainant claims that additional loans have been granted to Altrad over the last years and "*it must be expected*" that they have been facilitated by FSI/Bpifrance as well, referring to the fact that granting guarantees is one of the tools used by FSI/Bpifrance. Following a request by the Commission of 29 April 2015, the Complainant clarified by its submission of 11 May 2015, that in light of the support granted to Altrad by FSI in 2011 and of the criteria used to decide on that support, the Complainant believes that the subscription to convertible bonds by Bpifrance in 2015 also does not correspond to market conditions and therefore involves unlawful State aid as well. Apart from the reference to alleged aid granted already in 2011 and the rating system used by Bpifrance for evaluating its investments, the Complainant does not provide any additional arguments why Bpifrance's subscription in 2015 would constitute aid.

3. ARGUMENTS RAISED BY THE FRENCH AUTHORITIES

(30) According to the French authorities the investment by FSI in Altrad was implemented in line with a process comparable to what any private economy investor would have done.

(31) Selon les renseignement fournis par les autorités françaises, dans le cadre des deux opérations d'augmentation de capital, le prix d'émission par action a été fixé selon la méthodologie appliqué pour la valorisation de la holding opérationnelle Altrad SA which was undertaken by an independent consultant sur la base des comptes arrêtés au 31/08/2010 et d'un business plan concernant la période 2011 à 2015. It applies two standard valuation methodologies – consolidated EBITDA multiple (le multiple d'EBITDA – Dette Financière Nette Consolidée) and discontinued cash flow (DCF) analysis (le method des flux de trésorerie actualises dite "DCF"). These valuations resulted in the value of Altrad in the range of EUR 340 – 392 million. The average valuation (la valeur moyeene) of EUR 369 million was taken as a basis for the calculation of the resulting price per share of EUR 122.62 for the acquisition by the three financial investors as well as by FSI. This valuation was based on the approved past financial accounts and on a business plan of Altrad that had been reviewed by other independent consultants of FSI and which can be considered as sufficiently solid and reasonable.

(32) The French authorities further clarify that the price per share paid by FSI and the three private banks was exactly the same, as it was based on the same valuation of

Altrad. In addition, the extent of the participation of FSI (10.87% of shares for EUR 45 million) was fully equivalent to the participation of the three banks (11.35% of shares for EUR 47 million).

(33) The French authorities underline that the option for additional EUR 25 million investment by FSI was not realised since Altrad was able to secure the necessary financing from private commercial banks on the market.

(34) The French authorities dispute the correctness of the valuation of Altrad as provided in the Complaint since it was based on assumed financial data which differed significantly from the data in Altrad's accounts and in its Business Plan. In particular, the valuation in the Complaint significantly underestimates the expected future profitability of Altrad and thus undervalues the expected returns on the investment by FSI.

(35) As regards the acquisitions of shares from a minority shareholder CAPE by the majority shareholder Mr. Mohed Altrad of January 2011, the French authorities clarify that the price for this particular transaction was a contractually agreed exit price ("*un prix de sortie contractuellement convenu*") for a minority shareholder of Altrad calculated in July 2010 on the basis of the Shareholders Pact of 2005. Therefore, the share price for this transaction was not based on any valuation of Altrad in 2011 but on a predetermined annual internal rate of return as agreed between the shareholders in 2005. Therefore, this specific transaction between the shareholders of Altrad cannot serve as a benchmark for a market price of Altrad's shares in 2011.

(36) As regards the participation of the private banks, the French authorities dispute that the three banks would have been given any financial or contractual advantage in order to participate in the capital increase in Altrad. Neither the shareholders agreement nor any other document contains any such advantage to the three private banks which participated in the capital increase in March 2011 under the same conditions as FSI in June 2011.

(37) In view of the above, the French authorities consider that the investment is MEIP conform on the basis of the valuation by independent consultants with good prospects for return on the investment and the significant simultaneous investment of EUR 47 million by private investors under the same conditions.

(38) In addition, the French authorities claim that the investment by FSI in Altrad cannot be considered as imputable to the state and constituting State resources. They claim that in view of the composition of its decision-making bodies and the procedures applied for deciding on future investments, FSI is autonomous in its decision-making. Thus, according to the French authorities, the decision to invest in Altrad cannot be attributed to the State and FSI invested its own resources without any State interference.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of State aid

(39) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods

shall, insofar as it affects trade between Member States, shall be incompatible with the internal market.

(40) State aid within the meaning of Article 107 (1) TFEU is therefore present only if all the conditions stipulated therein are fulfilled, i.e. the measure is imputable to the State, involves a transfer of State resources, provides a selective advantage to the beneficiary, distorts or threatens to distort competition and affects trade between Member States.

(41) In view of the above described arguments, the Commission will first analyse whether the measure involved economic advantage to Altrad.

(42) In order to determine whether or not state aid was granted in favour of Altrad within the meaning of Article 107(1) TFEU, the Commission will assess whether the company received due to FSI capital contribution an economic advantage which it would not have obtained under normal market conditions. To examine this question the Commission applies the MEIP test, according to which no State aid would be involved where, in similar circumstances, a private investor of a comparable size to the relevant bodies in the public sector, and operating in normal market conditions in a market economy, could have been prompted to provide the measure in question to the beneficiary.

(43) According to the MEIP, the Commission therefore has to assess whether a private investor would have entered into the transaction 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[2].

(44) In principle, a contribution from public funds does not involve state aid if it takes place at the same time as a significant capital contribution by a private investor made in comparable circumstances and on comparable terms (*pari passu*)[3]. In addition, irrespective of *pari passu* reasoning, a measure can fulfil the MEIP test if it can be demonstrated that a private investor in the same position as the public investor and facing a similar set of circumstances, would have provided the capital contribution on similar terms and conditions[4]. In the following, both these aspects of the MEIP test will be analysed.

4.1.1. Pari passu considerations

(45) As described above, apart from the investment by FSI, there were two other transactions with Altrad shares which may serve as a possible reference point in order to determine whether FSI's investment has been carried out *pari passu* with private investors.

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2 Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein – Westfalen v Commission* [2003] ECR-II435, paragraph 255.

3 Case T-296/97 *Alitalia* [2000] ECR II-3871, paragraph 81.

4 Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 20.

a) Entry of three financial investors in March 2011

(46) On 7 March 2011, three private financial investors (commercial banks CM-CIC Capital France, Synergie Finance and BNP Paribas Développement) agreed to subscribe new shares of Altrad for a total amount of EUR 47 million. Contrary to the allegations by the Complainant, the French authorities demonstrated that the price paid per one share by the three financial investors was exactly the same as the price paid later by FSI. In fact, the price was based on the same valuation of Altrad. Therefore, the three financial investors agreed to enter into the capital of Altrad on the basis of the same price per share as FSI, as demonstrated by the following table.

Table 2: Valuation of the capital increase transactions in Altrad in 2011

	Invested amount (million EUR)	**Number of subscribed shares**	**Price per share (EUR)**
Capital increase of 7 March 2011 (three financial investors)	47	383,296	122.62
Capital increase of 9 June 2011 (FSI)	45	366,987	122.62

(47) Further, the extent of the participation of the three banks (11.35% of shares for EUR 47 million) was fully equivalent to the participation of FSI (10.87% of shares for EUR 45 million). Even taking into account the option for additional EUR 25 million investment by FSI in the limited period of one year after the first acquisition (which was not realised as Altrad was able to obtain necessary financing from private banks) does not affect in any significant way the equivalent character of these two transactions. Even if the total capital contribution offered by FSI is considered as amounting to EUR 70 million (EUR 45 million of actual capital increase + EUR 25 million of the option for additional capital increase), the participation of the private investors amounting to EUR 47 million can still be considered as significant.

(48) In addition, there is no evidence to support the Complainant's claims that the three banks would have been given any financial or contractual advantage in order to participate in the capital increase in Altrad. The Shareholders Agreement between the three financial investors, FSI, Mr. Mohed Alrad and Altrad concluded on 9 June 2009 does not contain any such advantage and the three private investors and FSI have the same rights and obligations as regards for example governance of Altrad, pre-emption rights or exit from Altrad. The French authorities also confirmed that there is no other contractual document which would have given any such advantages or guarantees to the three financial investors.

(49) In addition, the French authorities indicated that the letter of intent by the three investors was signed and send already at the beginning of December 2010 while first contacts between Altrad and FSI took place only in February 2011. In fact, the financial investors have acquired their participations in Alrad on 7 March 2011 and thus well before the investment of FSI has been approved internally at the FSI Investment Committee meeting of 31 May 2011. Therefore, the decision of the financial investors to invest in Altrad was made at a time when

participation of FSI was by far not certain and thus could not provide any additional assurance to the private investors.

(50) As regards previous exposure by the three investors through their links with BNP Paribas (BNP Paribas Développement) and Crédit Mutuel (CM-CIC Capital France and Synergie Finance), the submission of the Complainant exaggerates their extent since it takes into account the full amount of loans (EUR 224 million) as of 31 August 2010 provided to Altrad by consortiums of banks including not only the above banks, but also other banks. The information submitted by the French authorities indicates that the amount of existing loans by the banks with links to the financial investors on 31 August 2011 was in total only EUR 41.4 million, of which EUR 20.6 million was secured.

(51) However, even though the amount of outstanding loans was lower than claimed by the complainant, it was still substantial compared to the amount of the investment (EUR 45 million). Therefore, the circumstances on which the three banks invested in Altrad were not comparable to the circumstances concerning the investment of FSI without any previous exposure.

(52) For these reasons, the Commission concludes that the investment of FSI cannot be considered as strictly *pari passu* with the investment of the three financial investors. This finding, however, does not as such invalidate possible MEIP character of FSI's investment which will be analysed below.

b) Exit of CAPE

(53) CAPE entered into the capital of Altrad on 5 August 2005 and its relations with Altrad and the founding shareholders including Mr. Mohed Altrad were set out in a Shareholders Pact ("*Convention d'Actionnaires*") signed on the same date. However, as described in the due diligence report prepared for FSI by law firm Bichot & Associés, there have been deep disagreements ("*profondes divergences*") between CAPE and the founding shareholders as of September 2007, relating in particular to the strategy of further development of Altrad. With the aim to resolve these various disagreements and the resulting situations of blockage ("*situations de blocages*"), CAPE and Mr Mohed Altrad have signed on 24 August 2010 a transaction protocol ("*protocole transactionnel*") previewing exit of CAPE and its conditions. This protocol was further amended on 7 January 2011. The protocol included acquisition by Altrad Investment Authority of the whole CAPE's 18.36% share in Altrad (165,881 shares) for EUR 31,439,425.93 (i.e. for EUR 189.53 per share of Altrad SA[5]). This implies a valuation of 1%-share of Altrad group amounting to around EUR 1.7 million. The transaction, however, involved also other elements including cession of "*créances en compte-courant*" held by CAPE for EUR 560,677.79, abandonment of the on-going court disputes between the parties and renunciation by the parties on any other court actions connected to their relations in Altrad group.

(54) In view of above, the Commission acknowledges the fact that the valuation of Altrad implied by the transaction with CAPE (EUR 1.7 million for 1%-share) is

5 Note that even though Altrad SA is a 100% subsidiary of the holding company Altrad Investment Authority, the price per share in Altrad SA cannot be directly compared with the price per share in Altrad Investment Authority acquired by the investor and FSI since the total number of shares for the two companies is different.

significantly lower than in case of the capital contributions by the financial investors and FSI (EUR 4.14 million EUR for 1%-share). However, there were several elements which make this transaction incomparable to the capital contribution in 2011.

(55) First, the transaction was agreed between the shareholders in Altrad as a solution aimed at putting an end on several years of disputes and disagreements blocking the future of Altrad and involving several court actions between the parties. The transaction thus involved not only a transfer of shares but also a settlement of on-going and potential future court disputes between the parties. It is clear that the additional elements of the agreement were likely to influence the price paid for the shares held by CAPE.

(56) Second, the price paid for the shares of CAPE was fixed on the basis of a calculation agreed in the Shareholders' Pact of 2005. Article 4.3 of the Shareholders' Pact defines the terms of exercise by CAPE of its right to exit Altrad in case of significant disagreement ("*désaccord important*"). The price paid to CAPE in January 2011 was agreed in line with this Article as the price per share paid by CAPE at its entry into Altrad increased by 20% for each year of the duration of the investment. Therefore, the exit price as previewed by the Shareholders' Pact provided to CAPE a substantial guaranteed annual return on investment.

(57) Third, contrary to the claims by the Complainant, CAPE was not free to sell its shares on the market since the conditions of its exit from Altrad were in detail defined by the Shareholders' Pact and provided to the founding shareholders including Mr. Mohed Altrad a number of rights and safeguards. In view of the serious disagreements between CAPE and the founding investors, such sale of Altrad shares on the free market was clearly at least very difficult, if not impossible.

(58) In view of the above, the price paid in January 2011 to CAPE exiting the capital of Altrad cannot be considered as a valid benchmark for the market price of Altrad shares to be paid by new investors entering Altrad's capital.

4.1.2. Application of MEIP

(59) The Commission has reviewed in detail the evidence provided by the French authorities claiming that FSI's investment in Altrad was in line with MEIP.

(60) The French authorities provided a number of contemporaneous documents demonstrating that the economic rationale of the FSI investment was seriously studied prior to its approval. These documents include in particular the following studies prepared by external advisors:

- Report by auditing and accounting consultancy CapSud of 21 December 2010 ("CapSud report");
- Financial due diligence report by consultancy firm Grant Thornton of 17 May 2011 ("Grant Thornton report");
- Strategic due diligence report by strategy consulting firm L.E.K. of May 2011 ("L.E.K. report");
- Legal due diligence report by law firm Bichot & Associés of 2 May 2011 ("Bichot report").

(61) Further, the French authorities provided to the Commission the internal presentations of the proposed investment to the FSI Investment Committee ("*Comité d'Investissement*") of 7 April and 1 June 2011 and to FSI Board of Directors ("*Conseil d'Administration*") of 3 May 2011 as well as minutes of the deliberations of these bodies. The French authorities noted that the internal presentations also reflect input from Société Générale, which served as a consultation bank to FSI for this transaction and assisted FSI in discussions and negotiations with other parties.

(62) Finally, the French authorities also provided a Business Plan prepared by Altrad's management and the Shareholders' Pact ("*Pacte d'Actionnaires*") signed on 9 June 2011 by Altrad, Altrad Investment Authority, Mr. Mohed Altrad, FSI and the three financial investors.

(63) Having reviewed the above documents, the Commission considers that they provide sufficient evidence that when deciding on its investment in Altrad, FSI acted in line with what a prudent market economy investor would have done in a similar situation.

(64) CapSud report presented a valuation of Altrad based on two different valuation methodologies: multiple of EBITDA decreased by net financial debt and discounted cash-flow methodology. Based on these methods, which belong among standard evaluation methodologies, the report established the value of 100% of shares of Altrad in the range of between EUR 340 million and EUR 392.39 million. Despite the fact that CapSud does not belong among large consultancy companies, the Commission found its analysis *prima facie* sound and solid. In addition, the reliability of this valuation is confirmed by the fact that all other subsequent reports including Grant Thornton accepted and used its results, and FSI, assisted by Société Générale, corroborated them with additional own valuations. As regards the argument of the Complainant that CapSud must have been chosen by Altrad itself, it is not correct. CapSud report indicates that the task to evaluate Altrad was entrusted to CapSud by the President of Tribunal de Commerce of Béziers in order to verify that the valuation of a planned contribution consisting of Altrad shares in the newly created company Altrad Investment Authority is correct.

(65) Grant Thornton report prepared for FSI reviews in detail the financial situation of Altrad and its expected future development based on the business plan prepared by the management. The report states with respect to the Business Plan 2012-2016 prepared by Altrad management: "*[c]e Business Plan reste ambitieux mais réalisable au regard de l'expérience déjà acquise par le Group. Globalement, les hypothèses utilisées pas le Management semblent cohérentes et réalistes au regard des acquisitions 'habituelles'*". It also states that "*[l]e Groupe a développé au cours des dernières années de réelles compétences en terme de reprise et d'intégration de sociétés au sein du Groupe*". Also as regards the forecasted financial results of Altrad till 2016, the report states that "*[g]lobalement, l'approche retenue par le Management nous semble cohérente au niveau du résultat financier*" and that "*[g]lobalement et historiquement, le taux de rentabilité des sociétés acquises est supérieur à celui du Groupe (à minima 9%)*". Also as regards the cash flow forecasts, the report states that "*[l]es cash flows prévisionnels du Management sont d'une part, en ligne avec l'historique et d'autre part, cohérents avec les hypothèses retenue, sous réserve de confirmation de la variation du BFR prévisionnel*." As regards the working capital requirements

(BFR – besoin en fonds de roulement), the report shows that the management of Altrad has reacted to previous versions of the report by revising their forecasts for working capital requirements which had seemed too optimistic in the first version of the business plan. The report states that the revised approach seems more prudent and coherent with the Group's activities and its planned strategy of external growth. Therefore, the report in general validated the business plan of Altrad and its financial forecasts as reasonable and coherent.

(66) L.E.K. report commissioned by FSI had the aim "*de conduire une due diligence stratégique afin de valider le positionnement stratégique et les perspectives du groupe Altrad sur ses marchés*". L.E.K. report thus analysed in detail the main markets on which Altrad was active (sales as well as renting/erection of scaffoldings, sales of concrete mixers) in order to determine the expected development of these markets and analyse Altrad's clients and competitors on these markets. Apart from reviewing existing documents concerning these markets, L.E.K. had also conducted interviews with a number of customers, competitors and market experts. The report indicates that following the steep decline of the scaffolding market in 2009 and 2010, the market is expected to growth moderately as of 2011 and to achieve its previous 2008 volume in 2012. Taking into account also the expected price increase, the report indicates that the total value scaffoldings market in France, Germany and the UK is expected to grow by between 4.2% and 4.9% annually during the period covered by Altrad's Business Plan.

(67) As regards competitors in the scaffoldings market, L.E.K. report indicates that "*le marché est dominé par un nombre d'acteurs limité, le groupe Altrad étant systématiquement parmi les trois premiers*" and that the competitive environment of Altrad is "*composé de fabricants et de loueurs - monteurs, peu d'acteurs étant présents sur les deux activités*". As regards Altrad, the report indicates that "*[l]e groupe Altrad est perçu comme un acteur performant du marché*" both for manufacturing and for renting/erection of scaffoldings. The report also demonstrates that the scaffoldings markets are protected by significant barriers to entry due to regulatory requirements, reputation and clients' fidelity as well as necessity of substantial initial investments. According to the report, Altrad "*a atteint une taille critique qui lui permet d'avoir des coûts compétitifs*" and it confirms that "*[g]râce à son activité de location, le groupe Altrad peut maintenir sa compétitivité et ses prix sur ses activités de vente*". It is noteworthy in this respect that the report includes a quote from a representative of Layher in France commenting on the expansion of Altrad into the renting/erection services market as follows: "*Tous les fabricants historiques n'ont pas su ou n'ont pas voulu se diversifier dans la location - montage qui apparait maintenant comme un avantage économique évident. Un groupe comme Layher a préféré rester dans sa position de fabricant mais a développé des partenariats avec certains loueurs - monteurs tandis qu'un groupe comme celui d'Altrad a su profiter d'opportunités de croissance pour développer son activité pour répondre au mieux aux besoins du marché …*". As regards the market for the sales of concrete mixers, the report indicates that substantial growth is expected in this market for the duration of Altrad's Business Plan (5.4% and 5.6% annually for the French and UK market respectively) and that Altrad is a clear leader in France and the UK, representing the only manufacturer able to cover the whole range of concrete mixers.

(68) The Commission thus considers that L.E.K. report further supports the presumptions of Altrad's Business Plan and, contrary to the claims of the

Complainant, confirms that the expansion of Altrad into the renting/erection services market is considered as an economically reasonable strategy providing Altrad with economic advantage over its competitors.

(69) Bichot report commissioned by FSI provides a legal due diligence of Altrad for the purpose of FSI's planned investment. It thus analysis the past transactions with Altrad shares (exit of CAPE, establishment of Altrad Investment Authority), reviews the existing debts and guarantees of Altrad and analysis possible legal risks of FSI's entry in Altrad. The report does not identify any major legal risks or irregularities. The Commission considers that the report thus provides a standard *ex ante* legal due diligence usually required by a prudent market economy investor.

(70) Based on the above reports from independent consultants and using additional advice of its consulting bank Société Générale, FSI has prepared its internal analysis assessing in detail the current situation of Altrad as well as its Business Plan and providing valuation of the company based on several different methodologies. The analysis also indicates the result of FSI's internal rating system for the proposed investment.

(71) The analysis stresses that Altrad had been a successfully growing and profitable company with "*un impressionnant track record de consolidation et d'integration de societies*". It states that "*Mohed Altrad sollicite le FSI pour participer au financement d'une à plusieurs opérations de croissance externe, dont une de taille significative qui pourrait intervenir dans les tous prochains mois*". The analysis indicates: "*[d]isposant de position industrielles et commerciales solides, Altrad se présente comme l'un des principaux acteurs de la consolidation du secteur du matériel de BTP de ce type en Europe*". In view of the reports provided by the consultants, the strategy of Altrad based on further external growth and including further expansion in the scaffolding services market as set out in its Business Plan is plausible and economically reasonable. The presence on various levels of the vertical chain (manufacturing, renting, erection and other services) is considered as a substantial economic advantage of Altrad. In addition, the services market is by nature less cyclical compared to the sales market and also provides better margins.

(72) The Business Plan of Altrad expects that the turnover would be doubled between 2011 and 2016, showing that Altrad had been able to achieve this in the past between 2005 and 2010. In view of the continued external growth strategy, the experience of Altrad with integrating new businesses and its strong position on the markets involved, the Commission considers this expectation as reasonable and providing good basis for evaluation of the investment. In addition, it is also confirmed by actual figures. As shown in Table **1**, the turnover grew between 2011 and 2014 by 75% to EUR 861 million for 2014 and it is thus well above the turnover of EUR 784 million expected for 2014 in the Business Plan. The figures indicate that a somewhat slower turnover growth between 2011 and 2013 pointed to by the Complainant (around 17% annually), was more than compensated by the growth in 2014.

(73) The Business Plan also expects a stable EBITDA margin of 11% and an EBIT margin of 9% for 2012-2016. This was considered as reasonable in Grand Thornton report and supported by the market developments and Altrad's competitive strengths identified in L.E.K. report. In addition, it was accepted by

the three financial investors who agreed to invest in total EUR 47 million based on the same Business Plan. Further, the reasonableness of these forecasts is confirmed by the developments between 2011 and 2014. The actual values of EBITDA as summarised in Table **1** are consistently above the forecasts of the Business Plan and significantly above the target of 11% EBITDA margin. As regards EBIT margin (résultat opérationnel in Table **1**), even though with values between 6.5% and 7% it lagged slightly behind the 9% target for 2011-2013, it improved significantly above that target in 2014 (amounting to 10.3%).

(74) The Commission thus considers that the Business Plan was based on reasonable presumptions, solid market analysis and significant expertise of Altrad. In view of the above, the Commission considers that the Business Plan serving as a basis for FSI's decision whether to invest in Altrad was sufficiently reasonable, realistic and robust.

(75) FSI's analysis also includes valuation of Altrad group based the following valuation methodologies:

(a) Recent transactions with Altrad's shares: indicating Altrad's value of EUR [150-200]* million for CAPE exit and EUR 369 million for entry of three financial investors; however, the analysis indicates that the low valuation of CAPE exit is caused by on-going litigations between the parties (see above in recital (55)).

(b) Discounted cash flow analysis: indicating Altrad's value range of EUR [350-400] - [450-500] million (without external growth) and EUR [400-450] - [500-550] million (with external growth);

(c) Valuation by target internal rate of return (IRR) of [10-20] - [15-25]%: indicating Altrad's value range of EUR [350-400] - [400-450] million;

(d) Valuation by comparable transactions: an analysis of multiples for in total 15 other transactions in the construction equipment sector in Europe provides a valuation range of EUR [250-300] - [300-350] million (EBITDA multiple) and EUR [450-500] - [550-600] million (EBIT multiple).

(76) In addition, the above valuation was supplemented by a robust sensibility analysis taking into account possible variations in a number of key indicators.

(77) In view of the above, the Commission considers that the valuation of FSI's entry into Altrad's capital (implying the value of Altrad amounting to EUR 369 million) is supported by a robust valuation analysis and corresponds to the market value of Altrad (as also accepted, independently of FSI, by the three private financial investors).

(78) The Commission notes that the economic study establishing the indicative valuation of Altrad does not put into question the above valuation used by FSI. The Complainant did not have access to a number of key financial data of Altrad and thus used estimates which, as pointed by the French authorities, in some cases largely deviated from the actual figures. For example, the net result of Altrad for 2011 and 2012 used by the Complainant amounted to EUR 12.7 million and EUR 15.3 million, respectively, while the real net result of Altrad for these years

* Confidential information

amounted to EUR 20.0 million and EUR 28 million, respectively. Further, the Complainant used EBIT for 2011 amounting to between EUR 10.7 and 25 million, while its actual value was EUR 42 million. These wrong assumptions underestimating the real data clearly affected the results of the Complainant's valuation. The Commission also notes that once these comments of the French authorities with more realistic data were transferred to the Complainant, no further or updated economic study was prepared by the Complainant's consultant.

(79) Further, FSI's analysis explicitly indicates that the entry into Altrad's capital will be done on the same conditions as the entry of the three financial investors in March 2011 and that FSI will adhere to the Shareholders Pact concluded between Altrad and the three investors. FSI will thus have the right to nominate 2 members of the Board of Directors (Couseil d'administration) and certain key decisions and transactions of Altrad would be subject to FSI's approval.

(80) The fact that the three financial investors accepted to invest in Altrad on the same terms as FSI provides additional evidence of MEIP character of the investment. Even though the transactions were not strictly *pari passu* due to previous exposure by the banks, the effect of this exposure on the banks' investment decision was likely to be negligible. As indicated in Table 1, Altrad was at the time of the investment a profitable company with growing turnover and very low net debt levels. In addition, the capital increase was clearly intended to finance further growth and not repayment of past debts. Therefore, there is no reason to presume that in case the financial investors had not invested in Altrad, the risk of non-repayment of the debt held by their financial groups would have increased in any appreciable way and thus influence their investment decision.

(81) FSI's analysis expects an exit from Altrad in the horizon of 5-6 years, most likely either by introduction of Altrad to the stock exchange or by exiting concomitantly together with the financial investors. The Shareholders' Pact previews a "*clause de rendez-vous*" after 5 years when possible options for exit would be discussed.

(82) In view of the possible exit after 5 years, the analysis indicates a significant internal rate of return (taux de rentabilité interne – TRI) for FSI's investment of in total EUR 70 million (i.e. including the option for EUR 25 million) amounting to [15-25]%.

(83) Finally, the FSI internal analysis indicates the rating of the investment based on the internal rating system of FSI, comprising both standard market economy investor criteria as well as public interest criteria (e.g. employment, innovation, contribution to exports etc.). The analysis shows that in this case the rating for the market economy investor criteria amounting to 2.9 points out of maximum 4 was higher than the rating for public interest criteria amounting to only 2.7. Further, these two ratings were not summed up to a final ranking but considered both in a two-dimensional graph. Therefore, taking into account the public interest criteria actually disadvantaged the investment. This is confirmed by the minutes of the first Investment Committee meeting of 20 April 2011. While there were no doubts about the economic rationale of the transaction, some members expressed doubts about whether the public interest criteria justify FSI's intervention. For this reason, the decision was escalated to the Board of Directors which validated further preparation of the transaction on its meeting of 3 May 2011. The transaction was then approved, based on the final internal analysis, at the meeting of the Investment Committee of 6 June 2011. In addition, a comparison of the

transaction with other FSI's investments shows that its market economy investor rating was among the highest.

(84) Therefore, the Commission considers that in this particular case the rating system of FSI does not put in question the MEIP character of the transaction.

(85) In view of the above, the Commission concludes that the acquisition of Altrad's capital by FSI was carried out on market terms and thus did not involve any economic advantage to Altrad.

4.1.3. Other measures

(86) As regards the subscription by Bpifrance (ex FSI) to convertible bonds of Altrad, the Complainant does not provide any evidence of economic advantage to Altrad and links their alleged State aid character only to the fact that the 2011 capital contribution by FSI was allegedly State aid. In view of the conclusion of the previous section, this argument is no longer valid. Further, as indicated in the previous section, the nature of the internal rating system alone does not invalidate the MEIP character of Bpifrance's investments.

(87) In addition, the Commission notes that Bpifrance participates to the subscription alongside the other three financial investors whose total contribution (EUR 48 million) is almost identical to the amount subscribed by Bpifrance (EUR 52 million). Further, according to the information provided by the Complainant, all these contributions are part of a single EUR 100 million convertible bonds issue and there are no indications that Bpifrance would have participated on conditions different from the participation of the three financial creditors. The Commission notes as well that such different conditions would also most likely not have been in line with the *pari passu* clause in the Shareholders' Pact of 2011 (Article 7.2).

(88) In view of the above, the Commission considers that there are no indications that Bpifrance's subscription to Altrad's convertible bonds would constitute an economic advantage to Altrad.

(89) As regards the alleged guarantees or any other forms of facilitation by FSI/Bpifrance of loans granted to Altrad by commercial banks over the last years, the Complainant provides only allegation without any evidence. Further, the Commission's preliminary investigation has not revealed any guarantee or other forms of facilitation by FSI/Bpifrance. On the contrary, it confirmed that Altrad was a financially sound company pursuing a successful and profitable expansion strategy. There is thus no reason to doubt the willingness of commercial banks to provide financing on market terms without any support by the State.

4.1.4. Conclusion on the existence of State aid

(90) As stated above in recital (40), the criteria for determining State aid are cumulative. Since the acquisition of Altrad's capital by FSI as well as other measures complained of are considered as conform to the market economy investor principle, the economic advantage criterion is not fulfilled. It is thus not necessary to examine whether the remaining criteria are fulfilled.

5. CONCLUSION

(91) The Commission, therefore, concludes that the measures do not constitute State aid within the meaning of Article 107(1) TFEU.

6. DECISION

(92) The Commission has accordingly decided that the measures subject to the complaint do not constitute State aid.

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission