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**Subject: State Aid SA.47144 (2016/N) – Sweden
Tax reduction of employee share options**

Madam,

1. PROCEDURE

- (1) On 21 December 2016, the Swedish authorities notified electronically, according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU"), the above-mentioned measure designed to enable young and small companies to recruit and retain key employees ("the notified measure").
- (2) By letters dated 17 February and 29 March 2017, the Commission requested additional information from the Swedish authorities concerning the notified measure. They provided the requested information by letters dated 6 March and 24 April 2017.
- (3) By letter dated 24 April 2017, the Swedish authorities agreed to waive their rights deriving from Article 342 of the TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have the present decision adopted and notified in English.

¹ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the measure

- (4) The "Employee share tax regime" is a tax scheme designed to enable young and small companies to recruit and retain the key employees they need to achieve their growth potential. Such companies often do not have enough capital or financial resources to offer/pay a market wage, which makes it difficult for them to attract and retain key talented or skilled personnel that is crucial for the company in order to develop innovative ideas and expand their businesses.
- (5) The aid will be granted in the form of a reduction in the taxes which are due when employees exercise their stock options, more precisely a tax relief is granted through lower employer's social security contributions. By decreasing the overall employment costs for young and small companies associated with the exercise of certain employee share options, the Swedish authorities aim at reducing the risk related costs for such companies when hiring new key employees and incentivising the retention of their existing key employees. Therefore, these companies are better able to compete with well-established companies that have, for instance, better access to finance and the financial resources to offer competitive market wages to attract such key employees.
- (6) In addition, the measure provides an income tax relief when such key employees exercise their granted stock options.

2.2. Legal basis, budget and duration of the measure

- (7) The legal basis of the scheme is the Income Tax Act² and the Tax Procedure Act³.
- (8) The Swedish authorities estimate that the social security contributions foregone, as a result of the tax relief, would be approximately SEK 160 million over the period of implementation of the measure.
- (9) The scheme will start on 1 January 2018 for a duration of ten years. The Swedish authorities confirmed they will notify a prolongation of the scheme before its expiration if they deem it necessary to extend the duration of the notified measure.

2.3. Functioning of the measure

2.3.1. Standard tax treatment of share options in Sweden

- (10) In Sweden, taxation of income is regulated by the Income Tax Act and is divided into three different types of income: income from employment⁴, business income⁵ and capital income⁶.

² Inkomstskattelagen (1999:1229)

³ Skatteförfarandelagen (2011:1244)

⁴ *Income from employment* includes salaries, allowances, pensions, benefits and any other income received as remuneration for work.

⁵ *Income from business* includes all revenues and expenditures because of trade, i.e. income from business activities that are carried out professionally and independently.

- (11) The Swedish authorities indicated that benefits in kind, i.e. any remuneration in kind received by employees from their employers for services rendered, are taxable as employment income at their fair market value. Taxable benefits include employee share options⁷. An employee who is granted an employee share option is deemed to receive a taxable benefit at the time the option is exercised (the exercise date). The economic advantage to the employer within the meaning of Article 107 TFEU is determined by the difference in taxable value resulting from a comparison between the market value of the underlying shares at the exercise date and the total price paid for the shares (i.e. the exercise price and the premium)⁸.

2.3.2. Description of the tax relief

- (12) As illustrated in the table below, the main features of the scheme are the following:
- (a) The employee will be taxed at a later point in time, namely upon the sale of the shares, i.e. under the scheme, exercising an employee share option is not considered as a taxable remuneration.
 - (b) When selling the shares, the employee will be taxed at a lower tax rate on the difference between the income realized from the sale of said shares and the total price paid for the shares at the exercise date and not on the difference between the income realized from the sale of the shares and the market value of the shares at the exercise date..
 - (c) The employer will not have to pay any social security contributions on the value of this benefit. On the other hand, the employer will not be entitled to receive any tax deduction in relation to the scheme as there will be no payment of social security contributions.

⁶ *Capital income* includes continuous returns, gains and other income from assets that should not be attributed to business. Thus, this includes interest, dividends and other returns of capital assets and capital gains and losses.

⁷ The Swedish authorities indicated that a *share option* is a financial security known as a derivative. The value of an option is ‘derived’ from the value of an underlying asset, such as the share/shares of a company, currency, raw materials, etc. The underlying asset of a share option is the share/shares of a company. An option gives its owner (the option holder) the right (but not the obligation) to buy (call option) or sell (put option) the underlying asset at a predetermined price (exercise price) during a predetermined period regardless of the development of the asset’s market price.

⁸ The Swedish authorities confirmed that if no benefit is made by the employee at the time of exercising the option, this means that no benefit is generated and therefore not taxed at employee level and, as a consequence, there is no ground for the employer to pay social security contributions. This situation is similar with and without the notified scheme.

Table 1: description of the measure with and without the scheme

	Without the scheme	With the scheme
Grant of option	No tax effects or social security contributions.	
Exercise of option	<p><u>The employee</u> has to pay local income tax (approx. 32%⁹) and, in some cases, state income tax (20/25%¹⁰) on the difference between the market value of the underlying share at the exercise date and the total price paid for this share (i.e. any premium paid by the employee and the exercise price). This difference is the benefit.</p> <p><u>The employer</u> has to pay social security contributions (2017: 31.42 %) on the benefit. The payment is deductible for income purposes. The corporate tax rate is 22%.</p>	No tax effects or social contributions
Sale of share	<p><u>The employee</u> has to pay capital gain tax (normally 25%¹¹) on the difference between the value realized on selling the share and the market value of the share at the exercise date (i.e. the value of the benefit, any premium paid by the employee and the exercise price). The difference is the capital gain.</p> <p><u>The employer</u> pays no tax or social security contributions.</p>	<p><u>The employee</u> has to pay capital gain tax (normally 25%¹²) on the difference between the value realized on selling the share and the total price paid for the share at the exercise date (i.e. any premium paid by the employee and the exercise price). The difference is the capital gain.</p> <p><u>The employer</u> pays no tax or social security contributions.</p>

2.4. Eligibility criteria

- (13) In order to benefit from the scheme, the grantor company, the employee option holder and the option must fulfil certain eligibility criteria.

2.4.1. Eligible companies

- (14) The company whose shares are subject to the proposed tax scheme must fulfil the following criteria:
- (a) It must be a Swedish limited liability company¹³ or a corresponding foreign company with a permanent establishment in Sweden;

⁹ The local income tax rate is different, depending on where the individual live in Sweden, the average local rate is approx. 32%.

¹⁰ The State income tax rate is 20% for taxable income above SEK 438 900 and 25% for taxable income above SEK 638 500 (2017).

¹¹ According to the Swedish authorities, capital gains are generally taxed at a flat rate of 30%. For non-quoted shares, the tax rate is generally 25% since 5/6 of the gain is taxable.

¹² See footnote 11.

¹³ In Swedish: "aktiebolag".

- (b) It must employ less than 50 full time-equivalent employees;
- (c) The company's net turnover or balance sheet total must not exceed SEK 80 million¹⁴;
- (d) The company must be independent, i.e. 25 per cent or more of the shares or voting rights of the shares of the grantor company should not be directly or indirectly controlled by one or more public bodies;
- (e) The company must not be listed on a regulated market;
- (f) The company must not exercise any of the following activities: banking or finance, insurance operations, production of coal and steel, trade in land, real estate, raw materials or financial instrument, rent for a longer period of commercial and residential premises or provision of legal services or services related to accounting and auditing.
- (g) The company must not be in operation for more than ten years;
- (h) The company must not be a company in difficulty in the meaning of the Guidelines on State aid for rescue and restructuring non-financial undertakings in difficulty¹⁵.

2.4.2. Eligible employees

- (15) The employee eligible to receive share option (option holder) must be employed by the grantor company during the vesting period (at least 30 hours per week) and receive remuneration from the company.
- (16) The option holder and/or his/her family relatives may not control more than 5% of the shares or voting rights of the shares of the grantor company. The Swedish authorities indicated that this limitation is applicable during the year of granting up to the time of granting and the previous two years.

2.4.3. Qualifying options

- (17) The total value of outstanding employee options (with shares of the grantor company as underlying assets) that the grantor company has issued, including the options in question, must be maximum SEK 75 million at the time of entering the option agreement.
- (18) The total value of the employee options (with shares of the grantor company as underlying assets) each option holder may hold, including the option in question, must be maximum SEK 3 million at the time of entering the option agreement. The granting company is free to decide how the options are distributed among the employees in the company.
- (19) The Swedish authorities indicated that the option value is deemed to correspond to the value of the underlying share. If any market transaction/transactions regarding the underlying share has/have occurred during a 12 month period

¹⁴ The Swedish authorities indicated that requirements (b) and (c) shall be fulfilled during the fiscal year preceding the year of granting.

¹⁵ OJ C 249 of 31.07.2014 p.1

before the issue of the option in question, the value shall be determined with assistance from this/these transaction/transactions. If no such transaction has occurred, the value of all shares of the company shall be based on the difference between the book value of the assets and the liabilities. If no balance sheet has been adopted, the value shall be determined as the par value of the share¹⁶.

- (20) The holder must hold the share option for a minimum period of three years from the time of granting before the share option can be exercised. The option must be exercised within 10 years from the time of granting.

2.5. Transparency

- (21) The Swedish authorities confirmed that the measure will be published and accessible on the website of the Agency for Growth Policy Analysis¹⁷.

3. ASSESSMENT

3.1. Existence of aid

- (22) Article 107 (1) of the Treaty on the Functioning of the European Union (hereafter "TFEU") states 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 undertaking or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (23) Therefore, in order to determine whether a measure constitutes State aid within the meaning of Article 107(1) TFEU, it must be established whether a) the measure confers a selective economic advantage to the undertakings concerned, b) this advantage has been financed through State resources and the measure is imputable to the State, c) the advantage distorts or threatens to distort competition and, finally, d) the measures affect trade between Member States. These conditions must be cumulatively met, which means that if one is not met the measure does not fall within the scope of Article 107(1) TFEU.
- (24) The exemption from employees' income tax liabilities concerns only employees who are private individuals and therefore Article 107(1) TFEU does not apply to them.
- (25) However, the measure confers an economic advantage to the qualifying SMEs. The relief from social contribution confers a direct advantage to these companies, as it mitigates the charges which are normally included in their budget when paying employment income. A further advantage lies in the fact that these SMEs can grant additional remuneration to their employees without the employees being subject to income tax on the value of their share options (when exercising the option) and without being taxed at the standard rate on capital gains following a future sale of these shares.
- (26) As the tax relief benefits only small companies as defined above, the measure is therefore selective.

¹⁶ In Swedish: "aktiens kvotvärde".

¹⁷ <http://www.tillvaxtanalys.se/statsstod>

- (27) In line with well-established case-law¹⁸, the measure involves State resources as the social security contributions related to the non-taxable benefit of the share option constitute foregone revenues of the State which would, absent the scheme, be due. The notified measure is also clearly imputable to the State as it is introduced through a legislative act.
- (28) When aid granted through State resources strengthens the position of an undertaking compared with that of its competitors, and given that some of the beneficiaries are active on markets that are open for competition and trade, therefore the notified measure is liable to distort (or threaten to distort) competition and trade between Member States.
- (29) In light of the above, the Commission concludes that the measure constitutes State aid to the eligible companies within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid – standstill clause

- (30) The measure has been notified on 22 December 2016 by the Swedish authorities. They confirmed that effective implementation of the scheme is conditional upon the approval of the notified measure by the European Commission.

3.3. Compatibility

- (31) According to Article 107(3)(c) TFEU, aid may be compatible with the internal market if it facilitates the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (32) In order to determine the compatibility of a measure under Article 107(3)(c) TFEU, the Commission performs a balancing test, weighing positive effects in terms of a contribution to the achievement of well-defined objectives of common interest and negative effects on trade and competition in the common market. In this regard, the Commission considers the following principles¹⁹:
- (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 107(3) TFEU;
 - (b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern;
 - (c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest;

¹⁸ See inter alia Judgment of the Court of Justice of 16 May 2000, *France v Ladbroke Racing Ltd and Commission*, C-83/98 P, ECLI:EU:C:2000:248, paragraphs 48 to 51.

¹⁹ For example, SA 32835 (2011/N) - Northwest Urban Investment Fund (JESSICA) (OJ C 281 of 24.09.2011, p.2, http://ec.europa.eu/competition/state_aid/cases/240234/240234_1247477_97_2.pdf and SA 38769 (2015/N) - Green Deal for Electric Vehicle Charging Infrastructure, to be published, http://ec.europa.eu/competition/state_aid/cases/258489/258489_1710979_137_2.pdf

- (d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity, which it would not carry out without the aid or would carry out in a restricted or different manner or location;
- (e) proportionality of the aid: the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned;
- (f) avoidance of undue negative effects on competition and trade between Member States: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive;
- (g) transparency of aid: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder.

3.3.1. Contribution to a well-defined objective of common interest

- (33) In Sweden, young and small companies often face difficulties in recruiting and retaining key employees. According to the Swedish authorities, because such companies often do not have enough capital or financial resources to pay a competitive market wage, it is difficult for them to attract key personnel that is crucial for the company in order to develop ideas and make the business grow. The possibility for innovative companies to develop ideas and grow is a fundamental condition for growth in the economy at large. One way of improving young, small companies' possibilities to recruit and/or retain key employees is to decrease the tax costs associated with offering the employees share options.
- (34) The Commission has recognised that a shortage of skilled employees adversely impacts innovation and growth by restricting small companies' abilities to explore the productive potential of innovation and ideas and acknowledged the need to promote a more entrepreneurial culture and create supportive environment for SMEs²⁰. The Commission also emphasized in the past the importance of employee share options as a mechanism for attracting and retaining employees to small growth companies and in fostering entrepreneurship²¹.
- (35) The Commission is therefore of the opinion that the measure thus aims at facilitating the efficient matching of labour resources to the economic needs of small high-growth businesses in order to increase their productivity and growth.
- (36) In light of the considerations set out in recitals (33) to (35) above, the Commission concludes that the measure contributes to a well-defined objective of common interest.

²⁰ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *Entrepreneurship 2020 Action Plan, Reigniting the entrepreneurial spirit in Europe*, COM (2012) 795 final of 9.1.2013

²¹ *Employee Stock Option: the legal and administrative environment for employee stock options in the EU*, European Commission, DG Enterprises, June 2003, p.20.

3.3.2. Need for State intervention

- (37) In assessing how the measure contributes to efficiency and remedies a market failure, the Commission has to examine the presence and magnitude of a market failure.
- (38) According to the Swedish authorities, the market failure which is the rationale for this scheme stems both from capital market and labour market failure, each explained by asymmetric information, in particular agency and adverse selection problems. On the one hand, small and young SMEs in Sweden do not have access to external capital to the same extent as large, well-established companies have. Asymmetric information regarding the company's profile and prospect results in debt or equity financing being available to a lesser degree (or with higher interest rates) or not at all. On the other hand, small and young SMEs, with investment opportunities that expect positive returns but with capital constraints, will have difficulties to hire key personnel. Such companies generally struggle to offer a market level wage, due to limited access to capital, and at the same time the employee will likely identify that the employment is riskier (higher risk of being laid off) compared to employment at a large, well-established company and will therefore ask for an additional risk premium. A large company will be better able to diversify its "risk" of losing key personnel by hiring a larger number of qualified staff, something that is inherently more difficult, or even impossible, for a small young firm. Therefore, not only recruiting but also retaining key personal is imperative for SMEs in Sweden.
- (39) The Swedish authorities provided economic studies showing the difficulties that Swedish SMEs face to compete in the labour market and attract qualified personnel. A specific survey performed on small companies regarding their expectations for the future showed that their main obstacle to expand their business is recruiting qualified employees²². Recruitment of managers and professionals with accumulated tacit knowledge may be particularly instrumental for productivity growth of SMEs. But these companies are arguably unable to compete easily with the salaries offered by larger and more established firms due to their relative weak economic situation.
- (40) While young start-ups usually have cash-flow constraints that prevent them from hiring qualified staff by offering competitive salaries, they also face uncertainty concerning their future success and related incentive problems. For these two reasons, stock options can play an important role as they defer the cash payments to the future and act as incentives for employees to commit themselves and remain within the company in the expectation that attractive share options become available. Employee share options are already available in Sweden, but the existing taxation system is rendering them inappropriate for the use by start-ups. One way of improving competition and mobility would be to enable SMEs to more easily match the salaries and job security of more established firms by

²² Företagarna (The Swedish Federation of Business Owners), "*Småföretagsbarometern, Riksrapporten, September 2016*" (in Swedish)

http://www.foretagarna.se/globalassets/media/opinion/rapporter/2016/smaforetagsbarometern/riksrapport_slutlig_version1.pdf

offering favourably taxed employee stock options, which SMEs can use to attract managers and professionals²³.

- (41) The economic literature recognized that the fiscal environment in Sweden may limit entrepreneurship. In 2012, the OECD pointed that one of the elements of the tax code in Sweden that may limit entrepreneurship is the way in which stock options are taxed. According to the report, it is a widely-held view that the Swedish law for stock options is best suited for large listed companies, rather than early stage ventures with their typical uncertainties and high risks. The OECD recommended that the government undertake a comprehensive examination of how the tax system affects equity finance for growth companies, including the taxation of stock options²⁴.
- (42) Another study provided by the Swedish authorities concludes that one of the most important changes of the Swedish tax system for improved prosperity may be increased premiums for entrepreneurs and key employees. This could be achieved through stock options for employees²⁵.
- (43) Considering the above, the Commission can conclude that the Swedish authorities have demonstrated, with references to the economic theory and empirical evidence for Sweden, the existence of a market failure in the form of asymmetric information that prevents an efficient matching of labour resources to the economic needs of small businesses. In this context, smaller companies are unable to offer competitive remuneration and normal job security to employees compared to larger well established ones.
- (44) In light of the elements detailed in recitals (38) to (43) above, the Commission concludes that public intervention both at SME and employee level is needed in order to allow smaller companies in Sweden to offer competitive remuneration to employees compared to larger well established ones.

3.3.3. *Appropriateness of the aid measure*

- (45) Member States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 107(1) TFEU can only be justified by the appropriateness of a particular instrument to meet the public policy objective and contribute to one or more of the common interest objectives²⁶.
- (46) The Commission normally considers that a measure is an appropriate instrument where the Member State has considered whether alternative policy options exist which are equally suitable to achieve the common interest objective but at the same time less distortive to competition than the selective State aid and where it

²³ Gidehag, A. and Lodefalk, M., (2016), *Recruiting for Small Business Growth: Micro-level Evidence*, HUI Working Paper Series, number: 119.

²⁴ OECD Reviews of Innovation Policy, Sweden 2012

²⁵ Henrekson, M., Sanandaji, T., (2014) *Företagandets förutsättningar – en ESO-rapport om den svenska ägarbeskattningen*, Rapport till expertgruppen för studier i offentlig ekonomi, 2014:3 http://eso.expertgrupp.se/wp-content/uploads/2014/05/ESO-2014_3-till-webben.pdf

²⁶ See for a discussion of appropriateness Cases C 25/2004 — DVB-T Berlin-Brandenburg (OJ L 200, 22.7.2006) or N 854/2006 — Soutien de l'agence de l'innovation industrielle en faveur du programme mobilisateur pour l'innovation industrielle TVMSL, OJ C 182, 4.8.2007.

can demonstrate the appropriateness of the measure in targeting efficiency and/or equity objectives.

- (47) According to the Swedish authorities, the proposed employee share option tax regime is so designed as to address the eligible companies' specific problem of attracting, recruiting and retaining qualified employees (due to lack of capital). They acknowledge that other State aid instruments (i.e. repayable advances, soft loans) can be appropriate to tackle the eligible companies' general problems with lack of capital but would not be as focused, effective and cost effective as the proposed employee share option tax regime to help eligible companies to attract, recruit and retain qualified employees.
- (48) The Swedish authorities are also of the opinion that a general regulatory measure would be less effective and therefore cause, in economic terms, so-called "deadweight losses" (i.e. losses of economic efficiency) as such a measure would address all companies and not target specifically those small, young companies with problems of attracting, recruiting and retaining key personnel.
- (49) They indicated that a fiscal scheme aimed at addressing access to finance for SMEs would not be as focused and concentrated on the eligible companies' specific problem of attracting, recruiting and retaining qualified employees as the proposed employee share option tax regime.
- (50) Finally, the Swedish authorities highlighted that the proposed employee share option tax regime would have some additional advantages compared to other State aid instruments²⁷:
- (a) Employee stock options (and similar schemes) create a stronger sense of involvement on the side of the employees, making them more interested in the value and wellbeing of the company, and will induce them to work harder, improve the flow of information and help to develop an entrepreneurial spirit. There is empirical evidence that companies that have introduced some kind of financial participation scheme are on average more successful than others. There is also some evidence that companies with broad based option schemes have higher productivity and higher growth rates;
 - (b) Standard economic theory accepts that employees who participate in the success of their company will be better motivated than employees who receive a fixed salary;
 - (c) Financial participation tends to increase (informal) horizontal control. In general, the introduction of share options also aims at a change of culture inside the company, it can influence the way employees perceive themselves in their job and lead to more teamwork and a more entrepreneurial attitude.
- (51) In light of the elements detailed in recitals (47) to (50) above, the Commission considers that the type of aid chosen (i.e. a tax regime) is coherent with the market failure that the aid measure aims to address. As the proposed tax regime

²⁷ See in particular *Employee Stock Option: the legal and administrative environment for employee stock options in the EU*, European Commission, DG Enterprises, June 2003, p.19.

better focuses on the SMEs' problem of recruiting and retaining key employees, the Commission considers it is more appropriate than other State aid instruments.

3.3.4. Incentive effect

- (52) In order to enable the Commission to assess the compatibility of an aid, the Member State must provide evidence demonstrating that the aid has an incentive effect, i.e. it is likely to change the behaviour of the beneficiary in such a way that it engages in additional activities.
- (53) The required incentive effect is present if the aid changes the behaviour of the beneficiary in relation to reaching the objective of common interest and addressing the identified market failure.
- (54) The Swedish authorities indicated that the proposed measure will increase the amount of net (post-tax) remuneration available to an employee, thus increasing the attractiveness of remuneration to employees and provide an incentive for employees to join and remain in the eligible company. While the potential benefits arising from employee share options only crystallise if an employee ultimately exercises the option and only if there has been market growth in the value of the shares between grant and exercise, nevertheless granting the option *per se* creates incentives to employees. Furthermore, given that the tax relief is lost on employee resignation or termination, employee would have an incentive effect to remain with the company.
- (55) The Swedish authorities also explained that the tax relief will also have an incentive effect on companies, as they are not liable to pay any social security contributions on the part of the remuneration which relates to exercised share options. It also reduces the amount of underlying shares under option that a company would have to grant to give the same post-tax reward to employees, thus enabling companies to provide a more competitive overall remuneration package that otherwise would have only been possible through the provision of greater shareholding value under the option.
- (56) The Commission considers that the proposed measure makes employee share options economically attractive both for employees and SMEs, which addresses both the labour and capital market failure. The scheme will increase the amount of net (post-tax) reward available to an employee and thereby provides an incentive to join or remain with the SME. Furthermore, by reducing the value of the options that a company would have to issue to attract a given employee, it enables companies to provide a more competitive overall remuneration package.
- (57) Therefore, the Commission can conclude that the scheme, by improving the economic attractiveness of employee share options granted by SMEs in Sweden to their employees, provides incentive to the beneficiary companies to recruit and retain employees. It is also an incentive to employees to join or remain with the companies, which addresses Sweden-specific market failure and contributes to the achievement of the public objectives.

3.3.5. Proportionality of the aid

- (58) The Commission considers that the aid is proportionate if the same result could not be achieved with less aid.

- (59) The Swedish authorities indicated that the measure contains certain safeguards to limit the aid granted to the company.
- (60) Firstly, the advantage from the proposed tax relief materialises only from the exercise of employee share options, which normally happens only when the share price exceeds the agreed exercise price. Since the advantage depends on the growth in the company's share price and the financial gain made by employees at exercise, this ensures the proportionality of the aid.
- (61) Secondly, the amount of employee share options awarded is the result of bargaining between individual companies and their employees with opposite motives, which has the effect of minimising the aid provided to the minimum necessary and producing the least possible distortion. Both independent economic actors will have to negotiate on the exercise price, the premium and the amount of share under option to be awarded. While employees will have preferences for greater remuneration, employers will have an incentive to minimise the costs.
- (62) Finally, the scheme also has a cap on the total value of employee options that a company may issue and the total value of the employee options each option holder may hold. There are also a number of qualifying criteria for companies, employees and options, which also provide safeguards that the measure targets the above identified market failures, while still limiting the aid to the minimum.
- (63) The Commission also notes that the aid granted under the present scheme is not related to any costs that could be eligible for other State aid. The qualifying criteria effectively preclude any abuse or cumulation with other aid schemes for the same eligible costs.
- (64) The Commission therefore considers that the aid granted with the notified measure is proportionate, as it provides for a number of safeguards ensuring that any aid is limited to the minimum necessary to achieve the objectives.

3.3.6. Avoidance of undue negative effects on competition and trade

- (65) A State aid measure must be designed in such a way as to limit distortions of competition within the internal market. The negative effects have to be balanced against the overall positive effect of the measure.
- (66) In the present case, the Commission notes that the measure is targeted at a well-defined restricted set of companies which typically face difficulties in recruitment and retention of key employees. Larger well-established companies do not suffer from the same magnitude of the market failure and therefore would be able to compete successfully in the labour market by offering competitive remuneration packages. Therefore, the measure is unlikely to discourage investments by larger companies.
- (67) The Commission notes that by increasing the ability of young and small companies to offer competitive remuneration packages to employees, the scheme has a potential to promote competition in the labour market and help to improve the efficient matching of labour resources to productive economic activities.
- (68) Finally, the Commission notes that the aid characteristics ensure the potential distortions of competition are limited to a minimum. The tax relief will only materialise if there is real productive growth and the employee exercises the

option and realises a gain. This is likely to facilitate innovation and the development of new products and services, which has a positive effect on competition. Given that the maximum aid amount is limited and that the aid is targeted to a well-defined purpose, it is unlikely to have any measurable negative effects on competition and trade.

- (69) The Commission is therefore able to conclude that the distortions of competition and negative effects on trade due to the measure will be limited.

3.3.7. Transparency

- (70) The Commission considers that the Swedish authorities comply with their transparency obligations (see section 2.5 above).

3.3.8. Conclusion with regard to the compatibility of the measure

- (71) In light of the above, the Commission considers that the measure can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU.

4. CONCLUSION

- (72) The Commission has accordingly decided not to raise objections to the aid measure on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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

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

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Registry
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully

For the Commission

Margrethe VESTAGER
Member of the Commission

