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<p>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 [...].</p>	<p style="text-align: center;">PUBLIC VERSION WORKING LANGUAGE This document is made available for information purposes only.</p>
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Subject: State aid SA.32715 (2012/C) (ex 2012/NN) – Slovenia

Alleged aid to Adria Airways

Sir,

The Commission wishes to inform Slovenia that, having examined the information supplied by your authorities on the measures referred to above, it has decided to initiate the formal investigation procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

- (1) By SANI notification n° 5628 of 11 March 2011, registered on the same day, Slovenia notified to the Commission rescue aid to Adria Airways (hereinafter "Adria" or "the company"), in the form of a State guarantee and a soft loan in the amount of EUR 6.2 million.
- (2) The Slovenian authorities provided supplementary information by letters of 31 March 2011 and 12 April 2011. The Commission requested additional information by letter of 29 April 2011 to which the Slovenian authorities did not reply. A meeting with the Slovenian authorities and their advisors took place on 13 July 2011, where it was explained to the Commission that the

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notified rescue aid would not be sufficient in view of the unfavourable financial situation of the company and that Slovenia planned to inject EUR 50 million in cash into Adria. Slovenia withdrew its rescue aid notification on 1 August 2011.

- (3) Following information that Slovenia had nevertheless carried out the above cash injection on 30 September 2011, the Commission decided to continue its preliminary investigation *ex officio* and asked for further information by letters of 12 September 2011, 28 November 2011 and 17 April 2012, to which the Slovenian authorities replied by letters of 11 October 2011, 27 December 2011, 13 January 2012 and 18 May 2012. In addition, the Slovenian authorities submitted a memorandum prepared by the lawyers of Adria by e-mail of 7 November 2012.
- (4) At the request of the Slovenian authorities, a meeting was held on 12 July 2012 with the participation of representatives of Adria and the State-owned holding PDP,¹ one of the shareholders of Adria. In that meeting, the Slovenian authorities and the representatives of Adria and PDP presented clarifications and arguments as regards the measures under scrutiny.

2. THE SLOVENIAN AIR TRANSPORT MARKET

- (5) Adria is the national air carrier of Slovenia and the main airline at Ljubljana's airport. In 2011, it carried 73.4% of the passengers flying via Ljubljana's airport and is expected to account for 70% of total passenger numbers in 2012.
- (6) The entrance of low-cost carriers in Slovenia is very limited (easyJet operates only one route from Ljubljana while Wizz Air operates two) and there are only four other competitors (Air France, Finnair, Turkish Airlines and Montenegro Airlines) flying from Ljubljana to their main hubs.

3. THE BENEFICIARY

- (7) Adria is a large company, with a turnover of EUR 148.7 million and losses of EUR 63.1 million in 2010, and about 450 employees. It has a fleet of 13 aircraft, mainly regional jets. At present, Adria is owned *inter alia* at 69.9% by the Republic of Slovenia, 19.6% by Nova Ljubljanska Banka d.d.² (hereinafter "NLB"), and 2.1% by PDP.
- (8) As presented in detail in paragraphs (41) to (44) below, Adria's financial situation has constantly deteriorated from 2008 onwards, having reduced sales, negative EBT (earnings before tax) and negative own equity.
- (9) Slovenia and the management of Adria are currently looking for a strategic private partner for Adria Airways. On 1 August 2012, Slovenia together with PDP, NLB, Abanka Vipa d.d., Hypo Alpe-Adria Bank d.d., and Unicredit

¹ PDP is a holding company established in May 2009. It is fully owned by three 100% State-owned funds: Kapitalska družba d.d. (hereinafter "KAD"), Slovenska Odszkodninska družba d.d. (hereinafter "SOD") and Družba za svetovanje in upravljanje d.o.o. (hereinafter "DSU").

² As of 31 December 2010, Slovenia owned – directly or indirectly – 48.8% of NLB. However, after a rescue recapitalisation of NLB, approved by Commission Decision of 7 March 2011 (SA.32261), Slovenia currently holds – directly or indirectly – a stake of NLB of approximately 55.7%.

Bank of Slovenia d.d. (see paragraph (20) below) began the privatization process of Adria by seeking bids for 74.87% of the company's shares. On that day, the Capital Assets Management Agency of the Republic of Slovenia (AUKN) published a public invitation to investors for submission of non-binding expression of interest in the process of sale of a majority block of shares of the company.³

4. DESCRIPTION OF THE MEASURES

4.1. Measure 1: the 2007 capital increase

- (10) As of 31 December 2006, the capital of Adria had the following shareholding structure:

Table 1: Adria's shareholder structure before the 2007 capital increase

Name	%
KAD	55.0
SOD	20.0
NFD 1 delniški investicijski sklad d.d. ⁴	9.7
NFD Holding d.d. ⁵	7.2
Infond d.o.o. ⁶	4.9
Others (incl. individual shareholders)	3.2

- (11) On 19 February 2007, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 10.9 million. Approximately 99.6% of the increase was subscribed by the State-owned fund KAD, while the rest was subscribed by individual shareholders. All shares were paid by 5 April 2007.
- (12) The price paid was EUR 27 per share. A valuation report dated [...] set the shares' value at EUR [...] per share in September 2006.
- (13) Subsequent to the 2007 capital increase, the capital ownership of Adria was as follows:

Table 2: Adria's shareholder structure after the 2007 capital increase

Name	%
KAD	77.3
SOD	10.0

³ See http://www.auknrs.si/en/what_new/public_invitation_Adria_Airways_english_01082012/.

⁴ NFD 1 delniški investicijski sklad d.d. is a 48.5% subsidiary of NFD Holding (see footnote below). The rest of owners appear to be mainly private companies – see the annual accounts (in Slovenian only) at <http://www.nfd.si/dokumenti?lang=en>.

⁵ NFD Holding d.d. is a publicly traded joint stock company whose main activity is managing financial investments. It appears to be privately owned – see the annual accounts (in Slovenian only) at <http://www.nfdholding.si/dokumenti.php>.

⁶ Infond d.o.o. is a Slovenian investment fund management company. It is 72% owned by Nova KBM, a bank that at the time was 42.3% owned by Slovenia, 4.8% by KAD and 4.8% by SOD. See <http://www.nkbm.si/financial-reports-and-documents>.

* Information covered by the obligation of professional secrecy.

NLB ⁷	8.5
Infond d.o.o.	2.4
Others (incl. individual shareholders)	1.8

4.2. Measure 2: the 2009 capital increase

- (14) On 13 January 2009, the Management Board of Adria decided to increase the capital of Adria by issuing new shares. As a result, the capital of Adria was increased by EUR 2.36 million. Approximately 99.5% of the increase was subscribed by KAD, while the rest was subscribed by individual shareholders. All shares were paid by 20 July 2009.
- (15) The price paid was EUR 22 per share. A valuation report dated [...] set the value of the shares at EUR [...] per share in September 2008.
- (16) Subsequent to the 2009 capital increase, the capital ownership of Adria was as follows:

Table 3: Adria's shareholder structure after the 2009 capital increase

Name	%
KAD	78.6
SOD	8.8
NLB	7.5
Infond d.o.o.	2.2
Others (incl. individual shareholders)	2.9

4.3. Measure 3: the 2010 capital increase

- (17) On 2 September 2010, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 2.5 million. Approximately 80% of the increase was subscribed by the holding company PDP, the successor of KAD and SOD. The remaining 20% was subscribed by two private tourist agencies: Kompas d.d. and Palma d.o.o. (10% each). All shares were paid by 1 October 2010.
- (18) The price paid was EUR 12 per share. A valuation report dated [...] set the shares' value at EUR [...] per share in June 2009.
- (19) Subsequent to the 2010 capital increase, the capital ownership of Adria was as follows:

Table 4: Adria's shareholding structure after the 2010 capital increase

Name	%
PDP	86.0
NLB	6.1
Kompas d.d.	1.9
Palma d.o.o.	1.9

⁷ On the basis of the information available, it appears that at some point in time before the 2007 capital increase, NLB acquired the shareholding of NFD 1 delniški investicijski sklad d.d. and NFD Holding d.d.

Infond d.o.o.	1.7
Others (incl. individual shareholders)	2.4

4.4. Measure 4: the 2011 capital increase

- (20) On 21 September 2011, the shareholders' meeting of Adria decided to increase the capital of the company by EUR 69.7 million. The Republic of Slovenia subscribed EUR 49.5 million in cash and PDP subscribed EUR 0.5 million, also in cash. The rest of the capital increase (i.e. EUR 19.7 million) took the form of debt-to-equity swap by a number of banks: (i) EUR 13.83 million by NLB, (ii) EUR 3.35 million by Abanka Vipava d.d., (iii) EUR 1.24 million by Unicredit Bank of Slovenia d.d., and (iv) EUR 1.28 million by Hypo Alpe-Adria Bank d.d. The capital increase was carried out on 30 September 2011.
- (21) The agreed price was EUR 1 per share, the minimum allowed by Slovenian law. There was no valuation report.
- (22) Subsequent to the 2011 capital increase, the capital ownership of Adria was as follows:

Table 5: Adria's shareholder structure after the 2011 capital increase

Name	%
Republic of Slovenia	69.9
NLB	19.6
Hypo Alpe-Adria Bank d.d.	1.8
Abanka Vipava d.d.	4.7
Unicredit Bank of Slovenia d.d.	1.8
PDP	2.1
Others (incl. individual shareholders)	0.1

4.5. Measure 5: the acquisition of Adria Airways Tehnika d.d. in 2010-2011

- (23) Adria Airways Tehnika d.d. (hereinafter "AAT"), a 100% subsidiary of Adria, was founded in 2010. Until then it had been Adria's in-house maintenance unit known as SVL. AAT is active in the aircraft maintenance sector for Adria and other clients.
- (24) In the period October 2010-March 2011, PDP and Aerodrom Ljubljana – the majority State-owned manager of Ljubljana's airport – respectively acquired 52.3% and 47.7% of AAT from Adria in two stages. Although the exact conditions of the sale are not completely clear to the Commission, it appears that at a first stage PDP purchased a stake of 18.24% in AAT in the form of 2,676,346 preference shares with no voting rights at EUR 1 per share. At the same time, Aerodrom Ljubljana acquired a 31.16% stake in AAT through conversion of debt into preference shares with no voting rights for an amount of approximately EUR 4.6 million. At a second stage in early 2011, Adria sold its remaining shares in AAT as follows: PDP acquired 5,000,000 ordinary shares at EUR 1 per share and increased its stake in the company to 52.33%, while Aerodrom Ljubljana increased its stake in AAT to 47.67% by converting EUR 2.2 million of receivables from Adria.

- (25) The total price paid was thus EUR 14.7 million, i.e. EUR 1 per share. A valuation report dated April 2010 had set the value of AAT as Adria's maintenance unit at a range between EUR 14.4 million and EUR 14.9 million in December 2009.

5. COMMENTS FROM SLOVENIA

- (26) Slovenia considers that Adria is to be considered a firm in difficulty in the sense of the Community guidelines on state aid for rescuing and restructuring firms in difficulty⁸ (hereinafter "the R&R Guidelines") only as of 29 July 2011, when the company's management board examined the 2010 annual report of the company and found that it had become insolvent in the long term. Thus, in the opinion of the Slovenian authorities, Adria would only be a firm in difficulty at the time of measure 4.
- (27) Slovenia considers that the 2007 and 2009 capital increases (**measures 1 and 2**) did not entail State resources and that the decision to increase the capital of Adria cannot be deemed imputable to the State. Also, the Slovenian authorities are of the view that these capital increases were done in accordance with the market economy investor principle ("MEIP") since they were sound economic investments carried out at prices below the market value estimated by independent valuation reports and, therefore, that no undue advantage was provided to Adria.
- (28) Regarding the 2010 capital increase (**measure 3**), Slovenia argues that it did not entail State resources since allegedly PDP obtained the necessary funds to carry out this capital increase from a private bank. In addition, Slovenia notes that the decision to increase Adria's capital was sound and highlights that two private companies participated to this capital increase with EUR 0.5 million, i.e. approximately 20% of the total capital increase, in identical conditions to PDP. Slovenia considers that the participation of the private investors can be deemed of real economic significance, which would make this capital increase MEIP-conform.
- (29) Slovenia also suggests that the actions of PDP cannot be deemed imputable to the State, since PDP was not established pursuant to any special law from the National Assembly or a decision of the Government of Slovenia, it operates under commercial law, and it obtains its financial resources from commercial banks subject to market conditions.
- (30) In relation to the 2011 capital increase (**measure 4**), Slovenia claims that the actions of NLB (who converted EUR 13.83 million of debt into equity) cannot be deemed imputable to the State despite the fact that at the time of the measure it was the majority shareholder. In Slovenia's opinion, NLB is a company incorporated under private law which would give it a level of independence enough to exclude the safeguard of any public interest. Slovenia also considers that the participation of PDP is not imputable to the State (for the same reasons presented in paragraph (29) above).
- (31) Slovenia emphasizes that the 2011 capital increase is to be considered MEIP-conform for a number of reasons. First, Slovenia notes that by decision of 23

⁸ OJ C 244, 1.10.2004, p. 2.

June 2011 the Government of Slovenia conditioned its participation in the capital increase subject to a simultaneous participation of the private sector, at least in proportion to their shareholding and under identical conditions to those of the public investor. Slovenia, PDP and the banks entered into an agreement to recapitalise Adria on 28 September 2011 under the conditions referred to in paragraph (20) above.

- (32) Slovenia further argues that the capital increase was not the only restructuring measure planned and executed, and notes that the banks accepted a reprogramming of several bank loans which, in their view, also represents private capital participation. Slovenia concludes that the proportion of capital subscribed by private investors was of real economic significance.
- (33) Slovenia also explains that the decision of the State, PDP and the banks to participate to the 2011 capital increase was taken on the basis of a plan entitled "*Financial and Business Restructuring Program*", dated September 2011. That plan included necessary measures for the financial and business restructuring of Adria, which would allow the latter to return to viability. The details of the plan are presented in paragraphs (35) to (39) below.
- (34) Finally, in relation to the acquisition of AAT in 2010-2011 (**measure 5**), Slovenia considers that it was carried out at a market price, as estimated by an independent valuation report. Slovenia further claims that PDP obtained the necessary funds for this transaction from the market without any State guarantee. Moreover, in Slovenia's views, the actions of PDP would not be imputable to the State (see paragraph (29) above).

The "*Financial and Business Restructuring Program*" plan of September 2011

- (35) According to the "*Financial and Business Restructuring Program*" plan (hereinafter, "the plan"), Adria would achieve viability in 2013 (basic and optimistic scenarios) or 2014 (pessimistic scenario). Also, according to the plan, Adria's difficulties were caused by: a) [...].
- (36) The plan also established a number of measures aimed at restructuring Adria and returning it to viability: a) [...].
- (37) According to the plan, the 2011 capital increase of EUR 69.7 million would cover Adria's negative equity of EUR [...], the repayment of obligations of EUR [...] (EUR [...] obligations to suppliers and EUR [...] for early repayment of bank loans), and the financing of restructuring measures of EUR [...].
- (38) On the other hand, the total costs of the restructuring would amount to EUR [...], which are partly funded by the EUR 50 million cash injection from the Slovenian State and PDP. The plan also foresees a contribution by Adria to its restructuring costs ("own contribution") of EUR [...] from a debt-to-equity conversion of bank loans (EUR 19.7 million), [...].
- (39) Finally, the plan considers the sale of AAT and the cancellation of scheduled routes as compensatory measures.

6. ASSESSMENT

- (40) This decision addresses as a preliminary point the issue of whether Adria is a firm in difficulty in the sense of the R&R Guidelines (see below section 6.1). Subsequently, the Commission will examine whether the measures under scrutiny constitute state aid to Adria in the meaning of Article 107(1) TFEU (see below section 6.2), and finally whether such aid might be compatible with the internal market (see below section 6.4).

6.1. Difficulties of Adria

- (41) The Commission observes that, as set out in detail in table 6 below, the company's financial performance has deteriorated significantly in the period 2008 – June 2011.

Table 6: Adria' key financial data 2007 – June 2011 (EUR million)

	2007	2008	2009	2010	June 2011
Turnover	179.2	205.4	161.4	148.7	71.1
Net result	0.4	-3.2	-14.0	-63.1	-2.2
EBT+DA	0.4*	10.9	1.6	-50.9	1.8
Registered capital	6.8	6.8	7.7	9.4	9.4
Own equity	41.8	32.5	29.3	-35.4	-35.9
Debt/Equity (ratio)	2.8	3.7	4.0	-3.9	-3.6
Cash flow from operating activities	16.9	18.5	6.1	1.7	-21.6**

* EBT

** Data from December 2011

- (42) Adria closed financial year 2011 with losses of EUR 12 million.⁹ From information available in the press, it appears that it had losses of approximately EUR 8 million in the first quarter of 2012.¹⁰
- (43) Point 10(a) of the R&R Guidelines stipulates that a company is in difficulty when "*more than half of registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months*". This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term (as stipulated in point 9 of the same Guidelines).
- (44) In the case of Adria, as it appears in its financial statements for the years 2007-June 2011, the registered capital was not lost, but it actually increased. However, the Commission notes that over the same period the company's equity turned negative. At the same time, the company did not adopt appropriate measures in order to tackle the decrease of its own equity. In

⁹ See Adria's financial report for 2011, available at <http://www.adria.si/assets/Uploads/Annual-Report-2011-part-two-Financial-Report.pdf>.

¹⁰ See for instance <http://www.sloveniatimes.com/adria-airways-posts-eur-8m-loss-in-q1> or <http://www.sta.si/en/vest.php?s=a&id=1760327>.

earlier cases,¹¹ the Commission concluded that, where a company has negative equity, there is an *a priori* assumption that the criteria of point 10(a) are met, which would be the case for Adria since at least 2010. The General Court also concluded in a recent judgment¹² that a company with negative equity is a company in difficulty.

- (45) In addition, it also appears that by the end of 2010 the difficulties of Adria were at its peak. In this sense, the press at the time mentioned the possibility of Adria going into receivership or even filing for bankruptcy.¹³ This could be seen as a sign that, at least at that time, Adria fulfilled the criteria for being the subject of collective insolvency proceedings under Slovenian law in the sense of point 10(c) of the R&R Guidelines.
- (46) The Commission finally notes that Adria has incurred significant losses since 2008, passing from losses of EUR 3.2 million in 2008 to losses of EUR 63.1 million in 2010. The turnover has also been constantly decreasing from 2008 onwards. Equally, the cash flow from operating activities has been in continuous decline, passing from EUR 18.5 million in 2008 to EUR 6.1 million in 2009, to EUR 1.7 million in 2010, and to EUR -21.6 million in 2011.¹⁴ Adria's net asset value has also fallen, passing from EUR 30.9 million in 2008 to EUR -36.6 million in 2010.¹⁵
- (47) The elements above suggest that Adria could also be deemed to be in difficulty in the sense of point 11 of the R&R Guidelines, which states that a firm may be considered to be in difficulty "*where the usual signs [...] are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value*".
- (48) Accordingly, the Commission is of the view that Adria can be considered a firm in difficulty at the time the measures identified were provided or at the very least since 2008.

6.2. Existence of state aid

- (49) By virtue of Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (50) In order to conclude on whether state aid is present, it must therefore be assessed whether the cumulative criteria listed in Article 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of

¹¹ Commission Decision in case C 38/2007 *Arbel Fauvet Rail*, OJ L 238, 5.9.2008, p. 27.

¹² Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, [2010] ECR II-585, at paras 95 to 106.

¹³ See <http://www.rtvsllo.si/gospodarstvo/adria-airways-v-prostovoljno-poravnavo/246290> (in Slovenian) or <http://www.bloomberg.com/news/2010-12-15/slovenia-s-adria-airways-may-file-for-bankruptcy-tvs-reports.html> (in English).

¹⁴ See Adria's annual and financial reports for 2008-2011 available at <http://www.adria.si/en/about-us/company-profile/annual-reports/>.

¹⁵ See section 3 of the "Financial and Business Restructuring Program" plan.

competition and affectation of intra-EU trade) are met for each of the measures identified.

- (51) Slovenia argues that the measures described in Section 4 above do not involve State aid within the meaning of Article 107(1) TFEU because the measures are not imputable to the State and/or because of absence of an undue advantage to Adria.

6.2.1. Measures 1 and 2: the 2007 and 2009 capital increases

- (52) The Commission first notes that the 2007 and 2009 capital increases (measures 1 and 2) were subscribed almost in their entirety by KAD, at 99.6% and 99.5% respectively (see paragraphs (11) and (14) above).¹⁶
- (53) KAD manages State pension funds and assets for Slovenia and is also responsible for the privatisation of State-owned assets. The very objective of this entity is therefore closely linked to the public administration and to the implementation of public authority decisions, e.g. concerning privatisation of public assets, etc. At the time of measures 1 and 2, Slovenia directly held 100% of the shares in KAD and as a result the Government of Slovenia appointed all members of the Assembly and of the Supervisory Board. In this respect, it appears that the 2007 and 2009 capital increases were discussed and approved by KAD's Supervisory Board in 2006 and in 2009.¹⁷
- (54) At this stage, the Commission considers that the Slovenian State had a clear and direct influence on KAD. In this sense, the conclusions that the Commission reached in its decision of 19 September 2012 in the ELAN state aid case in relation to the imputability of KAD's action to the State are also applicable to the present case.¹⁸ In addition to the fact that Slovenia was the sole shareholder of KAD at the time, that all members of KAD's Supervisory Board were appointed by Slovenia, and that the Supervisory Board actually agreed to the 2007 and 2009 capital increases, it also appears that representatives of the Government of Slovenia take part in all assembly and supervisory board meetings. There is moreover evidence that KAD was used by the Slovenian State as an instrument for pursuing industrial policy objectives.¹⁹
- (55) In the light of the above, the Commission is of the view that the participation of KAD to the 2007 and 2009 capital increases consist of State resources and are imputable to Slovenia.

¹⁶ The exact date of subscription of the shares by KAD and the other shareholders is not known to the Commission. This point will need to be clarified in the course of the formal investigation procedure.

¹⁷ Annual Reports of KAD for 2006 and 2009, available at http://www.en.kapitalska-druzba.si/about_kapitalska_druzba/annual_reports/archive.

¹⁸ Commission decision of 19 September 2012 in case SA.26379 – *Elan d.o.o.*, para.103 to 110 [not yet published].

¹⁹ See for instance the OECD review "Corporate Governance in Slovenia" of 28 March 2011, page 9, at http://www.oecd.org/document/58/0,3746,en_2649_34813_47492282_1_1_1_1.00.html: "[KAD and SOD] have provided the Government with a strong mechanism to influence the boards and management of privatised firms and, ultimately, to play an active role in determining ownership changes".

- (56) The Commission also needs to assess whether the 2007 and 2009 capital increases provided Adria with an undue selective advantage. The Commission notes that KAD acquired the new shares of Adria in February 2007 at a price of EUR 27 per share, below the value determined by a valuation report of EUR [...] per share as of September 2006 (see paragraph (12) above). In January 2009, KAD acquired the shares at a price of EUR 22 per share, below the value determined by a valuation report of EUR [...] per share as of September 2008 (see paragraph (15) above). In view of the above, the 2007 and 2009 capital increases could appear to be market-conform.
- (57) However, the above is put into question by a number of reasons. First, the Commission highlights that there is a significant time gap between the moment at which the capital increases took place (February 2007 and January 2009, respectively) and the time at which the shares of the company were valued (September 2006 and September 2008, respectively). This time gap, in a fast-changing economic environment as the one in which airlines operate, could have a significant impact on the value of the shares of Adria.
- (58) Second, the Commission at this stage regards Adria as a firm in difficulty at the time of the 2009 capital increase. The Commission notes in particular that in 2008 Adria made losses of EUR 3.2 million (see table 6 above). In addition, as noted in the valuation report used for the 2009 capital increase, the 2008 increased turnover was mainly the result of the Slovenian Presidency of the EU Council and thus was not a structural trend.
- (59) Third, it is unclear whether a private investor would have actually provided capital to Adria at the time KAD did it. In this sense, it is to be noted that KAD was majority shareholder of Adria already at the time of the 2007 and 2009 capital increases.²⁰ It can therefore be considered that the capital increases were aimed at financing an existing investment for KAD in a company which could be considered to be in difficulty at least in 2009. Thus, it is unclear whether a private investor would have actually provided capital to Adria at the time KAD did it.
- (60) On the basis of the elements above, the Commission at this stage has doubts as to whether the 2007 and *a fortiori* the 2009 capital increases might have conferred an undue advantage to Adria. Given that the capital increases were provided exclusively to Adria, the Commission considers that the advantage would be selective in nature.

6.2.2. Measure 3: the 2010 capital increase

- (61) The 2010 capital increase of EUR 2.5 million was subscribed by PDP at 80% together with two private tourist agencies at 20% (see paragraph (17) above).²¹
- (62) The first element that the Commission must assess is whether the actions of PDP can be considered imputable to the State, which Slovenia contests (see paragraph (29) above).

²⁰ Before the 2007 and 2009 capital increases, KAD respectively owned 55% and 77.3% of Adria (see tables 1 and 2 above).

²¹ The exact date of subscription of the shares by PDP, Kompas d.d. and Palma d.o.o. is not known to the Commission. This point will need to be clarified in the course of the formal investigation procedure.

- (63) The Commission first notes that PDP is the successor of KAD and SOD, whose actions the Commission preliminarily considers are imputable to the State (see paragraph (54) above). In addition, the Slovenian State indirectly owns 100% of PDP (through KAD, SOD and DSU)²² and thus has the totality of votes in the shareholders' committee, which in turn appoints the Board of Directors of the company. Following Article 19 of the Articles of Association of PDP, the Board of Directors must authorise the purchase of securities when the value of the transaction exceeds EUR 500,000 as is the case here.
- (64) Moreover, the Commission notes that the former Slovenian Minister of Finance stated the following at the end of his term on 28 October 2011 (i.e. after the capital increase to Adria): "*With the establishment of the special restructuring company (PDP) we provided Slovenian firms with new sources of finance, knowhow and expertise based on cases of good practice for the restructuring of firms. Adria Airways and Unior are definitely the most resounding successes*".²³ It appears at this stage that this statement could be considered indirect evidence of imputability to the State in the sense of the *Stardust Marine* case-law²⁴ in the sense that PDP was precisely set up to carry out policies decided by the Slovenian public authorities.
- (65) In the light of the above, at this point in time the Commission is of the view that the participation of PDP to the 2010 capital increase entailed State resources and that PDP's actions are imputable to the State.
- (66) With regard to whether the 2010 capital increase provided Adria with an undue selective advantage, the Commission first notes that although the price of EUR 12 per share that PDP paid for the shares of Adria was below the price of EUR 16 per share determined by a valuation report (see paragraph (17) above), there is significant time gap of 15 months between the moment of the capital increase (September 2010) and the moment for which the report valued the shares (June 2009). Given the significant impact of the economic crisis in the airline industry, it seems reasonable to consider that a valuation carried out 15 months before the capital increase actually took place would not accurately reflect the value of the shares at the moment of the capital increase.
- (67) In relation to the participation to the 2010 capital injection of two private tourist agencies (Kompas d.d. and Palma d.o.o.) alongside PDP, the Commission notes that each of them subscribed 10% of the capital increase, i.e. EUR 250,000 each. A private participation of 20% could in principle be seen as sign that the investment in question was supported by the market. However, the capital increase must not be seen in isolation but in the broader context of the situation of Adria at the time. In the first place, it appears that Adria could be considered a firm in difficulty at the time of the 2010 capital increase (see section 6.1 above). Also, the 2010 capital increase was the third one within a time span of approximately 3.5 years. Therefore, it took place in a context in which the public authorities had already demonstrated their willingness to financially support Adria and this might have influenced the

²² See footnote 1 above.

²³ See speech by the former Minister of Finance of Slovenia (Dr. Franc Križanič) at the end of his term on 28 October 2011, uploaded in the web page of the Slovenian Ministry of Finance: http://www.mf.gov.si/si/medijsko_sredisce/novica/article/3/1054/8a67f745b4/ (in Slovenian).

²⁴ Case C-482/99 *France v Commission (Stardust Marine)* [2002] ECR I-4397.

conduct of private investors. Furthermore, as the General Court has clarified, "*la concomitance ne saurait à elle seule, même en présence d'investissements privés significatifs, être suffisante pour conclure à une absence d'aide au sens de l'article 87, paragraphe 1, CE sans prendre en considération les autres éléments pertinents de fait ou de droit*".²⁵ In this broader context, bearing in mind the difficulties of Adria at the time, the fact that the company had required a total of EUR 15.76 million in capital since 2007, and the limited possibilities that the investment would yield a sufficient return in the short- to medium-term, the Commission preliminarily considers that the investment of EUR 0.5 million does not *per se* remove the Commission's doubts about a possible advantage for Adria.²⁶

- (68) Against this background, the Commission at this stage has doubts as to whether the 2010 capital increase might have conferred an undue advantage to Adria. As in the case of the 2007 and 2009 capital increases, the advantage would be selective in nature given that its sole beneficiary was Adria.

6.2.3. Measure 4: the 2011 capital increase

- (69) Out of the total of EUR 69.7 million of the 2011 capital increase (measure 4), Slovenia directly subscribed EUR 49.5 million in cash.²⁷ It is clear that these are State resources and that the capital increase is imputable to the State. In relation to the EUR 0.5 million subscribed in cash by PDP, the Commission applies *mutatis mutandis* the arguments exposed in paragraphs (62) to (65) above. As an additional argument, the Commission notes that the decision of the Slovenian Government of 23 June 2011 – referred to in paragraph (31) above – imposed on PDP the obligation to contribute EUR 0.5 million to the 2011 capital increase, as highlighted in the press release of the same date of the Office of the Prime Minister of Slovenia: "*At today's session, the Government [...] decided that the Capital Assets Management Agency would contribute EUR 49.5 million to the equity of Adria Airways, d. d., and the joint stock company, Posebna družba za podjetniško svetovanje (PDP, d. d.), would pay EUR 500 000 [...]. With its active engagement in this process, the Republic of Slovenia would also in the future like to meet its interests in the field of scheduled air services provided by a carrier with the seat in Slovenia*".²⁸ On the basis of these elements, the Commission concludes that PDP's actions are imputable to the State.
- (70) As regards the participation of NLB, Slovenia argues that NLB acted as a private operator when deciding to convert its debt into equity and considers that its actions are not imputable to the State despite NLB being majority State-owned at the time of the 2011 capital increase. Indeed, NLB was at the

²⁵ Case T-565/08 *Corsica Ferries v Commission*, judgment of 11 September 2012, not yet reported, at para 122.

²⁶ See Cases T-358/94 *Compagnie nationale Air France v Commission* [1996] ECR II-2109, at paras 148-149 and T-296/97 *Alitalia – Linee aeree italiane SpA v Commission* [2000] ECR II-3871, at para 81.

²⁷ The exact date of subscription of the shares by Slovenia and PDP and of the debt-to-equity conversion by the banks is not known to the Commission. This point will need to be clarified in the course of the formal investigation procedure.

²⁸ Available at http://www.nekdanji-pv.gov.si/2008-2012/nc/en/press_centre/news/article/252/5487/.

time majority-owned by the State, either directly (45.62% of the shares) or indirectly through SOD (4.07%) and KAD (4.03%), both fully owned by the State,²⁹ with KBC Bank as the only other significant shareholder (25%).

- (71) First, the Commission notes that the resources of NLB have to be considered as State resources as they are the resources of a public undertaking and therefore can be controlled by the State.
- (72) Second, the Commission considers at this stage that the majority ownership of NLB, which translates into majority of votes in the Management Board and Supervisory Board of the bank, could be an indication as to the imputability of the actions of NLB to the State.
- (73) Third, given that this measure was decided and orchestrated by the State it is unlikely that the behaviour of a State controlled bank was not influenced by the public authorities.
- (74) The Commission also needs to assess whether Adria received an undue selective advantage as a result of the 2011 capital increase. The Commission preliminarily notes in this respect that, at the time of this capital increase, Adria could be considered to be in difficulty, since it had negative equity, decreasing sales and annual losses, and there were no signs of improvement (see section 6.1 above).
- (75) Slovenia argues that the 2011 capital increase was market conform, since it was carried out in *pari passu* terms with the participation of the private sector, i.e. private banks, under identical terms and conditions.
- (76) The Commission first notes that the participation of the banks amounted to EUR 19.7 million, i.e. the totality of the debt converted into equity. However, if the actions of NLB were to be considered as imputable to the State, the private participation to the capital increase would be reduced to EUR 5.87 million. In such scenario, the participation of the private sector could not be deemed significant as to exclude the presence of state aid.
- (77) In addition, the Commission reminds that a concomitant and significant participation of private investors is just an indication of the absence of aid. However, the Commission has to take into account all the factual and legal elements of the transaction that appear relevant. In this connection, the Commission notes that the participation of the banks took the form of a conversion into equity of existing loans, whereas the State and PDP injected fresh funds, i.e. cash. The fact that the banks agreed to the debt-to-equity conversion only in the case that the State would inject cash into Adria, and in particular the different nature of their contributions (fresh money increase v. conversion of debt), is in the Commission's view sufficient to create reasonable doubts about whether the 2011 capital increase was indeed *pari passu* as claimed by Slovenia. Indeed, given the financial situation of Adria, the chances for the banks to recover their credits vis-à-vis Adria were limited, notably if those credit were not privileged. Therefore, by accepting the conversion into capital the banks did not take over any new or a very limited

²⁹ In addition, 2.53% of NLB was in the hands of Zavarovalnica Triglav d.d., which in turn was 62.54% owned by State through KAD, SOD and SPIZ.

economic risk, while the State by injecting fresh capital took the full risk with regard to financial resources that before were not committed.

- (78) The Commission also notes that, contrary to the previous capital increases, the 2011 capital increase took place without any valuation report.
- (79) According to the case-law, a private investor contemplating a recapitalisation of an undertaking with significant debts would have required a restructuring plan capable of making the company viable.³⁰ In the case at hand, the Slovenian authorities claim that they decided to participate in the 2011 capital increase on the basis of the restructuring plan dated September 2011 (see paragraphs (30) to (39) above).
- (80) However, taking into account Adria's bad economic performance at the time of the 2011 capital increase, i.e. considering that in 2010 and 2011 it had negative equity, diminishing turnover and annual losses at significant level (see table 6 above), it preliminarily appears that a normal return on the capital invested could not be expected within a reasonable time. Moreover, even if the recapitalisation of a company could be considered an essential element of a restructuring plan, this would not be sufficient to satisfy the private investor criteria where it is established that the plan was based on insufficient and unreliable information.³¹ In the case at hand, some of the restructuring plan's predictions were based on uncertain or unclear assumptions. For example, the plan does not include any quantification of the expected effect on Adria's results of the increase of ticket prices, the scheduled cooperation with local and long-haul airlines, the reduction of labour cost, the changes in fuel prices, the cancellation of loss-making routes, etc. In addition, the reduction of labour cost is expected to come as a result of negotiations with the trade unions, which always include a significant degree of uncertainty. Furthermore, the foreseen reduction of staff is just a vague idea. Finally, the plan foresees certain sales of assets that are supposed to bring revenue to the company, but without supporting evidence (valuation reports, etc.) to establish the forecasted proceeds.³²
- (81) In addition, the Commission notes that this recapitalisation took place after three other recapitalisations. The Commission thinks at this stage that those earlier capital injections could constitute state aid and doubts whether they may have made possible the 2011 capital increase by keeping the company artificially afloat by postponing the necessary restructuring. The Commission observes that in these circumstances a private investor would have considered the risk that the previous capital increases constituted illegal state aid and would have assessed the impact of the risk of a possible recovery order by the Commission on the profitability of its investment.

³⁰ Joined cases T-126/96 and C-127/96, *BFM and EFIM v Commission*, ECR II-3437, at paras 82-86.

³¹ Case T-152/99, *HAMSA v Commission*, ECR II-3049, at paras 116-134.

³² The plan includes a chapter on the "risks to successful restructuring" (page 88), referring to certain parameters whose fluctuations would influence Adria's viability. Those parameters include, among others, the price of fuel, the future economy and airline industry developments, the successful agreements with trade unions, and the currency exchange rate. However, the chapter does not predict any specific changes of those parameters and does not quantify any specific impact on Adria's forecasted performance.

- (82) Finally, the Commission notes that a concomitant investment made by a private investor in comparable circumstances provides strong evidence that the market investor test is met. However, this is only a refutable presumption. In its assessment the Commission must also assess whether the behaviour of the private investor is influenced by the State's conduct.³³
- (83) In the present case, it cannot be discarded at this stage that the banks participated to the capital injection because of the interest showed by Slovenia in Adria much before 21 September 2011, i.e. the date when the 2011 capital increase was decided. Indeed, by decision of 20 January 2011 the Government of Slovenia expressed its interest in supporting Adria's financial and operational restructuring, which was confirmed by decision of 23 June 2011 detailing its support (see paragraph (31) above). In this sense, the Commission preliminarily considers that the strong interest in Adria shown by Slovenia could have influenced the behaviour of the banks to participate to the 2011 capital increase, in the belief that the Slovenian State would not led the company to go bankrupt.
- (84) On the basis of the above, it appears that the 2011 capital increase conferred an undue advantage to Adria, as it enabled the latter to obtain funds which, as a company in difficulty, it would not have obtained from the market. This advantage would be selective in nature given that its sole beneficiary was Adria.

6.2.4. Measure 5: the acquisition of AAT in 2010-2011

- (85) PDP and Aerodrom Ljubljana, the manager of Ljubljana's airport, respectively acquired 52.3% and 47.7% of AAT in November 2010-March 2011.
- (86) On the basis of the explanations provided in paragraphs (62) to (65) above, the Commission preliminarily concludes that the actions of PDP are imputable to the State and that State resources are involved.
- (87) Regarding Aerodrom Ljubljana, the Commission notes that it was majority State-owned already at the time of the acquisition of AAT.³⁴ In addition, the Articles of Association of Aerodrom Ljubljana state that the Supervisory Board of the company is composed of six members, out of whom the State appoints at least three members: two are elected by the Republic of Slovenia and one by KAD and SOD.³⁵ In this respect, on 1 October 2010 the Supervisory Board of Aerodrom Ljubljana approved the Management Board's proposal regarding the purchase of a participating interest in AAT with the conversion of claims in the amount of EUR 4.4 million against Adria. In early 2011, the

³³ See in this regard Opinion of Advocate General Geelhoed in Joined Cases C-328/99 and C-399/00 *Italy v Commission* and *SIM 2 Multimedia SpA v Commission (Seleco)* [2003] ECR I-4035, at paras 53-54.

³⁴ As of 31 December 2010, the republic of Slovenia directly held 50.67% of the shares of Aerodrom Ljubljana, while KAD held 7.36% and SOD held 6.82%. Moreover, Zavarovalnica Triglav d.d. (see footnote 29 above) held 3.98% of the shares. Source: Aerodrom Ljubljana's annual report for 2010, available at <http://www.lju-airport.si/eng/about-the-company/investor-info/financial-reports>.

³⁵ See Article 18 of Aerodrom Ljubljana's Articles of Association, available at <http://www.lju-airport.si/eng/about-the-company>.

Supervisory Board gave its approval for the conversion of debt from Adria into capital in AAT thereby increasing its shareholding to 47.67%.

- (88) In addition, the Commission notes that Ljubljana's airport is the main international airport of Slovenia.³⁶ Due to its strategic importance for the country as the main gate for international flights, the Commission considers it unlikely that the public authorities are not involved in important decisions taken by the airport manager.
- (89) From the arguments above, the Commission concludes at this stage that the actions of Aerodrom Ljubljana are also imputable to the State.
- (90) In order to assess whether the acquisition of shares of AAT by Aerodrom Ljubljana and PDP provided an undue advantage to Adria, the Commission first notes that the first stage of the acquisition of shares of AAT took place immediately after or at the same time as the 2010 capital increase. Thus, it appears that both measures should not be assessed in isolation but as part of a larger operation aimed at supporting Adria.³⁷
- (91) The Commission notes that the price at which PDP and Aerodrom Ljubljana purchased the shares of AAT – EUR 14.7 million – was within the value range set in a valuation report as of December 2009. The investment in question would therefore appear to be market-conform.
- (92) However, as stated in section 6.1 above, Adria could be considered a firm in difficulty at the time of measure 5. Within this context, the Commission observes that the report valued AAT as being part of Adria's maintenance unit (it was at the time known as SVL) and logically took into account the synergies derived from this when assessing the value of AAT. The Commission also notes that AAT was spun-off from Adria in 2010 and sold as a separate entity. Thus the report should have assessed the value of SLV/AAT as a stand-alone entity discarding intra-group synergies. It is thus uncertain whether the value of AAT would be the same as when it was part of Adria. In addition, there is a considerable gap between the time of the valuation (December 2009) and the time of the sale of shares of AAT (November 2010-March 2011). In the overall context of the economic crisis and taking into consideration the worsening of the financial situation of Adria between 2009 and 2010, it appears reasonable to consider that a valuation carried out 11 to 15 months before the actual time of the sale would not accurately reflect the value of the shares at this point in time.
- (93) The Commission also notes that the acquisition of AAT was reported in the press in January 2011 as being a form of support from a State-owned firm to an ailing airline.³⁸ It appears indeed that Adria had been unsuccessfully trying to secure a bridging loan in the market and that PDP had to intervene.
- (94) Finally, the Commission highlights that in September 2010, i.e. one month before the first stage of the sale of AAT, the State had made a significant

³⁶ There seem to be two other international airports in Slovenia – Maribor and Portorož – which seem to be inactive at present or only available for charter flights. Adria does not operate regular flights from these airports.

³⁷ The press reports both measures as part of a single operation occurred in October 2010. See for instance <http://www.sta.si/en/vest.php?id=1560867>.

³⁸ See <http://www.sta.si/en/vest.php?s=a&id=1598072>.

investment into Adria (the 2010 capital injection) in view of the difficult position of the company. It is reasonable to consider that the State showed its strong interest in supporting Adria through this investment decision, which in turn may have had an impact on Aerodrom Ljubljana's decision to support Adria through the acquisition of AAT.³⁹

- (95) On the basis of the above, the Commission preliminarily considers that the acquisition of shares AAT by Aerodrom Ljubljana and AAT conferred an undue advantage to Adria, as it constituted an investment that a market economy investor would in principle not have undertaken.

6.2.5. Distortion of competition and effect on trade

- (96) The Commission has to consider whether the measures taken by the Slovenian authorities in favour of Adria are likely to distort competition and affect trade between Member States, by providing this company with an advantage over competitors not receiving public support.
- (97) Measures 1 to 5 affect trade between Member States and competition as Adria competes with other EU airlines, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1993. In addition, for travels of relatively shorter distances within the EU, air travel is in competition with road and rail transport, and therefore road and rail carriers might also be affected.
- (98) The measures in question thus enable Adria to continue operating so that it does not have to face, as other competitors, the consequences normally deriving from its difficult financial results.

6.2.6. Conclusion on the existence of state aid

- (99) On account of the arguments above, the Commission considers at this stage that measures 1 to 5 under scrutiny might involve state aid within the meaning of Article 107(1) TFEU.

6.3. Unlawful aid

- (100) If the measures identified were to constitute state aid, they would have been granted in breach of the notification and stand-still obligations established in Article 108(3) TFEU. Thus, the Commission considers at this stage that the measures granted to Adria qualify as unlawful state aid.

6.4. Compatibility of the aid

- (101) Inasmuch as the measures constitute state aid within the meaning of Article 107(1) TFEU, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.
- (102) According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met.⁴⁰ The Slovenian authorities consider

³⁹ See the jurisprudence referred to in footnote 33 above.

⁴⁰ Case C-364/90 *Italy v Commission*, [1993] ECR I-2097, at para 20.

that the measures do not constitute state aid and have not provided any possible grounds for compatibility.

- (103) The Commission nonetheless considers at this stage that the exceptions laid down in Article 107(2) TFEU are not applicable and have not been invoked by the Slovenian authorities. The same conclusion would apply to the exceptions foreseen in Article 107(3), points (d) and (e), TFEU.
- (104) In view of the fact that Adria can be considered a firm in difficulty at the time the measures identified were provided, or at the very least since 2008, and that it continues to be in difficulty at present, it does not appear at this stage that the exception relating to the development of certain areas or of certain sectors laid down in Article 107(3)(a) TFEU could be applicable, despite the fact that the beneficiary is located in an assisted area under Article 107(3)(a) TFEU and could be eligible for regional aid.
- (105) As regards the crisis rules enshrined in the Temporary Framework⁴¹, the Commission notes that Adria was possibly a company in difficulty before 1 July 2008 and therefore would not be eligible for aid under the Temporary Framework. Moreover, the measures under assessment do not appear to fulfil the rest of the conditions of applicability of the Temporary Framework.
- (106) In view of the nature of the measures at issue and of the fact that Adria could be considered a firm in difficulty at the time of the granting of the measures (see section 6.1 above), it appears that the compatibility of the measures can only be assessed under Article 107(3)(c) TFEU, and in particular in the light of the R&R Guidelines.
- (107) At this stage the Commission however doubts that the identified aid could be declared compatible with the R&R Guidelines, because it seems that several of the conditions and principles of the latter would not be met.
- (108) The Commission first notes that the conditions for rescue aid laid down in section 3.1 of the R&R Guidelines do not seem to be met: the measures under assessment do not consist of liquidity support in the form of loan guarantees or loans, they do not seem to have been provided on the grounds of serious social difficulties, they were not accompanied by an undertaking given by Slovenia to communicate to the Commission a restructuring plan or a liquidation plan, etc.. In relation to restructuring aid as defined in section 3.2, the Commission highlights that the Slovenian authorities refer in their submissions to the restructuring of Adria on the basis of the "*Financial and Business Restructuring Program*" plan. However, they consider the measures not to be state aid and have not provided arguments as to their possible compatibility as restructuring aid.
- (109) Paragraph 34 of the R&R Guidelines requires that grant of the aid is conditional on implementation of a restructuring plan, which must be endorsed by the Commission in all cases of individual aid. Were the measures identified

⁴¹ Temporary Framework for state aid measures to support access to finance in the current financial and economic crisis, OJ C 16 of 22.1.2009, p. 1, as modified by the Communication from the Commission amending the Temporary Community Framework for state aid measures to support access to finance in the current financial and economic crisis, OJ C 303, 15.12.2009, p. 6. The Temporary Framework expired in December 2011.

to constitute state aid, they would have been granted before notification to the Commission and in the absence of a credible restructuring plan satisfying the conditions laid down in the R&R Guidelines. This circumstance would in itself be sufficient to exclude compatibility of the measures with the internal market.⁴²

- (110) The Commission observes that the plan – which was approved only in September 2011 – covers most of the points of a restructuring plan in the sense of the R&R Guidelines (see paragraphs (35) to (39) above). However, even assuming that the plan is indeed a restructuring plan, the Commission has doubts whether it is sufficiently solid so as to restore the long-term viability of Adria, as some of its predictions are based on non-quantified, uncertain or unclear assumptions.
- (111) It is also doubtful whether the compensatory measures foreseen in the plan – see paragraph (39) above – could be considered appropriate and/or sufficient, given that they appear to be necessary to restore the viability of Adria. Regarding the sale of AAT, it took place several months before the plan was approved, at a time – end of 2010, beginning of 2011 – when Adria apparently was in dire need of financing (see paragraph (45) above). Also, the cancellation of scheduled routes cannot be accepted as compensatory measure given that most of these routes (27 out of 31) are reported in the plan to be loss-making and their termination would in any case be required to ensure viability of the company.
- (112) Similarly, the plan foresees an own contribution from Adria of EUR [...] (see paragraph (38) above). However, at this stage it is doubtful that the proposed own contribution can be fully accepted. In particular, it is unclear whether the amounts from the sale of AAT and the debt-to-equity conversion of bank loans could be counted as own contribution, in view of the fact that they could entail state aid to Adria. The Commission also notes that the realisation value resulting from the projected sale of [...] is not justified by valuations and thus cannot be considered conclusive at this stage.
- (113) Finally, in view of the fact that Adria seemed to be in difficulty at the time the measures were granted (see section 6.1 above) and that firms in difficulty can only receive rescue and/or restructuring aid, it is also unclear at this stage whether the "one time, last time" principle would be fulfilled notably as regards the 2011 capital increase.
- (114) Also, the Commission does not see any possible compatibility ground for measure 5, nor have the Slovenian authorities invoked any.

6.5. Preliminary conclusion on compatibility

- (115) At this stage the Commission has doubts on the compatibility with the internal market of the different measures identified.

⁴² See in this sense the judgment of the EFTA Court in joined cases E-10/11 and E-11/11 *Hurtigruten ASA, Norway v EFTA Surveillance Authority*, not yet published, at paras 228 and 234-240.

7. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Slovenia to submit its comments and to provide all such information as may help to assess the aids/measures, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

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

The Commission warns Slovenia that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Greffe
B-1049 Brussels

Fax No: +32-2-296.1242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president of the Commission