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Subject: SA.42525 (2017/N) – Slovakia – Workshops for light maintenance of trains

Sir,

1. PROCEDURE

- (1) By electronic notification dated 21 June 2017, the Slovak authorities notified to the European Commission a measure concerning workshops for the light maintenance of passenger trains. The measure was registered under the State aid case number SA.42525.

2. DESCRIPTION OF THE MEASURE

2.1. Objective of the aid measure

- (2) The measure aims at the modernisation/construction of three workshops for the provision of light maintenance services for passenger trains. Light maintenance work for passenger trains comprises the cleaning of vehicles, the cleaning of toilet tanks, the re-filling of the water supply, necessary inspections as preparation for the daily service and, if necessary, the replacement of such parts as lights, door mechanisms or sliding steps, etc. Light maintenance work is routinely carried out as part of day-to-day operations and does not require a removal of the vehicle from service. It is undertaken within non-service hours of the regular schedule of operation of the vehicle.
- (3) The measure is part of the Slovak Operational Programme for Integrated Infrastructure 2014 - 2020. The measure aims to solve the existing problems and inefficiencies

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regarding the appropriateness and quality of the light maintenance services for rail passenger trains in the Slovak Republic.

- (4) According to the feasibility study provided by the Slovak authorities, Slovak railway passenger transport suffers from declining passenger numbers and a negative image. The modal share of railway passenger transport declined from 2.43 % in 2000 to 1.89 % in 2014. The Slovak Republic belongs to the countries in Europe showing a significant decrease (of more than 40%) in the modal share of rail passenger transport between 1995 and 2011.¹ Passengers express dissatisfaction with their travel conditions. Amongst others, the conditions of the interior and cleanliness of rolling stock and sanitary facilities do not meet expectations. The technical conditions of the rolling stock in combination with partly inappropriate maintenance equipment contribute to an unsatisfactory reliability of rolling stock and play an important role in the negative development of the performance of railway passenger transport.
- (5) According to the Slovak authorities, to achieve a higher attractiveness of the Slovak railway passenger transport a series of changes are required. The modernisation of the light maintenance facility network plays an important role in the required changes. The existing facilities are not up to modern standards and especially do not meet the needs of the increasingly modernised fleet of Železničná spoločnosť Slovensko, a.s. ("ZSSK") which is the main provider of passenger transport services and main operator of the public service contracts (hereinafter: "PSC") in Slovakia.
- (6) The measure is expected to:
- Improve the quality of daily maintenance, technical inspections and hygienic services for passenger rolling stock in order to satisfy the comfort of passengers and fulfil the requirements set out by manufacturers of the recently purchased units;
 - Meet the environmental requirements of workplaces, improve working conditions and premises, construct facilities for liquidation of train waste, excrements, oil and fat separators and other facilities necessary to meet the requirements on air, water and soil protection;
 - Increase labour productivity; and
 - Reduce the operational costs of workplaces.
- (7) Taking into account that currently around 95% of passenger trains in Slovakia are operated under PSC, the new workshops will primarily serve the PSC trains. However, the equal and non-discriminatory access for other passenger trains (i.e., trains operated commercially) will be safeguarded in line with Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast).²

¹ European Commission, Fourth report on monitoring development of the rail market, Part 1, p. 10, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0353>.

² OJ L 343 of 14.12.2012, pp. 32–77. According to this Directive, operators of service facilities (including operators of light maintenance facilities) are required to provide access including access to their facilities in a non-discriminatory manner to all railway undertakings. Service facility operators are required to maintain separate accounts, including separate balance sheets and profit and loss accounts in

2.2. The Beneficiary

- (8) The primary beneficiary of the aid is the national incumbent ZSSK, a stock company whose shares are 100% State-owned. The rights of the Slovak Republic, as the sole shareholder, are administered via the Ministry of Transport and Construction. ZSSK is, the dominant provider of passenger rail transport services in Slovakia, including passenger rail transport services provided under PSC.
- (9) A subsidiary company of ZSSK as a special purpose vehicle will be entrusted with the construction of the workshops and will also assume ownership.
- (10) However, after the construction phase, the benefits of the aid together with the ownership of the workshops will be passed over to a separate entity (hereinafter: "SE") set up by the Ministry of Transport and Construction which will own the workshops.
- (11) The project is divided into three phases during which different contractual relationships apply (see Table 1 below). The Slovak authorities indicated that:
 - Phase 1 (the construction phase) will consist in the building of the light maintenance facilities by a daughter company of ZSSK which will be created for that special purpose. The building of the light maintenance facilities will be governed by an amendment to the current PSC concluded between ZSSK and the Ministry of Transport and Construction. At the end of Phase 1, the daughter company of ZSSK will be obliged to transfer the ownership of the light maintenance facilities to SE under direct control of the Ministry of Transport and Construction. Phase 1 will start after the approval of the measure by the Commission and is to be concluded around 2020/2021.
 - Phase 2 is considered a transitional phase during which the operation of the light maintenance facilities will be ensured by ZSSK whilst ownership is assumed by SE. The operation of the light maintenance facilities will be regulated by an "operation contract" between SE and ZSSK. Phase 2 will end with a handover of the light maintenance operations by ZSSK to other eligible railway undertakings.
 - Phase 3 will kick in when the first Public Service Contracts are tendered and, following those tenders, possible competitors of ZSSK will operate different public service obligations. The operation of the respective facility will be transferred to the operator of the relative majority of train kilometres in the catchment area of the light maintenance facility. The duration of Phase 2 and the start of Phase 3 depends on the progression of the market opening in the Slovak railway sector and on the results of the tender procedures.

order to support the transparency of the imposed charges. The operator is required to answer requests for access within a reasonable time limit to be specified by the regulatory body.

Table 1: Phases of the project

		PSC (Ministry of Transport and Construction)	Light maintenance workshops			
			Building	Ownership	Operation	Use
Phase 1	- Staggered building and operation of light maintenance workshops under existing PSC	ZSSK (existing PSC)	Daughter company of ZSSK	Daughter company of ZSSK	ZSSK	ZSSK/other
Phase 2	- Transfer of ownership to separate entity - Operation of light maintenance workshops contract	ZSSK/other	-	Separate entity	ZSSK	ZSSK/other
Phase 3	- Respective light maintenance workshops will be operated by the operator of relative majority of capacity km in the catchment area of workshop	ZSSK/other	-	Separate entity	ZSSK/other	ZSSK/other

2.3. The investment project

- (12) The measure concerns the modernisation/construction of three new light maintenance workshops including the relevant railway infrastructure and equipment³ in Nove Zamky, Zvolen and Humenne. Those workshops will replace the depots currently serving passenger trains in these places. The total eligible investment cost amounts to EUR 99.3 million for the three light maintenance workshops.

2.4. Form and amount of the aid and aid intensity

- (13) The project has not yet been started, apart from planning/preparatory phase. Aid for the project will be granted following its approval by the Commission.
- (14) The aid will take the form of a direct grant for co-financing under the Integrated Infrastructure Operational Programme, priority axis 2 Railway Infrastructure (other than TEN-T Core), investment priority 7d, activity E – Developing the infrastructure for the inspection and maintenance of passenger rail rolling stock for operation as part of public services.
- (15) The Slovak authorities provided financial analyses for a 30-year period that show that the project will be highly unprofitable. The expected funding gap of the project amounts to EUR 96.45 million.

³

The main part of costs covers the construction objects like railway superstructure and substructure, switches, halls for serving train sets, shed for a stable washer, driving energy system, roofing of halls and technological facilities like technology for train servicing hall, washing hall technology, pre-heating devices, air compressing stations, water cleaning station, shunting devices, security equipment.

- (16) The financial analyses that calculated the funding gap were conducted with the assumption that the light maintenance workshops will serve primarily trains operated under PSCs and that the PSC compensation will not cover the capital expenditure related to the investment project in question. The capital expenditure will be covered only marginally by including this cost in the prices for railway undertakings operating routes outside PSC (i.e., commercial trains).
- (17) The planned aid is equal to the funding gap of the project (i.e., EUR 96.45 million). The aid therefore represents a share of 97% of the eligible investment costs (i.e., the aid intensity is 97%).
- (18) It is planned that 85% of the aid (EUR 81.98 million) will be financed using a grant from the European Regional Development Fund and the remaining 15% (EUR 14.47 million) will be financed from the Slovak State budget.
- (19) The beneficiary of the aid - ZSSK will contribute to the project with the amount of EUR 4.4 million.

2.5. Special provisions concerning the current PSC/future PSCs

- (20) The current PSC concluded by the Slovak Republic (represented by the Ministry of Transport and Construction) and ZSSK covers the period 2011 – 2020. It was signed with an option of extending it for five additional years. The planned PSC amendment will make it mandatory for ZSSK to use the light maintenance workshops in question for the railway services under PSC. This will guarantee a steady utilization of the light maintenance workshops.
- (21) The Slovak authorities indicated that since the modernisation/construction of the light maintenance workshops will be covered almost totally by State resources, the investment costs will not be reflected in the tariffs for light maintenance services applied to trains operated under PSC.
- (22) In the course of phase 2 of the project (see recital (11)), the Slovak authorities intend to open PSCs to railway undertakings other than ZSSK by organising tender procedures for operating specific lines/networks. The PSC with the highest volume of train km in the catchment area of a given light maintenance workshop will include the obligation for the contracting party to take over the operation of the light maintenance workshop in question from ZSSK (phase 3 of the project, see recital (11) above).
- (23) The winner of the tender will be obliged to agree with the owner of the workshops (SE - the separate entity set up by the Ministry) on the operation contract. This PSC as well as all other tendered PSCs will contain the obligation to use the light maintenance workshops in question for the light maintenance services. The operation contract will contain a clause making it mandatory to transfer the operation of the light maintenance workshop to the next winner of the PSC tender in this specific catchment area. Therefore, the operation contract will be limited to the duration of the PSC.

2.6. National legal basis and transparency

- (24) The national legal basis of the notified aid is:
- Act No 358/2015 on adjustments to certain relations concerning State aid and de minimis aid, amending certain acts (State Aid Act);
 - Act No 292/2014 on the contribution from the European Structural Funds and Investment Funds, amending certain acts; Slovak Republic Partnership Agreement for 2014-2020;
 - Integrated Infrastructure Operational Programme 2014-2020; Strategic Plan for Transport Infrastructure Development in Slovakia until 2020;
 - Strategy for the Development of Passenger and Non-Motorised Transport in Slovakia until 2020;
 - Act No 513/2009 on railways, amending certain acts, as amended;
 - Act No 514/2009 on railway transport, as amended;
 - Act No 259/2001 on Železničná spoločnosť, a.s., amending Act of the National Council of the Slovak Republic No 258/1993 on Slovak Railways, as amended by Act No 152/1997, as amended; and
 - Public Transport Services Contract.
- (25) Information on the measure required will be made available on the following websites: www.mindop.sk and <http://semp.kti2dc.sk/>.

2.7. Cumulation of aid

- (26) Aid under the measure cannot be cumulated with aid including de minimis aid received from other local, regional, national or Union schemes to cover the same eligible costs.

3. ASSESSMENT OF THE AID

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (27) According to Article 107(1) TFEU “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*”
- (28) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be financed through State resources and be imputable to the State; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

State resources and imputability to the State

- (29) The main part of the aid measure will be financed using the resources from the European Regional Development Fund which are transferred to Slovakia to implement activities set out in the Operational Programme Integrated Infrastructure 2014 – 2020. The Slovak authorities are responsible for implementing and managing the operational programme in question, including the selection of beneficiaries and projects under the specific measures and payment of the financing to the selected beneficiaries for realisation of their projects. Therefore, the financing from the European Regional Development Fund is at the disposal of the Slovak authorities and hence imputable to the Slovak authorities.
- (30) The remaining part of the grant will be financed directly from the Slovak State budget. Hence, it can be concluded that the grant is provided by through State resources and is imputable to the State.

Selective economic advantage

- (31) According to the case-law of the Court of Justice of the European Union, the construction and operation of infrastructure may constitute an economic activity⁴. As the notified measure concerns investment aid for infrastructure that is used for commercial exploitation, the construction and operation of such infrastructure must be considered to constitute an economic activity.
- (32) The direct grant allows ZSSK to be relieved of the costs that it would normally have to bear itself when renewing/constructing the light maintenance workshops. The direct grant can therefore be considered to confer a selective advantage upon ZSSK.

Distortion of competition and effect on trade between Member States

- (33) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid⁵. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition⁶. ZSSK provides international passenger services that are opened to competition⁷. Moreover, when providing passenger services, ZSSK competes with other modes of transport. Consequently, the aid is liable to distort competition and affect trade between Member States.

⁴ See inter alia Case C-82/01P *Aéroports de Paris* [2002] ECR I-9297 and Cases T-443/08 and T-445/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, not yet published in the European Court Reports.

⁵ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, paragraph 11; Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21; Case C-372/97 *Italy v Commission*, [2004] ECR I-3679, paragraph 44 .

⁶ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

⁷ The international passenger rail transport market was opened to competition as of 2010, based on Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 315 of 3.12.2007.

Conclusion on the existence of aid

- (34) For the reasons set out above, the Commission finds that the direct grant to ZSSK to finance the modernisation/construction of three light maintenance workshops constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (35) The Commission notes that the aid measure has not been implemented so far. Therefore, Slovakia has complied with the obligation laid down in Article 108(3) TFEU.

3.3. Compatibility of the aid

Legal basis

- (36) The project covers the modernisation/construction of three light maintenance workshops aimed primarily at improving the service offered to rail passengers and hence incentivise the modal shift and consequently increase the modal share of rail. The Commission has to determine whether the aid in question can be considered to be compatible with the internal market on the basis of the derogations provided for in the TFEU.
- (37) Article 93 TFEU states that aid which meets the needs of coordination of transport shall be compatible with the Treaties. The Commission has taken the position that the concept of aid meeting the needs of co-ordination of transport refers to the need for government intervention arising in the absence of a competitive market or in the presence of market failures.
- (38) The Commission notes that the passenger transport and in particular the rail passenger transport often requires public intervention since market forces are unlikely to provide the necessary investments on a purely commercial basis. In such context the transport infrastructure investments are guided by considerations of non-commercial character. The Commission considers that this is the case for the public support being assessed.
- (39) Thus, the Commission considers that the public action in question falls within the concept of measures aimed at coordination of transport. Since the entry into force of Regulation (EC) No 1370/2007 ("*the PSO Regulation*")⁸, the direct use of Article 93 TFEU is no longer precluded. The PSO Regulation applies to the national and international operation of public passenger transport services by rail and road and as such does not apply to investments in railway infrastructure or ancillary facilities such as maintenance facilities.
- (40) Therefore, the Commission will assess the compatibility of the notified aid with the internal market directly on the basis of Article 93 TFEU.
- (41) According to a constant decisional practice, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:

⁸ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

- The aid must contribute to a well-defined objective of common interest;
 - The aid must be necessary and provide an incentive effect;
 - The aid must be proportionate;
 - Access to the infrastructure in question must be open to all users on a non-discriminatory basis;
 - The aid must not lead to distortions of competition contrary to the common interest.
- (42) The Commission will therefore assess whether the aid measure meets these five criteria.

Contribution to a well-defined objective of common interest

- (43) With regard to the achievement of a policy objective of common interest, the Commission notes that the overall European strategy for the transport sector is to complete the internal market for transport.⁹ Transport infrastructure investments play a crucial role for the realisation of the ambitious aim of modernising and developing the transport system.
- (44) The 2011 White Paper¹⁰ specified the need for high quality mobility services, for an improvement of the energy efficiency performance and of the quality and reliability of rail passenger services and for modern infrastructure that minimises the impact on the environment.
- (45) In this context, the Commission considers that the intended modernisation/construction of the light maintenance facilities will enable an improvement of services that will contribute to reversing/reducing the negative development of passenger railway transport observed in Slovakia that is described in recital (4). The Commission notes that, apart from the availability of the transport service, its quality is very important to passengers (especially if alternative modes of transport are available). By aiming to achieve a higher degree of quality and efficiency and ensuring sustainability of railway passenger transport, the project aims to support modal shift to railway services. Such modal shift is given the highest priority by the European strategy towards improving Europe's railways and encouraging the development of high-quality, reliable, safe and efficient rail services.
- (46) Moreover, the Commission considers that the investment in question will lead to important (proportional to its scale) environmental improvements (a reduction in water and air pollution, noise reduction) that is also an objective of common interest.
- (47) In light of the above, the Commission considers that the investment in question contributes to a well-defined objective of common interest.

⁹ Fourth Railway Package: COM(2013) 26, COM(2013) 27, COM(2013) 28, COM(2013) 29, COM(2013) 30, COM(2013) 31.

¹⁰ White Paper: Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system, COM(2011).

Necessity of the aid (market failure) and incentive effect of the aid

- (48) The Slovak authorities indicated that the current light maintenance workshops in Slovakia are obsolete and do not meet the needs of an increasingly modernised fleet. To change this situation significant investments are required. The new light maintenance workshops should allow improving the services offered to passengers and consequently will contribute to modal shift towards rail transport.
- (49) In this context, the Commission notes that the overwhelming majority of passenger train services in Slovakia (around 95%) are provided on the basis of PSCs. Consequently, the trains running under PSCs account for the same proportion (95%) of the total demand for light maintenance services in Slovakia.
- (50) According to the information provided by the Slovak authorities, the current operator of PSC, ZSSK, does not have the resources and incentive to conduct the investment on its own.
- (51) The Commission agrees that this is because ZSSK or any other company (private or public) would require at least the following for the planned investment:
- expected revenues from offering the light maintenance facilities to potential users would have to exceed the investment costs over the amortisation period of 30 year;
 - long-term risk protection: a sufficient minimum demand would have to be ascertained over the amortisation period covering such situation where a dominant customer could be replaced without damage to the business.
- (52) As to the first requirement, the Commission notes that currently the light maintenance services are provided in old, fully depreciated facilities. Therefore, PSC compensation in relation to the light maintenance services covers only their operating costs. The Slovak authorities indicated that increasing the PSC compensation to cover also capital expenditure on new workshops is not possible due to budgetary restriction. It is also not possible to increase passenger fares to cover these new costs.
- (53) Since trains operated under PSCs are and, in the foreseeable future, will be responsible for the large part of the demand for light maintenance services and the compensation or passenger fares cannot be increased to cover capital expenditure on new workshops, the expected investment costs strongly exceeds the revenues that can be expected with the new workshops. The calculations provided by the Slovak authorities show that this difference between the expected investment costs and the expected revenues in a 30-year period amount to EUR 96.45 million, that is, 97 % of the eligible investment costs.
- (54) As to the second requirement, the Commission notes that in the current situation, which will not change in the foreseeable future, it is the State intervention (in the form of PSC compensation) that creates the demand (and market) for light maintenance services in Slovakia. The degree of the State intervention depends by nature on political decisions and the scope of the State budget. In the case of State support to public transport more specifically, the State has the choice between alternative modes: a minimum or basic level of public transport could be accomplished for instance by the provision of bus services as an alternative to rail. The fact that rail and bus services are to a certain degree interchangeable may make public demand for railway services

less stable in terms of long term prospects - compared to other services of general economic interest. As a consequence of this, long-term investments into light maintenance infrastructure involve an incalculable risk of later changes that is not acceptable for commercial actors.

- (55) In light of the above, the Commission considers that light maintenance services in Slovakia are characterised by the existence of market failure, namely market forces will not provide the service level that is required by rail passengers and the renewed fleet. Thus, the Commission considers that the aid in question is necessary and it has an incentive effect on the beneficiary.

Proportionality of the aid

- (56) The Commission notes that the criteria “proportionality of the aid” requires that the public funding is kept to the minimum necessary. The Commission's decisional practice especially in infrastructure projects is to consider a State aid measure as proportional if the aid intensity (i.e., the proportion of public funding to the investment cost) is limited to the funding gap ratio. The funding gap identifies the financing gap between the forecasted income from the operation of the investment project and the eligible costs of the project by taking into account a discount rate.
- (57) The financial and economic conditions described in detail in the feasibility study, provided by the Slovak authorities, result in a severe dependency of the investment in question on external public funds. This is justified by specific characteristics of the case.
- (58) Projects examined by the Commission normally generate revenues on the market. In these cases, while additional initial funding is required, investment costs are over time covered to a large extent by commercial revenues from the sale of services or goods to third parties.
- (59) In the present case, these conditions do not apply. In the foreseeable future, the light maintenance facilities will generate only a small amount of commercial revenues (i.e., revenues from railway undertakings operating commercial transport services and using the light maintenance facilities services).
- (60) The investment cost could only be passed on to the operators of PSCs (i.e., the main users of the workshops) if the PSC compensation paid to them by the Slovak State would be proportionally increased or the fares for passengers would proportionally increase.
- (61) However, according to the Slovak authorities an increase of PSC compensation to cover also the investment costs in question is not feasible due to budgetary restrictions. Moreover, the increase of revenue (by increasing fares to passengers) is also not possible because it would instead worsen the negative trend in the evolution of train passengers observed in the recent years in Slovakia. The Commission finds these arguments reasonable in the given case.
- (62) The proposed aid intensity equal to 97% of the eligible investment costs. The Commission notes that while the intensity of the aid is high, the aid remains strictly limited to the funding gap for the project.

- (63) In addition, the Commission notes that while the aid covers almost all the project costs, at the same time it avoids increasing the PSC compensation due to the investment.
- (64) In light of the above, the Commission considers that the aid is proportionate.

Open and non-discriminatory access

- (65) The Slovak authorities have confirmed that the operator of the light maintenance workshops – ZSSK in phases 1 and 2, and ZSSK and/or third operators in phase 3 – will be obliged to grant non-discriminatory access to the light maintenance facilities in line with Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (see recital (7) above). The same Directive specifies that the charge imposed for the light maintenance services shall not exceed the cost of providing it, plus a reasonable profit¹¹.
- (66) Compliance with the requirements of Directive 2012/34/EU will be monitored by the relevant regulatory body – the Railway Regulatory Authority (Úrad pre Reguláciu železničnej dopravy – URZD). Therefore, the Commission considers that the criterion of open and non-discriminatory access is met.

Limitation of distortions of competition

- (67) As regards the limitation of distortions of competition contrary to the common interest, the Commission has analysed the impact of the investment on i) the providers of light maintenance services as well as ii) on the railway undertakings providing passenger services.
- (68) With regard to the market for light maintenance services, the Commission notes that it is dominated by two models. In the first model, these services are provided by the railway undertaking to its own train fleets. In the second model, the light maintenance services are procured with new rolling stock as a part of a package.
- (69) The third model, which is the rarest, covers the provision of maintenance services by a third party, i.e. an entity that is neither the operator of the rolling stock in question or a dependent entity, nor the manufacturer of the rolling stock in question. According to the information provided by the Slovak authorities, this model is the dominant model in only one Member State, Sweden, which has a different structure than Slovakia as many more routes in Sweden are operated on an open access (i.e. commercial) basis.
- (70) The Commission considers that the investment in question will not have any impact on the providers of light maintenance services supplied under models 1 and 2 (since the demand for their services is guaranteed and, in general, these providers are not participants in a market for light maintenance services). For the reasons explained in recitals (51) - (55) (i.e., the market failure arising from the very high share of passenger trains operated under PSC in Slovakia and the resultant strong dependency of the demand on political decisions and budgetary restrictions), there is no perspective of development of the third model (namely, the provision of light maintenance services by (commercial) third party operators) in Slovakia.

¹¹ Article 31, point 7 of the Directive.

- (71) The Commission also notes that light maintenance services are by nature local services, namely they are provided to trains that end their routes close to the workshops. Therefore, the modernisation/construction of the workshops in question will not have impact on light maintenance services providers located in other Member States.
- (72) With regard to the market of rail passenger transport providers, the Commission notes that, as already mentioned above, at all phases of the project, an open and non-discriminatory access is guaranteed to all railway undertakings. Moreover, in line with the Directive 2012/34/EU, the charge for the supply of light maintenance services shall not exceed the cost of providing it, plus a reasonable profit. The operators of light maintenance workshops are obliged by the same Directive to maintain separate accounts, including separate balance sheets and profit and loss accounts in order to support the transparency of the imposed charges and their monitoring by the Railway Regulatory Authority.
- (73) The Commission also notes that the modernisation/construction of the light maintenance workshops should not block the opening of the rail passenger transport market, including tenders for PSCs, in Slovakia, since at the end of phase 2 or in phase 3, the workshops can be transferred to railway undertakings other than ZSSK (see recital (22) above).
- (74) In light of the above, the Commission considers that aid to the modernisation/construction of three light maintenance workshops is unlikely to distort competition to an extent contrary to the common interest.

4. CONCLUSION

The Commission has accordingly decided:

not to raise objections to the aid for the modernisation/construction of three light maintenance workshops, on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union.

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

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

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

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission