



EUROPEAN COMMISSION

Brussels 23.4.2018  
C(2018) 2357 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p style="text-align: center;"><b>PUBLIC VERSION</b></p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.48171 (2018/C) (ex 2018/NN, ex 2017/FC) – Italy  
Alleged State aid in favour of Alitalia**

Sir,

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

**1. PROCEDURE**

- (1) On 5 May, 12 May and 15 May 2017, the airlines Ryanair Ltd ("Ryanair"), Adria Airways d.o.o. ("Adria") and IAG International Airlines Group S.A. ("IAG") (jointly "the complainants") submitted three formal complaints to the Commission alleging that Italy had granted unlawful and incompatible State aid to Alitalia – Società Aerea Italiana S.p.A. ("Alitalia"). The complainants, who are competitors of Alitalia, alleged that in May 2017 the Italian authorities granted Alitalia liquidity support in the form of a EUR 600 million State bridge loan ("the initial

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loan"). The complainants alleged that the initial loan was an unlawful and incompatible State aid.

- (2) On 14 June 2017, the Commission forwarded the complaints to the Italian authorities, asking them to clarify the issues brought forward in the complaints, to which the Italian authorities replied on 18 July 2017.
- (3) On 20 June, 12 September and 16 October 2017, IAG sent additional information and updates regarding the expansion of Alitalia's network after the initial loan was granted.
- (4) On 30 October 2017, Adria submitted a new formal complaint alleging that Decree Law No 148 of 16 October 2017 provided for the granting of an additional EUR 300 million to Alitalia ("the loan extension") in 2018, bringing the total loan amount to EUR 900 million ("the initial loan" and "the loan extension" will jointly be referred to as "the measures"). Adria alleged that the loan extension was an unlawful and incompatible State aid.
- (5) On 27 November 2017, Adria sent to the Commission a letter inviting it to act as regards the initial loan under Article 265 TFEU.
- (6) On 30 November 2017, the Commission forwarded to the complainants the Italian authorities' reply of 18 July 2017.
- (7) On 21 December 2017, the Commission sent a request for information to the Italian authorities, replied to on 23 January 2018.
- (8) On 19 January 2018, the Commission responded to the letter sent by Adria on 27 November 2017, explaining that the Commission had not failed to act within the meaning of Article 265 TFEU.
- (9) On 23 January 2018, Italy notified the measures as rescue aid within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>1</sup> (the "Rescue and Restructuring Guidelines").

## 2. BENEFICIARY

- (10) Alitalia is a company operating in the air transport sector, established in Italy. As of 30 September 2017, it had 11,446 employees.
- (11) Alitalia's shareholding structure is as follows:



- (12) Since its acquisition by CAI in 2008, Alitalia has been continually loss-making. It tried to get back on track in early 2017 with an ambitious cost-cutting plan, which was supposed to pave the way for additional financing (EUR 2 billion including EUR 900 million of new money), mainly led by its existing shareholder Etihad (the "restructuring plan"). However, on 24 April 2017, Alitalia's staff rejected the restructuring plan and thus no additional financing was provided by the shareholders.
- (13) As a result, in May 2017 Alitalia and Alitalia Cityliner (a regional subsidiary fully owned by Alitalia) were placed under extraordinary administration (under Decree Law of 23 December 2003 n. 347 in conjunction with Legislative Decree No 270 of 8 July 1999<sup>2</sup>) by decree of the Italian Ministry of Economic Development dated 2 May 2017 and declared insolvent by judgment of the Court of Civitavecchia of 11 May 2017.

### 3. DESCRIPTION OF THE MEASURES

- (14) The initial loan to Alitalia was provided for in Decree Law No 55 of 2 May 2017 ("*Misure urgenti per assicurare la continuità del servizio svolto da Alitalia S.p.A.*")<sup>3</sup>. This bridge loan, granted by the State, with an interest rate equal to the 6-month EURIBOR rate published on the working day preceding the payment, plus 1,000 basis points, was to be repaid within six months as from the first disbursement of the loan, i.e. by 5 November 2017<sup>4</sup>, with priority over the repayment of any other debt owned by Alitalia in the extraordinary administration procedure. As explained below in recital (24), in October 2017 this amount was increased to EUR 900 million and the maturity date was extended on the same terms as the initial loan.
- (15) According to Decree Law No 55/2017, the initial loan was granted in order to avoid interruption of both international and domestic flights of Alitalia while in extraordinary administration, including flights falling under Alitalia's Public Service Obligations, given the serious social difficulties and serious inconvenience for users that the interruption would cause.
- (16) The initial loan was to be paid by order of the Minister for Economic Development together with the Minister for Economic Affairs and Finance within five days from Alitalia being placed in extraordinary administration, and had to be used for urgent management needs of the company and other companies of the group subject to the extraordinary administration procedure. Furthermore, the initial loan was also to be used to ensure Alitalia's continued participation in international systems for the international regulation of economic relations with airlines. Alitalia was thus to be maintained as a going concern pending the implementation of one of the solutions provided for in Article 27 of Legislative

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<sup>2</sup> Legislative Decree 8 July 1999 N. 270 "Nuova disciplina dell'amministrazione straordinaria delle grandi imprese in stato di insolvenza, a norma dell'articolo 1 della legge 30 luglio 1998, n. 274", Official Journal 9/8/21999 n. 185.

<sup>3</sup> Official Journal 2/5/2017 n. 100.

<sup>4</sup> A first disbursement of EUR 240 million of the initial loan took place on 5 May 2017, see recital (17).

Decree No 270/99, governing the extraordinary administration of large undertaking in a state of insolvency.

- (17) On 5 May 2017, the extraordinary administrators of Alitalia requested an urgent advanced release of an initial amount of EUR 240 million. According to the Italian authorities, this was primarily in order (i) to avoid exhaustion of the cash flow needed to carry out Alitalia's business activities in the days immediately following submission of the request and (ii) to allow Alitalia to start payment of the security deposits requested by the International Air Transport Association ("IATA"), thereby avoiding suspension of the undertaking from participation in the systems managed by IATA, which were essential for business continuity. This amount was paid on the same day by order of the Minister for Economic Development, in agreement with the Minister for Economy and Finance.
- (18) Decree Law No 55/2017 also provided that, in order to draw up the programme referred to in Article 54 of the Legislative Decree No 270/1999, the extraordinary administrators had to publish, by 17 May 2017, a call for expressions of interest to purchase or restructure Alitalia's business activities<sup>5</sup>. The ensuing process, to be carried out within six months of granting of the first financing, was to ensure the respect of the transparency, equal treatment and non-discrimination principles. The provisions of Decree Law No 55/2017 were amended and incorporated into Decree Law No 50 of 24 April 2017<sup>6</sup>.
- (19) In May 2017, the extraordinary administrators also started the first attempt to sell Alitalia's assets via a tendering procedure. They originally set a deadline for the selection of the winning bidder for November 2017.
- (20) In October 2017, a second tranche of the initial loan amounting to EUR 360 million was released to Alitalia, which, according to the Italian authorities, was provided at the request of the extraordinary administrators to provide the undertaking with the necessary funding to maintain regular flights pending completion of the divestment of the relevant business activities.
- (21) The tendering procedure for the sale of assets attracted several interested buyers that submitted bids in October 2017. [...] In view of that, the Government adopted Decree Law No 148 of 16 October 2017 "*Disposizioni urgenti in materia finanziaria e per esigenze indifferibili*"<sup>7</sup> which:
- (a) extended until 30 April 2018 the deadline for the completion of the tendering procedure, to allow the disposal of Alitalia's business activities;
  - (b) provided for an increase of the initial loan by EUR 300 million, i.e. the loan extension, to be paid by the State to Alitalia in 2018 and to be reimbursed by the end of the financial year, i.e. 31 December 2018; and

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<sup>5</sup> In accordance with the guidelines laid down by Legislative Decree 270/1999, Article 27, paragraph 2, letters (a), (b) and (b bis).

<sup>6</sup> Official Journal 24/4/2017, n. 95 - S.O. n. 20.

<sup>7</sup> Official Journal 16/10/2017 n. 242.

- (c) extended the maturity date of the initial loan by six additional months, i.e. until 5 May 2018.
- (22) According to Decree Law No 148/2017, the measures were enacted to ensure that Alitalia and other group companies could fulfil their flight obligations without interruption until the disposal of Alitalia's business activities.
- (23) Decree Law No 148/2017 was converted into law by Law No 172 of 4 December 2017<sup>8</sup>. This law added the following amendments:
  - (a) the justification for the loan extension is (among others) to ensure the fulfilment of Alitalia's transport obligations;
  - (b) the prolongation until 30 September 2018 of the maturity date of initial loan.
- (24) Following these amendments, in December 2017, the measures thus amounted to EUR 900 million: the first part of the initial loan of EUR 600 million, disbursed in 2017 and maturing on 30 September 2018 and the loan extension by EUR 300 million planned to be disbursed in 2018, maturing on 31 December 2018.
- (25) The loan extension of EUR 300 million was disbursed to Alitalia on 15 January 2018.
- (26) On 23 January 2018, Italy notified the measures as rescue aid within the meaning of the Rescue and Restructuring Guidelines.

### **3.1. The position of the complainants**

- (27) In their submissions against the initial loan to Alitalia, the complainants (Ryanair, Adria and IAG) argued that it constituted unlawful and incompatible State aid.
- (28) The complainants argued that the initial loan constituted State aid since, in view of the economic situation of Alitalia and its history, no market economy creditor would have been willing to provide such a loan and the Italian Government did not act as a market economy operator, either as a market economy investor or market economy lender. According to the complainants, the State loan granted by the Italian Government to Alitalia would have undoubtedly conferred a benefit on Alitalia, as it allowed the company to cover its 2016 losses and maintain operations, having a material impact on the trade between Member States and distorting competition, as Alitalia is in competition with other EU airlines.
- (29) The complainants also argued that the initial loan was unlawful, since it was disbursed to Alitalia without being notified.
- (30) The complainants argued that the initial loan was incompatible with the internal market. Although Alitalia could be classified as a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines, several cumulative conditions of compatibility with the internal market, as defined in these guidelines

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<sup>8</sup> "Conversione in legge, con modificazioni, del decreto-legge 16 ottobre 2017, n. 148, recante disposizioni urgenti in materia finanziaria e per esigenze indifferibili. Modifica alla disciplina dell'estinzione del reato per condotte riparatorie". Official Journal 5/12/2017 n. 284.

are not met such as the proportionality of the aid, the maximum duration of the loan of six months, the absence of undue negative effects on trade and competition and the one time-last time principle (having regard to the previous State aid granted by Italy to its flag carrier).

- (31) The same objections were submitted in the complaint regarding the loan extension.

### **3.2. The position of the the Italian authorities**

#### *3.2.1. Existence of State aid*

- (32) Initially, in their reply of 18 July 2017 to the complainants' letters, the Italian authorities claimed that the initial loan was in line with the market economy creditor principle and thus did not constitute aid.
- (33) The Italian authorities explained that the initial loan was intended to address urgent management needs of Alitalia and other companies of the group placed under special administration. These needs also included ensuring Alitalia's continued participation in the systems for international regulations governing economic relations with other airlines, pending the implementation of one of the solutions provided for in the Legislative Decree No 270/99, namely the sale of its assets or its restructuring.
- (34) The Italian authorities rejected the arguments set out in the complaints and argued that the initial loan granted to Alitalia was market-conform and therefore fell outside the scope of Article 107(1) TFEU.
- (35) According to the Italian authorities, this is due to the specific conditions attached to the initial loan, i.e.: (i) a 6-month EURIBOR interest rate, plus 1,000 basis points in line with the Reference Rate Communication<sup>9</sup>; (ii) mandatory payback within six months of payment, with (iii) priority repayment over any other debts under Alitalia's special administration. The cost of the total amount of the initial loan charged was allegedly calculated on the basis of market conditions and parameters, taking full account of the particular circumstances of Alitalia. Given that market conditions applied, the loan conferred no State-funded advantage on Alitalia and cannot therefore be deemed to be an aid measure.
- (36) The Italian authorities argued that the risk taken on by the State as lender – remunerated at market conditions – is practically non-existent given the recognised benefit of priority repayment over any other debts under Alitalia's extraordinary administration. The Italian authorities claim that it was reasonable to assume that Alitalia's assets could in any event cover the debts resulting from the initial loan, whatever the outcome of the special administration procedure.
- (37) According to the Italian authorities, the combination of the level of interest charged and the strict repayment terms means that the outcome for the lender, i.e. the end balance of the financial intervention, will certainly be positive, since the risk taken is in line with objectives of overall economic viability and the loan is to

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<sup>9</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

be repaid at market conditions. The loan was therefore fully in line with the principle of a private investor in a market economy and there was procedurally no obligation to give the Commission prior notification.

- (38) In their reply of 23 January 2018 to the Commission's request for information of 21 December 2017, the Italian authorities stated that their arguments in this regard applied in equal measure to the loan extension and referred to the arguments set out in their reply of 18 July 2017.
- (39) The Italian authorities added, however, in this context, that the initial loan for the immediate management needs of Alitalia and other undertakings in the group in extraordinary administration was provided due to the need to avoid service interruption, bearing in mind the social hardship and serious inconvenience to users that such an interruption would entail, infringing, inter alia, the right to territorial continuity within the Republic guaranteed by the Italian Constitution.
- (40) The Italian authorities claimed that without the measures it would have been difficult to conduct the tender process for the divestment of Alitalia in accordance with the highest standards of openness, non-conditionality and competitiveness. This constituted the precondition for obtaining the best value possible, or divesting Alitalia's businesses on the best market conditions achievable through a competitive procedure.
- (41) The Italian authorities argued that the loan extension (in terms of amount and time) was necessary to organise the tender and ensure the sale of Alitalia on the best market conditions achievable. The failure of such tender would have had punitive effects on the company's business prospects and would have caused serious harm to all stakeholders. The measures were thus closely related to the aim of achieving the long-term viability of the company.
- (42) The Italian authorities also argued that private shareholders, including in particular Etihad, were also ready to provide financing to Alitalia within the framework of the restructuring plan. More specifically, on 22 December 2016, (i) Alitalia reached an agreement with its own financial creditors for a moratorium, (ii) Alitalia's shareholders discussed issuing participating equity instruments worth USD 231 million; (iii) Etihad signed a pledge to take over the debt, without releasing the primary debtor, relating to the principal of Alitalia's debt with the underwriters of the bonds issued by Alitalia for the nominal amount of USD 231 million, referred to above, with maturity dates of 2020 and 2021. On 27 December 2016 Etihad also granted Alitalia a subordinated shareholder loan of EUR 100 million.
- (43) This restructuring plan, which envisaged staff and pay cuts, was, however, rejected in a vote by Alitalia's workforce, preventing the restructuring plan from being adopted and leading to Alitalia being placed in extraordinary administration. The Italian authorities argue that it only became apparent that Alitalia's private shareholders would not intervene to save Alitalia after the extraordinary administration procedure was launched. According to the Italian authorities, the shareholders' refusal to intervene was a direct consequence of the specific legal regime under which Alitalia was placed pursuant to the extraordinary administration procedure.

- (44) Therefore, despite having notified the measures as rescue aid, the Italian authorities argue that the loan and the loan extension were provided in line with the market economy creditor principle and thus does not constitute State aid.

### 3.2.2. *Compatibility of the rescue aid*

- (45) The Italian authorities argued that if the measures were to be deemed State aid, they would meet all the compatibility requirements for rescue aid. Alitalia is a firm in difficulty in view of the ongoing special administration procedure (which corresponds to collective insolvency proceedings under the Rescue and Restructuring Guidelines).
- (46) Italy further argued that the aid contributes to an objective of common interest by:
- (a) avoiding the disruption of an important service that is difficult to replicate,
  - (b) avoiding the negative consequences of Alitalia's exit from the market in view of its systemic role in the aviation sector in Italy,
  - (c) avoiding the exacerbation of the existing social tensions between Alitalia and its staff, and
  - (d) ensuring a proper conduct of the administration procedure which aims at making Alitalia's assets available on the market and thus contribute to the interests of its creditors, employees, customers and suppliers.
- (47) Further, Italy argued that the measures consisted of a repayable loan with an interest rate exceeding the minimum interest rate according to the Rescue and Restructuring Guidelines and will not be used to finance any structural measures. Italy acknowledged that the loan will not be reimbursed within six months after the disbursement of the first instalment but undertook to submit a liquidation plan setting out the steps leading to the liquidation of Alitalia within a reasonable time frame without further aid.
- (48) As regards the proportionality of the aid, Italy confirmed that the amount of the measures does not correspond to the formula set out in Annex I of the Rescue and Restructuring Guidelines. Italy thus provided a liquidity plan setting out Alitalia's liquidity needs for the duration of the loan, which is supposed to justify the amount. The plan included in particular the following forecasts for the expected cash flow and the cash position of Alitalia:

<b>(in EUR million)</b>	<b>Q1 2018</b>	<b>Q2 2018</b>	<b>Q3 2018</b>	<b>Q4 2018</b>
Operating free cash flow	[...]	[...]	[...]	[...]
Financial cash flow	[...]	[...]	[...]	[...]
Change in free cash position	[...]	[...]	[...]	[...]
Free cash – End of the Period	[...]	[...]	[...]	[...]
Free cash and restricted cash – End of the Period	[...]	[...]	[...]	[...]

- (49) Finally, Italy argued that the rescue aid is in line with the one-time, last-time principle since the current Alitalia has not received any rescue or restructuring aid in the past. The aid granted to Alitalia in 2008 is not to be taken into account in



view of the subsequent sale of Alitalia's assets without economic continuity as confirmed by the Commission decision of 12 November 2008<sup>10</sup>.

#### 4. ASSESSMENT

##### 4.1. Existence of State aid

(50) Article 107(1) TFEU provides that "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".

(51) It follows that, for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: (i) it must be granted by the State or through State resources and must be imputable to the State; (ii) it must confer an advantage upon an undertaking; (iii) it must be selective, i.e. favour certain undertakings or the production of certain goods; and (iv) it must distort or threaten to distort competition and it must affect trade between Member States.<sup>11</sup>

##### 4.1.1. Notion of undertaking

(52) Alitalia is a private company operating in the air transport sector established in Italy. It is clearly an undertaking for the purposes of Article 107(1) TFEU.

##### 4.1.2. Imputability and State resources

(53) To constitute State aid, a measure must both be imputable to the State and financed through State resources.

(54) Since the measures result from acts of the Italian Parliament, they are clearly imputable to the Italian State. In addition, the measures were financed from the State budget and were thus clearly granted through State resources.

##### 4.1.3. Selectivity

(55) The measures were granted specifically to a single company, Alitalia. Thus, they were granted on a totally *ad hoc* basis to a single company and were not available to other companies active in the Italian air transport sector which are in a comparable legal and factual situation, or in other sectors. No comparable companies were eligible for measures similar to those granted to Alitalia and thus no such companies received a comparable advantage. The measures therefore appear to be selective.

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<sup>10</sup> Commission Decision C(2008) 6745 final, of 12 November 2008, concerning State aid N 510/2008 — Italy — Sale of assets of the airline Alitalia. (OJ C 46, 12.11.2008, p. 6)

<sup>11</sup> Judgment of 2 September 2010, *Commission v Deutsche Post*, C-399/08 P, EU:C:2010:481, paragraph 39 and the case-law cited.

#### 4.1.4. Advantage

- (56) Within the meaning of Article 107(1) TFEU, an advantage is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention<sup>12</sup>.
- (57) According to the case law of the Union Courts, economic transactions carried out by public bodies do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions<sup>13</sup>. This principle has been developed with regard to different economic transactions.
- (58) The decisive element is whether the public bodies when granting the loan acted as a market economy operator would have done in a similar situation. Furthermore, economic behaviour may differ depending whether there is any existing exposure vis-à-vis the company (as would be the case for the loan extension) or not (as would be the case for the initial loan). Where, however, the public body has not acted like a market economy operator, the beneficiary undertaking would have received an economic advantage which it would not have obtained under normal market conditions<sup>14</sup>, placing it in a more favourable position compared to that of its competitors<sup>15</sup>.
- (59) On the basis of the information at its disposal – the company's financial situation and on the circumstances under which the initial loan was granted in May 2017 and extended in October 2017 – the Commission has doubts that the main conditions of the measures fulfil the market economy operator test and that Italy, in granting Alitalia the measures, acted as a prudent lender, guided by the likely profitability.
- (60) First, it seems unlikely that any private investor would have been willing and would be willing to provide similar loans to Alitalia (and then whether any creditor would be willing to extend the loan) in view of its current situation and recent history. In addition, the submission of Italy confirmed that Alitalia has not even attempted to obtain such loans from private banks.
- (61) In this respect the Italian authorities merely asserted that, given the conditions on which the loans were provided, the loans would be of a net benefit, on balance, for the lender and that it can be inferred from this that a private lender would also have been willing to provide the loans on similar terms. They also argued that there is no particular risk of non-repayment since in view of the preferential character of the claim the yield from the sale of Alitalia's assets could in any

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<sup>12</sup> Judgment of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; Judgment of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

<sup>13</sup> Judgment of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraphs 60 and 61.

<sup>14</sup> Judgment of the General Court of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission*, Joined Cases T-228/99 and T-233/99, EU:T:2003:57, paragraph 208.

<sup>15</sup> See, to that effect, Judgment of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 90; Judgment of 15 March 1994, *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14; Judgment of 19 May 1999, *Italy v Commission*, C-6/97, EU:C:1999:251, paragraph 16.

event cover the debts resulting from the loan, whatever the outcome of the special administration procedure.

- (62) However, the Commission has serious doubts that the value of Alitalia's assets would be sufficient to repay the initial loan. Since the State knew, when granting the initial loan, that the assets of the company were to be offered for sale and the company as such would be eventually liquidated, the expected yield from the sale of the assets was a crucial element for ensuring repayment of the initial loan. According to a valuation report commissioned in the first stage of the extraordinary administration, the value of Alitalia's assets is on average estimated to amount to EUR [...], with the highest limit of the range being EUR [...]. [...] The Italian authorities have not provided any evidence demonstrating that at the time of granting the initial loan the value of Alitalia's assets would have been sufficient to ensure the repayment of the loan. Therefore, the claim that the Italian State did not run any risk since the initial loan could in any event be repaid from the sale of Alitalia's assets is at this point in time not substantiated by evidence.
- (63) As such, were a private operator aware of the valuation of Alitalia, it is highly unlikely that it would have provided the initial loan on similar terms. Furthermore, if it is doubtful that a private operator would have provided the initial loan when Alitalia was expected to be sold by November 2017, it is even more doubtful that such a lender would have provided the loan extension after that the initial sale failed. [...] This would likely indicate to a private creditor that sales prospects for Alitalia were possibly even worse than initially projected. It thus seems doubtful that a private creditor would be willing to increase its existing exposure unless it had reasons to believe that its economic losses would be even higher without the loan extension. At this stage, there is no evidence that this would be the case.
- (64) Finally, the claim that by providing the initial loan and its extension the State acted in an economically rational way because it allowed the best outcome of the tender, ensuring the long-term viability of the airline and avoiding social unrest, is not relevant for the assessment of the application of the market economy operator principle. The State is not a direct shareholder of Alitalia but merely an indirect one through its holding in Poste Italiane and thus could not benefit from a better sales price or viability of the business to the same extent as the shareholders holding a majority stake in Alitalia. Furthermore, a market economy operator is normally not concerned about social unrest.
- (65) Indeed, Alitalia's own private shareholders (prior to it being placed in extraordinary administration) did not inject further capital or provide fresh funds after the failure of the restructuring plan. As can be inferred from Italy's arguments, were the total loans likely to be of direct benefit to an investor by facilitating a better sales price, it is reasonable to expect that those shareholders, which held a majority stake in Alitalia, would have provided such financing rather than the Italian State, even after the failure of the restructuring plan. Instead, those shareholders did not oppose Alitalia being placed in extraordinary administration. If those shareholders, which would have the most to gain from a better sales price for Alitalia, were not willing to provide similar financing to that offered by Italy after the failure of the restructuring plan, this further puts in doubt the market-conformity of the measures.

- (66) Consequently, the Commission considers on a preliminary basis that both the initial loan as well as the loan extension may have conferred an economic advantage on Alitalia for the purposes of Article 107(1) TFEU. The Italian authorities are, however, invited to provide all other relevant documents and evidence in support of their market economy creditor claim.

#### 4.1.5. *Potential distortion of competition and effect on intra-Union trade*

- (67) According to Article 107(1) TFEU, to constitute State aid, a measure must distort or threaten to distort competition and have an effect on intra-Union trade.
- (68) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes.<sup>16</sup> It is therefore sufficient that the aid allows the recipient to maintain a stronger competitive position than it would have had if the aid had not been provided.
- (69) The Commission considers that the measures affect trade between Member States, as they concern a company whose transport activity, by its very nature, directly concerns trade and covers several Member States. They also distort or threaten to distort competition within the common market, as they concern only one company which is in competition with other airlines on its European network, as also confirmed by the submissions of the three complainants.

#### 4.1.6. *Conclusion on the existence of State aid*

- (70) In view of the above, the Commission concludes on a preliminary basis that the initial loan and the loan extension may constitute State aid within the meaning of Article 107(1) TFEU.

### **5. LEGALITY OF THE AID**

- (71) The Commission notes that the measures were granted to Alitalia before notification to the Commission, in breach of Article 108(3) TFEU and the stand-still obligations laid down therein. Thus, the Commission concludes on a preliminary basis that the measures granted to Alitalia constitute unlawful State aid.

### **6. COMPATIBILITY OF THE AID**

#### **6.1. Assessment as rescue aid**

- (72) According to Italy, if the measures were to be deemed State aid, since Alitalia is an undertakings in difficulty, they should be assessed as rescue aid under the Rescue and Restructuring Guidelines and would be compatible with the internal market in respect of the Rescue and Restructuring Guidelines.

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<sup>16</sup> See Judgment of the Court of Justice in *Phillip Morris Holland v Commission*, 730/79, EU:C:1980:209, paragraph 11.

- (73) Insofar as the measures constitute State aid within the meaning of Article 107(1) TFEU, the Commission must assess whether that aid can be declared compatible with the internal market.
- (74) In view of the above, the Commission should assess compatibility of the aid under the Rescue and Restructuring Guidelines, on the basis of general assessment principles set up in the Rescue and Restructuring Guidelines. For that purpose, the Commission must examine whether each of the following criteria is met: (a) contribution to a well-defined objective of common interest; (b) need for State intervention; (c) appropriateness of the aid measure; (d) incentive effect; (e) proportionality of the aid (aid limited to the minimum); (f) avoidance of undue negative effects on competition and trade between Member States; (g) transparency of aid.

#### *6.1.1. Eligibility*

- (75) In order for an undertaking to be eligible for rescue aid, it must qualify as an undertaking in difficulty pursuant to section 2.2 of the Rescue and Restructuring Guidelines. In particular, point 20 of the Rescue and Restructuring Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term.
- (76) The present case, as presented by Italian authorities, fulfils the condition set up by point 20(c) of the Rescue and Restructuring Guidelines, when the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. Alitalia was placed under the extraordinary administration procedure pursuant to Decree Law No 347/2003 by way of the abovementioned decree of the Minister for Economic Development of 2 May 2017 and it was declared insolvent.
- (77) For the reasons above, the Commission concludes on a preliminary basis that Alitalia is a firm in difficulty in the sense of point 20(c) of the Rescue and Restructuring Guidelines.

#### *6.1.2. Contribution to an objective of common interest*

- (78) Point 38(a) of the Rescue and Restructuring Guidelines provides that in order to assess whether the rescue aid can be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. Point 38(a) further refers to Section 3.1 of the Rescue and Restructuring Guidelines, at which it is noted that the Member State must provide clear evidence showing that the aid aims to prevent social hardship or address a market failure. According to point 44 (b) of the Rescue and Restructuring Guidelines, this can be demonstrated in particular by showing that "*there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in*".
- (79) Italy argues that the measures are needed to prevent a sudden exit from the market, and the associated negative consequences, of a company playing an important systemic role in respect of the entire air transport sector.

- (80) Prima facie, it may be the case that if Alitalia's planes had had to be grounded due to it losing its operating license as a consequence of it filing for insolvency, other airlines would not have been able, in practice, to fill the gap left by Alitalia immediately. Such a series of events could have led to disruption and serious disturbance of air transport services in Italy.
- (81) However, on the basis of the information available, it is not possible to conclude that the aid contributes to a well defined objective of common interest.

### *6.1.3. Appropriateness*

- (82) Under point 38(c) of the Rescue and Restructuring Guidelines, the Commission will not consider an aid measure to be compatible if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 of the Rescue and Restructuring Guidelines:
- (a) it must consist of temporary liquidity support in the form of loan guarantees or loans;
  - (b) the financial cost of the loan or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, must be set at a rate not less than the reference rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points);
  - (c) except as otherwise specified in point (d) below, any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after disbursement of the first instalment to the beneficiary;
  - (d) the Member State must undertake to communicate to the Commission, not later than six months after the rescue aid measure has been authorised or, in the case of non-notified aid, not later than six months after disbursement of the first instalment to the beneficiary: (i) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; or (ii) a restructuring plan as set out in section 3.1.2 of the Rescue and Restructuring Guidelines if the beneficiary qualifies as an undertaking in difficulty (and not only faces acute liquidity needs); or (iii) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid;
  - (e) rescue aid may not be used to finance structural measures, such as acquisition of significant businesses or assets, unless they are required during the rescue period for the survival of the beneficiary.
- (83) In the case at hand, the aid initially consisted of a loan of EUR 600 million initially maturing on 4 November 2017 that Alitalia has been using and will use to avoid insolvency and provide Alitalia with the necessary time to complete the divestment process. The interest rate charged is the 6-month EURIBOR rate published on the working day preceding payment, in this case 3 May 2017, plus

1,000 basis points. This rate exceeds the minimum level of remuneration set out in point 56 of the Rescue and Restructuring Guidelines.

- (84) Italy, however, has admitted that the loan of EUR 600 million was not reimbursed within six months after the disbursement of the first instalment to Alitalia, i.e. before 4 November 2017. On the contrary the deadline for repayment was extended by almost a year, until 30 September 2018 (and could be further extended) and an additional EUR 300 million loan was granted to be repaid by 31 December 2018 only.
- (85) The Italian authorities claim to be preparing a liquidation plan involving the sale of Alitalia's assets and a subsequent liquidation of the company within the framework of the ongoing special administration procedure. However, it is not clear when such liquidation would occur since the last tranche of the loan is to be repaid at the end of December 2018 and the liquidation is likely to take place even later. It is thus doubtful that such liquidation would be finalised within a reasonable timeframe as required by point 55(d) (iii) of the Rescue and Restructuring Guidelines. In addition, in view of the loan extension approved in October 2017 and paid to Alitalia in January 2018, the condition that the liquidation plan should not involve any further aid has not been met.
- (86) The aid has thus allowed continued operations of Alitalia between May 2017 and at least September 2018, keeping an otherwise non-viable business on the market for significantly longer than a temporary period of six months. This is not in line with the appropriateness requirements for rescue aid under point 55(d) of the Rescue and Restructuring Guidelines.
- (87) Finally, as regards point 55(e) of the Rescue and Restructuring Guidelines, the Commission observes that Italy has committed that Alitalia will not use the rescue aid to finance structural measures.
- (88) In view of the above, the Commission has serious doubts that the conditions laid down in points 38(c) and 55 of the Rescue and Restructuring Guidelines have been met and that the form of the aid allows rescuing Alitalia in the least distortive way.

#### *6.1.4. Proportionality of the aid / aid limited to the minimum*

- (89) Under point 38(e) of the Rescue and Restructuring Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the Rescue and Restructuring Guidelines rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission will take into account the outcome of the formula set out in Annex I of the Rescue and Restructuring Guidelines. The Commission will authorise any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.
- (90) In this regard, the liquidity plan provided by Italy does not meet the requirements laid down in point 60 of Rescue and Restructuring Guidelines. First of all, the amount of the aid does not correspond to the outcome of the formula ex Annex I of the Rescue and Restructuring Guidelines; moreover it includes a substantial

liquidity cushion (EUR [...] at the end of first quarter 2018, dropping gradually to EUR [...] at the end of 2018), without any justification.

- (91) The Italian authorities argue that such liquidity reserve is necessary in order to provide confidence to Alitalia's business partners. However, Italy does not provide any justification for the actual amount of such reserves (e.g. by comparison to the standard cash reserves before the administration procedure<sup>17</sup> or by comparison to similar airlines). In view of the projected 2018 revenues of Alitalia amounting to [...] million, its cash reserves would constitute between [15-35]% of the total revenue. This seems to be overly generous.
- (92) The Commission therefore has serious doubts on the proportionality of the aid, i.e. whether the amount of the aid was really limited to the minimum necessary for Alitalia to continue operating in the relevant period and whether the period for which the loans were granted and continue to be at the disposal of Alitalia was in line with the Rescue and Restructuring Guidelines.

#### 6.1.5. *Negative effects*

##### 6.1.5.1. "One time, last time" principle

- (93) Under points 70 and 71 of the Rescue and Restructuring Guidelines, aid can be granted to undertakings in difficulty in respect of only one restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past or the restructuring period came to an end or implementation of the restructuring plan was halted – whichever occurred the latest – the Commission will not allow further aid (the "one time, last time" principle).
- (94) Alitalia Linee Aeree SpA received rescue aid in the amount of EUR 300 million in 2008. Furthermore, at the time that this measure was granted, it was proposed that Alitalia Linee Aeree SpA would be acquired by CAI.
- (95) The Commission deemed this aid unlawful and incompatible with Article 87(3) TEC (now Article 107(3) TFEU) and ordered its recovery.<sup>18</sup> In a second decision, the Commission, *inter alia*, deemed that the sale of the assets of Alitalia Linee Aeree SpA, as it was then constituted, implemented by Italy entailed no economic continuity between that undertaking and the buyers of its assets.<sup>19</sup> The Commission's conclusion in this regard was upheld before the General Court<sup>20</sup> and the Court of Justice<sup>21</sup>.

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<sup>17</sup> EUR 74 million.

<sup>18</sup> Commission Decision 2009/155/EC of 12 November 2008 on the loan of EUR 300 million granted by Italy to Alitalia No C 26/08 (ex NN 31/08).

<sup>19</sup> Commission Decision C(2008) 6745 final, of 12 November 2008, concerning State aid N 510/2008 — Italy — Sale of assets of the airline Alitalia.

<sup>20</sup> Judgment of 28 March 2012, *Ryanair v Commission*, T-123/09, EU:T:2012:164.

<sup>21</sup> Judgment of 13 June 2013, *Ryanair v Commission*, C-287/12 P, EU:C:2013:395.



- (96) As such, given that there is no economic continuity between Alitalia Linee Aeree SpA, which received restructuring aid in 2008, and Alitalia as it is presently constituted, any past aid that was granted to the former should not be taken into account when assessing the applicability of the "one time, last time" principle.
- (97) On the basis of the information provided by Italy, and in view of the above observations regarding economic continuity, it follows that Alitalia has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years. Therefore, the Commission concludes that the 'one time, last time' principle is respected.

#### 6.1.5.2. Effects on competition and trade

- (98) Under point 38(f) of the Rescue and Restructuring Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.
- (99) However, in view of (i) the duration of the measures significantly exceeding six months, and (ii) the use of most of the measures to create a significant liquidity cushion without proper justification of its necessity, the likely negative effects on competition and trade cannot be considered as sufficiently limited.

#### 6.1.6. Transparency

- (100) According to point 38(g) of the Rescue and Restructuring Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the provisions on transparency laid down in point 96 of the Rescue and Restructuring Guidelines must be respected.
- (101) The Commission observes that Italy has provided assurances that the transparency conditions of point 96 of the Rescue and Restructuring Guidelines will be respected.

#### 6.1.7. Conclusion on the compatibility of the aid

- (102) For the reasons stated above, at this stage of the investigation, the Commission has come to the preliminary conclusion that there are serious doubts about the compatibility of the measures with the internal market under Article 107(3)(c) TFEU and invites Italy and all interested parties to submit their comments.

## 7. CONCLUSION

- (103) Consequently, at this stage, the Commission has come to the preliminary conclusion that there are serious doubts on the compatibility of the notified rescue aid with the internal market.

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 Italy to submit its comments and to provide all such information as may help to assess the 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 reminds Italy that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Italy 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 disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission