EUROPEAN COMMISSION

Brussels, 20.11.2020
C(2020) 8142 final

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 […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State Aid SA.57032 (2020/N) – Lithuania
Support to the LNG terminal of Klaipėda in Lithuania

Excellency,

1. PROCEDURE

(1) Following pre-notification contacts, on 17 September 2020 Lithuania notified a State aid measure to support the liquefied natural gas terminal ("LNG Terminal") in Klaipėda, Lithuania.

(2) The Commission requested additional information on 20 October 2020.

(3) The Lithuanian authorities replied and submitted additional information on 22 October 2020.

(4) By letter dated 22 September 2020, Lithuania agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958[1] and to have the present decision adopted and notified in English.

[1] Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17.6.10.1958, p. 385).

Mr. Linas LINKEVIČIUS
Užsienio Reikalų Ministerija
J. Tumo-Vaižgantog. 2
LT-01511 Vilnius
Lietuvos Respublika

2. DESCRIPTION

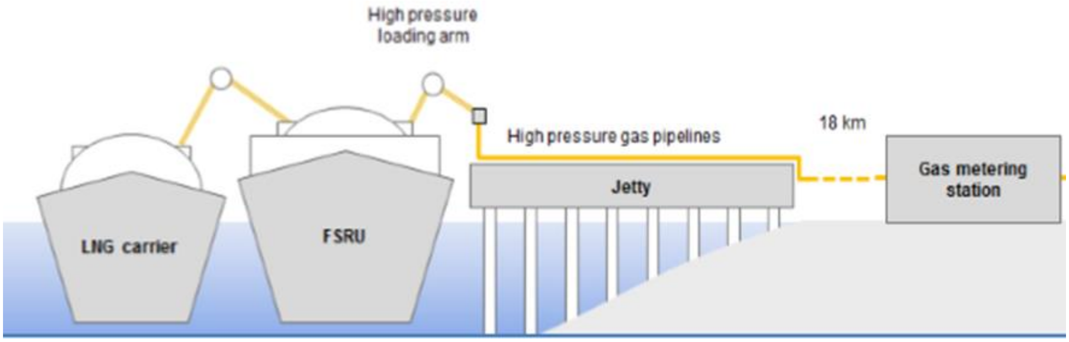
2.1. Assessment of the measure in 2013 and 2019

2.1.1. The initial measure as approved by the 2013 Decision

(5) The Lithuanian LNG Terminal project was aimed at cutting Lithuania's dependence on a sole gas supplier OAO Gazprom ("Gazprom") and creating a competitive gas market by connecting Lithuania to the EU gas market. In 2013 the Commission adopted a decision in case SA.36740 (2013/NN) - Aid to beneficiary – AB Klaipėdos Nafta (the "2013 Decision"). The project consisted of the construction and operation of an LNG Terminal, its connection to the natural gas transmission system of Lithuania and port infrastructure at Klaipėda seaport. The LNG Terminal started its operation on 1 January 2015.

(6) The LNG Terminal consists of a floating liquefied natural gas storage and regasification unit ("FSRU") with its related energy structures and installations. The FSRU was provided by the Norwegian company Höegh LNG based on a 10-year lease agreement with purchase option to be exercised in 2022 by AB Klaipėdos Nafta ("KN"), the purchase being completed by 2024. See figure 1 below.

Figure 1: the LNG Terminal infrastructure



Source: AB "Klaipėdos nafta"

(7) Based on the 2013 Decision, Lithuania granted operating and investment aid to support the LNG Terminal project to the beneficiary KN.

(8) As regards operating aid, the Commission approved operating aid to cover fixed operating costs such as LNG Terminal maintenance, insurance, personnel and marketing, and variable operating costs linked to the purchase of minimum quantities of LNG[2] to operate the LNG Terminal on a continuous basis. Variable operating costs were covered from the purchase obligation[3] and the regasification

[2] This is a technical minimum LNG quantity necessary for the LNG Terminal to remain operational at all times. The Lithuanian Government is responsible for determining such quantities of the LNG necessary to ensure stable operation of the LNG Terminal.

[3] The Purchase Obligation was imposed on private and public undertakings operating in the regulated segment of electricity and heat generation. They bought the minimum volume of LNG from a selected supplier.

tariff[4]. Fixed operating costs were covered from a special levy imposed upon all users of the natural gas transmission system, on top of the transmission fees (the "LNG Supplement").

(9) As regards investment aid, the Commission approved aid to cover the cost of the project such as project management, gas pipelines, gas metering station, jetty, and the lease of the FSRU. These costs were covered from the State guarantee and the LNG Supplement. The lease costs of the FSRU in particular were covered by the part of the LNG Supplement.

(10) State guarantees of 100 % of the amounted loans were granted to cover the loans from the European Investment Bank (EIB) and the Nordic Investment Bank (NIB). The remaining amount was foreseen to be financed from the commercial banks and/or KN capital. The loans from EIB, and from NIB were aimed at financing the LNG Terminal infrastructure: 1) high pressure natural gas pipeline connecting the LNG Terminal with the natural gas transmission system (18 km); 2) the port infrastructure at the Klaipėda seaport: the moorage of the FSRU and the jetty.

2.1.2. *The modification as approved by the 2019 Decision*

(11) In 2019, Lithuania notified a modification to the financing mechanism for the FSRU leasing costs (part of the investment aid approved under the 2013 Decision). Under the 2013 Decision, the FSRU leasing costs were financed exclusively via the LNG Supplement. In the decision in case SA.53074 (2019/N) – Modification of investment aid approved under the Commission decision SA.36740 (2013/NN) aid to AB Klaipėdos nafta[5] (the "2019 Decision"), the Commission approved a reduction of the financial burden for the Lithuanian gas consumers by reducing the LNG Supplement and replacing the relevant part of LNG Supplement with a loan guaranteed by the Lithuanian State. The approved measure consisted of this State guarantee designated to obtain this new loan aimed at financing the FSRU leasing costs in the period 2019-2024.

(12) At the time of the 2019 Decision, the Lithuanian authorities explained that the amendment was part of a broader design contemplated for the FSRU, which also comprised the implementation of a second state guarantee which would be used to obtain a further loan aiming at financing the purchase of the FSRU after the expiry of the lease agreement in 2024.

2.1.3. *Proportionality assessment performed under the 2013 and 2019 Decisions*

(13) As was already indicated in recital (9) the investment aid approved under the 2013 Decision was financed from two sources – the State guarantee and the LNG Supplement. The Commission performed a compatibility assessment of these two measures under Article 107(3)(c) of the Treaty of the Functioning of the European Union ("TFEU"). The assessment of compatibility of the modification approved by the 2019 Decision was performed based on the same principles.

---

[4] Regasification tariff is a fee paid by the LNG Terminal user to the LNG Terminal operator for converting liquefied natural gas temperature back to natural gas at atmospheric temperature.

[5] C(2019) 6794 final, https://ec.europa.eu/competition/state_aid/cases1/201943/280512_2103124_152_2.pdf

(14) Based on the 2013 Decision[6], the proportionality assessment was made comparing the internal rate of return ("IRR")[7] of the LNG Terminal project and the weighted average cost of capital ("WACC")[8]. The Commission found that the investment aid measures resulted in an IRR of [0-10]% which was below the WACC estimated for the industry [0-10]%. As a result, the investment aid complied with the proportionality criteria.

(15) Similarly, by the 2019 Decision the Commission concluded that the measure was proportionate because the profitability entailed by the measure (project IRR of [0-10] %) remains below the weighted average cost of capital required by the market for this type of project (WACC of [0-10]%).

(16) For the purposes of the present notification, Lithuania has provided an updated business plan which demonstrates the extent to which the assumptions made at the time have been confirmed. The updated business plan introduces several modifications in order to reflect better recent market evolution and actual revenues and costs, such as income deduction adjustment, update of the industry WACC and of the State guarantee value and changes in the business model assumptions.

(17) Regarding the income deduction adjustment, state aid income has been reduced in the updated business plan, by subtracting income from additional LNG Terminal activities over the period 2020-2069. The change is due to the fact that KN can gain profit only on the project Regulated Asset Base (RAB), therefore income from additional operations is used to cover part of the LNG Supplement. The RAB is subject to the return rate (regulated WACC) set by the regulator.

(18) The updated business plan shows that the values of past state guarantees slightly increased, following evolution on the interest rate markets.

(19) The updated business plan also introduces several changes to the business model assumptions, such as an increased tariff for regasification services, updated inflation rates, and increased costs for the FSRU repairs of dry dock to better reflect incurred costs.

(20) Overall, the updated business plan results in IRR and WACC that do not contradict previous conclusions from the 2019 Decision, in the sense that the updated project IRR remained well below the industry WACC.

2.2. The notified measure – new State guarantee

(21) To ensure long-term security of supply of gaseous fuels in Lithuania, by diversifying the gas supplies, favouring new gas flows in the region, the Lithuanian authorities considered the acquisition of the FSRU after the expiry of the lease agreement in 2024. Therefore, KN has the right to exercise a purchase option stipulated in the lease contract with Höegh LNG in December 2022.

---

6 See recitals 167-178 of the 2013 Decision.

7 The internal rate of return is the return that the concrete LNG terminal project yields, based on the projected costs and revenues (including the aid) over the lifetime of the project.

8 Weighted average capital cost is the minimum rate of return for investments expected by the particular industry or particular project.

(22) Lithuania also argues that the purchase of the FSRU aims at reducing the costs of maintaining the LNG Terminal which are currently socialized by the natural gas users. This will be achieved by acquiring the FSRU and replacing the FSRU's lease with KN's ownership rights.

(23) The 2013 Decision envisaged the purchase of the FSRU in 2024. Recital (100) of the 2013 Decision stated that the LNG Supplement would be used to cover costs of purchasing the FSRU, however the 2013 Decision did not approve any specific aid measure to finance the purchase of the FSRU. As indicated in recital (12) above, the 2019 Decision also referred in recital (20) to the purchase of the FSRU after the expiry of the lease agreement in 2024, which would be financed from a loan secured by a second State guarantee.

(24) More specifically, the 2013 Decision envisaged that the FSRU's purchase costs were included when calculating the amount of the LNG Supplement over the period of 55 years. It also acknowledged that the LNG Supplement allowed for a return on capital on the LNG Terminal's Regulated Asset Base and that the Regulated Asset Base would include the FSRU after its purchase.

(25) The Lithuanian authorities submitted two studies (produced by Pöyry Management Consulting in 2018 and [***consultant***]): one demonstrating that the purchase of the FSRU from Höegh LNG is the more valuable option and the other one demonstrating […].

(26) The Pöyry analysis shows that the greatest net economic benefit is achieved in all market structures when the FSRU is purchased. The net economic benefit of purchasing is closely followed by leasing a vessel for a further 20 year period. This is shown in the table below.

Table 1 – Economic net present value for Lithuania (€m)

Option	National markets	Baltic market	Baltics & Finland
Purchase	94.4	406.5	90.8
Lease 10	14.0	206.8	19.6
Lease 20	78.5	390.6	74.9

Source: Pöyry Study.

(27) The study demonstrates that Lithuania should continue having access to LNG after 2024 and that the optimal value is achieved by purchasing the FSRU as it produces the largest economic benefit for Lithuania. Furthermore, the purchase of the FSRU will provide Lithuania the greatest flexibility to react to unexpected circumstances on the gas market. Based on the study, purchasing or leasing a smaller vessel would be an inferior solution due to the limitation on tankers that can supply LNG. The study also stresses that LNG is an essential factor for Lithuania to secure access to a diverse set of competitive supply sources.

(28) The market report produced by [***consultant***] analysed several options available to purchase FSRUs. The report […].

(29) Lithuania operates on a base scenario that the FSRU will be purchased from Höegh LNG. The FSRU's business model estimates that the price of this vessel will be EUR [50-300…] million. Nonetheless, to explore alternative options and to ensure that purchasing the FSRU is the most economically viable option KN plans to initiate a selection process in 2021. The Lithuanian authorities explained that the selection process would be carried out in line with the public procurement rules. Lithuania committed to introducing safeguards into the selection process in order to ensure a level playing field among potential competitors. If the selection process results in better purchase options, they will be considered and, if deemed feasible, will be pursued. This situation would however not materially affect the measure, since it would result in a lower purchase price and consequently in a State guarantee covering a lower loan amount (see recital (33)).

(30) The purchase of the FSRU will be financed from a loan. Lithuania explained that KN has been in contact with several commercial and institutional banks and asked them to submit their offers in respect to a loan. However, due to KN's low capacity to secure the loan, all banks required KN to provide a guarantee. Lithuania submits that this demonstrates that a state or other form of guarantee is needed. Following a thorough comparison, KN selected as the most economically beneficial an offer submitted by the Nordic Investment Bank ("NIB"). KN and NIB signed an agreement regarding the loan on 9 March 2020.

(31) Lithuania argues that KN could not obtain a comparable guarantee on the market. Based on the market analysis performed by KN, it is unlikely that a financial institution would be willing to issue a guarantee covering 100% of the loan amount needed for the purchase of the FSRU at similar terms. Lithuania also considers that the premium that will be paid for the State guarantee (0.1% of the overall loan amount) is more advantageous than the market price of such a guarantee.

(32) The Lithuanian authorities submit that without the State guarantee, KN could not secure at the same cost the loan needed for the purchase of the FSRU. The costs of the loan, if it would be based on market terms, would oblige KN to resort to alternative ways of keeping the LNG Terminal, such as extending the lease of the FSRU. However, as demonstrated by the studies (see recitals (26)-(28) above), this would not be the most economically beneficial option for Lithuania.

(33) Lithuania explained that if the selection process (see recital (29) above) results in an overall lower price for the FSRU, the loan will correspond to this particular price. The loan agreement concluded with NIB stipulates that the loan amount is up to EUR 160 million and does not oblige KN to take out the full loan amount. The State guarantee will cover the loan amount which is actually needed. Therefore, if a lower amount is needed, the State guarantee will cover this lower amount. This would result in an overall lower aid amount.

2.3. Beneficiary

(34) The beneficiary of the initial aid measure approved by the 2013 Decision was KN. KN is a State owned company with the Lithuanian State holding 72.34 % of the shares. 10.41 % of KN shares are owned by the private company - UAB koncernas „Achemos grupė". It is one of the largest industrial companies and one of the

biggest gas consumers in Lithuania. The rest of the shares are owned by other private investors.[9]

(35) KN continues to be the beneficiary of the current measure.

2.4. Legal basis

(36) The national legal basis indicated by Lithuania is the Law on Liquefied Natural Gas Terminal ("LNGT Law")[10] as amended by the Law on the Amendment of the Law on Liquefied Natural Gas Terminal[11] and Resolution of the Lithuanian Parliament on Granting State Guarantees to Nordic Investment Bank[12].

2.5. Cumulation, transparency

(37) Lithuania confirmed that the aid measure would not be cumulated with other forms of support to cover the same eligible costs.

(38) Lithuania confirmed that all the information regarding the notified measure will be published on the website: https://webgate.ec.europa.eu/competition/transparency.

3. ASSESSMENT

3.1. Existence of Aid

(39) According to Article 107(1) TFEU, the qualification of a measure as State aid requires the following conditions to be met cumulatively:

- the measure is financed through State resources;
- it grants a selective advantage liable to favour certain undertakings or the production of certain goods;
- the measure distorts or threatens to distort competition;
- it has the potential to affect trade between Member States.

3.1.1. State Resources and imputability

(40) According to settled case-law, only advantages which are granted directly or indirectly through State resources are to be regarded as aid within meaning of Article 107(1) TFEU.

[9] See KN shareholders structure at www.kn.lt/en/for-investors/share-trading/410?http=1.

[10] Law on the Liquefied Natural Gas Terminal of the Republic of Lithuania (No XI-2053), of 12 June 2012 (State Gazette, 2012, No 68-3466), as amended.

[11] Law on the amendment of Articles 5 and 9 of Law No. Xi-2053 on the Liquefied Natural Gas Terminal, 18 December 2018 No. XIII-1786

[12] Resolution of the Parliament of the Republic of Lithuania on Granting State Guarantees to Nordic Investment Bank No. XIII-2718 adopted on 19 December 2019

(41) The Commission notes that the state guarantee granted by the Lithuanian State covers 100% of the NIB loan amounting to up to EUR [50-300] million. The Commission considers that in case of default of the beneficiary, which would trigger the State guarantee, the Lithuanian State budget would be directly affected. Therefore the State guarantee involves State resources, since it entails a concrete risk for the State budget to be burdened in case that guarantee is triggered. Furthermore, State resources are also involved because the Lithuanian State will not receive a guarantee premium that conforms to market prices, and therefore waives part of the fee that a market operator would have sought, which reflects a cost for the state budget. Therefore, the Commission views this state guarantee as being granted out of the State resources.

(42) The decision to grant this state guarantee to the beneficiary was taken directly by the Lithuanian State and is hence imputable to the State within the meaning of Article 107(1) TFEU.

3.1.2. Economic Advantage

(43) The Commission notes that the notified measure will provide an economic advantage to KN, because the company will obtain a State guarantee securing a loan for the purchase of the FSRU, which would not have been provided by a market economy operator at similar terms. Therefore, that guarantee confers an advantage, which would not be available under normal market conditions.

3.1.3. Selectivity

(44) The State guarantee is granted only to KN, therefore the Commission considers that the measure is selective.

3.1.4. Effect on Trade and Distortion of Competition

(45) The Lithuanian gas market is currently connected to the EU gas market with competition among alternative suppliers. The Commission observes that there is already an operating LNG terminal in Swinoujscie (Poland), and other LNG terminals in Western Europe, such as Belgium, Netherlands, France and others. Favouring a particular LNG terminal’s operator, may strengthen KN position on the EU gas market.

(46) It follows that the measure is therefore likely to distort or threaten to distort competition and affect trade between Member States.

3.1.5. Conclusion on the Existence of State aid

(47) On the basis of the above-mentioned elements, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid

(48) By notifying the amendments before their implementation, the Lithuanian authorities have respected the notification and standstill obligation laid down in Article 108(3) TFEU.

3.3. Compatibility under Article 107(3)(c) TFEU

(49) By the notified measure the Lithuanian authorities intend to exercise the option of purchasing the FSRU, which was foreseen and approved in the 2013 Decision and the 2019 Decision. In particular, the purchase of the FSRU was reflected in the business plans that were thoroughly assessed by the Commission. The 2013 Decision envisaged that FSRU's purchase costs were included when calculating the amount of the LNG Supplement amount over the period of 55 years and they would be covered from the LNG Supplement.

(50) The measure, consisting in an additional State guarantee to secure a loan to purchase of the FSRU, was not foreseen nor approved in 2013 Decision nor 2019 Decision. Therefore, the Commission assesses the notified measure in the context of previous aid measures already approved under the 2013 and 2019 Decisions. As the initial investment aid was approved under Article c) TFEU, the Commission considers that the modification (i.e. the State guarantee) should also be assessed based on the same compatibility principles as in the 2013 Decision.

3.3.1. Legal basis for assessment

(51) Article 107(3)(c) TFEU states that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In established Commission practise the aid measure can be declared as compatible under Article 107(3)(c) TFEU, if it contributes to the development of an economic activity; it is necessary and appropriate; has an incentive effect; is proportionate; and the positive effects outbalance the negative effects on competition and trade, and therefore it avoids undue negative effects on competition and trade between Member States. In this regard, the Commission considers it appropriate to assess the following:

a) Development of an economic activity

b) Appropriateness and necessity

c) Incentive effect

d) Proportionality

e) Distortions of competition and effect on trade

3.3.2. Development of an economic activity

(52) Under Article 107(3)(c) TFEU, the measure must contribute to the development of certain economic activity[13].

[13] C-594/18 P *Austria v Commission* EU:C:2020:742, paras 20 and 24.

(53) As stated in recitals (136) – (145) of the 2013 Decision, the investments into the LNG Terminal in Lithuania aim at developing the trade in LNG in Lithuania. This activity is fully aligned with the EU objectives for secure energy supply, also enshrined in Article 194 TFEU. The LNG Terminal was aimed at increasing security of supply of gaseous fuels to Lithuania by diversifying sources of supply and therefore improving the stability and continuity of the supply of gaseous fuels to final customers in Lithuania, hence reducing the risk of an interruption in supply. Furthermore, the objective of the construction of the LNG Terminal together with other investments in the Baltic countries and in neighbouring countries was to and has contributed to increasing the integration of the regional gas market in the EU, in particular markets in central and eastern Member States of the EU. Due to the LNG Terminal in Lithuania, all three Baltic States as well as Finland have now access to the global LNG market and, hence, to a second source of gas supply.

(54) The Commission notes that before the commissioning of the LNG Terminal, the gas market of the three Baltic States and Finland was dominated by Gazprom. Since the start of the operation of the LNG Terminal in 2015, Lithuania's natural gas prices dropped by 50 %[14] and significant decreases were also observed in Latvia and Estonia. The LNG Terminal is currently the only viable alternative to Gazprom gas for the three Baltic States and Finland as no interconnection link with neighbouring Member States towards the West has been built since the 2013 Decision. According to the planning, the gas interconnection between Poland and Lithuania (GIPL) will start operations only on 31 December 2021. However, Lithuania argued that it would not offer the same degree of diversification of supply sources as that offered by the LNG Terminal and will not be able to act as a temporary natural gas storage. This is due to the fact that the sources of gas supply into Poland are almost completely utilized for the Polish national market.

(55) The notified measure adds up to the aid measures approved by the 2013 Decision. The measure will enable KN to purchase the FSRU which could be operated until at least 2044. By the notified measure, the Lithuanian authorities intend to finance the FSRU's purchase with a loan guaranteed by the Lithuanian State. As the notified measure (i.e. the State guarantee for the loan aiming at purchasing the FSRU) is granted in the context of the execution of the option foreseen and approved under the 2013 Decision, the objective of security of gas supply in Lithuania identified in the 2013 Decision is also served by the current measure (see recitals 136 to 145 of the 2013 Decision).

(56) It follows that the aid measure facilitates the development of LNG infrastructures and trade and therefore contributes to the development of certain economic activities as required by Article 107(3)(c) TFEU.

3.3.3. Appropriateness and necessity

(57) As stated in recitals (146) – (157) of the 2013 Decision, the Commission concluded that the aid was necessary for the LNG terminal project to materialise and deliver its contribution to ensure security of supply in Lithuania. The

[14] Information provided by the Lithuanian authorities, Notification Form, p. 6.

Commission also noted that no other type of investment would provide Lithuania with the same degree of security of supply.

(58) The 10-year lease agreement with Höegh LNG will expire in 2024. Based on the information provided by the Lithuanian authorities, the Commission notes that the purchase of the FSRU appears the most economically beneficial option to secure long-term security of supply in Lithuania.

(59) The Commission notes that secure LNG supplies can be achieved through different aid instruments. The Lithuanian authorities have the choice between various aid forms, and they can chose an instrument that they consider the most appropriate.

(60) Furthermore, in recital (154) of the 2013 Decision the Commission already recognized that a State guarantee, which was provided to secure the loan taken by KN, was an appropriate aid instrument as it enabled KN to obtain loans for the main portion of the infrastructure investments and reduced the costs of the project. Similarly, in recitals (43) – (48) of the 2019 Decision, the Commission considered that the State guarantee was an appropriate instrument to ensure the operation of the LNG Terminal and was necessary to enable the beneficiary to obtain the loan from NIB and to maintain the operation of the LNG Terminal.

(61) The Commission observes that the notified measure is an addition to the financing mechanism of the FSRU investment costs, which was approved under the 2013 Decision. The measure will enable KN to purchase the FSRU, which will contribute to reducing the maintenance costs of the LNG Terminal as the FSRU leasing costs that are currently included in the LNG Supplement. The Commission considers that the State guarantee to secure an institutional bank loan is an appropriate instrument to ensure the operation of the LNG Terminal.

(62) The Commission also notes that, based on the information provided by the Lithuanian authorities, under normal market conditions, commercial banks would require a State guarantee or a commercial guarantee to grant a loan to finance the purchase of the FSRU. The loan was made available only by NIB under the condition of securing it with the State guarantee. The State guarantee is therefore necessary to enable the beneficiary to obtain the loan from NIB and to maintain the operation of the LNG Terminal.

(63) Therefore, it follows that the notified State guarantee is an appropriate and necessary instrument to contribute to the development of the economic activity at issue, which concerns LNG infrastructure and trade.

3.3.4. *Incentive effect*

(64) The incentive effect is fulfilled, if the aid induces the beneficiary to change its behaviour in such a way that it engages in additional activity which it would not carry out without the aid or would carry out to a lesser extent or at different conditions.

(65) As stated in recitals (158) – (166) of the 2013 Decision, the Commission found that the aid measure leads to improving the financial indicators of the LNG Terminal to a level that can be acceptable for KN and hence provides an appropriate incentive to carry out the project. The payment of the LNG Supplement reduces the risks of the LNG Terminal's activity. Similarly, in recitals (49) – (52) of the 2019

Decision, the Commission observed that SGD Terminalas (100% KN subsidiary in charge of LNG operation) was not able to obtain a loan on the market at the same terms if it was not secured by the State guarantee.

(66) In the present case, the Commission notes that without the State guarantee KN would not be able to obtain a loan on similar conditions, which is necessary to purchase the FSRU. In the absence of the State guarantee, in order to ensure Lithuania's long-term security of supply KN would have to resort to alternative options such as leasing a terminal, which – as demonstrated in the studies provided by the Lithuanian authorities – is a less economically beneficial option than the purchase of the FSRU.

(67) Therefore, it can be concluded that the aid has an incentive effect, as the State guarantee leads KN to conclude the loan for the purchase of FSRU, and thus allows KN to continue operating the LNG Terminal while keeping secure and diverse gas supplies at better economic conditions than absent the aid.

3.3.5. Proportionality

(68) As stated in recitals (167) – (178) of the 2013 Decision, in order to ensure that proportionality criteria is met, the aid must be kept to the minimum necessary to induce the additional investments or activity by the beneficiary.

(69) The 2013 Decision has approved several aid measures for this Project. The proportionality of the notified aid should be assessed in this context. The Commission examines if the aid equivalent of the new guarantee together with the aid approved and benefitting the project is still proportionate. Based on the amount of aid equivalent, the Commission calculates the new IRR of the project, which incorporates both past aid measures and the notified measure, and compares it with the updated WACC.

(70) The Commission assessed in the 2013 Decision the return made possible for the LNG Terminal by comparing the expected internal rate of return (IRR) to be generated by the project and the weighted average cost of capital (WACC) calculated for this sector. The Commission concluded that there were sufficient safeguards in place to ensure that the aid would not provide KN with excessive profits on the investment.

3.3.5.1. Aid equivalent of the new State guarantee

(71) In order to assess the proportionality of the scheme, the Commission must evaluate the aid equivalent of the new State guarantee. The Commission notes that, as the notified measure involves a State guarantee, the relevant legal framework for the calculation of its aid equivalent is the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (the "Guarantee Notice")[15].

(72) Pursuant to Section 4.2. of the Guarantee Notice, the calculation of the cash grant equivalent of a guarantee equals the difference between the market price of the guarantee and the price actually paid.

15 OJ C 155, 20.6.2008, p. 10–22.

(73) Similarly to the 2013 Decision, the Commission observes that as there is no market interest rate which could serve as a reference, a reference rate needs to be determined in line with the Commission Communication on the revision of the method for setting the reference and discount rates (the "Communication on reference rates")[16]. This should take into account the relevant risk profile linked to the operation covered as well as the characteristics of the undertaking guaranteed and the collaterals provided.

(74) The cash equivalent results from the difference between the alleged financing costs at arm's length conditions ([0-5] %, which is the sum of a margin rate of [0-500] bpp and a negative base rate of [-500 – 0] bpp) and the actual financing conditions ([0-5] %) obtained by the beneficiary for the loan. The Lithuanian authorities explained that they applied the base rate from the Communication on reference rates which applies when the credit rating is deemed as good (BBB), combined with a low level of collateralisation. A credit rating of BBB was also applied in the 2013 and 2019 Commission decisions.

(75) In addition, the Lithuanian authorities have provided an analysis of the borrowing rate in absence of any State guarantee based on market terms, following a cost-to-lend approach. This analysis estimates the borrowing rate in absence of any State guarantee within a range between [0-10] % - [0-10] %. This analysis therefore validates the assumption of debt funding level used for the cash equivalent assessment of the State guarantee as being in line with market terms.

(76) According to the calculations provided by the Lithuanian authorities, the net present value of the cash equivalent of the State guarantee amounts to EUR [0-100]million.

3.3.5.2. Assessment of proportionality

(77) Since the 2013 Decision has approved several aid measures for this Project, the proportionality of the notified aid should be assessed by examining whether the overall aid amount benefitting to the Project is still proportionate following the addition of the new guarantee.

(78) In assessing the proportionality of the aid, the Commission compared the project IRR with the industry WACC.

(79) The Commission takes note of the fact that Lithuania submitted an updated business plan, introducing several modifications compared to the previous version (see recitals (16)-(19)). Regarding the activity projected over 2020-2069, the business plan also introduces an updated return level allowed by the regulator ("regulatory WACC") and includes the additional State guarantee (the measure). The updated business plan then presents the resulting project IRR, and compares it to the updated industry WACC.

(80) In the updated business plan, the regulated WACC has been revised downwards. It was set to [0-10] % for 2020 due to lower risk premium rate set by the regulator and it is expected to be set to [0-10] % (compared to [0-10] % previously) for the period 2021-2024 due to changes in the WACC Methodology.

[16] OJ C 14, 19.1.2008, p. 6–9.

(81) The updated business plan also includes the additional State guarantee (the measure) applicable on the loan to finance the FSRU acquisition.

(82) Based on the updated business plan that includes the notified measure, the Commission notes that Lithuania submits that the internal rate of return (project IRR) would amount to [0-10] %, to be compared with the industry WACC.

(83) According to Lithuania, from the KN shareholder's perspective the industry WACC now amounts to [0-10] %, which is lower than previous industry WACC of [0-10] % to reflect a significant decrease in financing by equity following recent market developments.

(84) The Commission observes that Lithuania has calculated the aid element (gross grant equivalent) in the State guarantee in line with the State aid rules. Therefore, the applied margin rate of [0-500] bpp is in line with the level specified by the Communication on reference rates corresponding to a low level of collateralisation and a good (BBB) credit rating, and in line with market terms. The Commission notes that compared with an actual interest rate charged on the loan of [0-5] %, the cash equivalent of the State guarantee would indeed amount to EUR [0-100] million. Such a cash equivalent would trigger an internal rate of return of [0-10] % for the project, all other parameters remaining equal, to be compared with a WACC of [0-10] %. Hence, the profitability entailed by the measure remains below the weighted average cost of capital required by the market for this type of project.

(85) In light of those elements, the Commission concludes that the measure remains proportionate.

3.3.6. *Distortion of competition and balancing test*

(86) As explained in recitals (179) – (191) of the 2013 Decision, the Commission performed a balancing test that led to the conclusion that the contribution to the development of an economic activity as well as the positive effects on competition outweigh some identified negative effects on competition.

(87) The notified measure enables KN purchasing the FSRU and keeping it operational until at least 2049. The Commission notes the operation of the LNG Terminal creates a number of benefits for competition, in particular increasing diversification and security of supply, reducing isolation of the Baltic region and its dependency on a single supplier and reinforcing internal grid infrastructures accordingly.

(88) Currently, Gazprom is still the major gas supplier in Lithuania and the Baltic region countries, including Finland. Gazprom currently supplies more than 50% of gas in Lithuania. The Commission notes that Lithuania is still poorly interconnected as it has a single interconnection with Latvia, which is also dependent on Gazprom gas supplies. The Commission considers that, based on the information provided by the Lithuanian authorities, maintaining the LNG Terminal operational until at least 2044 will have substantial beneficial effects by further diversifying not only the Lithuanian upstream gas market but also upstream gas markets in the entire Baltic region, reaching Finland through the newly inaugurated Baltic connector.

(89) Moreover, financing the purchase of the FSRU from the loan from NIB guaranteed by the Lithuanian State should be beneficial to the gas consumers in Lithuania. As the FSRU leasing costs are currently included in the LNG Supplement and socialized, purchasing the FSRU will reduce the financial burden to natural gas consumers, therefore making natural gas prices more competitive and having positive impact on competition for all the three Baltic States and Finland.

(90) Therefore, the Commission concludes that the measure supports an economic activity guaranteeing secure gas supply to Lithuania while not adversely affecting trading conditions to an extent contrary to the common interest, as required by Article 107(3)(c) TFEU. It follows that the positive effects of the aid outweigh its negative effects on competition and trade.

4. CONCLUSION

(91) The Commission has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

(92) The Commission reminds the Lithuanian authorities that, in accordance with Article 108 (3) TFEU, any plans to refinance, alter or change this aid have to be notified to the Commission pursuant to the provisions of the Commission Regulation (EC) 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU)[17].

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President

[17] OJ L 140, 30.4.2004, p. 1.