

Commission Decision (EU) 2015/1091 of 9 July 2014 on the measures SA.34191 (2012/C) (ex 2012/NN) (ex 2012/CP) implemented by Latvia for A/S Air Baltic Corporation (airBaltic) (notified under document C(2014) 4552) (Only the English text is authentic) (Text with EEA relevance)

- Article 1 The first State loan of LVL 16 million which the...
Article 2 The second State loan of LVL 67 million and the...
Article 3 This Decision is addressed to the Republic of Latvia.
 Signature

- (1) OJ C 69, 8.3.2013, p. 40.
- (2) Exchange rate of EUR 1 = LVL 0,7063. Average exchange rate for 2011 published by the European Central Bank, available at <http://sdw.ecb.europa.eu/reports.do?node=100000233>.
- (3) Cf. footnote 1.
- (4) Source: Riga International Airport Yearbook 2011, available at <http://www.riga-airport.com/en/main/about-company/gada-gramata>.
- (5) See <http://bnn-news.com/airbaltic-shareholders-structure-11608>. The press reports some links between Taurus and a Russian entrepreneur Mr Vladimir Antonov.
- (6) The former main shareholder and chairman of the Lithuanian bank Snoras was Mr Vladimir Antonov.
- (7) The Central Bank of Lithuania explained that it needed to nationalise Snoras because of the failure to meet regulatory requirements, failure to provide requested information, and the poor condition of assets. See <http://en.rian.ru/business/20120523/173624459.html> and <http://www.bloomberg.com/news/2011-12-19/antonov-says-he-invested-50-million-euros-in-latvia-s-airbaltic.html>.
- (8) See http://www.lkb.lv/en/about_bank/news/archyve?item=2022&page=6.
- (9) See http://www.fktk.lv/en/publications/other_publications/2012-02-07_jsc_latvijas_krajbanka_c/.
- (10) The Minister of Transport explained that the goal of the acquisition was to protect the depositors of Latvijas Krājbanka. Apparently, BAS' financial problems threatened to prevent the State from investing in airBaltic's capital and thus the Government decided to act in the defence of its interests and take control of airBaltic. See <http://www.bloomberg.com/news/2011-12-01/latvia-buys-out-minority-shareholder-in-airbaltic-ministry-says.html> and http://www.sam.gov.lv/?cat=8&art_id=2598.
- (11) See <http://www.baltic-course.com/eng/transport/?doc=54423>. The press also reports that BAS allegedly owed LVL 14 million to Latvijas Krājbanka (see for instance <http://www.baltic-course.com/eng/transport/?doc=53861>).
- (12) According to Latvia, as of August 2013, BAS had not been declared bankrupt despite the attempts of several of its creditors.
- (13) In addition, it seems that at least since 2010 the main shareholders of airBaltic — the Latvian State and BAS — remained in conflict: the press reports on numerous legal actions between the Latvian State and BAS (see for instance <http://atwonline.com/airline-finance-data/news/airbaltic-files-bankruptcy-0921>).
- (14) See <http://centreforaviation.com/analysis/airbaltics-restructuring-plan-is-in-full-swing-but-competition-from-estonian-air-is-rising-74754>.
- (15) See <http://www.eurofound.europa.eu/emcc/erm/factsheets/18371/Air%20Baltic%20Corporation?Template=searchfactsheets&kSel=1> and <http://www.baltic-course.com/eng/transport/?doc=42089>.
- (16) See https://www.airbaltic.com/en/bottom_menu/press-room/press_releases/2011/airbaltic-files-for-legal-protection-airbaltic-to-continue-operations.
- (17) The Latvian Ministry of Transport placed an advertisement in the European and British editions of the Financial Times on 27 August 2012 inviting non-binding expressions of interest to participate in the sale of shares issued by airBaltic. See http://prudential.lv/upload_file/27082012-ABC%20ad%20EN.pdf.
- (18) Business secret.
- (19) The Latvian State apparently exercised this right on 8 June 2012 (see recital 23 above).
- (20) Contrary to what is stated in recital 80 of the opening decision, during the formal investigation procedure the Commission observed that BAS was not obliged under the Agreement to provide a convertible loan on *pari passu* terms alongside the second State loan.
- (21) On 10 July 2012 airBaltic signed a letter of intent with Bombardier to acquire 10 CS300 aircraft and take purchase rights on a further 10 CS300 jetliners. Based on the list price of the CS300 airliner, a firm-order contract will be valued at approximately USD 764 million (EUR 621,74 million), and could increase to USD 1,57 billion (EUR 1,28 billion) should the purchase rights be converted to firm orders. See <http://www.airbaltic.com/public/49780.html>. Exchange rate of EUR 1 = USD

- 1,2288 — average exchange rate for July 2012 published by the European Central Bank, available at <http://sdw.ecb.europa.eu/reports.do?node=100000233>.
- (22) The first State loan of LVL 16 million and the second State loan of LVL 67 million (including the second tranche of LVL 25,4 million, which following the reShape plan was provided to the company in the second half of 2012).
- (23) [OJ C 244, 1.10.2004, p. 2.](#)
- (24) The EUR [...] million figure is claimed by Latvia but does not result from the Agreement.
- (25) 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](#)).
- (26) ASK stands for available seat kilometre (seats flown multiplied by the number of kilometres flown). ASK is the most important capacity indicator of an airline as employed by the air transport industry and by the Commission itself in previous restructuring cases in the air transport sector.
- (27) Ryanair referred to Case C-405/11 P, *Buczek Automotive*, not yet published, at paras 55-57.
- (28) See <http://www.eurofound.europa.eu/emcc/erm/factsheets/18371/Air%20Baltic%20Corporation?Template=searchfactsheets&kSel=1> and <http://www.baltic-course.com/eng/transport/?doc=42089>.
- (29) See <http://atwonline.com/airline-finance-data/news/airbaltic-files-bankruptcy-0921>.
- (30) Source: airBaltic's annual report for 2011.
- (31) See for instance the press release of the Cabinet of Minister of Latvia of 7 September 2011 (<http://www.mk.gov.lv/en/aktuali/zinas/2011/09/070911-cm-01/>), where the Prime Minister at the time is reported as having stated that '*it is essential to maintain airBaltic as the national air operator which creates substantial advantages for Latvia in the area of logistics, tourist attraction and as a significant employer; however, emphasizes the need to choose the solutions which are most favorable to the public interest*'.
- (32) Case T-565/08 *Corsica Ferries v Commission*, judgment of 11 September 2012, not yet reported, at para 122.
- (33) See footnote 24. The base rate for Latvia on 3 October 2011 was 2,2 %. To this figure a margin of 400 basis points should be added, considering the difficulties of airBaltic at the time and the significant level of collateralisation of the loan, resulting in a rate of 6,2 %.
- (34) The Commission nonetheless observes that the first State loan was capitalised on 29 December 2011 as part of measure 3. The assessment of measure 3 is presented in section 7.2.4 below.
- (35) The guarantee letter, dated 3 October 2011, states that the guarantee is void if the State '*has used its rights according to [...] Clause 7.4 [of the Agreement] and the State has become no less than 99,78 % shareholder of voting shares of [airBaltic]*'. Indeed, Latvia became 99,8 % shareholder of airBaltic on 30 November 2011.
- (36) Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)*, [2003] ECR I-7747, para 81.
- (37) Commission Decision 2011/414/EU of 14 December 2010 on the State aid C 8/10 (ex N 21/09 and NN 15/10) implemented by Greece in favour of Varvaressos S.A. ([OJ L 184, 14.7.2011, p. 9](#)).
- (38) See Commission decision in case SA.30908 — *CSA — Czech Airlines — Restructuring plan*, at para. 107 and Commission decision in case SA.33015 — *Air Malta plc.* at para. 93. See as well Commission Decision 2010/137/EC of 28 August 2009 on State aid C 6/09 (ex N 663/08) — *Austrian Airlines — Restructuring Plan* ([OJ L 59, 9.3.2010, p. 1](#)) at para. 296 and Commission Decision 2012/542/EU of 21 March 2012 on the measure SA.31479 (2011/C) (ex 2011/N) which the United Kingdom plans to implement for Royal Mail Group ([OJ L 279, 12.10.2012, p. 40](#)), at para. 217.
- (39) Respectively revenue per available seat kilometre (RASK) and cost of available seat kilometre (CASK).
- (40) See recital 194 below.
- (41) Namely the routes between [...]. The Commission understands that the closures of these routes are pure compensatory measures since nothing suggests that they were closed as a necessary consequence of the reduction of the fleet.

Status: This is the original version (as it was originally adopted).

- (42) See Commission decision in case SA.30908 — *CSA — Czech Airlines — Restructuring plan*, at para.130 and 131.
- (43) Fully coordinated airports are defined in Article 2(g) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports ([OJ L 14, 22.1.1993, p. 1](#)). According to Article 3(4) of Regulation (EEC) No 95/93, these airports experience, at least during certain periods, capacity constraints.
- (44) See Commission decision of 13 September 2006 in State aid case N 447/2006 — *Latvia — Regional aid map 2007-2013*.
- (45) The total costs for transitioning the aircraft from an operator in default to meeting the delivery requirements for a new customer can easily run to up to [...] % of the aircraft's book value.
- (46) See *Czech Airlines* decision, para.119 and 145.