

Commission Decision of 28 August 2009 on State aid C 6/09 (ex N 663/08) — Austria Austrian Airlines — Restructuring Plan (notified under document C(2009) 6686) (Only the German text is authentic) (Text with EEA relevance) (2010/137/EC)

- Article 1 Subject to the conditions set out in Article 2, the...
- Article 2 (1) Austria shall take the necessary measures to ensure that...
- Article 3 This Decision is addressed to the Republic of Austria.
- Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 28 August 2009 on State aid C 6/09 (ex N 663/08) — Austria Austrian Airlines — Restructuring Plan (notified under document C(2009) 6686) (Only the German text is authentic) (Text with EEA relevance) (2010/137/EC). (See end of Document for details)

- (1) [OJ C 57, 11.3.2009, p. 8.](#)
- (2) See footnote 1.
- (3) Not yet published in the Official Journal.
- (4) *Amtsblatt zur Wiener Zeitung* and *Financial Times* (European edition).
- (5) From Air France/KLM, Deutsche Lufthansa and S7 (a Russian airline).
- (6) Confidential information.
- (7) For Air France/KLM's position on the privatisation process, see Section 4.4 below.
- (8) Three years after the closing date or, at the latest, after the financial reports have been submitted for the period ending on 31 December 2011, ÖIAG will receive an additional payment of up to EUR 162 million, calculated on the basis of the following formula, [...].
- (9) See recital 71 of the Commission Decision of 19 January 2009 on State aid NN 72/08, Austria — Austrian Airlines — Rescue aid.
- (10) Negative prices are indicated in brackets in the following.
- (11) [OJ C 244, 1.10.2004, p. 2.](#)
- (12) [OJ C 350, 10.12.1994, p. 5.](#)
- (13) Commission Decision of 17 September 2008 on State aid N 321/08, N 322/08 and N 323/08, Greece — Sale of certain assets of Olympic Airlines/Olympic Airways Services, not yet published in the Official Journal, recitals 59, 184 and 185; and Commission Decision of 12 November 2008 on State aid N 510/08, Italy — Alitalia, [OJ C 46, 25.2.2009, p. 6](#), recitals 29, 123 and 124.
- (14) Commission Decision 2000/628/EC of 11 April 2000 on the aid granted by Italy to Centrale del Latte di Roma, [OJ L 265, 19.10.2000, p. 15](#), recital 91; and Commission Decision 2001/798/EC of 13 December 2000 on the State aid implemented by Germany for SKET Walzwerktechnik GmbH (aid C 70/97 (ex NN 123/97)), [OJ L 301, 17.11.2001, p. 37](#).
- (15) Commission Decision 2008/767/EC of 2 April 2008 on the State aid C 41/07 (ex NN 49/07) which Romania has implemented for Tractorul, [OJ L 263, 2.10.2008, p. 5](#), recital 44.
- (16) Article 4(a) in conjunction with Article 3(2) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), [OJ L 293, 31.10.2008, p. 3](#).
- (17) Commission Decision of 12 November 2008 on State aid N 510/08, Italy — Alitalia, [OJ C 46, 25.2.2009, p. 6](#), recital 125.
- (18) Within the framework of the foundation established in the course of the Swissair/Sabena merger (Commission Decision 95/404/EC), an administrative council was set up which was given operative powers.
- (19) See points 402 and 403 of the *XXIIIrd Report on Competition Policy 1993* (ISBN 92-826-8374-5).
- (20) Section 26(1) of the Austrian Takeover Act.
- (21) An exemption from the compulsory offer would not have been acceptable, as this would only have meant that there was no need to submit a compulsory offer at that time, but that such an offer would have had to be submitted for the takeover of at least 90 % of Austrian Airlines at a later point in time. A reduction of the takeover price would have made the takeover of Austrian Airlines by Lufthansa more difficult, as the reduced takeover price would have been much lower than the stock-market price, and shareholders' acceptance of the takeover offer would have been lower.
- (22) Commission Decision 2002/631/EC of 7 May 2002 on aid allegedly granted by Germany to RAG AG in connection with the privatisation of Saarbergwerke AG, [OJ L 203, 1.8.2002, p. 52](#), recital 60; Commission Decision 2002/200/EC of 3 July 2001 on State aid which Spain has implemented and is planning to implement for the restructuring of Babcock Wilcox España SA, [OJ L 67, 9.3.2002, p. 50](#), recital 61.
- (23) Commission Decision 2008/366/EC of 30 January 2008 on State aid C 35/06 (ex NN 37/06) implemented by Sweden for Konsum Jämtland Ekonomisk Förening, [OJ L 126, 14.5.2008, p. 3](#), recitals 50 and 58.

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- (24) [...].
- (25) See the ECJ's judgment of 21 March 1991 in Case C-305/89 *Italy v Commission* (ALFA Romeo) [1991] ECR I-1603 and the ECJ's judgment of 14 September 1994 in joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* (Hytasa) [1994] ECR I-4103.
- (26) The analysis conducted by Merrill Lynch allocates losses in value to ÖIAG and the Republic of Austria only to the extent of their respective shareholdings.
- (27) This is made up of [...].
- (28) *Source: Airlines Business* 11/1999, p. 83.
- (29) OJ L 138, 30.4.2004, p. 50.
- (30) See points 402 and 403 of the *XXIIIrd Report on Competition Policy 1993* (ISBN 92-826-8374-5).
- (31) Judgment of the Court of Justice of 16 May 2002 in Case C-482/99 *France v Commission* (Stardust Marine) [2002] ECR I-4397, paragraph 71.
- (32) The discounting factor for the calculation of the terminal value (hereinafter TV) is calculated as the difference between the applied WACC and the estimated stable long-term growth rate (in this case [...]).
- (33)
- | Phase II | 2013budget | 2014budget | 2015budget | 2016budget | 2017budget | 2018budget | 2019budget | 2020budget | 2021budget | Total |
|----------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------|
| FCF | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] |
| WACC | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | |
| NPV | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] |
- (34) A credit default swap is a derivative credit instrument which requires the buyer of this swap to make a series of payments to the seller and — in exchange — the buyer receives a payoff if a bond or loan goes into default (is not serviced).
- (35) See footnote 23.
- (36) In this regard, see also Commission Decision 2008/767/EC.
- (37) Judgment of the Court of Justice of 21 March 1991 in Case C-305/89 *Italy v Commission* (ALFA Romeo) [1991] ECR I-1603, paragraph 40; judgment of the Court of Justice of 20 September 2004 in Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 77; and judgment of the Court of Justice of 29 April 2004 in Case C-277/00 *Germany v Commission* (SMI) [2004] ECR I-3925, paragraph 80.
- (38) See, for example, Erste Group Research: <http://produkte.erstegroup.com/CorporateClients/de/ResearchCenter/Overview/index.phtml> or Raiffeisen Centrobank Equity Research: http://www.rcb.at/_sterreich.aktienoesterreich.0.html
- (39) OJ L 24, 29.1.2004, p. 1.
- (40) Under case law, this should be the case where ‘those aspects of aid which contravene specific provisions of the Treaty other than Articles 92 and 93 may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately’ (see the judgment of the Court of Justice of 22 March 1977 in Case 74/76 *Ianelli v Meroni* [1977] ECR 557 and the judgment of the Court of Justice of 15 June 1993 in Case C-225/91 *Matra v Commission* [1993] ECR I-3203, paragraph 41).
- (41) See footnote 8.
- (42) See footnote 27.
- (43) [...]
- (44) Case COMP/M.5440 — Lufthansa/Austrian Airlines.
- (45) i.e. the authorisation issued to an airline to use an airport's infrastructure on a certain day and at a certain time for the purpose of take-off or landing.
- (46) Such concerns exist for the routes between the following cities: Vienna-Stuttgart, Vienna-Cologne, Vienna-Munich, Vienna-Frankfurt and Vienna-Brussels.

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- (47) Defined as ‘any airline or airlines that are members of the same alliance (with the exception of the two combining parties and all airlines controlled by them) offering new or additional competing air transport services either individually or collectively through code sharing’.
- (48) [OJ L 157, 30.4.2004, p. 7.](#)
- (49) See footnote 28.
- (50) See recital 15.

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