

DECISIONS

COMMISSION DECISION

of 9 July 2014

on the measure SA.35668 (13/C) (ex 13/NN) (ex 12/CP) implemented by Denmark and Sweden for Scandinavian Airlines

(notified under document C(2014) 4532)

(Only the English text is authentic)

(Text with EEA relevance)

(2014/938/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid SA.35668 (13/C) (ex 13/NN) (ex 12/CP) ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) In late October 2012, the Commission and the EFTA Surveillance Authority ('ESA') were informally contacted by Denmark, Sweden and Norway (jointly 'the States') in relation to their intention to participate to a new Revolving Credit Facility ('the new RCF') in favour of Scandinavian Airlines ('SAS', 'the SAS Group' or 'the company'). On 12 November 2012, the States decided to participate to the new RCF without however formally notifying the measure to the Commission.
- (2) On 14 November 2012, the Commission opened an *ex officio* case on the new RCF. The Commission sent requests for information to Denmark and Sweden on 29 November 2012, 18 December 2012, 28 January 2013, and 18 February 2013, replied to on 6 December 2012, 8 January 2013, 5 and 13 February 2013, and 22 March 2013 respectively. Denmark and Sweden provided additional information by letter of 3 June 2013.
- (3) In addition, on 20 November 2012 the Commission received a complaint from Ryanair, followed by one from the European Low Fares Airline Association ('ELFAA') on 4 February 2013, on which Denmark and Sweden provided comments by letter dated 22 March 2013.
- (4) By letter dated 19 June 2013, the Commission informed Denmark and Sweden that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid (hereinafter 'the opening decision'). Denmark and Sweden submitted comments on the opening decision by letters dated 19 August 2013.
- (5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾ on 28 September 2013. The Commission invited interested parties to submit their comments on the measures.

⁽¹⁾ OJ C 283, 28.9.2013, p. 8.

⁽²⁾ Cf. footnote 1.

- (6) The Commission received observations from the SAS Group and from Foundation Asset Management Sweden AB ('FAM') ⁽³⁾ on 28 October 2013. On 5 November 2013, the Commission forwarded these observations to Denmark and Sweden, which were given the opportunity to react. By letters of 4 and 5 December 2013, the Danish and Swedish authorities noted that they had no comments on the observations of the SAS Group and FAM.
- (7) The Commission requested additional information from Denmark and Sweden by letter of 25 February 2014, replied to on 25 March 2014 by both Member States. In addition, by letters dated 5 and 7 March 2014, the Danish and Swedish authorities informed the Commission that SAS had decided to cancel the new RCF and investigate alternative possibilities to strengthen its capital base. The cancellation was effective from 4 March 2014.
- (8) By letters dated 4 and 7 July 2014, Sweden and Denmark respectively agreed to waive their rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation No 1/1958 and to have the present decision adopted and notified in English.
- (9) For this procedure, the Commission is solely competent to assess whether the provisions of the TFEU have been respected by Denmark and Sweden. On the other hand, the ESA, pursuant to Article 109(1) of the Agreement on the European Economic Area ('EEA Agreement') in conjunction with Article 24 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, is competent to assess whether the provisions of the EEA Agreement have been complied with by Norway. Also, on the basis of Article 109(2) and Protocol 27 to the EEA Agreement, in order to ensure a uniform application throughout the EEA, the ESA and the Commission shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases.
- (10) In the light of the above and given the parallel competence of both institutions in the present case, the Commission has cooperated and consulted with the ESA before adopting the present decision.

2. THE SCANDINAVIAN AIR TRANSPORT MARKET

- (11) Between 2001 and 2011, the Scandinavian air transport market (encompassing Denmark, Sweden, Finland and Norway) reportedly grew by 126 % in ASK ⁽⁴⁾ terms. Almost all of the growth in the short-haul Scandinavian market came from low-cost carriers, in particular Norwegian Air Shuttle and Ryanair. Indeed, it is estimated that low-cost carriers generated 90 % of the growth in that period ⁽⁵⁾.
- (12) Despite the increase in the importance of low-cost carriers, the largest player in the Scandinavian market is still SAS, with an estimated market share in 2011 of 35,6 %, far from the highs above 50 % enjoyed a decade ago. The market shares of Norwegian Air Shuttle and Ryanair reached 18,7 % and 6,8 % respectively in that year.

3. THE BENEFICIARY

- (13) SAS is the flag carrier of the States, the largest airline in Scandinavia and the eighth-largest airline in Europe. It is also a founding member of the Star Alliance. The airline group, which includes Scandinavian Airlines, Widerøe ⁽⁶⁾ and Blue1, is headquartered in Stockholm with its main European and intercontinental hub at Copenhagen Airport. In 2013, SAS carried around 28 million passengers, achieving revenues of around SEK 42 billion.
- (14) SAS is currently 50 % owned by the States: 21,4 % by Sweden, 14,3 % by Denmark, and 14,3 % by Norway. The main private shareholder is the Knut and Alice Wallenberg's foundation ('KAW') (7,6 %), while the remaining shareholders own stakes of 1,5 % or less.

⁽³⁾ FAM is the company responsible for the management of the assets of the Knut and Alice Wallenberg's foundation.

⁽⁴⁾ Available Seat Kilometre (ASK) is a measure of an airline flight's passenger carrying capacity. It is equal to the number of seats available multiplied by the number of kilometres flown.

⁽⁵⁾ Source: <http://www.airlineleader.com/regional-focus/nordic-region-heats-up-as-all-major-players-overhaul-their-strategies>

⁽⁶⁾ See footnote 12 and paragraph 31, concerning the sale of 80 % of the shares of Widerøe.

Table 1

Principal shareholders in SAS AB on 31 March 2012 ⁽¹⁾

Shareholder	Total (%)
The Swedish Government	21,4
The Danish Government	14,3
The Norwegian Government	14,3
Knut and Alice Wallenberg's foundation	7,6
Försäkringsaktiebolaget, Avanza Pension	1,5
A.H Värdepapper AB	1,4
Unionen	1,4
Denmark's National Bank	1,4
Robur Försäkring	0,9
Ponderus Försäkring	0,8
Andra AP-fonden	0,5
Tredje AP-fonden	0,5
SSB+TC Ledning Omnibus FD No OM79	0,5
Nordnet Pensionsförsäkring AB	0,4
Swedbank Robur Sverigefond	0,4
Swedbank Robur Sverigefond Mega	0,3
JPM Chase NA	0,3
AMF Aktiefond Småbolag	0,3
JP Morgan Bank	0,3
KPA Pensionsförsäkring AB	0,2
Nomura International	0,2

⁽¹⁾ Source: <http://www.sasgroup.net/SASGroup/default.asp>

- (15) The financial position of SAS has been weak for several years, with recurring losses between 2008 and 2013. In November 2012, Standard and Poor's ('S&P') downgraded its credit rating for the company from B- to CCC+ ⁽⁷⁾. These difficulties were heightened by the market environment of high fuel costs and uncertain demand.
- (16) In particular, it results from the annual reports of the company that, between 2008 and 2012, SAS has incurred substantial losses every year and has registered significant amounts of financial net debt.

⁽⁷⁾ More recent developments in S&P's credit rating for SAS are discussed in footnote 25 below.

Table 2

SAS' key financial data 2007-12 (SEK million) ⁽¹⁾

	2007	2008	2009	2010	2011	2012 (Jan-Oct)
Revenue	50 958	52 870	44 918	41 070	41 412	35 986
Financial net debt	1 231	8 912	6 504	2 862	7 017	6 549
EBT	1 044	- 969	- 3 423	- 3 069	- 1 629	- 1 245
Net income	636	- 6 360	- 2 947	- 2 218	- 1 687	- 985
Cash flow for the year	- 1 839	- 3 084	- 1 741	868	- 1 243	- 1 018
Return on capital employed (ROCE) — %	6,7	- 19,6	- 11,7	- 7,6	- 2,2	- 8,1
Return on book equity after tax — %	3,8	- 47,6	- 26,8	- 17,0	- 12,0	- 24,8
Interest coverage ratio — %	1,8	- 5,3	- 4,4	- 1,9	- 0,6	- 1,6

⁽¹⁾ Source: annual reports of SAS for the period 2008-12, available at <http://www.sasgroup.net/SASGroup/default.asp>

- (17) As a result of its deteriorating financial position, SAS followed a substantial cost reduction program ('Core SAS') in 2009/10. In implementing that program, SAS had to raise equity from its shareholders by way of two rights issues: (i) SEK 6 billion in April 2009; and (ii) SEK 5 billion in May 2010 (*).
- (18) The financial difficulties of SAS reached a peak in 2012, when the company presented the 4 Excellence Next Generation business plan ('4XNG plan'), perceived by the management of the airline as the 'final call' for SAS ⁽⁸⁾. In addition, in November 2012 the press reported the possibility of SAS going into bankruptcy ⁽⁹⁾.

4. DESCRIPTION OF THE MEASURE: THE NEW RCF IN 2012

- (19) As for other airlines globally, SAS has relied on external credit facilities to maintain a minimum level of liquidity. From 20 December 2006, SAS relied on a RCF that was due to expire in June 2013 (the old RCF). The old RCF amounted to EUR 366 million and was exclusively provided by a number of banks ([...] ⁽¹⁰⁾). It also included a number of financial covenants or conditions, such as [...].
- (20) In December 2011, as a result of the deterioration in the company's business performance, SAS management decided to draw the old RCF in full. Following an application for bankruptcy by a subsidiary of SAS (namely Spanair) in January 2012, SAS entered into negotiations with the banks and reached an agreement for a covenant reset on 15 March 2012. This covenant reset increased the cost of drawing the old RCF, tightened the drawdown

(*) Business secret.

⁽⁸⁾ The rights issues of 2009 and 2010 were the subject of a Commission Decision in case SA.29785 (available at http://ec.europa.eu/competition/state_aid/cases/249053/249053_1461974_61_2.pdf), where the Commission concluded that the right issues did not involve State aid.

⁽⁹⁾ See in this sense the words of the CEO of SAS, quoted by Reuters on 12 November 2012: "This truly is our 'final call' if there is to be a SAS in the future," said Chief Executive after launching a new rescue plan for the airline [...] which has not made a full-year profit since 2007", available at <http://www.reuters.com/article/2012/11/12/uk-sas-idUSLNE8AB01O20121112>. See as well the article entitled 'SAS tops European airline critical list' in the Financial Times of 13 November 2012, available at <http://www.ft.com/intl/cms/s/0/fa1cbd88-2d87-11e2-9988-00144feabdc0.html#axzz2TSY5JHUH>

⁽¹⁰⁾ See for instance Reuters on 18 November 2012 (<http://www.reuters.com/article/2012/11/19/sas-idUSL5E8MI6IY20121119>) and the Financial Times of 19 November 2012 (<http://www.ft.com/intl/cms/s/0/43e37eba-322f-11e2-b891-00144feabdc0.html#axzz2TSY5JHUH>).

conditions and required SAS to provide full and immediate repayment of the drawn amount. In addition, SAS had to provide the lenders with a Recapitalisation Plan that had to be endorsed by the Board and the main shareholders, i.e. the States and KAW.

- (21) The Recapitalisation Plan was underpinned by the so-called 4XNG plan that was already under development in early 2012. The 4XNG plan also addressed concerns expressed by [...] about the existing business plan of SAS called 4 Excellence ('4X plan'), in May 2012. According to SAS, the 4XNG plan would enable it to position itself as a financially self-sufficient airline. It set out a number of financial targets that SAS had to meet in the financial year 2014/15. These included an EBIT margin of above 8 %, a financial preparedness ratio of above 20 % and an equity ratio (equity/assets) in excess of 35 %. The 4XNG plan was supposed to allow SAS to improve its EBT by approximately SEK 3 billion on an annual basis, while its implementation would require restructuring costs and one-off costs of approximately SEK 1,5 billion.
- (22) A further objective of the 4XNG plan was to prepare the company for the introduction of new accounting rules for pensions from November 2013, which were anticipated to have a negative impact on the SAS Group's equity. In addition, the plan included a commitment to complete an asset disposal and financing plan, which totalled approximately SEK 3 billion in potential net cash proceeds. The asset disposal included ⁽¹¹⁾: (i) the sale of Widerøe, a subsidiary regional airline in Norway ⁽¹²⁾, (ii) the sale of a minority interest investment in the [...], (iii) the sale of airport-related real estate interests, (iv) the outsourcing of ground handling ⁽¹³⁾, (v) the sale of aircraft engines ⁽¹⁴⁾, (vi) the sale-and-lease-back or other financing transaction in respect of the [...], (vii) the outsourcing of management systems and call centres ⁽¹⁵⁾, and (viii) the sale or secured financing of three Q400 aircraft.
- (23) The States insist that the 4XNG plan was self-financing, which means that SAS would generate enough cash from operations and non-core disposals to fund the upfront cost of implementing the 4XNG plan. However, SAS was concerned about investor perception of a weak liquidity position as a result of the significant upfront costs of implementing the 4XNG plan. SAS thus requested an extension of the old RCF together with the introduction of the new RCF supported by the States and KAW. However, SAS argued that neither the old RCF (as extended) nor the new RCF would be drawn.
- (24) Discussions on the new RCF commenced on 4 June 2012 ⁽¹⁶⁾. Initially, in line with the Recapitalisation Plan (see paragraph 20 above), the banks that were lenders of the old RCF required that the States provide another round of equity, e.g. a rights issue, since they were unwilling to support a new RCF on their own. However, the States rejected this idea.
- (25) After some negotiations, the banks accepted a new RCF that would be set up jointly with the States and KAW and would be structured strictly on equal terms without subordination or disproportionate rights to security. It must be noted that the new RCF was initially targeted to be SEK [3-6] billion in size, while only SEK [1-4] billion of available security existed. On 22 October 2012, the size of the new RCF was finally reduced to SEK 3,5 billion (approximately EUR 400 million).
- (26) The new RCF was provided by the same banks that provided the old RCF (except one ⁽¹⁷⁾) together with the States and KAW. In this regard, 50 % of the new RCF was provided by the States in proportion to their shareholding in SAS, and the remaining 50 % was provided by the banks and KAW. The States and KAW participated in the new RCF on the same terms (fees, interest rates, covenants) as the banks.

⁽¹¹⁾ According to information provided by the Danish and Swedish authorities, the sale of [...] — indicated in the opening decision — was removed from the final list of planned disposals, given the high uncertainty as regards the timing of sale and revenue generation.

⁽¹²⁾ On 20 May 2013, SAS reported that it had signed an agreement to sell 80 % of its shares in Widerøe to an investor group. SAS will retain a 20 % share in Widerøe but will have an option to transfer full ownership in 2016. See <http://mb.cision.com/Main/290/9410155/119539.pdf>

⁽¹³⁾ SAS has sold 10 % of the shares in its ground handling company to Swissport. This acquisition was effective as of 1 November 2013. The negotiations are currently on hold until Swissport has concluded the acquisition and integration of Servisair.

⁽¹⁴⁾ This has been completed having a liquidity effect of around SEK 1,7 billion.

⁽¹⁵⁾ These measures have largely been implemented and will amount to savings of around SEK 1 billion.

⁽¹⁶⁾ [...]

⁽¹⁷⁾ [...], one of the lenders under the old RCF, indicated that it would not be prepared to participate in the new RCF. As a result, [...] and [...] increased their participation in the new RCF proportionally.

- (27) The main characteristics of the new RCF were the following:
- It was divided into two sub-facilities of SEK 2 billion (Facility A) and SEK 1,5 billion (Facility B), in respect of which the States contributed 50 % of the value. The pricing conditions for both facilities included an up-front fee, a commitment fee, an utilisation fee, a margin and an exit fee.
 - SAS needed to satisfy certain conditions to be able to draw on the RCF, and these conditions were tighter for Facility B than for Facility A ⁽¹⁸⁾.
 - The new RCF continued the security package of the old RCF and in addition the lenders were granted security over all shares in Widerøe and all other unencumbered fixed assets of the SAS Group as of December 2012. The new RCF thus had first-ranking security on a number of SAS assets, including 100 % of the shares of its subsidiaries Widerøe and SAS Spare Engine, 18 aircrafts and a number of properties. These securities were valued with a book value of approximately SEK 2,7 billion (i.e. approximately 75 % of the new RCF) and were shared *pro rata* between Facility A and Facility B.
 - Facility B could only be drawn once Facility A had been drawn in full. After 1 January 2014, SAS would only have been able to draw down from it if the sale of Widerøe assets or shares had been completed.
 - The maturity of the new RCF was 31 March 2015.
- (28) The terms of the new RCF were agreed upon on 25 October 2012. It was, however, subject, inter alia, to parliamentary approvals for each of the States and the signing of union agreements with flight deck and cabin crew.
- (29) The States submitted a report prepared by CITI dated 7 November 2012 ('the CITI report') which sought to assess whether a private investor in a situation as close as possible to that of the States may have entered into the new RCF on similar terms and conditions. Assuming a successful implementation of the 4XNG plan in its base case, the CITI report concluded that the States' participation in the new RCF would generate an internal rate of return ('IRR') of [90-140] %, a cash-on-cash multiple of circa [4-9]x, and an increase in equity value of close to [700-1 200] % (from November 2012 until March 2015). The CITI report concluded that the return required by the States would thus be at least equal to that required by private investors in a similar position. However, the CITI report did not assess the probability of SAS successfully executing the 'base case' of the 4XNG plan, nor did it assess the impact of deviations from the 'base case' such as, for example, a failure to monetise non-core assets.
- (30) SAS announced on 19 December 2012 that all the necessary conditions for the new RCF to enter into force (see paragraph 28 above) were in place, including parliamentary approval in the States. As of this date and until 3 March 2014, the new RCF was effective, replacing the old RCF ⁽¹⁹⁾.
- (31) By letter of 3 June 2013, Denmark and Sweden explained that, as a result of the sale of 80 % of Widerøe's shares (paragraph 22 above), the States and the lending banks had agreed with SAS to a modification of the terms and conditions of the new RCF, although the amendment agreement had not yet been formally signed. In its comments submitted during the formal investigation, the Danish and Swedish authorities informed the Commission that the modification of the new RCF was signed by all parties and would enter into force when the Widerøe transaction was closed, i.e. on 30 September 2013. These modifications included the following:
- Facility A would be reduced from SEK 1,173 billion to SEK 0,8 billion and its maturity would be extended for five months until 1 June 2014.
 - SAS would pledge SEK [0,5-0,8] billion in cash as security for Facility A. The remaining SEK [0,1-0,4] billion would be secured by the securities already listed in the new RCF agreement.
 - SEK 0,2 billion of Facility A would be cancelled once the ground handling section was partly disposed of. By the time the new RCF was cancelled on 4 March 2014, SAS had entered into a letter of intent with a potential buyer ⁽²⁰⁾.
 - Facility B would be reduced from SEK 1,5 billion to SEK 1,2 billion.

⁽¹⁸⁾ See footnote 34 below.

⁽¹⁹⁾ See <http://www.reuters.com/finance/stocks/SAS.ST/key-developments/article/2662973>

⁽²⁰⁾ The commitment under Facility A was reduced from SEK 0,8 billion to SEK 0,6 billion on 31 October 2013 as a consequence of SAS selling a stake in SAS Ground Handling to Swissport.

5. THE OPENING DECISION

- (32) In its opening decision, the Commission expressed doubts as regards the *pari passu* participation of the States, KAW and the banks in the new RCF mainly because of the following:
- The banks' previous exposure to SAS through their participation in the old RCF. Indeed, the banks had roughly halved their contribution to the new RCF and therefore reduced their overall exposure to SAS by approximately 50 % in terms of RCF, while the States — which had received no return as regards the 2009 and 2010 rights issues in view of the persistently negative results of SAS — had increased their exposure to SAS.
 - The fact that SAS had drawn the old RCF completely in January 2012, which could have influenced the decision of the lending banks to participate in the new, so as to avoid any further drawdown and ensure that their RCF contributions were not completely lost in view of the difficulties of the company.
 - It was unclear to the Commission whether the banks' decision to participate in the new RCF was influenced by the States' continuous financial support to SAS in previous years. The Commission also noted that the involvement of the States was a strict requirement for the private operators to participate in the new RCF.
 - The Commission questioned whether KAW's participation in the new RCF could be compared to that of a private investor, given KAW's exposure to SAS not only through its shareholding but also *via* the bank SEB.
- (33) The Commission further questioned whether or not the participation of the States in the new RCF could be considered rational from a shareholder perspective and would fulfil the market economy investor ('MEI') test outside the *pari passu* line of reasoning. In this respect, the Commission assessed whether or not the 4XNG plan relied on sufficiently robust assumptions to induce a private investor to participate in the new RCF, and whether the sensitivity analyses carried out in the plan were overly optimistic.
- (34) For example, the Commission pointed, *inter alia*, towards the optimistic figures in the plan concerning market growth in ASK and GDP, as well as the 0 % inflation rate for the period 2015-17. Likewise, it doubted whether the successful implementation of all of the cost-savings and asset disposal initiatives could have been predicted at the time of signing the new RCF.
- (35) As regards the terms and conditions of the new RCF and CITI's assessment of the anticipated return from the States' participation in the new RCF, the Commission underlined the fact that the CITI report did not assess the 4XNG plan nor did it perform a sensitivity analysis of the financial model, but it merely relied on the information provided to it. The Commission also highlighted that the CITI report did not value the new RCF security from a private market investor perspective and that it did not consider the impact of possible alternative scenarios with less favourable assumptions (including default) on the return analysis. In this respect, the Commission noted that the CITI report assigned a zero probability to the likelihood that SAS would default in the next three years, which seemed an underestimation of the risk.
- (36) In view of the above, the Commission could not exclude that the States' participation in the new RCF could entail an advantage in favour of SAS within the meaning of Article 107(1) TFEU.
- (37) Finally, if the new RCF was to entail State aid within the meaning of Article 107(1) TFEU, the Commission doubted whether the new RCF could be regarded as compatible with the internal market. In this respect, the Commission assessed whether any of the possible compatibility grounds laid down in the TFEU would be applicable. In view of the nature of the measure and of the difficulties of SAS, the Commission noted that the only relevant criteria appeared to be those concerning aid for rescuing and restructuring firms in difficulty under Article 107(3)(c) TFEU on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²¹⁾ ('the R&R Guidelines'). However, the Commission came to the preliminary conclusion that the conditions for rescue and restructuring aid laid down in the R&R Guidelines did not seem to be met.

⁽²¹⁾ OJ C 244, 1.10.2004, p. 2.

6. COMMENTS ON THE OPENING DECISION

6.1. Comments from Denmark and Sweden

- (38) Denmark and Sweden maintain that their participation in the new RCF was on market terms since they participated in it *pari passu* with the banks and KAW, thereby excluding the presence of State aid.
- (39) Denmark and Sweden argue that SAS did not draw on the old RCF at any time during the period in which negotiations on the new RCF took place. They note the amendments to the old RCF in March 2012 introducing even more stringent drawdown conditions and argue that from the end of June 2012 the banks were thus in a position to reject any drawdown request from SAS. The amount drawn from the RCF was fully repaid by SAS in March 2012 and from that moment SAS did not draw on the old RCF. As a result, those banks could be reasonably considered as 'outside' investors participating in the new RCF on equal terms with the States ⁽²²⁾, without having any material unsecured exposure to SAS ⁽²³⁾.
- (40) Concerning KAW's participation in the new RCF together with the banks, the Danish and Swedish authorities are of the opinion that KAW had limited economic exposure to SEB and that this could not have affected its decision to participate in the new RCF.
- (41) Moreover, Denmark and Sweden hold that the 4XNG plan was realistic and that it could be successfully implemented. They maintain that all aspects and assumptions, including those concerning revenue projections ('RASK') ⁽²⁴⁾, cost-saving measures and planned disposals, were carefully examined to satisfy the financial targets in the 4XNG plan for 2014-15. Further, the 4XNG plan — together with all of the assumptions it relied upon — was closely scrutinised by the external financial advisers of both the States (Goldman Sachs) and the banks ([...]) and was adapted in view of their comments and recommendations. They also stress that the expectation of a successful implementation of the plan when deciding to participate in the new RCF was supported by the fact that the conclusion of new union agreements was a condition precedent for the new RCF. Furthermore, according to Denmark and Sweden, the developments between December 2012 and the cancellation of the new RCF on 4 March 2014 showed that the plan was on track to deliver the expected results ⁽²⁵⁾.
- (42) In relation to the terms and conditions of the new RCF, Denmark and Sweden argue that these were in conformity with normal market conditions, as they were similar to those of comparable deals and the new RCF also had higher upfront fees and more stringent conditions for drawdown than most deals analysed. As far as the security package was concerned, Denmark and Sweden state that the actual financial risks of the lending banks were negligible because the securities had an estimated value that clearly exceeded the size of Facility A. As a result, in a liquidation scenario, all of the lending banks' claims would be satisfied by the security package or by other SAS assets that could be sold, such as [...], its shareholding in [...], etc. The above is also supported by the actual cancellation of a significant part of the commitments under Facility A during the first half of 2013. According to Denmark and Sweden, this shows that the banks acted commercially and prudently when deciding to participate with the States and KAW in the new RCF.
- (43) Finally, Denmark and Sweden report that the participation in the new RCF has generated a significant return for the RCF lenders without SAS having to draw on the facility. This should support the view that the States' participation in the new RCF together with KAW and the banks was fully compliant with the MEI principle.

⁽²²⁾ The alternative would be to simply allow the old RCF to expire on 20 June 2013, while at the same time preventing any utilization in that period as long as SAS could not satisfy the drawdown conditions.

⁽²³⁾ The Danish and Swedish authorities provided information concerning some of the banks' other exposures to SAS in the form of bilateral facilities, various hedging arrangements, credit cards, aircraft financing facilities, overdraft facilities and real estate transactions. The Danish and Swedish authorities maintain that, with the possible exception of [...]'s exposure related to credit card payments, the banks did not have any material unsecured exposure to SAS. The various forms of exposure mentioned were either limited in size or were secured and consequently appeared insignificant in relation to the banks' decision to participate in the new RCF.

⁽²⁴⁾ Revenue per Available Seat Kilometre (RASK) is a commonly-used measure of revenue for airlines.

⁽²⁵⁾ Denmark and Sweden and SAS also emphasise in this regard that S&P upgraded its credit rating of SAS from CCC+ to B- with a stable outlook on 5 August 2013.

6.2. Comments from the SAS Group

- (44) The SAS Group argues that the States participated in the new RCF in their capacity as shareholders, not as public authorities. From that perspective, participating in such an instrument was preferable to an equity contribution, given the significant revenue generation for the shareholders/lenders in terms of fees, as well as the prospective increase in the share value.
- (45) As regards the *pari passu* test, the SAS Group states that this was fulfilled given that the banks had no exposure to SAS and, as a result, they should be treated as 'outside' investors. In addition, the States' participation in the new RCF did not influence the banks' behaviour, as it was SAS — and not the banks — who requested that the shareholders join the new RCF. Furthermore, the SAS Group maintains that the banks decided to participate in the new RCF on equal terms with the States and KAW based on the very positive results of the risk/revenue analysis.
- (46) The SAS Group further supports Denmark and Sweden's claim that the assumptions underlying the 4XNG plan were robust with very realistic forecasts as regards the three main drivers, namely market growth in ASK, GDP growth for 2015-17 and assumed inflation of 0 %. Also, the risks associated with the implementation of the plan were closely scrutinised by all lending banks with a particular focus on RASK as a key indicator of the company's profitability.
- (47) At the same time, the SAS Group argues that the security package was sufficiently assessed and that the risk of SAS defaulting on the implementation of the 4XNG plan was mitigated. This is supported by the fact that the delivery of cost savings was a condition precedent to the lenders entering into the new RCF and that the conclusion of new collective agreements in November 2012 was key to the successful implementation of the plan.
- (48) The SAS Group further criticises the Commission for having failed to take into consideration the bankruptcy alternative and the fact that the States would have lost the value of their combined shareholding had the new RCF not been made available. In this context, the SAS Group stresses that the States participated in the new RCF in their capacity as core shareholders in SAS aiming to obtain an appropriate return on their investment.
- (49) Finally, the SAS Group reports that the implementation of the 4XNG plan has achieved earnings before tax of SEK 3 billion, leading to a positive outcome for SAS for the period November 2012-July 2013.

6.3. Comments from FAM

- (50) According to FAM, the company responsible for the management of KAW's assets, the latter's decision to participate in the new RCF was taken irrespective of its interest in SEB and SEB's exposure to SAS. FAM argues that KAW neither had a majority shareholding in SEB, nor could it be said that it controls SEB.
- (51) FAM examined the 4XNG plan, the associated financial risks and the security package, and considered it to be in KAW's interest to participate in the new RCF. In this respect, it compared the prospect of protecting KAW's long-term investment in SAS and future possible returns on that investment, as well as the high fees which would be paid by SAS under the new RCF, against the winding up of SAS, which it did not consider to be an economically interesting option.
- (52) FAM also agrees with Denmark, Sweden and the SAS Group that all stakeholders participated in the new RCF on equal terms, without any form of subordination, disproportionate rights to securities, or otherwise asymmetrical terms. The decision to participate in the new RCF was based on a thorough analysis of the prospects of profitability resulting from a strong and competitive SAS in the future.
- (53) Finally, FAM shares Denmark and Sweden's view that the lending banks' decision to participate in the new RCF was based on commercial considerations, as their existing exposure under the old RCF was only theoretical. It argues that the banks had even less incentive to participate in the new RCF than the States and KAW, as the latter could count on a share price increase. It therefore maintains that the conditions of the *pari passu* test must be considered to be fulfilled.

7. ASSESSMENT OF THE MEASURE

7.1. Presence of State aid

- (54) By virtue of Article 107(1) TFEU ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market’.
- (55) The concept of State aid thus applies to any advantage granted directly or indirectly, financed out of State resources, by the State itself or by any intermediary body acting by virtue of powers conferred on it.
- (56) To constitute State aid, a measure must stem from State resources and must be imputable to the State. In principle, State resources are the resources of a Member State and of its public authorities, as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.
- (57) It cannot be disputed that the measure in question entailed State resources, since it was financed by resources coming from the States’ budgets, and that it was imputable to the State. In particular, it may be noted that the parliaments of Denmark and Sweden approved the participation of both Governments in the new RCF (paragraph 30 above).
- (58) The measure in question must distort or threaten to distort competition and be liable to affect trade between Member States.
- (59) According to established case-law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and on competition ⁽²⁶⁾. In this regard, the Commission is of the view that any potential economic advantage granted to SAS through State resources would fulfil this condition. SAS is in competition with other airlines in the European Union and the EEA, in particular since the third stage of air transport liberalisation (‘the third package’) entered into force on 1 January 1993 ⁽²⁷⁾. In addition, for journeys of relatively shorter distances within the EU, air travel is in competition with road and rail transport, and therefore road and rail carriers might also be affected.
- (60) The only criterion of the notion of State aid that is thus in question is whether the measure conferred a selective undue economic advantage on SAS.
- (61) In the light of the cancellation of the new RCF as from 4 March 2014, the Commission has assessed whether or not the new RCF conferred a selective undue economic advantage on SAS from the time of its establishment in 2012 until its cancellation in 2014.

7.2. Economic advantage in favour of SAS

- (62) In order to determine whether or not State aid was granted in favour of SAS within the meaning of Article 107(1) TFEU, the Commission will assess whether the airline received an economic advantage which it would not have obtained under normal market conditions. To examine this question the Commission applies the MEI test, according to which no State aid would be involved where, in similar circumstances, a private investor of a comparable size to the relevant bodies in the public sector, and operating in normal market conditions in a market economy, could have been prompted to provide the measure in question to the beneficiary.

⁽²⁶⁾ See Case 730/79 *Philip Morris Holland BV v Commission* [1980] EC-2671, paragraph 11; Case T-288/97 *Regione Friuli Venezia Giulia v Commission* [2001] ECR 2001 II-1169, paragraph 41; and Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)* [2003] ECR I-7747, paragraph 75.

⁽²⁷⁾ The ‘third package’ included three legislative measures: (i) Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1); (ii) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8); and (iii) Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15). These Regulations were incorporated in the EEA Agreement until the time they were repealed by 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 (OJ L 293, 31.10.2008, p. 3), as incorporated in the EEA Agreement by means of Annex XIII to the EEA Agreement.

- (63) According to the MEI test, the Commission therefore has to assess whether a private investor would have entered into the transaction under assessment on the same terms. The attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return ⁽²⁸⁾.
- (64) In principle, a contribution from public funds does not involve State aid if it takes place at the same time as a significant capital contribution by a private investor made in comparable circumstances and on comparable terms (*pari passu*) ⁽²⁹⁾.

7.2.1. *Pari passu participation of the States, KAW and the banks in the new RCF*

- (65) The Commission notes that the lending banks involved in the new RCF also participated in the old RCF. In the new RCF, however, the States increased their exposure to SAS, whereas the banks roughly halved their contribution (from EUR 366 million to approximately EUR 200 million) and therefore reduced their overall existing RCF exposure to SAS by approximately 50 %. In view of this, the Commission expressed doubts in the opening decision that the *pari passu* argument could be met as the States and the banks did not seem to be in comparable positions.
- (66) Denmark, Sweden and the SAS Group argue that the lending banks did not have any exposure under the old RCF, when negotiating their participation in the new RCF. The banks should therefore have been considered as 'outside' investors in a comparable position to the States and KAW.
- (67) The Commission notes that SAS had drawn completely on the old RCF in January 2012 (paragraph 20 above). Indeed, the amendments to the old RCF in March 2012 included, inter alia, a condition of full and immediate repayment of the amount drawn. The amounts were fully repaid in March 2012 and the amendments to the old RCF enacted on the same month made it extremely difficult for SAS to draw on the facility thereafter ⁽³⁰⁾. Also, SAS was required to provide a Recapitalisation Plan by June 2012, which had to be endorsed by the Board, as well as by the States and KAW as the main shareholders. This plan was initially rejected by the banks. It was not until November 2012 that the States, having carefully examined the revised 4XNG plan, decided to participate in the new RCF, followed by the banks.
- (68) As a result, the Danish and Swedish authorities and the SAS Group claim that SAS was effectively prevented from requesting a drawdown of the old RCF. Cognisant of that situation, the banks had to decide whether to continue with the old RCF until its expiry in June 2013, or to participate in the new RCF on equal terms with the States and KAW, despite the fact that the States and KAW, as shareholders, had greater incentives to participate with a view to potentially achieving higher value on their shares following the implementation of the 4XNG plan.
- (69) Although the Commission considers it likely that the banks, at least those with no other unsecured bilateral exposures to SAS, were not materially exposed to the old RCF at the time of taking a decision to participate in the new RCF, it is also of the opinion that there was still a risk that SAS could have met the drawdown conditions before the new RCF was in place. The fact that this did not happen and that the old RCF was not used after it was fully repaid in March 2012 is irrelevant in that respect. On this basis, it appears that the banks had a certain degree of exposure to SAS under the old RCF which the States (and KAW) did not have. Therefore, the Commission cannot accept the argument of the Danish and Swedish authorities that the banks participated in the new RCF as 'outside' investors, notwithstanding their exposure under the old RCF.
- (70) Furthermore, the Commission cannot agree with Denmark and Sweden that the exposure of some of the banks in the form of bilateral facilities linked to the old RCF ⁽³¹⁾ did not comprise any financial risk for the banks during the period of negotiating the new RCF, on the basis that these facilities could not have been drawn unless

⁽²⁸⁾ Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein — Westfalen v Commission* [2003] ECR-II435, paragraph 255.

⁽²⁹⁾ Case T-296/97 *Alitalia* [2000] ECR II-3871, paragraph 81.

⁽³⁰⁾ [...]

⁽³¹⁾ Apart from the old RCF, three banks had by 30 September 2012 exposures in the form of bilateral facilities linked to the old RCF which could not be drawn unless the old RCF was drawn in full. The amounts of the individual bilateral facilities were EUR [400-800] million for [...], EUR [200-400] million for [...] and EUR [400-800] million for [...].

the old RCF was drawn in full. As mentioned above, there was a risk, even if admittedly small, that the drawdown conditions could have been met despite the fact that, following the amendments in March 2012 and the stringent conditions introduced, the probability of SAS drawing on the old RCF was very low.

- (71) Moreover, it appears that some banks had other exposure to SAS. For example, in addition to participating in the old RCF, [...] had — as of 30 September 2012 — an unsecured (and undrawn) bilateral exposure to SAS of EUR [200-600] million, as well as an unsecured credit card exposure of EUR [500-900] million. It could therefore have been responsible for covering any costs of reimbursing customers should SAS have cancelled the corresponding flights. While this unsecured credit card exposure represented [0-2] % of [...]’s total credit portfolio of around SEK [1 000-3 000] million, it nonetheless constituted a financial risk and it therefore cannot be accepted that [...] was in a comparable position vis-à-vis the States when deciding to participate in the new RCF.
- (72) In addition, three other banks had exposure in terms of outstanding aircraft financing facilities (e.g. [...]). Although the States argue that the financings were secured by the aircraft and did not represent a financial risk for the banks because they could be easily sold on the market, this has not been factually proven. It remains unclear whether, in case of fire-sale of the aircraft, the total amount would indeed have been recovered.
- (73) Further, in the opening decision the Commission questioned whether the banks’ behaviour could have been influenced by the States’ conduct, given the States’ continuous financial support to the airline in previous years (e.g. the 2009 and 2010 rights issues). In addition, the banks were willing to participate in the new RCF only on condition that the States participated in it, as explained in paragraphs 23 and 24 above.
- (74) In principle, the Commission considers that the *pari passu* condition cannot be applicable in cases where the States’ involvement constitutes a strict requirement for the private operators to participate in the transaction.
- (75) In the course of the formal investigation, Denmark, Sweden and the SAS Group argued that at no stage during the negotiations for the new RCF did the banks feel ‘contaminated’ by the States’ past conduct and their continued willingness to support SAS, despite the fact that the States’ revenue forecasts on the rights issues of 2009 and 2010 fell short.
- (76) The Commission cannot exclude the possibility that private operators would not have been willing to invest in a business with such a track record and unpredictable projections, unless with the participation of the States. At the same time, it cannot exclude either that the States, which had refused to provide new equity and to enter into a subordinated RCF, were no longer willing to put additional funds into SAS. Notwithstanding these considerations, the Commission remains unconvinced that the participation of the States in the new RCF was made on *pari passu* terms with the lending banks, taking into account that the States’ participation resulted in the banks reducing their overall RCF exposure to SAS by approximately 50 %, whereas at the same time the States increased their exposure to SAS.
- (77) In relation to whether or not KAW’s behaviour could be considered a reference point to establish the conduct of a private investor, the formal investigation showed that KAW’s exposure to SAS through its shareholding in SEB was smaller than that indicated in the opening decision. Taking into account that KAW is no more than a minority shareholder in SEB and that SEB’s exposure to SAS was limited, it could be argued that KAW’s participation in the new RCF was motivated by prospects of profitability of the investment.
- (78) Further to the above, the formal investigation has not enabled the Commission to conclude with certainty that the transaction at issue took place on *pari passu* terms.
- (79) Irrespective of the *pari passu* assessment, the Commission has also examined whether or not the States’ participation in the new RCF could be considered rational from a shareholder perspective and would fulfil the MEI test outside of the *pari passu* line of reasoning.

7.2.2. Assessment of the States' participation in the new RCF under the MEI test

- (80) The question to be addressed is whether or not a private investor in the same position as the States, i.e. as existing shareholders in SAS and facing a similar set of circumstances as the States in 2012, would have entered into the new RCF on similar terms and conditions ⁽³²⁾.
- (81) The independent analyses undertaken by external financial advisers (namely Goldman Sachs International and CITI as advisers to the States and [...] as adviser to the lenders) prior to the conclusion of the new RCF are instructive in this regard. According to Denmark and Sweden, the States only decided to participate in the new RCF after close scrutiny of the 4XNG plan by its external advisors and following adjustment of the terms and conditions of the new RCF.
- (82) While the Commission expressed some reservations in its opening decision regarding the scope of the report prepared by CITI, Denmark and Sweden have clarified that their decision to participate in the new RCF drew on all of the analyses prepared by its financial advisers and that the CITI report should therefore not be assessed in isolation.
- (83) The financial advisers were tasked, *inter alia*, with providing a critical analysis of the 4XNG plan and the new RCF and of relevant sensitivities and vulnerabilities in that regard. This analysis was conducted over successive reports with reference to the historical performance of SAS and to other industry benchmarks. The advisers issued a range of recommendations regarding risk-mitigating strategies for both the 4XNG plan and the new RCF. In line with this advice, the States requested a number of adjustments to the 4XNG plan (to accelerate cost-saving measures and accommodate additional initiatives), as well as adjustments to the terms of the new RCF to reduce the likelihood of a drawdown.
- (84) In analysing the 4XNG plan, the external advisers identified and paid particular attention to key areas of possible risk, including cost savings targets, disposals and RASK pressure. This risk assessment resulted, *inter alia*, in the following considerations:

— Cost-savings targets

Further to the external advice received, the 4XNG plan was modified and strengthened to include cost-saving initiatives of approximately SEK [1-4] billion p.a. (increased from the original target of SEK [1-4] billion p.a.). While non-delivery of cost-savings targets was identified as a concern, a key move to de-risk the 4XNG plan in advance of finalising the new RCF was the conclusion of new union agreements with employee compensation and benefit cuts, as well as pension plan changes in November 2012. This resulted in direct cost savings of just under SEK [0-3] billion p.a. [...] which, at the request of the States, had to be successfully executed before the new RCF could enter into effect.

— Disposals

Further to the initial assumptions on asset disposals being challenged by the external financial adviser, and also due to new information which materialised during the process, the final list of planned disposals in the 4XNG plan deviated from the list initially put forward by SAS ⁽³³⁾. The States' financial adviser ultimately concluded that the disposals (with an estimated disposal value of approximately SEK 3,0 billion) included in the final 4XNG plan were feasible within the estimated timeframe. Furthermore, the new RCF contained provisions for the timing of the Widerøe sale, as well as for the strict application of disposal proceeds towards repayment of the new RCF.

— RASK pressure

The underlying yield and RASK pressure assumptions were assessed and deemed reasonable taking into account relevant data on historical trends, third-party forecasts and known changes in the competitive environment at that time. These assumptions were therefore not considered to pose a significant downside risk to the execution of the 4XNG plan.

- (85) In relation to the Commission's doubts in the opening decision concerning the optimistic nature of specific drivers in the 4XNG plan (e.g. market growth in ASK, GDP forecasts and 0 % inflation for the period 2015-17), the information submitted by Denmark, Sweden and the SAS Group during the formal investigation indicates that these estimates took particular account of the main markets in which SAS is active. This included the company's more pronounced exposure to northern rather than to southern Europe, as well as its exposure to the US

⁽³²⁾ Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 20.

⁽³³⁾ For example, [...] was removed from the final list of planned disposals [...].

and Asian markets. The submissions further indicate that the estimated cost inflation of 0 % p.a. for the period 2015-17 is the net effect of an underlying rate of inflation of 2 % p.a. (in line with the estimated EU inflation level) and the assumption that it would be possible to neutralise this *via* new cost-savings measures.

- (86) As regards the lack of sensitivity testing on the IRR analysis presented in the CITI report (see paragraph 35 above), as well as the Commission's initial concerns regarding the potential impact of less optimistic scenarios, the Commission has received additional information from Denmark and Sweden in their submissions on the opening decision concerning the extent of sensitivity analysis undertaken. In this regard, Goldman Sachs presented a range of sensitivity tests during the development of the 4XNG plan over the period June to September 2012. A revised analysis in September 2012 indicated that SAS would not run out of cash even under the downside scenarios presented, i.e. in all cases analysed the SAS cash position would remain above the bottom end of the RCF corridor. However, to maintain market confidence, it was considered that a liquidity backstop was needed and that the RCF remained the most realistic option for such back-up liquidity.
- (87) The Commission thus notes the successive financial reviews conducted on the 4XNG plan (including extensive analysis and testing of various iterations of the plan). The Commission also notes the States' resulting demands to lower the implementation risks and achieve a consolidated restructuring plan in advance of entering into the new RCF. Such actions would appear to be in accordance with those of a prudent private market investor. Notwithstanding this, it still needs to be considered whether or not the terms and conditions of the new RCF were in line with what a private market investor, in the same position as the States, i.e. as existing shareholders in the company, would have accepted.
- (88) Denmark, Sweden and the SAS Group have explained that a specific characteristic of the airline sector is the need to maintain a high level of financial preparedness to preserve customer and stakeholder confidence in the ability of the business to continue operations. Given the financial difficulties facing SAS in 2012 and the prevailing liquidity situation at that time, a likely motivation for the States' participation in the new RCF, as shareholders in SAS, was the avoidance of higher losses or bankruptcy in the event of a liquidity run on the company.
- (89) In this respect, the States appear to have drawn notably on recommendations from the independent financial advisers when finalising the terms and conditions of the new RCF. Indeed, it appears that the terms and conditions of the new RCF were collectively aimed at mitigating the main commercial risks identified. For example, as noted in paragraph 84 above, a key condition precedent to the implementation of the new RCF was the successful execution of new collective agreements with flight crews. Furthermore, the drawdown conditions applicable to Facility B appeared to render it very unlikely that it could have been drawn before March 2015 ⁽³⁴⁾. The financial covenants attached to the new RCF were also structured in such a way that, unless SAS was able to execute the key financial projections contained in the 4XNG plan, it would not have had access to the RCF or it would have had to repay any amount drawn on the RCF at the time ⁽³⁵⁾.
- (90) In addition to the above observations, the Commission has received additional information concerning the adequacy of the underlying collateral for the new RCF. In a report dated May 2012, [...] provided an independent valuation of Widerøe and certain tangible assets (including spare engines, relevant aircraft, a number of smaller properties and some equipment) which were subsequently used as security for the new RCF. While the focus was on Widerøe, as the most important asset in the security package, and the assessment of the other assets was based on more limited information, the overall valuation implied a total asset value of approximately SEK [1-4]-[3-6] billion. The total estimated value of the assets subject to security thus exceeded the size of Facility A. According to Denmark and Sweden, this was considered sufficient comfort for the new RCF lenders since, as noted above, the likelihood that SAS would ever draw on Facility B was considered negligible.
- (91) The actual financial risks associated with the new RCF were further mitigated by provisions on mandatory prepayment and/or cancellation of the commitments under the new RCF, if SAS disposed of certain assets or engaged in other financing options. Such prepayment and cancellation provisions had the effect of reducing the

⁽³⁴⁾ For example, one of the drawdown conditions for Facility B was that SAS should have an EBITDAR of at least SEK [5-9] billion on a 12-month rolling basis. Since this exceeded the EBITDAR projected for each year of the period 2012-15, it was considered unlikely that SAS would be in a position to draw on Facility B during the time horizon of the new RCF.

⁽³⁵⁾ The financial covenants related to [...]. The latter two financial covenants were adjusted on a quarterly basis based on the financial model underlying the 4XNG plan, implying that SAS was required to meet its own financial targets.

potential loss over time. Indeed, as a result of the Widerøe sale, and pursuant to an agreement which entered into force upon that sale in September 2013 (see paragraph 31 above), the overall size of the new RCF was reduced from SEK 3,5 billion to SEK 2 billion.

- (92) It therefore appears that a comprehensive and coherent set of measures were taken, specifically aimed at ensuring the ongoing viability of SAS over the period 2012-15 and limiting the key financial risks associated with the new RCF.
- (93) Furthermore, the Commission recognises the need to consider whether a comparable private investor, facing similar market circumstances to the States (i.e. as existing shareholders in SAS), could have been prompted to provide the measure in question to the beneficiary. To this end, it is also useful to consider possible counterfactual situations arising in the absence of the measure being provided.
- (94) In this respect, Denmark, Sweden and the SAS Group claim in their submissions on the opening decision that bankruptcy would have been likely if the new RCF had not been made available in 2012. According to Denmark and Sweden, this would have corresponded to a combined loss of SEK 1 044 million for the States, i.e. the value of their aggregate shareholding. A further consideration also related to the prospect of forgoing future possible capital gains if the 4XNG plan was successfully implemented. By comparison, Denmark and Sweden estimate in their submissions that if SAS defaulted on the new RCF, the possible combined loss resulting from the States' collective shareholding and their RCF contributions would, in the most extreme scenario, have been in the region of SEK [1 000-3 000] million ⁽³⁶⁾.
- (95) Consequently, in the event of bankruptcy of SAS, the possible additional loss associated with the States' participation in the new RCF (i.e. approximately SEK 447,5 million based on Denmark and Sweden's illustrative example) appears relatively contained compared to the loss which would have nonetheless accrued in respect of the States' shareholding. Comparing this relatively limited incremental change in the States' downside (bankruptcy) scenario to the potential upside for the States from a successful execution of the 4XNG plan, appears to provide further support for the States' decision to participate in the new RCF. In the most optimistic 'base case' scenario, the CITI report estimated potential capital gains for the States of SEK [7 000-12 000] million in total. However, while the Commission expressed some reservations in its opening decision regarding the optimistic nature of such growth projections, it recognises the possibility that, even under more conservative scenarios, the potential capital gains in the upside scenario may still have notably exceeded the potential losses in the downside scenario.
- (96) The Commission thus notes the above risk-reward assessment, as well as the extensive review and testing of the 4XNG plan, the additional verifications provided on the underlying collateral ⁽³⁷⁾, the cancellation and prepayment provisions which reduced the potential loss over time ⁽³⁸⁾ and the various other risk-mitigating measures incorporated within the terms of the new RCF ⁽³⁹⁾. Taking the above into account, the States' decision to participate in the new RCF would appear consistent with the actions of a private operator acting with a view to obtaining a normal market return given the company's specific situation at that time.
- (97) Further to the above, the Commission concludes that the States, in their position as existing shareholders in SAS, were guided by reasonable and realistic prospects of profitability when they decided to participate in the new RCF together with KAW and the lending banks during the period December 2012 — March 2014. This participation thus did not entail any advantage to SAS within the meaning of Article 107(1) TFEU.

7.3. Conclusion on the presence of State aid

- (98) In view of the above, the Commission concludes that the participation of Denmark and Sweden in the new RCF does not constitute State aid within the meaning of Article 107(1) TFEU.
- (99) Finally, the Commission notes that Denmark and Sweden agreed to have the present decision adopted and notified in English,

⁽³⁶⁾ For illustrative purposes, Denmark and Sweden estimate the States' combined loss on the new RCF assuming a full drawdown of Facility A (of which SEK [700-1 200] million was covered by the States) and further assuming that the security only covered 50 % of the Facility A commitment and that the States had already received the first instalment of the commitment fee. This would have implied an estimated loss of SEK [400-800] million on the new RCF together with an estimated loss on the combined shareholding of SEK [700-1 200] million, i.e. SEK [1 100-2 000] million in total.

⁽³⁷⁾ See paragraph 90.

⁽³⁸⁾ See paragraphs 84 and 91.

⁽³⁹⁾ See paragraphs 84 and 89.

HAS ADOPTED THIS DECISION:

Article 1

The financing of Scandinavian Airlines through the new Revolving Credit Facility which the Kingdom of Denmark and the Kingdom of Sweden implemented in December 2012 does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of Denmark and to the Kingdom of Sweden.

Done at Brussels, 9 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President
