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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 741/2009**of 13 August 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 August 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 August 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	25,6
	XS	21,6
	ZZ	23,6
0707 00 05	MK	23,0
	TR	101,7
	ZZ	62,4
0709 90 70	TR	103,3
	ZZ	103,3
0805 50 10	AR	65,9
	NZ	63,1
	UY	61,0
	ZA	67,1
	ZZ	64,3
0806 10 10	EG	159,0
	MA	141,6
	TR	141,4
	US	223,1
	ZA	142,5
	ZZ	161,5
0808 10 80	AR	124,5
	BR	70,9
	CL	82,7
	NZ	81,9
	US	87,1
	ZA	78,2
	ZZ	87,6
0808 20 50	AR	104,5
	CL	101,7
	CN	60,2
	TR	139,7
	ZA	89,7
	ZZ	99,2
0809 30	TR	132,3
	ZZ	132,3
0809 40 05	IL	123,6
	ZZ	123,6

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 742/2009**of 13 August 2009****amending Regulation (EC) No 1296/2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1) in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1296/2008 ⁽²⁾ lays down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal.
- (2) Under the agreements concluded during the Uruguay Round of multilateral trade negotiations, the Community has undertaken, as from the 1995/96 marketing year, to put in place quotas for imports into Portugal of 500 000 tonnes of maize and imports into Spain of 2 000 000 tonnes of maize and 300 000 tonnes of sorghum and, if necessary, to open reduced-tariff tendering procedures.
- (3) It should be clarified that the implementation of these quotas does not require a tendering procedure to be opened.

(4) Regulation (EC) No 1296/2008 should be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) and (2) of Regulation (EC) No 1296/2008 are hereby replaced by the following:

‘1. Two quotas for imports from third countries, for release for free circulation in Spain, of a maximum quantity each year of 2 000 000 tonnes of maize and 300 000 tonnes of sorghum shall be deemed to be opened on 1 January of each year. Imports under those quotas shall be effected as provided for in this Regulation.

2. One quota for imports from third countries, for free circulation in Portugal, of a maximum quantity each year of 500 000 tonnes of maize shall be deemed to be opened on 1 January of each year. Imports under that quota shall be made under the conditions laid down in this Regulation.’

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 August 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 340, 19.12.2008, p. 57.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 10 March 2009

on measure C 5/2000 (ex NN 118/97) implemented by Spain in favour of SNIACE SA, located in Torrelavega, Cantabria, and amending Decision 1999/395/EC

(Notified under document C(2009) 1479)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2009/612/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities and, in particular, the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments, pursuant to the provisions cited above ⁽¹⁾, and having regard to those comments,

Whereas:

(3) By Decision 1999/395/EC ⁽²⁾ (hereinafter the Decision of 1998), the Commission considered the aid granted in favour of SNIACE by the Fondo de Garantía Salarial (the Wages Guarantee Fund, hereinafter FOGASA) and the Tesorería General de la Seguridad Social (the General Social Security Treasury, hereinafter the TGSS) to be unlawful and incompatible with the common market because the debt repayment agreements concluded between SNIACE and FOGASA and the rescheduling agreement concluded between SNIACE and the TGSS did not comply with market conditions as the interest rates applied to the agreements were below market rates. That unfavourable decision ordered Spain to require the recipient to repay the contested aid.

1. PROCEDURE

(1) By letter of 17 April 1997, the Commission received a complaint from the Austrian undertaking Lenzing AG, the Community's main producer of viscose fibres, concerning a number of measures granted to its Spanish competitor Sociedad Nacional de Industrias y Aplicaciones de Celulosa Española SA (hereinafter SNIACE).

(2) By letter of 7 November 1997, the Commission informed the Spanish Government of its decision to initiate the procedure laid down in Article 88(2) of the Treaty.

(4) In the Judgment of the Court of Justice of the European Communities of 29 April 1999 in Case C-342/96 *Spain v Commission* (hereinafter *Tubacex*) ⁽³⁾, the Court considered that the debt rescheduling agreements concluded by the TGSS and FOGASA did not constitute State Aid as those public institutions had acted as a private creditor would have done to try to recover amounts owed to it, provided that the interest rate was at least equal to the rate that a private creditor would have applied ⁽⁴⁾ and that the rescheduling agreement did not result in new debts being accumulated.

⁽¹⁾ OJ C 275, 16.11.2007, p. 18.

⁽²⁾ OJ L 149, 16.6.1999, p. 40.

⁽³⁾ [1999] ECR I-2459.

⁽⁴⁾ Paragraph 48 of the *Tubacex* judgment.

- (5) In the light of the *Tubacex* judgment, the Commission decided to reassess the Decision of 1998, as it considered that its conclusions were applicable to SNIACE. Consequently, by letter of 16 February 2000 addressed to the Spanish authorities, the Commission decided to initiate the formal investigation procedure⁽¹⁾ laid down in the first subparagraph of Article 88(2) of the Treaty in order to partially revoke the Decision of 1998 (hereinafter the second initiation of the procedure).
- (6) By letter of 21 March 2000, Spain sent its comments to the Commission on the decision concerning the second initiation of the procedure.
- (7) In the light of the comments made by the Spanish authorities and interested parties after the second initiation of the procedure, the Commission terminated the formal investigation procedure on 20 September 2000 by means of Commission Decision 2001/43/EC⁽²⁾ (hereinafter the Decision of 2000), concluding that the measures granted to SNIACE did not constitute State aid pursuant to the *Tubacex* judgment. The Decision of 1998 was partially amended pursuant to the Decision of 2000, whereby the first paragraph of Article 1 was replaced and Article 2 revoked.
- (8) In its Decision of 2000, the Commission considered that the public creditors, by applying the legal interest rate, had sought to maximise their prospects of recovering the sums due to them without suffering any financial loss. In the Commission's opinion, 'Spain acted as a hypothetical private creditor would have done, vis-a-vis SNIACE.'⁽³⁾
- (9) In the light of the Decision of 2000, the undertaking Lenzing brought an action against the Decision of 2000 before the Court of First Instance.
- (10) The Court of First Instance annulled the Decision of 2000 in its judgment of 21 October in Case T-36/99⁽⁴⁾ because the Commission made a manifest error of assessment when applying the private creditor behaviour test to the public creditor. The Court of Justice confirmed the judgment of the Court of First Instance⁽⁵⁾.
- (11) As a result of that annulment, the second formal investigation procedure is still open.
- (12) By letters of 3 December 2004, 13 May 2005, 18 July 2005 and 7 August 2008, the Commission requested additional information from the Spanish authorities, which was provided by letters of 28 February 2005, 4 July 2005, 29 September 2005, 10 September 2008 and 15 September 2008.

2. DESCRIPTION OF THE MEASURE

- (13) The beneficiary of the measures is SNIACE, an undertaking founded in 1939. The undertaking produces cellulose, paper, viscose fibres, synthetic fibres and sodium sulphate. SNIACE's turnover in 2007 was EUR 15 million.
- (14) FOGASA and the TGSS concluded debt repayment and rescheduling agreements with SNIACE as described in recitals 15 to 21.

Agreements concluded with FOGASA

- (15) FOGASA is an autonomous body answerable to the Ministry of Employment and Immigration which is financed by contributions from undertakings. Its main function, according to the first subparagraph of Article 33(1) of the Workers' Statute, is to pay 'to workers the remuneration owed to them in the event of insolvency or administration of their employers'. Under paragraph 4 of Article 33, FOGASA is required to subrogate itself to the rights and actions of workers in order to obtain repayment of the sums advanced.
- (16) Under the provisions of Royal Decree 505/85 of 6 March 1985⁽⁶⁾, FOGASA may conclude repayment agreements relating to the sums advanced to workers in payment of wages and compensation in order to assist the recovery of sums due, which will bear interest at the statutory rate in force.
- (17) FOGASA concluded two debt repayment agreements with SNIACE on 5 November 1993 and 31 October 1995. In the first case the sum owed was ESP 1 362 708 700 (including interest) and in the second it was ESP 339 459 878 (including interest).
- (18) The first agreement, of 5 November 1993 (hereinafter the FOGASA I agreement), related to the amounts paid by FOGASA in wages and compensation that SNIACE owed to its staff. The debt amounted to ESP 897 652 759, to which interest at a rate of 10 % amounting to ESP 465 055 911 had to be added, making a total of ESP 1 362 708 700. The debt was linked to mortgaging of SNIACE's assets and was to be repaid in accordance with a schedule, which was renegotiated on 18 March 1999, setting out the amounts in pesetas (ESP) as follows:

⁽¹⁾ OJ C 110, 15.4.2000, p. 33.

⁽²⁾ OJ L 11, 16.1.2001, p. 46.

⁽³⁾ Recital 30.

⁽⁴⁾ [2004] ECR II-3597.

⁽⁵⁾ Case C-525/04 [2007] ECR I-9947.

⁽⁶⁾ BOE (Boletín Oficial del Estado — Official State Gazette) No 92, 17.4.1985, p. 10203.

Table 1

The FOGASA I agreement

(ESP)

	Initial agreement of 5 November 1993	Renegotiated agreement of 18 March 1999
1994	20 000 000	20 000 000
1995	55 000 000	55 000 000
1996	90 000 000	40 000 000
1997	110 000 000	50 000 000
1998	160 000 000	80 000 000
1999	160 000 000	80 000 000
2000	392 527 956	259 427 000
2001	375 180 746	259 427 000
2002		259 427 000
2003		259 427 000
Total	1 362 708 702	1 362 708 000

- (19) The second agreement of 31 October 1995 (hereinafter the FOGASA II agreement) related to the amounts that FOGASA had continued to pay after the agreement of 5 November 1993 in wages and compensation that SNIACE owed to its staff. The new debt amounted to ESP 229 424 860, to which interest at a rate of 9 % amounting to ESP 110 035 018 had to be added, making a total of ESP 339 459 878. The debt was linked to mortgaging of SNIACE's assets and was to be repaid in accordance with a schedule that was renegotiated on 18 March 1999 that set out the amounts in pesetas (ESP) as follows:

Table 2

The FOGASA II agreement

(ESP)

	Initial agreement of 31 October 1995	Renegotiated agreement of 18 March 1999
1995		5 000 000
1996	20 000 000	10 000 000
1997	20 000 000	10 000 000
1998	20 000 000	10 000 000
1999	30 000 000	20 000 000
2000	30 000 000	20 000 000
2001	30 000 000	20 000 000
2002	40 000 000	50 000 000
2003	149 459 878	156 262 000
Total	339 459 878	301 262 000

The TGSS

- (20) Under Article 20 of the General Law on Social Security ⁽¹⁾, the TGSS may agree to the deferment or payment in instalments of the social security contributions owed and surcharges relating to those contributions. Article 27 of that Law states that surcharges for payments outside the time limit must be added to the deferred debt.
- (21) The agreement of 8 March 1996, as amended by the agreements of 7 May 1996 and 30 September 1997, provided for the rescheduling of the debt payment to a total amount of ESP 3 510 387 323 plus accrued interest, which, at a rate of 7,5 %, amounted to ESP 615 056 349. The principal corresponded to arrears in payment of social security contributions from February 1991 to February 1997. Payment was to be made in 120 monthly instalments. During the first two years, only the interest, calculated at the statutory rate of 7,5 %, was payable, whereas in years three to 10 both principal and interest were to be repaid at annual repayment rates of 5 % (from October 1999 to September 2001), 10 % (from October 2001 to September 2003), 15 % (from October 2003 to September 2005) and 20 % (from October 2005 to September 2007).

3. REASONS THAT LED TO INITIATION OF THE PROCEDURE

- (22) In its decision to initiate the procedure, the Commission considered that the Court of Justice's analysis in the *Tubacex* case was fully applicable to the measures in question in the Decision of 1998 and, therefore, that that decision should be partially revoked and the agreements concluded between SNIACE and the public creditors should be reassessed.
- (23) Indeed, in the light of the *Tubacex* judgment, the Commission expressed some doubts concerning the measures implemented by the public creditors:
- firstly, concerning the presence of elements constituting State Aid in the measures deemed incompatible in the Decision of 1998 and, if so, their compatibility; and
 - secondly, concerning the behaviour of a private creditor who, in a comparable situation, would have demanded a higher interest rate than that required by the public creditors.

⁽¹⁾ BOE No 154, 20.6.1994, p. 20658.

4. COMMENTS FROM INTERESTED PARTIES

- (24) No comments were submitted by interested parties.

5. SPAIN'S COMMENTS

- (25) The Spanish Government submitted its comments by letter of 21 March 2000.

- (26) The Spanish authorities disagree with the Commission's decision to open the formal investigation procedure, inasmuch as in their view the investigation procedure was not necessary to carry out the envisaged partial revocation of the Decision of 1998.

- (27) As regards the rescheduling agreement between SNIACE and the TGSS, the Spanish authorities do not share the Commission's view that 'it seems probable that, in the case of out-of-court agreements concerned with or having the effect of rescheduling pre-existing debts, the creditor would seek to obtain from the debtor a rate of interest on arrears that would be higher than the legal interest rate as compensation for not pursuing the recovery of the debt by legal means'. On the contrary, they claim that, owing to the financial situation of the company as well as the cost, duration and uncertainty inherent in legal proceedings, out-of-court agreements would frequently lead to agreeing an interest rate lower than the legal interest rate.

- (28) Thus, the Spanish authorities reiterate their argument that the granting of a deferment applying the legal interest rate protects the interests of the social security system, in terms of recovering debts, better than any other form of action that a private creditor could have taken.

- (29) The Spanish Government also recalls that while a private creditor can agree any interest rate with the debtor, the Social Security authorities are bound by Article 20 of the General Law on Social Security, which lays down that the legal interest rate is to be applied in the debt rescheduling agreements.

- (30) In its decision to initiate the procedure, the Commission considered that the comparison of the terms contained in the private creditors' agreement of October 1996 with the terms of the rescheduling agreement between the social security authorities and SNIACE might not be the correct way of applying the 'private creditor' test, as defined by the Court of Justice. In this regard, the Spanish authorities stated that, due to legal obligations of the public administration, the situation of public creditors could not be treated in the same way as the situation of private creditors. However, they emphasised that, in spite of the differences, the terms and conditions of the agreements between the social security authorities and SNIACE, on the one hand, and between FOGASA and SNIACE, on the other hand, were stricter than the terms reached in the private creditors' agreement.

- (31) Finally, the Spanish authorities reiterated the views expressed in the procedure which led to the Decision of 1998.

6. ASSESSMENT OF THE MEASURES

6.1. ON THE JUSTIFICATION OF THE SECOND INITIATION OF THE PROCEDURE

- (32) The Spanish authorities maintain that it was not necessary to initiate a new formal investigation procedure to resolve the case and that respect for the rights of interested parties was not a sufficient reason for doing so.

- (33) For its part, the Commission considers that the *Tubacex* judgment was sufficiently relevant for the Spanish authorities and the interested parties to be informed of it. Indeed, that judgment could alter the assessment criteria as laid down in the decision to initiate the procedure of 7 November 1997.

6.2. DETERMINING THE EXISTENCE OF AID FOR THE PURPOSES OF ARTICLE 87(1) OF THE TREATY

- (34) In the second initiation of the procedure, the Commission raised the question of whether the agreements concluded between SNIACE and its public creditors included State Aid and, if so, whether they could be declared compatible.

- (35) The *Tubacex* judgment allows State interventions in the form of debt rescheduling to be considered as not constituting State Aid if they fulfil the criteria laid down in that judgment (see recital (4))

- (36) In the judgment in Case T-36/99 annulling the Decision of 2000, the Court of First Instance rejected the grounds on which the Commission had considered that the TGSS and FOGASA had behaved as a private creditor would have done. For that purpose, and in the light of the judgment of the Court of First Instance, the following should be verified:

- (a) the situation of the public creditors compared with that of the private creditors;
- (b) the situation of the Banco Español de Crédito (hereinafter Banesto), a private creditor, compared with that of the TGSS and that of FOGASA;
- (c) the prospects of recovering the total sums owed to the TGSS and FOGASA without suffering any financial loss, and
- (d) SNIACE's prospects of future profitability and viability.

- (37) The criteria laid down in the *Tubacex* judgment and in the judgment of the Court of First Instance in Case T-36/99 are cumulative. As soon as the measures taken by the public creditors do not fulfil at least one of them, the Commission must discard the private creditor principle.

6.2.1. AGREEMENTS CONCLUDED WITH FOGASA

- (38) Unlike the facts that gave rise to the *Tubacex* judgment, the two agreements with FOGASA were concluded approximately two years apart and related to different debts. The Commission considers that they do not constitute a single agreement. When the second agreement was concluded, FOGASA did not try to combine them into one agreement covering all the amounts owed. FOGASA only unified outstanding debts by means of the agreement of 18 March 1999⁽¹⁾, that is to say, four years after the second agreement was concluded between FOGASA and SNIACE.
- (39) For the purposes of this assessment, the Commission will first analyse the FOGASA I agreement and then the FOGASA II agreement, taking into account the criteria applicable to private creditors.

FOGASA I Agreement

- (40) SNIACE and FOGASA concluded the first debt rescheduling agreement on 5 November 1993 for the amount of ESP 1 362 708 700 (including interest). The agreement was concluded after FOGASA paid the wages and compensation that SNIACE owed to its staff.
- (41) For the purposes of its analysis, the Commission must distinguish between the time when the agreement was concluded (*ex-ante* analysis) and the time when it was implemented (*ex-post* analysis). In fact, it could be the case that, after analysing an agreement in terms of its characteristics at the time when it was concluded, the conclusion is reached that the agreement does not contain aid, and that its implementation, in different circumstances from those initially envisaged, alters that initial opinion and the conclusion is reached that it does contain aid.

Assessment of the FOGASA I agreement at the time of its conclusion

FOGASA's position compared with that of private creditors, including Banesto

- (42) The Commission notes that the first debt rescheduling agreement with FOGASA dates from 5 November 1993, that is almost 8 months after the suspension of payments declaration issued by the court of first instance on 25 March 1993 requiring that FOGASA pay SNIACE's employees. At that time, FOGASA linked the agreement

to the mortgaging of SNIACE's assets in order to guarantee at least a part of its loan. The rate applied by FOGASA was 10 %, as laid down by the legislation in force when the agreement was concluded.

- (43) For its part, Banesto had granted lines of mortgage credit to SNIACE in 1987 and 1991, that is to say some time before the FOGASA I agreement was concluded, at rates of 16 % and 18 % respectively (the market conditions at that time).
- (44) Thus, it should be noted that, when the suspension of payments occurred in 1992, SNIACE had at least two creditors: FOGASA, to which it owed the wages that SNIACE had been unable to pay to its employees, and BANESTO, because of the loans that it had granted to SNIACE and which SNIACE had still not entirely repaid.
- (45) From the time when the suspension of payments was announced, BANESTO could have asserted its rights as a preferential mortgage creditor of SNIACE. However, only under the agreement of 26 de September 1996, in other words, three years after the FOGASA I agreement was concluded, did SNIACE transfer to Banesto, as payment of part of its debts, the shares that it owned in the undertaking Inquitex and some plots of land that were covered by the mortgage.
- (46) For its part, FOGASA was legally obliged to pay the wages in the event of suspension of payments. From the time when FOGASA had to pay the wages of the SNIACE workers, it began to negotiate a rescheduling agreement with SNAICE in order to recover its loan. The fact that BANESTO did not enforce its mortgage loans against SNIACE rather demonstrates that FOGASA acted prudently and wisely when it concluded the rescheduling agreement and obtained guarantees as soon as the suspension of payments was notified, unlike the private creditor BANESTO.
- (47) FOGASA and SNIACE therefore rapidly concluded negotiations that showed the parties' willingness to arrive at an amicable solution.

Possibility of recovering in full the sums owed to FOGASA without suffering any financial loss

- (48) After accepting the SNIACE workers' demand that they should be paid the wages and compensation owed to them pursuant to the judicial proceedings that had declared the suspension of payments, FOGASA concluded a debt rescheduling agreement whereby SNIACE would repay to it the sums involved. FOGASA applied the legal rate of interest laid down by Spanish law, namely 10 % at the time when the parties concluded the agreement.

⁽¹⁾ Letter from FOGASA dated 22 August 2008, p. 2, sent by the Spanish authorities.

- (49) The Commission considers that, by granting to SNIACE a rescheduling of its debts, FOGASA applied the principle of the *Tubacex* judgment, whereby 'a creditor does not seek to make any special profit on the money which is due to him, but merely wishes to recover in full the sums he has advanced without suffering any financial loss. To that end, where he agrees to the rescheduling of his debt for the purpose of ensuring that it is repaid, he requires the further payment of interest, the purpose of which is to compensate him for depreciation of the money as a result of the rescheduling' ⁽¹⁾.

Prospects of future financial profitability

- (50) At the time when the agreement was concluded, FOGASA was aware of the crisis that SNIACE was undergoing, which is why it had intervened on behalf of the workers so that they could be paid the wages and compensation that SNIACE could not pay them because its payments had been suspended.
- (51) Admittedly, at the material time the only genuine viability plan for SNIACE proposed to FOGASA was to reschedule the debts. However, after the serious social conflict that the undertaking experienced in 1992, its activity gradually revived, offering a glimpse of the prospect of future profitability, although the situation of the undertaking was still fragile.

- (52) The absence of an agreement with the private creditors and the fact that they had not enforced payment of the debts since 1993 shows that there was some basis for thinking that the undertaking was on the right track and that, therefore, it was not advisable to increase the risk that the undertaking would cease activities.

Conclusion on the FOGASA I agreement

- (53) The Commission considers that, at the time when it was concluded, the FOGASA I agreement did not constitute State Aid.

Analysis of the implementation of the FOGASA I agreement

- (54) Between 5 November 1993 and 18 March 1999, the date on which FOGASA concluded a new rescheduling

agreement extending the debt payment period for a further two years, SNIACE had only repaid about 50 % of its debt.

Position of the public creditors compared with that of the private creditors

- (55) Rather than enforce the guarantees and mortgages established in its favour at the time of the 1993 agreement, FOGASA preferred to amend the rescheduling agreement in order to maximise the prospects of recovering its loans. On the other hand, the Commission notes that on 26 September 1996, Banesto accepted, as part-payment of SNIACE's debt, some plots of land owned by that undertaking, as well as shares that SNIACE owned in the undertaking Inquitex.

- (56) The Commission considers that FOGASA's behaviour is not comparable to that of BANESTO, which tried to protect a part of its loan by concluding the 1996 agreement, unlike FOGASA, which in no way tried to recover its loan under the agreement concluded with SNIACE.

Possibility of recovering in full the sums owed to FOGASA without suffering any financial loss

- (57) The Commission points out that, at the time when the agreement was renegotiated, FOGASA did not require additional payment of interest as the total amount payable was the same, although the final date was delayed by two years ⁽²⁾. Consequently, the Commission considers that Spain's argument ⁽³⁾ that it wanted to protect its investment from monetary depreciation must be rejected.

Prospects of future profitability

- (58) The Commission has established, in the light of Table 3 below, that at the time when the agreement of 18 March 1999 amending the agreement of 5 November 1993 was concluded, the undertaking was faced with increasing debts, recurring losses and negative equity capital, which raised doubts concerning the prospects of recovering the loan:

⁽²⁾ Letter from the Spanish authorities of 4 July 2005, Annex I.

⁽³⁾ Spain's letter of 21 March 2000: 'the interest applied as a consequence of the rescheduling protects the creditor from the loss that it will incur as the money loses value over time'.

⁽¹⁾ Paragraph 32.

Table 3

(EUR million)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Sales	69,3	43,0	4,8	39,3	65,9	34,5	33,6	56,6	57,5	82,0
Results	- 24,8	- 27,9	- 22,8	- 10,7	0,9	- 11,7	- 3,0	- 9,6	- 7,4	1,7
Cash flow	- 15,3	- 19,8	- 20,0	- 6,0	6,4	- 8,8	2,2	- 2,2	- 0,6	8,7
Total debts	84,1	82,8	95,4	112,6	116,5	108,2	104,9	106,1	112,8	121,8

- (59) Although it is true that the undertaking had modestly positive results in 1995, it must be recognised that its financial situation indicated that its prospects of profitability were uncertain.

Conclusion on the implementation of the FOGASA I agreement

- (60) The Commission has arrived at the conclusion that FOGASA did not behave as a private creditor would have done:

- (a) by not trying to obtain as partial payment of the debt certain assets over which it had acquired rights upon the conclusion of the 1993 agreement;
- (b) owing to the uncertain prospects of profitability caused by the continued deterioration of the financial situation;
- (c) by not requiring the additional payment of interest when the 1999 rescheduling agreement was negotiated or not applying default interest to the unpaid sums in accordance with the agreement.

FOGASA II agreement

- (61) SNIACE and FOGASA concluded a second debt rescheduling agreement on 31 October 1995 for the amount of ESP 339 459 878 (including interest). That agreement was concluded after FOGASA had again paid the wages and compensation that SNIACE owed to its staff.

Situation of the public creditors compared with that of the private creditors

- (62) As with the implementation of the FOGASA I agreement, the Commission considers that FOGASA's behaviour is not comparable to that of BANESTO, which sought to protect a part of its loan by concluding the 1996 agreement, whereas FOGASA, which had only

recovered a part of the debts that were covered by the 1993 agreement, concluded a new agreement in 1995 relating to new debts.

Possibility of recovering in full the sums owed to FOGASA without suffering any financial loss

- (63) That new agreement was concluded despite the fact that:

- (i) the agreement of 5 November 1993 had not been complied with in full;
- (ii) it related to new debts contracted with FOGASA, which, once again, had satisfied the demands of SNIACE workers concerning the payment of their wages; and
- (iii) the financial fragility of SNIACE, which was an undertaking in crisis as a result of repeated losses incurred over many years, negative equity capital and its substantial debt as shown in the table contained in recital (59), was well-known.

- (64) Moreover, it is clear that FOGASA did not contemplate the possibility of enforcing repayment of the debt by enforcing the mortgage established in its favour. Admittedly, enforced repayment could have resulted in the closure of the undertaking, but there is no doubt that, if SNIACE had been liquidated, FOGASA could have recovered all or part of the debt after the undertaking's assets were transferred.

- (65) On this point, the Commission notes that the Spanish authorities have repeatedly maintained that it was impossible to estimate the value of the undertaking, which would have made it possible to calculate the amount that could be recovered, and that, in any case, in the event of liquidation, the value of the undertaking's assets could have depreciated significantly⁽¹⁾. Clearly, for that reason, FOGASA discarded the possibility of liquidating SNIACE in favour of the rescheduling solution.

⁽¹⁾ The Spanish authorities' reply of 4 July 2005: 'Neither FOGASA nor the [TGSS] have sufficient data to estimate the value of the undertaking's properties at that time.'

(66) The Spanish authorities added in their reply of 29 September 2005 that 'if, at any time, [FOGASA] had refused to enter into a recovery agreement without justifying that refusal, it would have been infringing the legislation binding on the organisation and would have been acting arbitrarily.' The Commission infers from the Spanish authorities' statement that FOGASA did not try to justify possible rejection of debt rescheduling. For the Spanish authorities, the mere fact of trying to recover the debt in full, including through the closure of SNIACE, is insufficient ⁽¹⁾.

Conclusion on the FOGASA II agreement

(67) The Commission has arrived at the conclusion that FOGASA did not behave as a private creditor would have done:

(a) by not requiring payment of the debts that were covered by the 1993 agreement in accordance with the schedule laid down in that agreement;

(b) owing to the uncertain prospects of profitability caused by the continued deterioration of the financial situation;

(c) by accepting the conclusion of an agreement relating to new debts.

6.2.2. THE TGSS AGREEMENT

(68) As has been mentioned in recital (13), the TGSS concluded an agreement with SNIACE on 8 March 1996, which was amended on 7 May 1996 and 30 September 1997. Although it was concluded approximately 18 months after the first agreement was concluded, the final agreement related to the same debts. The Commission therefore considers that these agreements amounted to a single agreement that was amended a number of times.

Position of the public creditors compared with that of the private creditors

(69) At the time when the first agreement was concluded between the TGSS and SNIACE, on 8 March 1996, and the time when it was first amended, on 7 May 1996, the private creditors had still not reached an agreement. Only when the agreement was amended for the second time, that is on 30 September 1997, could the TGSS's position be compared with that of the private creditors.

(70) It may be conceded, at that stage, that the TGSS went further than the private creditors by concluding an agreement to maximise the prospects of recovering their loans.

Possibility of recovering in full the sums owed to the TGSS without suffering any financial loss

(71) Under Spanish legislation, the TGSS may conclude debt rescheduling agreements provided that it applies the legal interest rate in force when the agreement is concluded.

(72) In this way, the TGSS tried to protect its loans without suffering financial losses, following the *Tubacex* judgment.

Prospects of profitability of the undertaking

(73) At the time when that agreement was concluded, as has already been stated in recital (63(iii)), SNIACE was an undertaking in crisis as a result of repeated losses incurred over several years, negative equity capital and its substantial debt.

(74) Moreover, the Spanish authorities were unable to respond favourably to the Commission's request (letter of 7 August 2008 D/53117) that it be provided with the minutes of the meetings that took place between the TGSS and SNIACE in 1994 ⁽²⁾. Those records would have enabled the Commission to determine the context of the negotiations and assess the TGSS's opinion on SNIACE's actual prospects of fulfilling its commitments both past and future. Instead, the Spanish authorities stated in their reply of 10 September 2008 that they did not have those documents.

(75) It is clear, then, that the TGSS knew SNIACE's financial situation, in particular, its failure to fulfil its commitments towards FOGASA. As the agreement was concluded in 1996, the TGSS could have verified from the undertaking's accounting documents that SNIACE had only partially honoured the agreement of 1993 and that, moreover, it had concluded a new agreement with FOGASA in 1995 (that is to say, approximately 6 months before the agreement with the TGSS), which related to new debts.

Conclusion on the agreement with the TGSS

(76) The Commission has arrived at the conclusion that the TGSS did not act as a private creditor would have done:

⁽¹⁾ The Spanish authorities' reply of 29 September 2005.

⁽²⁾ The Spanish authorities informed the Commission (letter of 28 February 2005 in reply to the Commission's letter of 3 December 2004) that a number of meetings had been organised between SNIACE and the TGSS.

- (a) because SNIACE did not fully repay its loan from another public creditor (FOGASA) which, moreover, had agreed to an accumulation of debts; and
- (b) owing to uncertain prospects of profitability caused by the continued deterioration of the financial situation.

6.2.3. CONCLUSION ON THE EXISTENCE OF AID

- (77) In the Commission's opinion, only the measure that led to the agreement of 5 November 1993 between FOGASA and SNIACE can be regarded as fulfilling the private creditor criterion. Therefore, that measure does not grant an advantage to SNIACE.
- (78) On the other hand, the Commission considers that the implementation of the FOGASA I agreement, as amended on 18 March 1999, the FOGASA II agreement and the TGSS agreement grant advantages to SNIACE for the purposes of Article 87(1) of the Treaty for the reasons set out above. In fact, those measures grant an advantage to SNIACE by enabling it to reschedule its legal obligations relating to the payment of social security contributions and the debts contracted with FOGASA, which SNIACE would normally have had to fulfil if those creditors had been private creditors.
- (79) As regards the other criteria, the Commission considers, firstly, that the measures are financed by State funds, as both FOGASA and the TGSS are public bodies whose resources arise from the payment of compulsory contributions.
- (80) Secondly, the contested measures are selective as they apply only to SNIACE.
- (81) Thirdly, the markets in which SNIACE operates are characterised by a high level of trade between Member States. SNIACE markets part of its production in Europe, where it competes with other undertakings. Consequently, the aid granted to SNIACE may affect trade between Member States. Accordingly, those measures threaten to distort competition between producers of textile products.
- (82) Therefore, the Commission considers that the measures relating to the implementation of the FOGASA I agreement, the FOGASA II agreement and the TGSS agreement constitute State Aid for the purposes of Article 87(1) of the Treaty.

6.3. EXAMINATION OF THE COMPATIBILITY OF THE AID

- (83) The compatibility of the measures considered as State Aid under Article 87(1) of the Treaty must be assessed on the basis of the exemptions provided for in paragraphs 2 and 3 of the same article.

- (84) The exemptions provided for in Article 87(2) and in Article 87(3)(b), (d) and (e), are clearly not applicable as the measures are not intended to promote the execution of a major project of common Community interest or to remedy a serious disturbance in the economy of a Member State, or to promote culture and heritage conservation. Nor do they come under another category of aid determined by decision of the Council acting by qualified majority on a proposal from the Commission.

- (85) Consequently, the exemptions relating to the development of certain regions or sectors provided for in Article 87(3)(a) and (c), should be assessed.

- (86) As regards aid intended to promote the development of certain sectors, and taking into account the nature of the measures in question, the only relevant criteria are those relating to aid for rescuing and restructuring firms in difficulty.

- (87) As regards aid intended to promote the development of certain regions, the Commission notes that the region in which SNIACE is situated may opt, from September 1995, for regional aid under Article 87(3)(a), and that, before that date, it could opt for regional aid under Article 87(3)(c).

- (88) Consequently, the Commission has to analyse the measures in the light of the Community guidelines on aid for rescuing and restructuring firms in difficulty and the guidelines on regional aid. Pursuant to the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid⁽¹⁾, the measures must be assessed in accordance with the guidelines in force at the time when the aid was granted.

Aid for rescuing and restructuring firms in difficulty

- (89) As regards the rules relating to aid for rescuing and restructuring firms in difficulty, it is clear that, since the publication of the Eighth Report on Competition Policy of 1979 and in all its successive guidelines, the Commission requires a restructuring plan enabling the viability of the firms in difficulty to be restored⁽²⁾.

⁽¹⁾ OJ C 119, 22.5.2002, p. 22.

⁽²⁾ Point 227 of the Eighth Report of the European Commission on Competition Policy of 1979. Point 3.2.2(i) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 31.12.1994, p. 12). Point 31 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2). Point 34 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

(90) In the present case, the Spanish authorities have never argued that the measures are rescuing and restructuring aid. Nor have they tried to show that they form part of a restructuring programme for the purposes of the rules applicable on the date when the contested aid was granted. A programme of that kind must include, *inter alia*, internal restructuring measures and compensatory measures, as required by the Eighth Report of the Commission on Competition Policy of 1979 (points 227 and 228) and the guidelines adopted from 1994 ⁽¹⁾. The absence of a restructuring plan confirms that the sole purpose of the aid was to keep the firm operating without requiring any restructuring measures in return.

(91) As regards the viability plan that the applicant submitted to the Commission before the procedure was initiated, the Spanish authorities confined themselves to stating, in particular, in their letter of 30 June 1997 in reply to the Commission's letter of 16 May 1997, that the expert's conclusion that 'SNIACE's viability can only be guaranteed by granting subsidies enabling investment projects to be implemented and debt to be renegotiated' was a purely personal opinion expressed in a private study, and did not necessarily reflect the opinion of the Spanish authorities ⁽²⁾.

(92) Consequently, as there was no restructuring programme, the measures adopted within the framework of the FOGASA II and TGSS agreements and the implementation of the FOGASA I agreement are not justified on the basis of the Eighth Report of the European Commission on Competition Policy of 1979 or the Community guidelines on State Aid for rescuing and restructuring of 1994, 1999 or 2004.

Regional aid

(93) As for the exemptions laid down in Article 87(3)(a) and (c) relating to aid intended to promote or facilitate the development of certain areas, the Commission points out that the area in which SNIACE is established may opt, from September 1995, for regional aid under Article 87(3)(a), and that, before that date, it could opt for regional aid under Article 87(3)(c).

(94) However, the aid granted to SNIACE lacks the necessary characteristics to facilitate the development of certain economic regions for the purposes of the said article, as it was granted in the form of operating aid, that is without being subject to any condition relating to investment or job creation.

(95) Since 1979 ⁽³⁾ the Commission only authorises aid that is not subject to an initial investment or job creation in regions that may opt for regional aid where the Member State succeeds in proving the existence of handicaps and gauges their importance, which has not occurred in this case.

(96) Consequently, the measures adopted within the framework of the FOGASA II and TGSS agreements and the implementation of the FOGASA I agreement cannot be justified on the basis of the Commission communication of 1979 or the Guidelines on regional aid of 1998.

Aid for the synthetic fibres sector

(97) As regards the rules on the textile fibres sector applicable at the time when the agreements were concluded ⁽⁴⁾, the Commission considers that the only possible aid option was investment aid. However, the contested measures do not have any of the features of investment aid. The measures adopted within the framework of the FOGASA II and TGSS agreements and the implementation of the FOGASA I agreement are not justified on the basis of the guidelines of 1992 or 1996.

Conclusion on the compatibility of the aid

(98) The Commission considers that the implementing provisions of the FOGASA I agreement, as amended on 18 March 1999, and the conclusion of the FOGASA II and TGSS agreements cannot be declared compatible.

7. PROCEDURE FOR RECOVERY OF THE UNLAWFUL AID

(99) Since the Commission considers that the implementation of the FOGASA I agreement, as amended on 18 March 1999, and of the FOGASA II and TGSS agreements are incompatible with the Treaty, the beneficiary must return the amounts received.

(100) The procedures for recovering unlawful aid declared incompatible were laid down in the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State Aid' (hereinafter the Notice of 2007) ⁽⁵⁾. The case-law of the Court, firstly, and paragraph 37 of the Notice of 2007 state that the Commission is not required to fix the exact amount to be recovered. However, the decision must include information enabling Spain to determine that amount.

⁽¹⁾ See point 3.2.2(i) of the 1994 Guidelines: '... aid must be linked to a viable restructuring/recovery programme ...'.

⁽²⁾ Letter of the Spanish authorities sent by fax on 30 June 1997, p. 2.

⁽³⁾ Second paragraph of point 4 of the Commission Communication on regional aid systems (OJ C 31, 3.2.1979, p. 9). Point 4.15 of the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

⁽⁴⁾ OJ C 346, 30.12.1992, p. 2 and OJ C 94, 30.3.1996, p. 11.

⁽⁵⁾ OJ C 272, 15.11.2007, p. 4.

(101) Commission Regulation (EC) No 794/2004⁽¹⁾ implementing Council Regulation (EC) No 659/1999⁽²⁾ provides that the aid to be recovered pursuant to a recovery decision is to include interest at an appropriate rate fixed by the Commission. Interest is to be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery. The interest rate is to be applied on a compound basis until the date of recovery of the aid.

(102) However, regarding the method for calculating the interest, the Court of Justice, in its judgment of 11 December 2008 in Case C-295/07, *Commission v Département du Loiret and Scott SA*⁽³⁾, stated that the method for calculating the present-day value of unlawful aid is a substantive and not a procedural matter⁽⁴⁾. The Decision of 2000 and the Decision on the second initiation of the procedure were adopted long before Regulation (EC) No 794/2004.

(103) Consequently, the Commission considers that the method for calculating the recovery of the unlawful aid must be that used at the time of the annulled decision and that, therefore, the Member State will use the 'simple interest' method to calculate the amount to be repaid.

(104) For the purposes of the present case, the Commission distinguishes between, on the one hand, the partial implementation of the FOGASA I agreement and, on the other, the incompatible measures of the FOGASA II and TGSS agreements.

FOGASA I agreement

(105) As has been stated in recital (77), the Commission considers that the agreement concluded between FOGASA and SNIACE on 5 November 1993 fulfils the private creditor criterion and, therefore, does not constitute State Aid.

(106) However, as the said agreement was only partly honoured, the Commission considers that the FOGASA I agreement, as revised on 18 March 1999, constitutes incompatible and unlawful aid that must be recovered. The incompatibility affects, firstly, the sums not paid under the agreement by 18 March 1999 and, secondly, the remainder of the aid from that date.

(107) The aid to be recovered must include accrued interest calculated in accordance with the simple interest method (see recital (101)). The sums that were repaid pursuant to the FOGASA I agreement before it was revised, even though the interest rate was lower than the Commission's reference interest rate, do not constitute State Aid and it is therefore not necessary to recover them. Payments made other than the amounts paid under the agreements may be deducted from the sums to be recovered as unlawful and incompatible aid.

FOGASA II and TGSS agreements

(108) As has also been stated above, the Commission considers that Spain granted unlawful aid in the form of a repayment agreement concluded with FOGASA on 30 October 1995 and a debt rescheduling agreement concluded with the TGSS on 8 March 1996 contrary to Article 88(3) of the Treaty, and that such aid is incompatible with the common market and the functioning of the EEA Agreement.

(109) As the aid is unlawful and incompatible, it must be repaid in full and its economic effects must be annulled. The amounts to be recovered equate to the total debt covered by the second agreement with FOGASA and the agreement with the TGSS. To these must be added the simple interest calculated in accordance with the Commission's reference interest rate. The payments made may be deducted from the amounts to be recovered.

8. CONCLUSION

(110) In the light of the above considerations, Decision 1999/395/EC should therefore be amended.

(111) The first repayment agreement concluded between FOGASA and SNIACE does not constitute State Aid.

(112) However, the reassessment of the implementation of the repayment agreement concluded with FOGASA on 3 November 1993, the repayment agreement concluded with FOGASA on 30 October 1995 and the rescheduling agreements concluded with the TGSS leads to the conclusion that Spain granted unlawful aid contrary to Article 88(3) of the Treaty and that such aid is incompatible with the common market and the functioning of the EEA Agreement.

(113) As the aid granted is unlawful and incompatible with the common market, its repayment must be secured under Regulation (EC) No 659/1999 and its economic effects annulled,

⁽¹⁾ OJ L 140, 30.4.2004, p. 1.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

⁽³⁾ (Awaiting publication).

⁽⁴⁾ Paragraph 83.

HAS ADOPTED THIS DECISION:

Article 1

Decision 1999/395/EC shall be amended as follows:

1. Article 1 shall be amended as follows:

- (a) the first paragraph shall be replaced by the following text:

'The agreement concluded on 5 November 1993 between the undertaking Sociedad Nacional de Industrias y Aplicaciones de Celulosa Española SA (SNIACE) and the Fondo de Garantía Salarial (FOGASA) did not constitute, on the date on which it was concluded, State Aid for the purposes of Article 87(1) of the EC Treaty.'

- (b) after the first paragraph, the following paragraph shall be inserted:

'The following State Aid implemented by Spain in favour of SNIACE is incompatible with the common market:

- (a) the debt rescheduling agreement concluded on 8 March 1996 (as amended by the agreement of 7 May 1996 and subsequently by the agreement of 30 September 1997) between SNIACE and the Tesorería General de la Seguridad Social;
- (b) the implementation of the agreement concluded on 5 November 1993 between SNIACE and FOGASA;
- (c) the agreement concluded on 31 October 1995 between SNIACE and FOGASA.'

2. Articles 2 and 3 shall be replaced by the following text:

'Article 2

1. Spain shall obtain from the recipient the repayment of the aid specified in the second paragraph of Article 1.
2. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until the date of their actual recovery.

3. The recovery of the aid specified in the second paragraph of Article 1 shall be immediate and effective.

4. Spain shall ensure that this Decision is implemented within four months of the date of its notification.

Article 3

1. Spain shall submit the following information to the Commission within two months of notification of this Decision:

- (a) the total amount (principal and interest) to be recovered from the recipient;
- (b) a detailed description of the measures already adopted and planned for the purpose of complying with this Decision;
- (c) the documents proving that the recipient has been ordered to repay the aid.

2. Spain shall keep the Commission informed of the progress of the national measures adopted pursuant to this Decision until the recovery of the aid specified in the second paragraph of Article 1 has been concluded. At the Commission's request, it shall immediately submit information on the measures already adopted and planned for the purpose of complying with this Decision. It shall also provide detailed information on the amounts of aid and interest already recovered from the recipient.'

Article 2

This Decision is addressed to the Kingdom of Spain

Done at Brussels, 10 March 2009.

For the Commission
Neelie KROES
Member of the Commission

COMMISSION DECISION

of 8 April 2009

on the measures C 7/07 (ex NN 82/06 and NN 83/06) implemented by the United Kingdom in favour of Royal Mail

(Notified under document C(2009) 2486)

(Only the English text is authentic)

(Text with EEA relevance)

(2009/613/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 3 December 2002, Deutsche Post AG (hereinafter 'DP') lodged a complaint against alleged cross-subsidies granted to the parcel activities of Royal Mail Group plc ('Royal Mail' or 'RM').
- (2) In response to Commission requests for information, the United Kingdom of Great Britain and Northern Ireland ('UK') authorities provided information relevant to the matters raised in the complaint by letters of 25 February 2003 and 13 February 2004, and by email dated 17 December 2003. This information included other Government measures in relation to RM.
- (3) On 27 May 2003, the Commission approved a series of measures in favour of Post Office Limited ('POL') which is a subsidiary of RM (case N 784/02) ⁽²⁾. Under these measures, compensation was granted to POL, financed through a reserve ('the mails reserve') constituted from surplus cash generated by RM. On 22 February 2006 the Commission raised no objection to the continuation of one of these measures (rural network support) for a further period (case N 166/05) ⁽³⁾.
- (4) On 8 October 2003, DP lodged an action for annulment (T-343/03) against the N 784/02 Commission Decision, arguing that this decision had implicitly rejected its CP 206/02 complaint. On 16 November 2005, the Court of First Instance rejected the action of DP saying that the N 784/02 Decision did not imply the rejection of the complaint and that the Commission was carrying on

investigations (as demonstrated by the correspondence presented before the Court).

- (5) On 10 August 2006, DP sent a letter which invited the Commission to take a position on its complaint of 2002 within the period of two months, on the basis of Article 232 of the Treaty. The same letter contained information concerning a series of alleged new State aid measures. These measures are distinct from those which were the subject of the complaint of 2002 and the complaint against them was therefore treated as a separate complaint which was attributed the reference CP 221/06, subsequently NN 83/06. The alleged measures were as follows:
 - (a) a transfer of GBP 850 million to a special account dedicated to finance RM's pensions;
 - (b) decision by Department of Trade and Industry to increase the amount of a loan granted to RM from GBP 844 million to GBP 900 million;
 - (c) violation of the Commission's decision in case N 166/05 concerning support for POL's rural network, since GBP 150 million was transferred to POL directly from the State budget and not, as approved by the Decision, from a special, ring-fenced reserve.
- (6) In response to Commission requests for information, the UK authorities provided information relevant to the matters raised in the two complaints by letters of 6 October and 31 October 2006. By letter of 5 December 2006, they supplemented this information with respect to the measures in favour of POL mentioned at recital 3.
- (7) By letter of 27 October 2006, the Mail Competition Forum (MCF), a body representing entrants to the postal market in the UK, submitted a complaint about the special account dedicated to finance RM's pensions also covered by DP's second complaint. The complaint of MCF was attributed the reference CP 164/06, subsequently NN 82/06. A non-confidential version of the complaint was sent to the UK authorities on 20 November 2006. The UK authorities provided comments on the complaint by letter of 19 December 2006.
- (8) By letter of 7 December 2006, the Commission informed DP that it did not find sufficient grounds for continuing the investigation concerning complaint CP 206/02, and that if it did not hear from DP within 20 working days, the complaint would be considered withdrawn. No response was received within the deadline. That complaint was therefore considered withdrawn.

⁽¹⁾ OJ C 91, 26.4.2007, p. 34.

⁽²⁾ OJ C 269, 8.11.2003, p. 23.

⁽³⁾ OJ C 141, 16.6.2006, p. 2.

- (9) On 7 December 2006, the UK notified the proposed extension of another of the measures in favour of POL (debt payment funding) covered by N 784/02 which was otherwise due to expire in 2007. The Commission authorised this aid under reference N 822/06 by decision of 7 March 2007 ⁽⁴⁾.
- (10) On 8 February 2007, the UK communicated to the Commission the terms of an announcement concerning 'the pensions measure', the GBP 900 million loan facility and also a new loan of GBP 300 million to Royal Mail.
- (11) On 21 February 2007, the Commission opened an investigation procedure on the following measures:
- (a) a GBP 500 million loan granted in 2001, repayable after 2021 and granted at a fixed interest rate, which financed Royal Mail's overseas acquisitions;
 - (b) GBP 1 billion of loan facilities made available to Royal Mail from State sources in 2003, of which GBP 900 million was to be extended after 2007;
 - (c) 'The pensions measure': placing GBP 850 million in an 'escrow account' which will lengthen the period over which Royal Mail needs to address the current deficit in its pension fund and will therefore reduce the contributions it makes in the initial years of the period;
 - (d) the loan of GBP 300 million announced on 8 February 2007.
- (12) The decision of 21 February confirmed the withdrawal of complaint CP 206/02 and confirmed that the Commission raised no objection to the funding of the authorised measures for POL from the State budget rather than from the mails reserve.
- (13) By letter dated 22 February 2007, the Commission notified the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the measures listed in recital 11.
- (14) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽⁵⁾. The Commission invited interested parties to submit their comments on the measures.

2. DESCRIPTION OF THE MEASURES

2.1. The beneficiary of the alleged State aid

- (15) The beneficiary of the alleged State aid is Royal Mail Group plc, subsequently Royal Mail Group Ltd ('RM') which (through a holding company, Royal Mail Holdings plc) is a 100 % State-owned company. RM is the UK's main postal operator and had a legal monopoly over most basic letter services until the end of 2005. The post office network is operated by POL, which is a subsidiary of RM.
- (16) Before 2001, postal activities in the UK were carried out by The Post Office Corporation, a statutory body created by the Post Office Act 1969. The assets and liabilities of The Post Office Corporation were transferred to Consignia Holdings (now renamed Royal Mail Holdings plc) and to its subsidiary, Consignia plc (now RM) on 26 March 2001, under the terms of the Postal Services Act 2000.
- (17) RM has a separate parcels business division, Parcelforce, which was cited as the beneficiary in DP's complaint of 2002. Parcelforce has its own separate hub and spoke infrastructure. In 2003, a part of the parcels activity (including the provision of a universal service for parcels handed in at post offices) was transferred from Parcelforce to the letters division of RM and is now operated through that infrastructure. Today, Parcelforce only handles time-critical parcels.

2.2. Financial regime of the beneficiary and relationship with the State

- (18) Under the regime in existence before the incorporation and transfers of 2001, there was no requirement for The Post Office Corporation to pay any dividends to the UK authorities and it did not do so. It was, however, obliged to invest a proportion of the profits it generated each year in Government securities or National Loan Fund deposits. These investments, classed as current assets and often referred to as the 'gilts', remained with RM following the 2001 transfers and amounted to GBP 1 800 million on 31 March 2002. Following directions by the UK authorities on 30 January 2003 under section 72 of the Post Office Act 2000, RM placed these assets in a special reserve ('the mails reserve') to be used to finance specific measures as directed.

2.3. The measures concerned by the investigation procedure

2.3.1. The 2001 loan

- (19) In February 2001, the UK authorities made a loan of GBP 500 million to RM to finance overseas acquisitions for the mail and parcels business. The loan is repayable

⁽⁴⁾ OJ C 80, 13.4.2007 p. 5.

⁽⁵⁾ See footnote 1.

between 2021 and 2025 and carries an average interest rate of around 5,8 %. The UK authorities have stated in correspondence with the Commission that this loan was on commercial terms, and that they followed advice from consultants designed to ensure that this was the case. The loan was secured on RM's shareholding in General Logistics Systems International Holdings BV and certain other RM assets. The loan was not notified to the Commission.

2.3.2. *The loan facilities*

- (20) In 2003, the UK authorities made various loan facilities available to RM to finance its 'renewal plan' (including the restructuring of Parcelforce). These facilities, described by the UK authorities as a commercial package were negotiated between RM and the UK authorities and consisted of a loan facility of GBP 544 million from the National Loans Fund ('NLF') secured on RM's accumulated cash balances (in particular the funds allocated to the mails reserve) and the acquisition by the authorities of two bonds issued by RM (one of GBP 300 million and one of GBP 200 million). Again, the UK authorities have stated in correspondence with the Commission that these loan facilities were on commercial terms, and that they followed advice from consultants designed to ensure that this was the case. They also informed the Commission that as of October 2006 these loan facilities had not been drawn down, apart from a GBP 50 million testing of the draw down process which was repaid in 7 days, and that the GBP 200 million facility had by then expired. Commitment fees of some GBP 2,5 million had nonetheless been paid by RM. These loan facilities were not notified to the Commission.

- (21) In May 2006, the UK authorities announced their intention to extend the remaining loan facilities and to increase their level from GBP 844 million to GBP 900 million. The UK authorities indicated on 31 October 2006 that the precise terms of this extension were still being finalised but the intention was that it would be on commercial terms and that the lending would not constitute State aid.

2.3.3. *The pensions escrow account*

- (22) In 2006, the UK authorities decided to release GBP 850 million of the cash balance remaining in the mails reserve within RM to set up an 'escrow account', which could be drawn on by the Royal Mail Pension Plan ('RMPP') in certain circumstances if RM were to fail as a business. The background to this measure was that the

various RM pension schemes, of which the RMPP is by far the largest, showed a total deficit (excess of projected liabilities over assets, on certain prudential assumptions) of GBP 5 600 million in its 2005/2006 accounts, where for the first time this deficit was included in RM's balance sheet. The RMPP, like other UK occupational pension schemes, is a funded scheme which is required to hold assets in respect of its liabilities. According to the UK authorities, RM would not be able to pay off this deficit quickly and modernise the business at the same time, given projected cash flows. The account therefore allows RM to agree with the trustees of the RMPP a longer period for addressing the deficit thereby reducing its pension contributions in the initial years. The UK authorities have stated that they believe the use of the mails reserve for this purpose is in RM's best commercial interests, and that by enabling RM to complete its strategic plan they will bring about an increase in the value of the UK authorities' shareholding. Without the escrow account and the extended loan facilities, the UK authorities claim there is a possibility that shareholder value would be destroyed and not enhanced, and that they are therefore acting in a commercial manner.

2.3.4. *The new GBP 300 million shareholder loan*

- (23) On 8 February 2007, the UK authorities announced their agreement to provide RM with a GBP 300 million shareholder loan. This loan was not notified to the Commission. It was clear from the terms of the announcement that this loan is part of a package of measures with the pensions escrow account and loan facility.

2.4. **Grounds for initiating the procedure**

- (24) In its decision opening the investigation procedure, the Commission expressed doubts over the claims by the UK authorities that the measures did not constitute State aid because they were provided on commercial terms and therefore provided no advantage to Royal Mail. The letters and parcels delivery business is international and the Commission believes that a selective advantage in favour of RM or Parcelforce would distort competition and affect trade between Member States. The measures were all granted from funds under the direct control of the State and therefore constituted State resources within the meaning of Article 87(1) of the Treaty. The measures were all imputable to the State and were selective in that they were granted only to RM. If they provided an advantage to Royal Mail they would therefore fulfil the

criteria to be considered State aid. The Commission assessed the question of advantage in respect of the measures on which it opened the procedure.

2.4.1. *The 2001 loan*

- (25) As noted in recital 19, the 2001 loan is repayable between 2021 and 2025 and carries an average interest rate of around 5,8 %. This is significantly below the reference rate applicable to the UK in 2001 (7,06 %), when the UK previously informed the Commission that the loan was granted. The UK authorities provided certain evidence that at that time, the yield curve in the UK was downward sloping and that therefore the interest rates for such a long-term loan could be below the reference rate (which at the time was based on five year rates) without contravening the market economy investor principle. However, this evidence also appeared to indicate that part of the loan was granted in 1999 and 2000. Not only did this contradict earlier information, but it involved a period when the reference rate was even higher (7,64 % in 2000). The Commission also noted that, at least in 2001, Royal Mail's financial performance was beginning to decline. This would normally be reflected in the terms of any loan. For this reason, when assessing a loan to a company in financial difficulties, the Commission may use a rate higher than the reference rate as a point of comparison.

2.4.2. *The loan facilities*

- (26) The UK authorities had informed the Commission that as of October 2006 the loan facilities granted in 2003 had not been drawn down. However, it could not be concluded from this point alone that the loan facilities provided no advantage, since the availability of the loan facilities had an 'option value' to the company. It could not have been known in 2003 that they would not be drawn down. The terms of the loan facilities therefore need to be assessed in the same way as the 2001 loan. It can be noted that these loan facilities were linked to RM's renewal plan.
- (27) The GBP 544 million NLF loan was granted at '25 basis points above LIBOR or relevant gilt' ⁽⁶⁾. It should be noted that the reference rate is set at 75 points above an interbank swap rate. The UK authorities justified the low margin by reference to the security provided, namely the cash reserves of RM. However, the Commission noted that these reserves constitute State resources over which the UK authorities had control through specific

legislation. The Commission therefore questioned whether their use as security could necessarily dispel its doubts as to the aid character of the measure. It noted that if the loan had been drawn down, a saving of 50 basis points would outweigh the value of the commitment fees which have been paid by RM.

- (28) The bonds of GBP 300 million and of GBP 200 million were issued at rates of 50 and 200 basis points above the 'relevant gilt'. The larger bond was secured by a floating charge over all assets of RM while the smaller one had lower security. The margin of 50 basis points above a rate based on Government securities (which are typically below interbank rates) implies the GBP 300 million loan may have been at a rate below the Commission's reference rate.
- (29) The UK authorities informed the Commission on 31 October 2006 that the terms on which the 2003 loan facilities, still in existence in October 2006 (namely the GBP 544 million National Loan Fund loan and the GBP 300 million bond), were to be extended were still being negotiated but that they were seeking advice from consultants to ensure that the terms were commercial.

2.4.3. *The pensions escrow account*

- (30) According to information provided by the UK authorities, one effect of the escrow account was to reduce the pensions contributions that RM has to make to the RMPP in order to address its deficit in the initial years. The Commission noted that this was an indication that the measure may provide an advantage to RM and therefore constitute State aid. The Commission had doubts about the argument that the measure can be justified as the intervention of a market economy investor, which had not been supported by projections or by financial analysis.
- (31) The Commission identified three issues it would be considering. Given that the reserve funds within the reserve were already held within Royal Mail and on its balance sheet, one issue was whether the creation of the escrow account could be regarded as a commercial decision by RM in spite of the involvement of the UK authorities, which arose through the particular applicable legal regime. A second issue, given the particular powers taken by the UK authorities over these reserves, was whether a shareholder acting commercially would agree

⁽⁶⁾ Letter from UK authorities dated 31 October 2006. A gilt is a UK Government security.

to this use of shareholders' equity. A third issue, given that the use of the reserves for the pensions measure requires the authorities to fund the POL measures from the State budget, was whether a shareholder would agree to bring new equity to fund an escrow account of this type.

2.4.4. *The new GBP 300 million shareholder loan*

- (32) The terms of the loan had not been communicated to the Commission at the time of opening the investigation. The Commission was therefore unable to assess whether its terms included aid. Given the fact that the loan was part of package of measures where the Commission had not allayed its doubts that State aid may be involved, the terms of the loan could not, in any case, be assessed independently.

2.4.5. *Compatibility of any State aid*

- (33) The Commission further expressed doubts whether, if they did constitute State aid, the measures could be found compatible with the common market. It noted that the legal basis of Article 86(2) of the Treaty did not seem to be available even though RM is entrusted with services of general economic interest. The loan and loan facilities had been explicitly linked by the UK authorities to other projects than the provision of such services, namely the overseas acquisitions of RM and the renewal plan adopted in 2003. The pensions escrow account had similarly not been linked to any service of general economic interest performed by RM.
- (34) The only basis for compatibility for these measures, if they contain State aid, appeared to be Article 87(3)(c) of the Treaty. However, the measures did not appear to conform with any of the rules concerning the application of that subparagraph that the Commission had promulgated to date. If State aid were involved, the Commission therefore doubted whether these measures would be compatible with the common market.

3. COMMENTS FROM INTERESTED PARTIES

3.1. *Deutsche Post*

- (35) Deutsche Post commented that the investigation covered only part of the aid granted to Royal Mail in recent years. The Commission had approved a whole series of UK aid measures resulting in Royal Mail being the largest aid recipient in the postal sector (after Poste Italiane) in recent years. DPAG pointed out that, despite all these measures, Royal Mail's liberalised parcel delivery service provider, Parcelforce, was for many years heavily loss-making. Since Royal Mail had at the same time not earned sufficient revenue from its other businesses to offset these losses, they must necessarily be covered out

of State resources. According to the Commission's decision of 19 June 2002 (case C 61/99, Deutsche Post AG (7)), such loss of compensation constitutes State aid incompatible with the common market. DPAG regretted that the Commission had not taken this fact, which DPAG already highlighted in its complaint of 3 December 2002, into account in these proceedings.

- (36) In respect of the 2001 loan, DP observed that in January 1999 Royal Mail acquired the German parcel service provider German Parcel GmbH ('German Parcel') for EUR 424 million. In the autumn of 1999 German Parcel GmbH became part of newly founded General Logistics System ('GLS'). GLS went on to make numerous purchases in the European market. During the period 2000-2003, Royal Mail generated hardly any profits from which to finance these acquisitions. If the loan financing these purchases was granted on terms which at that time were unobtainable on the market, then unlawful State aid would be involved which would have to be repaid.
- (37) In respect of the loan facilities, DPAG considered it hard to see why Royal Mail did not finance the renewal of its postal infrastructure out of its recent years' revenues (according to its own figures, in the 2005/2006 financial year Royal Mail booked an operating profit of GBP 355 million). The regulator Postcomm had already taken the company's universal service obligations extensively into account in its rate approvals. It was therefore to be feared that the overall effect of the many support measures in the form of direct State payments, loans and approved pricing measures would be to overcompensate for the universal service costs in a way that is inadmissible under State aid rules. This could appreciably affect competition in the letter, parcel and express courier market in the UK, where DPAG achieved a turnover in excess of EUR 1 000 million in 2006.
- (38) DPAG urged the Commission to subject the aid measures listed in the decision opening proceedings to a critical examination against the background of the numerous State support measures already approved for Royal Mail in particular.

3.2. *TNT Post UK Limited*

- (39) In a first response to the opening of procedure, TNT Post UK Ltd ('TNT') fully supported the investigation as a Member of the Mail Competition Forum which had submitted a complaint on the pensions measure. As

(7) OJ L 247, 14.9.2002, p. 27.

a market entrant, it was directly affected by any form of financing made on anything other than arms' length, commercial terms. Such financing would mean that Royal Mail is in a position to keep its prices artificially low, thus reducing TNT's ability to compete.

(40) TNT noted from the Royal Mail Group Limited (formerly plc) interim accounts that 'Royal Mail Group plc is in default of its borrowing facilities with Government, but has received formal waivers from the Department of Trade and Industry, in its capacity as lender'. TNT claimed that, given these conditions, no commercial lender would be willing to lend further amounts unless the terms adequately reflected the increased risk of non-payment of interest or non-repayment of capital. TNT further noted that, in a Royal Mail document dated March 2007, entitled 'Royal Mail's position on the interim review', Royal Mail confirmed that re-financing was inter-dependent with settling price control and funding the pension deficit over 17 years. TNT understood this to be an unduly long period and, if the financing were shown to be on non-commercial investor or lender terms then it would indicate this recovery period to be too long. Consequently, the price control caps set by the postal regulator Postcomm would have been set at too low a level. As a competitor, TNT said it was directly impacted by price caps on business mail which were set at a level assuming government financing and an unduly long recovery period for the pension fund deficit.

(41) TNT made a further submission which arrived well after the official deadline for comments but which the Commission has nonetheless taken into account. TNT had undertaken analysis of the two sources of government funding made available to Royal Mail, namely (i) loan financing and (ii) the release of government controlled reserves to an escrow account accessible by the Royal Mail pension fund trustees. TNT's conclusion was that both sources of funding would not have been made by a commercial investor.

(42) Concerning the 2001 loans, these were granted as unsecured loans in February 2001 with a duration close to, on average, 21 years and a fixed interest rate of, on average, 5,84 %. In the month of issuance of the loans, the 20-year swap rate (versus GBP-LIBOR) ranged between 5,87 % and 6,12 %. From this, it could be derived that the State loans must have been concluded at a discount from the prevailing inter-bank rates while under normal circumstances corporate unsecured debt pays a credit spread above the inter-bank rates. That this also holds for Royal Mail is proven by the credit spread of 0,25 % above LIBOR that commercial banks charged to Royal Mail for the loans with a much shorter duration. TNT also noted that credit spreads increase

significantly for longer maturities. Based on the information available, they would conclude that a commercial party would not have entered into the GBP 500 million of loans with Royal Mail on the conditions published. In fact, a loan granted on arm's length market terms would have yielded a substantially higher interest rate.

(43) With regard to the bonds issued in 2003 (that is, the loan facilities), TNT viewed the situation somewhat differently since it appeared that the bonds were secured by assets of Royal Mail. Depending on the strength of such assets (which, based on the information available, seemed to be rather strong) the spread over LIBOR would be expected to be reduced. Only the amount of such reduction would be questionable but since it was not clear to TNT what rate Royal Mail was actually paying, it was difficult to determine whether from a commercial perspective this can be justified by both Royal Mail and the UK Government.

(44) With regard to the loans issued in 2007, TNT noted that it was not possible to determine the commerciality of the terms because they were not public knowledge and, also, because the lending was apparently connected to the escrow account and existing loan facility. However, waiving default clauses under existing facilities (as was confirmed by the Royal Mail half-year regulatory accounts⁽⁸⁾), at note 3 on page 18 'Royal Mail Group plc has net liabilities as at 24 September 2006, primarily as a result of the pension deficit within its main pension plan, the Royal Mail Pension Plan. Consequently, Royal Mail is in breach of its borrowing facilities with Government, but has received formal waivers from the Department of Trade and Industry, in its capacity as lender') and granting additional loan finance was something a commercial party would not under normal circumstances do.

(45) With respect to the pensions measure, TNT questioned whether, at the incorporation of Royal Mail in March 2001, the transfer of the non-business assets and related equity known as the 'mails reserves' was commercial. According to TNT, a commercial shareholder would very probably not have established a company which included a loan asset (where the debtor was the shareholder) and then provide a similar contribution in equity. TNT commented that when Netherlands operator KPN was 'privatised' in 1989, a similar arrangement had been in place but KPN's opening balance sheet in 1989 as a Dutch NV did not contain either the associated assets or reserves.

⁽⁸⁾ Royal Mail Holdings plc, Unaudited Interim Report for the half year ended 24 September 2006.

(46) According to TNT, the transfer into the escrow account by the UK authorities acts as a guarantee towards the pension trust, of which the benefit to Royal Mail would be that it is able to recover the deficit over a longer funding period and to use their own funds to strengthen their business. If Royal Mail had had to fund the deficit at once, depending on whether the pension liability in the balance sheet would already have reflected such deficit, they would have been confronted with a substantial loss and reduction of equity and, perhaps more importantly, a reduction of funds. In normal market conditions, if a company needs funds, it can borrow from the debt market or raise additional capital in the equity markets. In Royal Mail's case, it appeared there was third possibility, namely, agreeing to a more lenient price cap in its price control with the regulator. Prices could increase by a substantial level without reaching abusively high levels. As Royal Mail's consent was required to give effect to the price control, this was a matter within the power of Royal Mail and an option which was known to its shareholder.

(47) TNT commented that to raise money in the debt market, a borrower needs a convincing argument that it is able to repay the debt from future cash flows. To raise money in the equity market, a company needs an even more convincing argument that it will generate a significant return for the shareholder over the invested total capital contribution. As the sole shareholder of Royal Mail, the UK Government should have undertaken all necessary investigations to satisfy itself that Royal Mail would be in better financial condition if it were allowed to complete its strategic plan. The critical issue was whether making further investment by releasing funds from reserves would make commercial sense or be tantamount to putting 'good money after bad'. A very clear analysis on the return to be derived from the additional investment would be paramount to any such decision. In the absence of compelling evidence to demonstrate that the re-structuring plan — enabled by the release of funds from the reserves — would derive a commercial return on this investment for the shareholder, TNT believed that the decision would have been taken on non-commercial terms.

4. COMMENTS FROM THE UNITED KINGDOM

4.1. The 2001 loan

(48) In respect of the 2001 loan, the UK clarified that the origins of the loan were in 1999 when the Government endorsed Royal Mail's strategy to make certain acquisitions in order to help the competitiveness of Royal Mail's core business. In agreeing to this strategy, the authorities in particular took into account the forecast return expected as Royal Mail worked towards achieving its strategic objective. By the fifth year of its overall acquisition strategy, Royal Mail was forecasting growth in turnover of 40 % and 210 % increase in

profits. In discussions about the acquisition funding, and in particular the acquisition of German Parcel which represented Royal Mail's first major overseas acquisition, the UK authorities indicated that they wished Royal Mail to finance this transaction (and future transactions) by a loan from the Government's NLF at commercial rates. This reflected the Government's intention to impose commercial disciplines on Royal Mail and also to ensure that it competed fairly with other postal operators in the postal sector as the market was gradually opened to competition.

(49) Because the NLF was not in a position to provide the loans in 1999, the UK Government agreed that Royal Mail would fund the transactions temporarily through the use of the cash reserves on its balance sheet, following UK policy that publicly owned bodies should generally not borrow from private capital markets. The interest on the NLF loan would be applied from the dates ⁽⁹⁾ Royal Mail drew down from its cash reserves as if the loan had been in place from that point (as originally intended) to leave the company neutral to the interim financing arrangement. The UK provided the Commission with the letter dated 12 January 1999 by which the UK authorities gave Royal Mail their approval of the German Parcel acquisition, which specified how the financing would be provided.

(50) In order to consider whether the proposed acquisitions by Royal Mail were strategically and commercially sensible, the UK authorities enlisted the assistance of an external adviser for the German Parcel acquisition. For subsequent acquisitions which were also funded by the GBP 500 million loan and requiring the consent of the UK authorities, advice was sought from Deloitte & Touche LLP ('Deloitte'), who evaluated each acquisition on an individual basis, before the UK authorities permitted the acquisitions concerned to go ahead. Deloitte did not advise against any of the acquisitions.

(51) Deloitte was also retained to help determine commercial interest rates on advances from the NLF to Royal Mail and in particular on the credit rating for Royal Mail based on assessing its creditworthiness as a standalone business, independent of Government ownership. Deloitte assessed RM's credit risk as a function of business and financial risks, and using comparators and financial ratios, determined a credit rating of between AA and AA-. Deloitte further recommended that the rate of interest charged to Royal Mail be determined by reference to rates for comparably rated issuers based on a screen

⁽⁹⁾ The '2001 loan' consists in fact of 20 loans of GBP 25 million each, for which the interest rate is determined according to the date in 1999-2000 of the corresponding drawing on the cash reserves. These individual loans are referred as 'tranches' of the 2001 loan in this decision.

pricing 'index' of spreads for the given credit rating against benchmark Government bonds. On this basis the relevant spread charged to Royal Mail ranged between 76 and 165 basis points.

company's indebtedness, the security over the GLS shares given under the new facilities was also extended to cover the 2001 loan. At the same time, the loan was secured by a fixed and floating charge over certain of Royal Mail's assets.

(52) Royal Mail sought a long-term loan since, in order to implement its strategy, it intended to hold the businesses it acquired for the long term. Based on the commercial rates of interest available at the time (when long term interest rates were considerably lower than short term interest rates), Royal Mail requested loan durations of between 20 and 25 years, as appropriate, for the long-term acquisitions concerned, enabling GBP 100 million of the total amount lent to become repayable in each of the years 2021 to 2025, rather than Royal Mail being required to repay the entire GBP 500 million in one year. The loan tranches had differing maturities ranging between 20 to 25 years which was not unusual given the relative attractiveness of long term interest rates at that time. The loan rates were based on similarly unsecured reported 20 and 25 year maturity AA credit-rated debt and then annual rates were interpolated to derive an appropriate rate for the Royal Mail loan.

(53) The UK maintained that the Commission's reference interest rates were not a valid comparator for the rates on the 2001 loan, in particular because the Commission's rates are based on five year maturity dates and the loan in question consisted of long-term debt with a range of maturity dates between 20 and 25 years, because the loan advanced to Royal Mail reflected commercial rates available to similarly positioned long-term borrowers, and because the UK yield curve in 1999-2000 (the relevant period for calculating interest) was moving downwards making corporate borrowing cheaper.

(54) No security on the loan was deemed necessary or appropriate as the credit rating of Royal Mail was considered to be AA for debt facilities of up to GBP 1 000 million. The proposed loan would still keep Royal Mail's long-term debt within this level and would by itself comprise the substantial majority of Royal Mail debt with maturity of greater than one year. At the same time as negotiating the 2003 debt facilities, however, the UK authorities decided to restate the 2001 GBP 500 million loans in a similar form of document to the 2003 arrangements. This new document did not change the amount of the loans, the duration of the loans or the interest rates applicable but, given the overall increase in the

4.2. The loan facilities

4.2.1. The facilities granted in 2003

(55) The UK provided further details about the loan facilities made available in 2003. The terms required that the loans be backed by security over certain of the cash deposits held on Royal Mail's balance sheet and were therefore especially low risk debt justifying a margin of [...] (*). In response to the Commission's observation that these cash deposits constituted State resources over which the UK authorities had control through specific legislation, whose use as security could therefore not necessarily dispel doubts as to the aid character of the measure, the UK authorities stated that they were seeking to achieve the use of the cash deposits and other assets of the company in a manner that would reflect commercial principles so that effective disciplines were placed on the company with regard to the facilities. The authorities directed Royal Mail, using the powers under section 72 of the Postal Services Act 2000, to credit its cash deposits with the NLF generated by the accumulated profits of the business (totalling some GBP 1 800 million) to a special reserve on the Royal Mail balance sheet (the Mails Reserve). A separate letter agreement allowed GBP 549 million of the reserve to be used as security for the GBP 544 million loan facilities with the NLF.

(56) In response to the Commission's questions concerning the commitment fee paid by Royal Mail for the NLF loan facilities, the UK clarified that the annual commitment fee in this case was [...] basis points of the loan value, that is, [...] % of the [...] basis point margin charged over LIBOR. They stated that the market convention is that commitment fees are generally 50 % or less of the margin over LIBOR, and adduced examples to illustrate this point. Relatively low margins — around 50 basis points or less — were common for senior debt in this period. Given the fact that the availability of the other facilities (the bonds) was conditional upon Parliament approving the supply of funds to the relevant Government department at such time as it required the funds to purchase the bonds to be issued by Royal Mail, a commitment fee for these other facilities was not appropriate since the facilities were never actually committed to Royal Mail. Market

(*) Business secret.

practice, in a private lending context, is that a commitment fee be paid only once the lender has obtained all necessary internal approvals so that the money is formally committed to (and unconditionally available for) the borrower.

- (57) The UK also described the analysis of the proposed loan facilities which was undertaken before they were granted, including calculation of the Net Present Value ('NPV') of cash flow returns from the proposed refinancing as well as some alternative options. The proposed option was assessed to have a recovery of GBP [...] whereas the alternatives had recovery of GBP [...] at best. The UK further confirmed that the facilities granted in 2003 were not drawn on, other than a test drawdown repaid within a week, before they either came to an end or were restated in the facilities granted in 2007.

4.2.2. The facilities granted in 2007

- (58) The UK explained that loan facilities granted in 2007 consisted of a GBP 900 million senior debt facility. It forms part of a financing package which includes the pensions measure and the GBP 300 million subordinated loan. The debt facilities are intended to finance the Royal Mail transformation and investment programme, including redundancy costs. The GBP 900 million senior loan replaces and extends the GBP 844 million loan facilities provided in 2003 and is structured in two tranches: the GBP [...] tranche which is permitted only to fund the transformation and GBP [...] which is for general working capital purposes within the business (excluding Post Office Limited). The measure became effective from 19 March 2007 and has a maturity term of [...] years from this date. It has a margin of [...] bps over relevant LIBOR⁽¹⁰⁾ for the first [...] months. Thereafter, the margin depends on the level of fixed charge cover (profitability as multiple of interest payments), with a minimum of [...] bps. The GBP 900 million facility is secured against shares in a new subsidiary company which Royal Mail have established, Royal Mail Estates Limited, which holds virtually all of its property assets (excluding those relating to Post Office Limited), with a total market value estimated by Atis Real in September 2006 of GBP [...].

- (59) The UK described the measures taken to ensure that the requirements of the Market Economy Investor Principle (MEIP) were met, while noting that commerciality of the

2007 financing package needed to be assessed as a whole (see further in recitals 64 and 65). Both Credit Suisse and Deloitte had advised that the facility is on commercial terms and the interest payable is at market rates, including through a benchmarking with loans made in the market. Although that analysis suggested that the term of seven years is at the upper end of the market range, the arrangement fee, commitment fee, and the tests for draw-down and default all appear in line with market norms for loans secured on the basis of the Royal Mail loans (in this case predominantly on real estate). The security arrangements were different from market practice (charge over shares rather than property) but the UK considered that this was actually more advantageous from a lender's perspective for cost, timing and administrative reasons.

- (60) As regards the submission of TNT referring to the breach of RM's borrowing facilities with the Government, and receipt of formal waivers from the Department of Trade and Industry, the UK explained that the waiver was necessary because of a purely technical matter regarding the introduction of new accounting requirements for pensions (FRS17), and not as a result of any underlying deterioration of the commercial performance of the business. They also noted that the 2007 facilities were not 'additional' as suggested by TNT, but rather, replaced the 2003 facilities.

4.3. The pensions measure

- (61) The UK clarified the mechanics of the establishment of the escrow arrangement, including the security given to the pension fund trustees over the amount. In the event the GBP 850 million escrow account was funded from the mails reserve for GBP 796 million and via a capital injection for the remaining GBP 54 million. Under the arrangements the Trustees are entitled to exercise the security over the escrow accounts upon the occurrence of certain limited events of default, principally relating to the relevant business (Royal Mail Holdings plc or Royal Mail Group Limited) going into insolvent liquidation or the security constituted by the escrow accounts becoming unenforceable. The security agreements also set out the circumstances in which funds in the accounts may be released from the security created by the security arrangements, which broadly will be once the pension fund reaches a 75 % solvency level. Once funds are released from the security created by the Royal Mail Holdings security agreement, the parties have acknowledged that the shareholder may decide that the GBP 850 million escrow funds (plus accrued interest) that are released from the security created by Royal Mail Holdings security agreement may be given

⁽¹⁰⁾ [...].

to the shareholder using powers under the Postal Services Act 2000 or other applicable rights or powers.

- (62) The provision of the escrow account resulted in the agreement of the trustees to a period of 17 years for the recovery of the pension deficit. The UK authorities drew attention to statements by the pension fund regulator that recovery periods longer than 10 years would be subject to particular scrutiny, including whether trustees had made use of a 'contingent asset' (such as an escrow account) to reduce risks arising from the recovery plan. The UK disputed the Commission's suggestion that the escrow arrangement enables Royal Mail to reduce its pension contributions, arguing that the outcome in the absence of the escrow account would be subject to negotiation and could not be predicted. Failure to agree would have placed the availability of funds for business investment at risk.

4.4. GBP 300 million shareholder loan

- (63) The UK confirmed that it was providing Royal Mail with a shareholder loan by way of a subordinated debt of GBP 300 million at an interest rate of [...] % with such interest rolled up until maturity of the loan. The facility was available for two years, with maturity being the later of the final repayment date of the senior debt facility [...], or the release of the pension escrow monies. The terms of the subordinated loan were negotiated as part of the total package as opposed to a stand-alone facility. The UK stated that the condition under which repayment could take place only after release of the pension escrow was a consequence of the subordinated nature of the loan. This was in turn reflected in the high interest rate which, in recognition of the business risks, was higher than the range put forward by the Government's advisors for the appropriate opportunity cost of equity. The arrangement had been confirmed by the Government's advisors to be 'fully commercial'.

4.5. Market Economy Investor conformity of the 2007 package

- (64) The UK stated that the components of the 2007 financing package were negotiated as elements of an integrated whole and that their commerciality were not and should not be evaluated on a stand-alone basis, although their individual terms were benchmarked against commercial equivalents. The commercial nature of the package, and in particular of the escrow arrangement, were analysed by Deloitte and Credit Suisse and the Government relied on their advice.

- (65) Deloitte's approach was to consider the enterprise value of the business under the Strategic Plan assuming the escrow investment of GBP 1 billion is made. This enterprise value is estimated by discounting projected pre-financing cash flows at the weighted average cost of capital of the business. According to the UK, the escrow investment is appropriate for a rational existing commercial equity investor if:

- (a) it delivers a positive equity value to the investor (deducting the net financial debt, value of the pension deficit and the net cost of the escrow from the enterprise value); and
- (b) a higher value could not be achieved by not investing in the escrow accounts as proposed.

Deloitte also calculated an associated internal rate of return 'IRR', defined as the discount rate for future cash flows which reduced the equity value of the business to [...]. The analysis performed by Deloitte indicated a post-investment equity value of over GBP [...] and an internal rate of return ('IRR') of [...], and that these returns were robust to a range of sensitivity analyses. Two alternative scenarios without escrow investment were examined under which, according to Deloitte, the value of the shareholder's equity would potentially become significantly impaired. In contrast, with the proposed investment, the value of the investment was expected to be significantly enhanced over time.

5. ASSESSMENT OF THE MEASURES: EXISTENCE OF STATE AID

- (66) As noted in the opening decision, the question of whether each of the measures under consideration constitutes State aid depends on the presence of an advantage to Royal Mail within the meaning of Article 87 of the Treaty, the other criteria for the existence of aid being clearly met. In order to determine whether the measure provided an advantage to RM, the Commission examines whether a private operator, acting in a market economy, would have been prepared to provide finance on the same terms.

5.1. The 2001 loan

- (67) The clarifications provided by the United Kingdom authorities explain why the interest rate at which the loan tranches were made was set at the long-term

(20-year) rate average of 5,8 %, below the Commission's reference rate then prevailing, which is a shorter term rate ⁽¹¹⁾. They also explain, in the letter referred to in recital 49, how the origins of the loan were in 1999 and how the terms were set at this date. They answer the points made by TNT (see recital 42) because TNT made comparisons with the loan rates in 2001, which was not when the loan rates were set. They also explain the absence of security on the loan (which was in any case subsequently amended when the 2003 loans were issued). Finally, they answer the point raised by the Commission in the decision opening the procedure that, at least in 2001, the decline in Royal Mail's financial performance was beginning. This was not the case in 1999 when commitment was given to the loan and in the period 1999-2000 which are the relevant dates for setting interest rates.

(68) At the time the loans were agreed, the Commission's reference interest rates were set under the Commission notice of 1997 on the method for setting the reference and discount rates ('the 1997 reference rate notice') ⁽¹²⁾. Under that notice, the Commission defined rates based on the five-year interbank swap rates, plus a premium, but reserved the right to use a shorter base rate (for example, LIBOR one-year rate) or a longer base rate (for example, the rate on 10-year bonds) than the five-year interbank swap rate. Because of the fixed longer duration of the loans, the Commission believes that the use of such a longer term rate is appropriate in this case.

(69) The Commission has noted that the rates charged were arrived at by a process based on observed commercial loan transactions which were then compared with the relevant Government bond ⁽¹³⁾. The spread over Government bonds ranged between 76 and 165 basis points, which is therefore sufficient in comparison with the 75 basis points set in the reference rate notice. The Commission also compared the rates charged with 20 year interbank swap rates on the relevant dates. The rates charged are extremely close to these rates (generally less than 10 basis points of difference). The Commission notes that the UK and its consultants did not base themselves on the relevant interbank swap or other published rate but rather sought direct commercial benchmarks. In

the light of all the above, the Commission accepts that the measure in question did not provide an advantage to Royal Mail and did not constitute State aid.

5.2. The loan facilities

5.2.1. The facilities granted in 2003

(70) As noted in the opening decision, these facilities were never used in the period before they were extended or modified in 2007. The Commission did not therefore open the procedure concerning the terms of the loan and this decision does not assess the adequacy of the agreed rate. The Commission did, however, raise the question of whether the facilities nonetheless had an option value to the company which should be assessed for State aid content. On this subject, the Commission has established that the facilities, despite not being used, were nonetheless the subject of a commitment fee of [...] per annum for those facilities which were committed. The Commission has established to its satisfaction that this was a market rate, being set as a percentage of the margin over LIBOR of the underlying loan, which is the market practice, and at a level [...] in line with that practice (the Commission has noted examples ranging from 16 to 50 %). Other facilities were never approved by Parliament and were never therefore committed, which would not normally therefore give rise to a fee. The Commission is therefore satisfied that the facilities granted in 2003 did not in practice confer State aid on Royal Mail.

5.2.2. The facilities granted in 2007

(71) In 2007, the outstanding facilities from 2003 ⁽¹⁴⁾ were replaced by a 'senior debt facility' of GBP 900 million, under revised terms. The Commission has reviewed the terms of this facility. The interest rate charged is [...] basis points above relevant LIBOR for the first 12 months, with the rate thereafter varying according to fixed charge cover but never below [...] basis points above relevant LIBOR. The facility is secured by a floating charge ⁽¹⁵⁾ over the assets of Royal Mail, a fixed charge over the shares of a new subsidiary Royal Mail Estates Ltd which holds RM's property portfolio, and a floating charge over the assets of that company. The market value of the property held in RM Estates was valued at GBP [...]. The Commission has assessed these terms under the 1997 reference rate notice which applied

⁽¹¹⁾ The term of the Commission's reference rates was 5 years under the methodology in effect until 31 December 2007, one year under the Communication adopted at the start of 2008.

⁽¹²⁾ OJ C 273, 9.9.1997, p. 3.

⁽¹³⁾ Because the loan consists of different tranches for which the rate depends on the date and duration for which the relevant funds were first drawn down from Royal Mail's reserves (see footnote 6 above), each tranche is subject to a different rate. This explains why 5,8 % is an average rate. The relevant Government bond rate was the rate for a bond closest in duration to the tranche in question on the date of drawing.

⁽¹⁴⁾ One part of the loan facilities had lapsed by this point, so the outstanding facilities were GBP 844 million.

⁽¹⁵⁾ A floating charge is a form of security which does not attach to a particular asset but rather to a class of assets.

when they were established. Given that the value of the assets over which a charge is held in respect of the loans exceeds the value of the loans by nearly 50 % the collateral is judged to be 'high'. The margin over LIBOR of between [...] and [...] bps is therefore sufficient in terms of the notice which set a margin of 75 bps (as noted in recital 68, the Commission envisaged in the 1997 reference rate notice the possible use of LIBOR as a basis for assessment). In addition, the Commission has noted the information provided by the UK authorities drawn from other transactions secured on property companies which appears to show that the terms have been 'benchmarked' to comparable commercial transactions. The Commission has determined on the basis of its reference rate analysis that, taken independently, these loan facilities do not constitute State aid.

- (72) Given that the 2007 facilities were made available as part of a package together with other measures, and given the UK's insistence that the components of the 2007 financing package should not be evaluated on a stand-alone basis, the Commission would need to determine whether the separate assessment in the recital 71 can be conclusive. This question is treated further in section 5.5 below.

5.3. The pensions escrow account

5.3.1. Existence of aid

- (73) Following the comments and explanation of the United Kingdom authorities the Commission was able to understand the mechanism involved in the pensions measure. As described at recital 22 above, Royal Mail is required to account for its large pensions deficit on its balance sheet, and UK pensions law requires it to agree with the trustees a plan, and in particular a period, for eliminating that deficit through deficit payments to the scheme's fund. The measure allowed Royal Mail to extend that period with a consequent effect on the payments it must make. The Commission noted at the outset that the legal nature of the measure (involving the release of reserves over which the State had effective control through specific legislation for use in an escrow arrangement in favour of the pension fund) had no immediate parallel in normal commercial transactions, even if the model of placing funds in an escrow account can be envisaged in the private sector⁽¹⁶⁾. In order to assess the United Kingdom's claim that the

measure was on commercial terms, therefore, the Commission had to determine the appropriate benchmark against which to compare it.

- (74) The measure releases funds that were totally under shareholder control to be used by RM to alter the deficit payments which it is obliged to make to its pension scheme by putting those funds in an escrow account (despite the Mails Reserve being formally on its balance sheet RM could not make use of the reserves and associated assets without the Government's approval). Although this release of funds is not a pure equity injection, it can be best assimilated, in terms of its effects, to such an operation. If the funds had not been released, Royal Mail could not have constituted the escrow account without raising capital from other sources or drawing on other reserves. It is true that the measure prescribed that, on release of the escrow account, the funds would return to the control of the State. However, the length of time expected to be necessary for this to happen (17 years), the associated uncertainty concerning whether the funds could in practice be returned to the shareholder if RM's financial performance were to decline over this period, and the lack of guaranteed interest income led the Commission to discard the possibility of assimilating the transaction to the provision of a loan. The Commission decided that this conclusion was all the more reasonable given that when the mails reserve amounted only to GBP 796 million on 31 March 2007, the UK authorities injected GBP 54 million as new equity in order to bring the mails reserve to the agreed level of GBP 850 million before establishing the escrow account. In the light of the above and for the purposes of analysing its conformity with the market economy investor principle, the Commission has analysed the release of funds that were totally under shareholder control to be used by RM as an equity injection.

- (75) The Commission's approach to the market-conformity of equity injections is to compare the net present value of the public authorities' equity holding with (post money) and without (pre money) investment⁽¹⁷⁾. If the difference is greater than the injected capital the injection is deemed to be MEIP conform. This 'incremental' approach is necessary because otherwise it would not be obvious what part of the returns to the shareholder (dividends or in the case of the sale of the shareholding the sale price) would result from the investment and what would occur regardless of it. The method for calculating the value of an equity holding in both post and pre money

⁽¹⁶⁾ The possibility is mentioned in *Regulatory Code of practice 03*, published by the UK Pension Regulator, 'Funding Defined Benefits', February 2006, paragraph 104. However, the UK did not adduce any examples of the possibility being used.

⁽¹⁷⁾ See for example the *Landesbanken* cases such as HSH decision NN 71/05, also NN 72/05, NN 19/06 and NN 34/07.

cases over a defined period is to add the discounted value of the future cash flows extracted from that equity holding over that period (normally dividends but a capital reduction would be another possibility) to any increase in the value over the period.

- (76) The UK's initial response enclosed a report by consultants Deloitte which purported to show an IRR for the planned investments of [...]. On investigation, however, there were several problems with the methodology used.
- (77) Firstly, the calculation only concerned the investment case and was not based on a comparison between the invest and non-invest scenarios. In response to this criticism, the UK replied that for the non-invest case an equity value of [...] was supposed. The argument that the non-invest case resulted in an equity value of [...] was however neither made in, nor borne out by, the Deloitte report. Thus the Commission could not perceive the original Deloitte report as having followed what the Commission considers as the proper methodology, namely that based on the comparison between the projections with and without investment.
- (78) Secondly, the method for valuing the equity holding was to calculate an enterprise value (that is, the sum of claims of debt-holders as well as shareholders) using enterprise level cash flows and terminal value and to deduct debts afterwards. While this is not an incorrect method, it does not show clearly the free cash flows available to shareholders only, which is one of the indicators (even if not the sole determinant) whether an equity injection conforms to the market economy investor principle. The Commission therefore prefers the method which involves discounting cash flows directly paid out to the shareholder (dividends) and using a terminal value which represents not an enterprise value but an equity value. This also involves using the cost of equity as discount rate instead of the Weighted Average Cost of Capital. This was the method used in the previously cited Landesbanken cases (see footnote 17).
- (79) Thirdly, the senior debt facility discussed in recital 71, and the release of the Mails Reserve, were assessed together in this calculation whereas normally the test for a loan and equity injection is different (private investor vs private lender test) and thus should be carried out separately⁽¹⁸⁾. While it is true that it is not

uncommon that a shareholder also acts as a lender in large groups, the Commission considers that it is difficult to assess the two measures within the same framework given their different nature. This does not mean, however, that the effects of the two measures on each other are not to be taken into account. On the contrary, the analysis of the release of funds that were totally under shareholder control for use by RM is based on cash flows that reflect the assumption that the loans discussed in this decision are made to RM.

- (80) The Commission therefore requested that the UK provide the incremental equity valuation over the best possible, but nevertheless realistic, 'non-invest' case. As concerns the identification of the alternative case, RM's own non-invest forecasts (the 'manage for cash case' or MFCC) led to [...]. Deloitte therefore sketched a different 'alternative case' (AC) under which [...] and addressed its pension deficit over 12 instead of 17 years. However, Deloitte's assessment of this case was that while the pension problem would be effectively addressed in the short term [...]. It should be noted that the Commission cannot be sure that this alternative is the 'best available' non-invest case, which would of course form the basis of a market economy investor's assessment. It can, however, be said that any doubts concerning the investment case would be magnified against any 'better alternative' that could be conceived.
- (81) At the Commission's request, the United Kingdom provided figures allowing the investment case to be assessed against both alternatives. For reasons outlined in recital 78 the Commission required that the projections use free cash flows available to equity holders, an equity value for terminal value and the cost of equity as discount rate.
- (82) The UK supplied the following projections⁽¹⁹⁾. The table shows the calculation of the Government's equity holding with investment (investment case), followed by the result of the same calculation in the alternative case. Based on these figures, the value of the Government's equity holding is GBP [...] in the investment case whereas it would be GBP [...] in the alternative case without investment.

⁽¹⁸⁾ The UK insists its public enterprises borrow only from the State. The Commission does not question this policy in this decision but takes the view that measures should be capable of separate scrutiny. It would in any case be highly unusual for a market economy investor to be both sole shareholder of a company which is not part of a wider group, such as Royal Mail, and sole banker to the company.

⁽¹⁹⁾ For the purposes of these projections the investment included the GBP 300 million of the shareholder loan, since the Commission considered at a certain point of the investigation the possibility that this measure could also be assimilated to equity. The Commission has finally decided to assess this measure as a loan, as described below. The change of treatment in the table would not alter the Commission's conclusion as to the market conformity of the pensions escrow account measure.

- (83) As the difference of GBP [...] is greater than the invested sum, the UK argues that it has demonstrated that the investment is on a commercial basis. The Commission determined, however, that that claim requires further examination.
- (84) From the table it can be seen that:
- (a) the cash generated under the investment case provides no return to equity holders in the first [...] years of the plan;
 - (b) the investment case thus relies heavily on the terminal value calculated in 2016/2017;
 - (c) the investment case is cash-negative for the first [...] years, after which cash generated is devoted entirely to debt and pension deficit payments until 2013/2014;
 - (d) for the years after 2016/2017 (and accepting that only limited reliance can be placed on projections at that distance) the alternative case generates stronger returns because the pension deficit has been repaid, cancelling out the positive returns in 2013-2016. This consideration therefore places even greater weight on the terminal value in the investment case.
- (85) Furthermore the Commission confirmed that even beyond the first [...] years, it is uncertain whether the figures in years [...] are in effect dividends capable of distribution to the shareholder. This is because the inclusion of RM's pension deficit on the balance sheet (following new accounting rules) results in a negative worth of the company on an accounting basis, placing severe constraints on any extraction of cash in the form of dividends even from [...]. In the original Deloitte report submitted by the UK, [...].
- (86) Given the pattern of returns to the shareholder (practically all of it resulting from the terminal value and practically nothing from dividends) the Commission believes that a private investor would expect some returns in cash in the [...] years after the investment and would be uneasy that the whole or the predominant share of the return from the investment comes from the terminal value in the [...] year. The terminal value being in essence the value of cash flows from the [...] year onwards discounted to the [...] year, the private investor is asked to believe that even though its investment produces no returns in [...] years, it is nevertheless a good investment on the basis of prospects following the [...] year. Given that the forecasts on such a long period are exposed to many unforeseeable variables and are therefore by their very nature of limited reliability, the Commission finds that a private investor would not be willing to invest on such terms especially in the postal sector, the long-term prospects of which are uncertain. The Commission also questions whether such an investor would have been prepared to subordinate its interests as shareholder so extensively to those of employees/pensioners and to debt repayment.
- (87) Not only does the investment case rely heavily on the terminal value calculated in 2016/2017, but the terminal value can also be questioned both because of the calculation methodology and because of the underlying figures. As regards methodology, the terminal value was arrived at by taking the EBITDA figure in the terminal year multiplied by a factor that is the ratio between Enterprise Value and EBITDA at sector equivalents. TNT and Deutsche Post/DHL were chosen on the ground that even if RM is not on a par with those companies now, it will be after [...] years of the investment plan. The result of this approach is an Enterprise Value (roughly debt plus equity), which is not consistent with the approach described in recital 81, which requires the use of an equity value as terminal value. If an appropriate equity value is used the terminal value changes significantly — it becomes lower. As regards the underlying figures leading to the terminal value, the Commission notes in particular that RM's earnings before interest, tax and depreciation (EBITDA) were projected to grow at over [...] annually in the plan period. The Commission regarded this projection as extremely optimistic in a newly-liberalised, regulated and mature sector.
- (88) The Commission subjected the calculation presented by the UK to various tests by varying the assumptions used and the calculation methodology, in particular for the terminal value. It found that, given the importance of the terminal value in the figures supplied, only minor variations in the methodology such as calculating the terminal value differently and less optimistic profits growth would change substantially the assessment of the investment.
- (89) In conclusion, the Commission has not been able to find that the release of funds that were totally under shareholder control to be used by RM to alter the deficit payments which it is obliged to make to its pension scheme by putting those funds in an escrow account complies with the MEIP.
- (90) The Commission has therefore proceeded to an examination of the compatibility of any aid contained in the measure (see section 6).

5.3.2. Quantification of aid

- (91) The effect of the measure on Royal Mail is on its payments to the pension scheme to address the pension deficit, which can, as a result of the measure, be spread over a larger number of years than would otherwise have been the case. These payments are therefore lower for the first years (because without the measure, RM would have to address the deficit more quickly and make therefore higher deficit contributions) but higher in the later years, when the deficit would otherwise have been addressed.
- (92) Valuing this advantage, through the calculation of the net present value of the amended cash flow payments, requires making certain assumptions, notably about the period over which the deficit would need to be addressed in the absence of the measure, and selecting a discount rate. The Commission accepted to use a period of 12 years for addressing the deficit, which was the basis of the 'alternative case' examined at recital 80 and which was put forward by Royal Mail to the UK postal regulator in the context of the pricing review. This figure slightly exceeds the period of 10 years which is used as a benchmark by the UK pensions regulator⁽²⁰⁾. However, given the use of the figure of 12 years for other purposes and in addition the large size of the deficit relative to the company, which would generally therefore require a longer period for being addressed, the Commission believes this is an acceptable assumption. The Commission has applied a discount rate of 12 % representing the cost of equity. On this basis the value to Royal Mail of the change in pension contributions as a result of the measure amounts to a figure of GBP [...].

5.4. The GBP 300 million shareholder loan

- (93) As already noted, the shareholder loan is subordinated both to RM's other debt and to the pensioner interest (it cannot be repaid before the escrow account is released). This led the Commission to consider whether the measure should not be assimilated to an injection of equity (see also footnote 19).
- (94) The Commission has however determined⁽²¹⁾ that subordination does not prevent loans from being assessed for the existence of State aid in the same way as non-subor-

ordinated loans. Such loans may therefore be assessed according to the terms of the notice on reference rates⁽²²⁾, albeit at a lower rating level than their non-subordinated equivalents.

- (95) The 1997 reference rate notice, which was in force in 2007 set rates by reference to observed rates of a specific duration, namely five years. The measure under assessment, however, would last as long as the escrow account, estimated at 17 years. At the time the loan was issued, the UK yield curve was downward sloping as it had been in 1999. Although the reference rate was 5,9 %, sterling 15 year interest rate swaps at end March 2007 were at 5,2 %. The benchmark used in the 1997 reference rate notice was interbank swap rates of five years and the Commission therefore regards the corresponding 15-year rate as an appropriate benchmark for the measure in question. This should be increased by the standard premium under the notice of 75 basis points, to 5,95 %.
- (96) The rate thus determined would need to be further adjusted to reflect the degree of security and of subordination.
- (97) The shareholder loan is not secured and its collateralisation must therefore be regarded as below what would normally be required by banks. In such cases, the 1997 reference rate notice sets a margin over the relevant benchmark of 400 basis points or more if no private bank would have agreed to grant the relevant loan. In line with previous Commission decisions⁽²³⁾ under the 1997 reference rate notice, the Commission believes that the rate should be increased by a premium of 400 basis points reflecting the lack of security and 200 basis points for the subordinated nature of the instrument.
- (98) Noting that the loan rate of [...] % is greater than the sum of 5,95 % and 600 basis points, the Commission can accept that, taken independently, the measure does not constitute State aid.
- (99) Given that the 2007 facilities were made available as part of a package together with other measures, the Commission would need to determine whether such a separate assessment can be conclusive. This question is treated further in section 5.5.

⁽²⁰⁾ The Pensions Regulator: The regulator's statement, May 2006, 'How the Pensions Regulator will regulate the funding of defined benefits', paragraph 3.16.

⁽²¹⁾ N 55/08 — Germany — GA/ERDF subordinated loans. See also case C 38/05 — Germany — Biria which concerned a 'silent participation' assessed under the 1997 reference rate notice.

⁽²²⁾ Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

⁽²³⁾ Cases C 38/05, Biria (OJ L 183, 13.7.2007, p. 27); C 38/07, Arbel Fauvet Rail SA (OJ L 238, 5.9.2008, p. 27); C 95/01, Siderurgica Añon (OJ L 311, 26.11.2005, p. 22); C 20/2000, Sniace (OJ L 108, 30.4.2003, p. 35).

5.5. Separate assessment of the 2007 measures

- (100) The Commission has determined that two of the 2007 measures taken independently (loan facilities of 2007 and shareholder loan of GBP 300 million) do not constitute State aid, but has not been able to make such a determination with respect to the pensions measure. Given that the measures were announced simultaneously, the Commission must assess whether it can confirm the findings of no aid, in the light of the Court's jurisprudence ⁽²⁴⁾.
- (101) The Commission has noted that the loan facilities extended in 2007 were, in practice, the continuation of measures granted in 2003, albeit with revised terms. It follows that when the measure was first granted, the pensions measure was not in existence. The purposes of the loan facilities and the pensions measure can also be distinguished: the former provides an external source of finance for Royal Mail's transformation plan, while the latter is to provide security for the repayment of the deficit over 17 years. As noted above, the security taken over RM's assets in respect of the loan facilities was in conformity with market practice. The three criteria established by the court (chronology, purpose, and the situation at the time the measure was taken) all plead in favour of the aid character of the loan facilities being assessed separately.
- (102) As regards the shareholder loan, the decision to grant this measure took place later than the other 2007 measures. The loan was added to the previously announced finance framework to provide sufficient funding headroom to enable Royal Mail to meet its transformation plan, following a decrease in the projected outturn over the plan period. The purpose of the measure can be distinguished from that of the pensions measure in the same way as for the loan facilities. Lastly, the situation of RM at the time the loan was granted does not invalidate the finding of no aid, since the situation is already taken into account in the assessment of the adequacy of the interest rate.
- (103) The Commission therefore concludes that the only measure for which an aid element cannot be excluded, and which therefore needs to be assessed for compatibility, is the pensions measure. That assessment follows in the next section.

6. COMPATIBILITY WITH THE COMMON MARKET

6.1. Basis for assessment

- (104) The pensions measure could only be declared compatible by the Commission pursuant to Article 87(3)(c) of the

Treaty, which states that aid to facilitate the development of certain economic activities or of certain economic areas may be declared compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest ⁽²⁵⁾. There is in addition case law concerning the application of Article 87(3)(c) of the Treaty to the specific situation of pensions measures, and the analysis below assesses the measure in the light of that case law. It follows that the current decision does not represent an application of the guidelines on State aid for rescuing and restructuring firms in difficulty for the purposes of section 3.3 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁶⁾.

6.2. The history of Royal Mail's pension arrangements

- (105) In order to assess the compatibility of the pensions measure, it is necessary to first describe the history of Royal Mail and its pension arrangements.
- (106) In 1969, Royal Mail (then called the Post Office) ceased to be a Government department and became a 'statutory corporation', under the Post Office Act 1969. Under section 43(1) of the Act, the pension arrangements for Post Office staff were subject to the approval of the Minister for Posts and Telecommunications. Employees ceased formally to be civil servants, but retained their acquired pension rights and continued to acquire further rights on essentially the same terms as civil servants. Under these terms, the final pension was determined as function of years of service and final salary. It was thus a 'defined benefit' scheme in that the pension level was set by the rules of the scheme. The pension scheme was separated off from the civil service scheme and became a funded scheme holding assets against future liabilities (in common with other corporate pension schemes in the UK).
- (107) Significant revisions to the pension arrangements took place in 1987 and 2008 (in the latter case, these measures were already in preparation when the pensions measure was adopted). The 1987 revised terms were still 'defined benefit' terms, that is, pension based on final salary and proportionate to number of years' service. Under the 2008 revision, new members join on a 'defined contribution' basis where the level of the final pension will depend on the performance of the fund's assets. In both cases, new employees were obliged

⁽²⁴⁾ Judgment of the Court of First Instance (Second Chamber, extended composition) of 15 September 1998, *BP Chemicals Limited v Commission*, Case T-11/95, ECR [1998] p. II-3235, paragraphs 170ff.

⁽²⁵⁾ The United Kingdom has not invoked Article 86(2) of the Treaty as justification for the compatibility of any aid granted to Royal Mail under the pensions measure.

⁽²⁶⁾ OJ C 244, 1.10.2004, p. 2.

to join under the revised terms while existing employees continued to acquire rights on the same or similar terms as before.

6.3. Previous Commission's decisions concerning pensions liabilities and their applicability to the situation of Royal Mail

(108) In its decision of 16 December 2003 on the State aid granted by France to EDF and the electricity and gas industries ⁽²⁷⁾, the Commission declared compatible with the common market State aid that relieved the undertakings in a particular sector of specific pension liabilities which exceeded those resulting from the general retirement arrangements and which had been defined during the monopoly period. It also took the view that the partial mitigation of the costs arising from the mechanism for financing the specific pension rights acquired before the date of the reform constituted State aid within the meaning of Article 87(1) of the Treaty that could be declared compatible with the common market. In its analysis of the accounts, the Commission concluded that the situation of EDF was not very intrinsically different from that of 'stranded costs' in the energy sector.

(109) In its decision of 10 October 2007 on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste ⁽²⁸⁾, the Commission took the view that the aid measures in question relieved La Poste of specific pension liabilities which exceeded those resulting from the ordinary pension arrangements and which had been defined during the monopoly period. These liabilities arose from, first, the higher pension contributions payable in respect of employees with civil servant status and, secondly, the requirement to ensure the equilibrium of its retirement scheme for these employees.

(110) The Commission found the measures to constitute State aid which was nonetheless compatible with the common market under Article 87(3)(c) of the Treaty. In doing so, it noted that the measures were limited to what was strictly necessary to establish a level playing field for social security contributions and tax payments and ultimately would therefore favour the development of competition and further liberalisation of the postal sector. It further noted, by way of drawing a parallel with the EDF decision, that La Poste no longer recruited civil servants, that the future pensions payments of La Poste placed it in a comparable situation vis-à-vis its competitors as regards social security contributions and tax payments, and that the obligations resulting from the 1990 Law prior to the liberalisation of the postal sector would have affected La Poste's competitiveness in an environment undergoing liberalisation.

(111) In France, occupational pension ('pillar 2') schemes are compulsory and are financed on a pay-as-you-go basis. In general, payment by the employer of the contributions discharges it of further responsibility for financing the resulting pensions entitlements. By requiring La Poste under a Law of 1990 to ensure the equilibrium of its retirement scheme for civil servants, the undertaking was subject to an obligation that other enterprises did not have to bear.

(112) In the United Kingdom, pensions arrangements differ from those in France. Most occupational pension schemes are 'contracted out' of the State pension arrangements known as the State Earnings Related Pension Scheme. Most large employers run their own pension schemes. Under UK pensions law, these schemes must provide a pension entitlement which meets certain standards, and employers have certain obligations to ensure that schemes are adequately funded. Under current accounting standards (IFRS), employers must record deficits on such pension schemes on their balance sheets. The rules requiring Royal Mail to account for its deficit are not therefore different from those applying to other companies. However, the level of that deficit arises from terms and conditions which were set as a result of Government ownership.

(113) The factual and legislative context of Royal Mail is therefore different from that of the EDF and La Poste decisions. Nonetheless, there are certain aspects of those cases which the Commission believes are applicable to Royal Mail. In particular, the cases indicate that higher pension contributions arising from specific status (and in particular civil servant status) and defined during a period of monopoly may be considered abnormal costs whose defrayal by the State may be compatible with the common market under Article 87(3)(c) of the Treaty.

6.4. Assessment of the pensions measure

(114) In the case of Royal Mail, pension rights acquired by employees who joined the pension scheme before 1987 were clearly aligned with those of the civil service. As of 31 March 2007, the pension scheme had 153 125 members already retired and drawing their pension who had joined the scheme on those terms. These are therefore former employees who have already retired and whose services are no longer of benefit to the company. According to information provided by the UK authorities, the terms applicable to members joining the scheme after 1987 can neither be clearly described as civil service terms nor as private sector terms of the type likely to be practised by RM's competitors in the newly liberalised postal market. As already noted, these terms ceased to be available to new members after 2008. On average, liabilities in respect of the members who joined the pension scheme before 1987 considerably exceed those of members who joined the scheme on

⁽²⁷⁾ OJ L 49, 22.2.2005, p. 9.

⁽²⁸⁾ OJ L 63, 7.3.2008, p. 16.

the terms which obtained following the reform of 1987 until the further reform of 2008. The value of those additional liabilities has been quantified at GBP [...] per employee.

(115) It follows that Royal Mail's pension scheme still carries substantial liabilities which arose solely as a result of employing staff on civil service terms, and over a period of time when Royal Mail enjoyed a monopoly over ordinary letter mail. These conditions correspond to those which existed in the La Poste case. The Commission has established, on the basis of information provided by the UK, additional such liabilities to an amount of GBP [...] (the product of 153 125 and GBP [...]) which therefore exceed, by some considerable margin, the quantification of GBP [...] for the possible aid content of the measure. The Commission has not found it necessary, in carrying out this analysis, to establish whether these liabilities of the pension scheme constitute the full amount of the scheme's liabilities that can be considered abnormal, once it has established that they in any case exceed the possible aid content of the measure.

(116) The Commission has also established that, in common with the features of the measures in La Poste described at recital 107, the terms giving rise to the additional costs are no longer available to new employees and indeed have not been since 1987, and that the obligations resulting from those terms prior to the liberalisation of the postal sector would have affected the development of effective competition in an environment undergoing liberalisation. In Royal Mail's case, the measure does not affect social security contributions and tax payments for current employees and therefore does not put RM in a better position vis-à-vis its competitors in this regard.

(117) The Commission also noted that the form of the measure left the pension liabilities of Royal Mail intact and only allowed the company to address the deficit over a longer period, rather than lifting those liabilities entirely. The latter was the form of the measure in La Poste, meaning that the beneficiary was permanently relieved of liabilities which it would otherwise have had to bear and was as a consequence not required to account for them on its balance sheet. In the case of Royal Mail, the measure makes no difference to the amount of the pensions deficit for which the company is required to account on its balance sheet under international accounting rules. The company remains required, under UK pensions law, to take steps to eliminate this deficit. The effect of the measure is only to lengthen the period over which it can do so. While this feature is already

reflected in the analysis above that any aid element is assessed at GBP [...] and not GBP 850 million, the Commission believes that, in general, a measure requiring a beneficiary to address its accrued liabilities in full is likely to be less distortive than a measure which relieves them.

(118) In terms of the effect of the measure on competition, it can be noted that the deficit payments which Royal Mail is required to make to the pension scheme, once established following negotiations between the company and the pensions trustees, do not vary according to levels of output or input. Their reduction in the initial years by means of the measure does not therefore affect marginal costs and is not such as to affect Royal Mail's commercial decisions, and in particular its future investment decisions⁽²⁹⁾. The Commission therefore finds that the effect on competition is not such as to adversely affect trading conditions to an extent contrary to the common interest in the sense of Article 87(3)(c) of the Treaty.

(119) On this basis, the Commission has determined that, to the extent that pensions measure contains an aid element, such element would be compatible with the common market.

7. CONCLUSION

(120) The Commission finds to the extent that the pensions measure contains an aid element, this was unlawfully implemented by the United Kingdom in breach of Article 88(3) of the Treaty. However, the Commission finds that aid to be compatible. The Commission finds that the other measures do not constitute State aid,

HAS ADOPTED THIS DECISION:

Article 1

The 2001 loan, the loan facilities and the 2007 shareholder loan do not confer State aid on Royal Mail.

Article 2

The pensions measure, to the extent that it contains State aid, is compatible with the common market.

⁽²⁹⁾ See paragraph 170 of the decision on La Poste.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 8 April 2009.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 23 July 2009

amending Decision 2008/458/EC laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the general programme ‘Solidarity and management of migration flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

(Notified under document C(2009) 5453)

(Only the Bulgarian, Czech, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)

(2009/614/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme Solidarity and Management of Migration Flows⁽¹⁾, and in particular Articles 23 and 35(4) thereof,

Whereas:

- (1) In the light of the experiences following the launch of the Fund, it is appropriate to extend the eligibility period of the annual programmes in order to enable Member States to implement the Fund in an effective way and to adapt the time schedule for the submission of the final report on the implementation of the annual programme.
- (2) It is also appropriate to adapt the procedure for the submission of the revised annual programmes by Member States.
- (3) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is bound by the basic act and, as a consequence, by this Decision.
- (4) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland is bound by the basic act and, as a consequence, by this Decision.
- (5) In accordance with Article 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by this Decision nor subject to the application thereof.

- (6) The measures provided for in this Decision are in accordance with the opinion of the common committee ‘Solidarity and management of migration flows’,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision 2008/458/EC⁽²⁾ is amended as follows:

1. Article 23(1) is replaced by the following:

‘1. In order to revise the annual programme approved by the Commission pursuant to Article 21(5) of the basic act, the Member State concerned shall submit a revised draft annual programme to the Commission at the latest three months before the end of the eligibility period. The Commission shall examine and, as soon as possible, approve the revised programme in accordance with the procedure laid down in Article 21(5) of the basic act.’;

2. in point 4.1 of Annex V, Part A, the words ‘List of all pending recoveries at 30 June of the year N + 2 (N = year of this annual programme)’ are replaced by the words ‘List of all pending recoveries six months after the eligibility deadline for expenditure’;

3. in Annex XI, point I.4.1 is replaced by the following:

‘1. Costs relating to a project must be incurred and the respective payments (except for depreciation) made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period is until 30 June of the year N (*) + 2, meaning that the costs relating to a project must be incurred before this date.

(*) Where “N” is the year referred to in the financing decision approving the annual programmes of the Member States.’;

⁽¹⁾ OJ L 144, 6.6.2007, p. 45.

⁽²⁾ OJ L 167, 27.6.2008, p. 135.

4. in Annex XI, point V.3. is replaced by the following:

‘3. Activities linked to technical assistance must be performed and the corresponding payments made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period lasts at the latest until the deadline for the submission of the final report on the implementation of the annual programme.’.

of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Article 2

This Decision shall apply to all annual programmes for which the payment of the balance has not been made at the date of its adoption.

Done at Brussels, 23 July 2009.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic

For the Commission

Jacques BARROT
Vice-President

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL COMMON POSITION 2009/615/CFSP

of 13 August 2009

amending Common Position 2006/318/CFSP renewing restrictive measures against Burma/Myanmar

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 27 April 2006, the Council adopted Common Position 2006/318/CFSP renewing restrictive measures against Burma/Myanmar ⁽¹⁾.
- (2) Council Common Position 2009/351/CFSP ⁽²⁾ of 27 April 2009 extended until 30 April 2010 the restrictive measures imposed by Common Position 2006/318/CFSP.
- (3) On 11 August 2009, the European Union condemned the verdict against Daw Aung San Suu Kyi and announced that it will respond with additional targeted restrictive measures.
- (4) In view of the gravity of the violation of the fundamental rights of Daw Aung San Suu Kyi, the Council considers it appropriate to include the members of the judiciary responsible for the verdict in the list of persons and entities subject to a travel ban and to an asset freeze set out in Annex II to Common Position 2006/318/CFSP.

- (5) Moreover, the Council considers it necessary to amend the lists of persons and entities subject to the restrictive measures in order to extend the assets freeze to enterprises that are owned or controlled by members of the regime in Burma/Myanmar or by persons or entities associated with them,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Annexes II and III to Common Position 2006/318/CFSP shall be replaced by the texts of Annexes I and II to this Common Position.

Article 2

This Common Position shall take effect on the date of its adoption.

Article 3

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 13 August 2009.

For the Council

The President

C. BILDT

⁽¹⁾ OJ L 116, 29.4.2006, p. 77.

⁽²⁾ OJ L 108, 29.4.2009, p. 54.

ANNEX I

‘ANNEX II

List referred to in Articles 4, 5 and 8

Table Notes:

1. Aliases or variations in spelling are denoted by “*aka*”.
2. D.o.b means date of birth.
3. P.o.b means place of birth.
4. If not stated otherwise, all passport and ID cards are those of Burma/Myanmar.

A. STATE PEACE AND DEVELOPMENT COUNCIL (SPDC)

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A1a	Senior General Than Shwe	Chairman, d.o.b. 2.2.1933	M
A1b	Kyaing Kyaing	Wife of Senior General Than Shwe	F
A1c	Thandar Shwe	Daughter of Senior General Than Shwe	F
A1d	Major Zaw Phyto Win	Husband of Thandar Shwe, Deputy Director Export Section, Ministry of Trade	M
A1e	Khin Pyone Shwe	Daughter of Senior General Than Shwe	F
A1f	Aye Aye Thit Shwe	Daughter of Senior General Than Shwe	F
A1g	Tun Naing Shwe a.k.a. Tun Tun Naing	Son of Senior General Than Shwe. Owner of J and J Company	M
A1h	Khin Thanda	Wife of Tun Naing Shwe	F
A1i	Kyaing San Shwe	Son of Senior General Than Shwe, Owner of J's Donuts	M
A1j	Dr. Khin Win Sein	Wife of Kyaing San Shwe	F
A1k	Thant Zaw Shwe a.k.a. Maung Maung	Son of Senior General Than Shwe	M
A1l	Dewar Shwe	Daughter of Senior General Than Shwe	F
A1m	Kyi Kyi Shwe a.k.a. Ma Aw	Daughter of Senior General Than Shwe	F
A1n	Lt. Col. Nay Soe Maung	Husband of Kyi Kyi Shwe	M
A1o	Pho La Pyae alias Nay Shwe Thway Aung	Son of Kyi Kyi Shwe and Nay Soe Maung	M
A2a	Vice-Senior General Maung Aye	Vice-Chairman, d.o.b. 25.12.1937	M
A2b	Mya Mya San	Wife of Vice-Senior General Maung Aye	F
A2c	Nandar Aye	Daughter of Vice-Senior General Maung Aye, wife of Major Pye Aung (D17g). Owner of Queen Star Computer Co.	F

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A3a	General Thura Shwe Mann	Chief of Staff, Coordinator of Special Operations (Army, Navy and Air Force) d.o.b. 11.7.1947	M
A3b	Khin Lay Thet	Wife of General Thura Shwe Mann, d.o.b. 19.6.1947	F
A3c	Aung Thet Mann a.k.a. Shwe Mann Ko Ko	Son of General Thura Shwe Mann, Ayeya Shwe War (Wah) Company, d.o.b. 19.6.1977	M
A3d	Khin Hnin Thandar	Wife of Aung Thet Mann	F
A3e	Toe Naing Mann	Son of General Thura Shwe Mann, d.o.b. 29.6.1978	M
A3f	Zay Zin Latt	Wife of Toe Naing Mann, Daughter of Khin Shwe (J5a), d.o.b. 24.3.1981	F
A4a	Lt-Gen Thein Sein	"Prime Minister", d.o.b. 20.4.1945	M
A4b	Khin Khin Win	Wife of Lt-Gen Thein Sein	F
A5a	Gen (Thiha Thura) Tin Aung Myint Oo	(Thiha Thura is a title) "Secretary 1", d.o.b. 29.5.1950, Chairman of the Myanmar National Olympic Council and Chairman of Myanmar Economic Corporation	M
A5b	Khin Saw Hnin	Wife of Lt-Gen Thiha Thura Tin Aung Myint Oo	F
A5c	Captain Naing Lin Oo	Son of Lt-Gen Thiha Thura Tin Aung Myint Oo	M
A5d	Hnin Yee Mon	Wife of Capt. Naing Lin Oo	F
A6a	Maj. Gen. Min Aung Hlaing	Chief of Bureau of Special Operations 2 (Kayah, Shan States). Since 23.6.2008. (Previously B12a)	M
A6b	Kyu Kyu Hla	Wife of Maj-Gen Min Aung Hlaing	F
A7a	Lt-Gen Tin Aye	Chief of Military Ordnance, Head of UMEHL	M
A7b	Kyi Kyi Ohn	Wife of Lt-Gen Tin Aye	F
A7c	Zaw Min Aye	Son of Lt-Gen Tin Aye	M
A8a	Lt-Gen Ohn Myint	Chief of Bureau of Special Operations 1 (Kachin, Chin, Sagaing, Magwe, Mandalay. Since 23.6.2008. (Previously B9a)	M
A8b	Nu Nu Swe	Wife of Lt-Gen Ohn Myint	F
A8c	Kyaw Thiha a.k.a. Kyaw Thura	Son of Lt-Gen Ohn Myint	M
A8d	Nwe Ei Ei Zin	Wife of Kyaw Thiha	F
A9a	Maj-Gen Hla Htay Win	Chief of Armed Forces Training, Since 23.6.2008. (Previously B1a). Owner of Htay Co. (logging and timber)	M
A9b	Mar Mar Wai	Wife of Maj-Gen Hla Htay Win	F
A10a	Maj-Gen Ko Ko	Chief of Bureau of Special Operations 3 (Pegu, Irrawaddy, Arakan). Since 23.6.2008. (Previously B10a)	M

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A10b	Sao Nwan Khun Sum	Wife of Maj-Gen Ko Ko	F
A11a	Maj-Gen Thar Aye a.k.a. Tha Aye	Chief of Bureau of Special Operations 4 (Karen, Mon, Tenas serim), d.o.b. 16.2.1945	M
A11b	Wai Wai Khaing a.k.a. Wei Wei Khaing	Wife of Maj-Gen Thar Aye	F
A11c	See Thu Aye	Son of Maj-Gen Thar Aye	M
A12a	Lt-Gen Myint Swe	Chief of Bureau of Special Operations 5 (Naypyidaw, Rangoon/Yangon)	M
A12b	Khin Thet Htay	Wife of Lt-Gen Myint Swe	F
A13a	Arnt Maung	Retired Director General, Directorate of Religious Affairs	M

B. REGIONAL COMMANDERS

#	Name	Identifying information (inc. Command)	Sex (M/F)
B1a	Brig-Gen Win Myint	Rangoon (Yangon)	M
B1b	Kyin Myaing	Wife of Brig-Gen Win Myint	F
B2a	Brig-Gen Yar (Ya) Pyae (Pye) (Pyrit)	Eastern (Shan State (South)), (Previously G23a)	M
B2b	Thinzar Win Sein	Wife of Brig-Gen Yar (Ya) Pyae (Pye) (Pyrit)	F
B3a	Brig-Gen Myint Soe	North Western (Sagaing Division) and Regional Minister without portfolio	M
B4a	Brig-Gen Khin Zaw Oo	Coastal (Tanintharyi Division), d.o.b. 24.6.1951	M
B5a	Brig-Gen Aung Than Htut	North Eastern (Shan State(North))	M
B5b	Daw Cherry	Wife Brig-Gen Aung Than Htut	F
B6a	Brig-Gen Tin Ngwe	Central (Mandalay Division)	M
B6b	Khin Thida	Wife of Brig-Gen Tin Ngwe	F
B7a	Maj-Gen Thaung Aye	Western (Rakhine State). (Previously B2a)	M
B7b	Thin Myo Myo Aung	Wife of Maj-Gen Thaung Aye	F
B8a	Brig-Gen Kyaw Swe	South Western (Irrawaddy Division) and Regional Minister without portfolio	M
B8b	Win Win Maw	Wife of Brig-Gen Kyaw Swe	F
B9a	Maj-Gen Soe Win	North (Kachin State)	M
B9b	Than Than Nwe	Wife of Maj-Gen Soe Win	F
B10a	Maj-Gen Hla Min	South (Bago Division)	M

#	Name	Identifying information (inc. Command)	Sex (M/F)
B11a	Brig-Gen Thet Naing Win	South Eastern (Mon State)	M
B12a	Maj-Gen Kyaw Phyo	Triangle (Shan State (East))	M
B13a	Maj-Gen Wai Lwin	Naypyidaw	M
B13b	Swe Swe Oo	Wife of Maj-Gen Wai Lwin	F
B13c	Wai Phyo Aung	Son of Maj-Gen Wai Lwin	M
B13d	Oanmar (Ohnmar) Kyaw Tun	Wife of Wai Phyo Aung	F
B13e	Wai Phyo	Son of Maj-Gen Wai Lwin	M
B13f	Lwin Yamin	Daughter of Maj-Gen Wai Lwin	F

C. DEPUTY REGIONAL COMMANDERS

#	Name	Identifying information (inc. Command)	Sex (M/F)
C1a	Brig-Gen Kyaw Kyaw Tun	Rangoon (Yangon)	M
C1b	Khin May Latt	Wife of Brig-Gen Kyaw Kyaw Tun	F
C2a	Brig-Gen Than Htut Aung	Centre	M
C2b	Moe Moe Nwe	Wife of Brig-Gen Than Htut Aung	F
C3a	Brig-Gen Tin Maung Ohn	North-Western	M
C4a	Brig-Gen San Tun	Northern, d.o.b 2.3.1951, Rangoon/Yangon	M
C4b	Tin Sein	Wife of Brig-Gen San Tun, d.o.b. 27.9.1950, Rangoon/Yangon	F
C4c	Ma Khin Ei Ei Tun	Daughter of Brig-Gen San Tun, d.o.b. 16.9.1979, Director of Ar Let Yone Co. Ltd	F
C4d	Min Thant	Son of Brig-Gen San Tun, d.o.b. 11.11.1982, Rangoon/Yangon, Director of Ar Let Yone Co. Ltd	M
C4e	Khin Mi Mi Tun	Daughter of Brig-Gen San Tun, d.o.b. 25.10.1984, Rangoon/Yangon, Director of Ar Let Yone Co. Ltd	F
C5a	Brig-Gen Hla Myint	North-Eastern	M
C5b	Su Su Hlaing	Wife of Brig-Gen Hla Myint	F
C6a	Brig-Gen Wai Lin	Triangle	M
C7a	Brig-Gen Win Myint	Eastern	M
C8a	Brig-Gen Zaw Min	South-Eastern	M
C8b	Nyunt Nyunt Wai	Wife of Brig-Gen Zaw Min	F

#	Name	Identifying information (inc. Command)	Sex (M/F)
C9a	Brig-Gen Hone Ngaing a.k.a. Hon Ngai	Coastal	M
C10a	Brig-Gen Thura Maung Ni	Southern	M
C10b	Nan Myint Sein	Wife of Brig-Gen Thura Maung Ni	F
C11a	Brig-Gen Tint Swe	South-Western	M
C11b	Khin Thaug	Wife of Brig-Gen Tint Swe	F
C11c	Ye Min a.k.a. Ye Kyaw Swar Swe	Son of Brig-Gen Tint Swe	M
C11d	Su Mon Swe	Wife of Ye Min	F
C12a	Brig-Gen Tin Hlaing	Western	M
C12b	Hla Than Htay	Wife of Brig-Gen Tin Hlaing	F

D. MINISTERS

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D1a	Maj-Gen Htay Oo	Agriculture and Irrigation (since 18.9.2004) (formerly Cooperatives since 25.8.2003), Secretary-General of the USDA	M
D1b	Ni Ni Win	Wife of Maj-Gen Htay Oo	F
D1c	Thein Zaw Nyo	Cadet Son of Maj-Gen Htay Oo	M
D2a	Brig-Gen Tin Naing Thein	Commerce (since 18.9.2004), formerly Deputy Minister of Forestry, d.o.b. 1955	M
D2b	Aye Aye	Wife of Brig-Gen Tin Naing Thein	F
D3a	Maj-Gen Khin Maung Myint	Construction, also Minister of Electric Power 2	M
D4a	Maj-Gen Tin Htut	Cooperatives (since 15.5.2006)	M
D4b	Tin Tin Nyunt	Wife of Maj-Gen Tin Htut	F
D5a	Maj-Gen Khin Aung Myint	Culture (since 15.5.2006)	M
D5b	Khin Phylene	Wife of Maj-Gen Khin Aung Myint	F
D6a	Dr. Chan Nyein	Education (since 10.8.2005), formerly Deputy Minister of Science & Technology, Member of the Executive Committee of the USDA, d.o.b. 1944	M
D6b	Sandar Aung	Wife of Dr. Chan Nyein	F
D7a	Col Zaw Min	Electric Power (1) (since 15.5.2006), d.o.b. 10.1.1949	M
D7b	Khin Mi Mi	Wife of Col Zaw Min	F
D8a	Brig-Gen Lun Thi	Energy (since 20.12.1997), d.o.b. 18.7.1940	M

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D8b	Khin Mar Aye	Wife of Brig-Gen Lun Thi	F
D8c	Mya Sein Aye	Daughter of Brig-Gen Lun Thi	F
D8d	Zin Maung Lun	Son of Brig-Gen Lun Thi	M
D8e	Zar Chi Ko	Wife of Zin Maung Lun	F
D9a	Maj-Gen Hla Tun	Finance & Revenue (since 1.2.2003), d.o.b. 11.7.1951	M
D9b	Khin Than Win	Wife of Maj-Gen Hla Tun	F
D10a	Nyan Win	Foreign Affairs (since 18.9.2004), formerly Deputy Chief of Armed Forces Training, d.o.b. 22.1.1953	M
D10b	Myint Myint Soe	Wife of Nyan Win, d.o.b. 15.1.1953	F
D11a	Brig-Gen Thein Aung	Forestry (since 25.8.2003)	M
D11b	Khin Htay Myint	Wife of Brig-Gen Thein Aung	F
D12a	Prof. Dr. Kyaw Myint	Health (since 1.2.2003), d.o.b. 1940	M
D12b	Nilar Thaw	Wife of Prof. Dr. Kyaw Myint	F
D13a	Maj-Gen Maung Oo	Home Affairs (since 5.11.2004) and Minister for Immigration and Population from February 2009, d.o.b. 1952	M
D13b	Nyunt Nyunt Oo	Wife of Maj-Gen Maung Oo	F
D14a	Maj-Gen Maung Maung Swe	Social Welfare, Relief & Resettlement (since 15.5.2006)	M
D14b	Tin Tin Nwe	Wife of Maj-Gen Maung Maung Swe	F
D14c	Ei Thet Thet Swe	Daughter of Maj-Gen Maung Maung Swe	F
D14d	Kaung Kyaw Swe	Son of Maj-Gen Maung Maung Swe	M
D15a	Aung Thaung	Industry 1 (since 15.11.1997)	M
D15b	Khin Khin Yi	Wife of Aung Thaung	F
D15c	Major Moe Aung	Son of Aung Thaung	M
D15d	Dr. Aye Khaing Nyunt	Wife of Major Moe Aung	F
D15e	Nay Aung	Son of Aung Thaung, businessman, Managing Director, Aung Yee Phyoe Co. Ltd and Director IGE Co.Ltd	M
D15f	Khin Moe Nyunt	Wife of Nay Aung	F
D15g	Major Pyi Aung a.k.a. Pye Aung	Son of Aung Thaung (married to A2c). Director IGE Co.Ltd	M
D15h	Khin Ngu Yi Phyo	Daughter of Aung Thaung	F
D15i	Dr Thu Nanda Aung	Daughter of Aung Thaung	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D15j	Aye Myat Po Aung	Daughter of Aung Thaung	F
D16a	Vice Admiral Soe Thein	Industry 2 (since June 2008). (Previously G38a)	M
D16b	Khin Aye Kyin	Wife of Vice Admiral Soe Thein	F
D16c	Yimon Aye	Daughter of Vice Admiral Soe Thein, d.o.b. 12.7.1980	F
D16d	Aye Chan	Son of Vice Admiral Soe Thein, d.o.b. 23.9.1973	M
D16e	Thida Aye	Daughter of Vice Admiral Soe Thein, d.o.b. 23.3.1979	F
D17a	Brig-Gen Kyaw Hsan	Information (since 13.9.2002)	M
D17b	Kyi Kyi Win	Wife of Brig-Gen Kyaw Hsan. Head of Information Department of Myanmar Women's Affairs Federation.	F
D18a	Brig-Gen Maung Maung Thein	Livestock & Fisheries	M
D18b	Myint Myint Aye	Wife of Brig-Gen Maung Maung Thein	F
D18c	Min Thein a.k.a. Ko Pauk	Son of Brig-Gen Maung Maung Thein	M
D19a	Brig-Gen Ohn Myint	Mines (since 15.11.1997)	M
D19b	San San	Wife of Brig-Gen Ohn Myint	F
D19c	Thet Naing Oo	Son of Brig-Gen Ohn Myint	M
D19d	Min Thet Oo	Son of Brig-Gen Ohn Myint	M
D20a	Soe Tha	National Planning & Economic Development (since 20.12.1997), d.o.b. 7.11.1944	M
D20b	Kyu Kyu Win	Wife of Soe Tha, d.o.b. 5.10.1980	F
D20c	Kyaw Myat Soe	Son of Soe Tha, d.o.b. 14.2.1973	M
D20d	Wei Wei Lay	Wife of Kyaw Myat Soe, d.o.b. 12.9.1978	F
D20e	Aung Soe Tha	Son of Soe Tha, d.o.b. 5.10.1983	M
D20f	Myat Myitzu Soe	Daughter of Soe Tha, d.o.b. 14.2.1973	F
D20g	San Thida Soe	Daughter of Soe Tha, d.o.b. 12.9.1978	F
D20h	Phone Myat Soe	Son of Soe Tha, d.o.b. 3.3.1983	M
D21a	Col Thein Nyunt	Progress of Border Areas & National Races & Development Affairs (since 15.11.1997), and Mayor of Naypyidaw	M
D21b	Kyin Khaing (Khin)	Wife of Col Thein Nyunt	F
D22a	Maj-Gen Aung Min	Rail Transportation (since 1.2.2003)	M
D22b	Wai Wai Thar a.k.a. Wai Wai Tha	Wife of Maj-Gen Aung Min	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D22c	Aye Min Aung	Daughter of Maj-Gen Aung Min	F
D22d	Htoo Char Aung	Son of Maj-Gen Aung Min	M
D23a	Brig-Gen Thura Myint Maung	Religious Affairs (since 25.8.2003)	M
D23b	Aung Kyaw Soe	Son of Brig-Gen Thura Myint Maung	M
D23c	Su Su Sandi	Wife of Aung Kyaw Soe	F
D23d	Zin Myint Maung	Daughter of Brig-Gen Thura Myint Maung	F
D24a	Thaung	Science & Technology (since 11.1998) , d.o.b. 6.7.1937	M
D24b	May Kyi Sein	Wife of Thaung	F
D24c	Aung Kyi	Son of Thaung, d.o.b. 1971	M
D25a	Brig-Gen Thura Aye Myint	Sports (since 29.10.1999)	M
D25b	Aye Aye	Wife of Brig-Gen Thura Aye Myint	F
D25c	Nay Linn	Son of Brig-Gen Thura Aye Myint	M
D26a	Brig-Gen Thein Zaw	Minister of Telecommunications, Post & Telegraphs (since 10.5.2001)	M
D26b	Mu Mu Win	Wife of Brig-Gen Thein Zaw	F
D27a	Maj-Gen Thein Swe	Transport, since 18.9.2004 (formerly PM's Office from 25.8.2003)	M
D27b	Mya Theingi	Wife of Maj-Gen Thein Swe	F
D28a	Maj-Gen Soe Naing	Minister for Hotels and Tourism (since 15.5.2006)	M
D28b	Tin Tin Latt	Wife of Maj-Gen Soe Naing	F
D28c	Wut Yi Oo	Daughter of Maj-Gen Soe Naing	F
D28d	Captain Htun Zaw Win	Husband of Wut Yi Oo	M
D28e	Yin Thu Aye	Daughter of Maj-Gen Soe Naing	F
D28f	Yi Phone Zaw	Son of Maj-Gen Soe Naing	M
D29a	Maj-Gen Khin Maung Myint	Electric Power (2) (New Ministry) (since 15.5.2006)	M
D29b	Win Win Nu	Wife of Maj-Gen Khin Maung Myint	F
D30a	Aung Kyi	Employment/Labour (appointed Minister for Relations on 8.10.2007, in charge of relations with Aung San Suu Kyi)	M
D30b	Thet Thet Swe	Wife of Aung Kyi	F
D31a	Kyaw Thu	Chairman of Civil Service Selection and Training Board, d.o.b. 15.8.1949	M
D31b	Lei Lei Kyi	Wife of Kyaw Thu	F

E. DEPUTY MINISTERS

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E1a	Ohn Myint	Agriculture & Irrigation (since 15.11.1997)	M
E1b	Thet War	Wife of Ohn Myint	F
E2a	Brig-Gen Aung Tun	Commerce (since 13.9.2003)	M
E3a	Brig-Gen Myint Thein	Construction (since 5.1.2000)	M
E3b	Mya Than	Wife of Brig-Gen Myint Thein	F
E4a	U Tint Swe	Construction (since 7.5.1998)	M
E5a	Maj-Gen Aye Myint	Defence (since 15.5.2006)	M
E6a	Brig-Gen Aung Myo Min	Education (since 19.11.2003)	M
E6b	Thazin Nwe	Wife of Brig-Gen Aung Myo Min	F
E6c	Si Thun Aung	Son of Brig-Gen Aung Myo Min	M
E7a	Myo Myint	Electric Power 1 (since 29.10.1999)	M
E7b	Tin Tin Myint	Wife of Myo Myint	F
E7c	Aung Khaing Moe	Son of Myo Myint, d.o.b. 25.6.1967 (believed to be currently in UK; went before entered on list)	M
E8a	Brig-Gen Than Htay	Energy (since 25.8.2003)	M
E8b	Soe Wut Yi	Wife of Brig-Gen Than Htay	F
E9a	Col Hla Thein Swe	Finance & Revenue (since 25.8.2003)	M
E9b	Thida Win	Wife of Col Hla Thein Swe	F
E10a	Brig-Gen Win Myint	Electric Power (2)	M
E10b	Daw Tin Ma Ma Than	Wife of Brig-Gen Win Myint	F
E11a	Maung Myint	Foreign Affairs (since 18.9.2004)	M
E11b	Dr Khin Mya Win	Wife of Maung Myint	F
E12a	Prof. Dr. Mya Oo	Health (since 16.11.1997), d.o.b. 25.1.1940	M
E12b	Tin Tin Mya	Wife of Prof. Dr. Mya Oo	F
E12c	Dr. Tun Tun Oo	Son of Prof. Dr. Mya Oo, d.o.b. 26.7.1965	M
E12d	Dr. Mya Thuzar	Daughter of Prof. Dr. Mya Oo, d.o.b. 23.9.1971	F
E12e	Mya Thidar	Daughter of Prof. Dr. Mya Oo, d.o.b. 10.6.1973	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E12f	Mya Nandar	Daughter of Prof. Dr. Mya Oo, d.o.b. 29.5.1976	F
E13a	Brig-Gen Phone Swe	Home Affairs (since 25.8.2003)	M
E13b	San San Wai	Wife of Brig-Gen Phone Swe	F
E14a	Brig-Gen Aye Myint Kyu	Hotels & Tourism (since 16.11.1997)	M
E14b	Khin Swe Myint	Wife of Brig-Gen Aye Myint Kyu	F
E15a	Brig-Gen Win Sein	Immigration & Population (since November 2006)	M
E15b	Wai Wai Linn	Wife of Brig-Gen Win Sein	F
E16a	Lt-Col Khin Maung Kyaw	Industry 2 (since 5.1.2000)	M
E16b	Mi Mi Wai	Wife of Lt-Col Khin Maung Kyaw	F
E17a	Col Tin Ngwe	Progress of Border Areas & National Races & Development Affairs (since 25.8.2003)	M
E17b	Khin Mya Chit	Wife of Col Tin Ngwe	F
E18a	Thura Thaung Lwin	(Thura is a title), Rail Transportation (since 16.11.1997)	M
E18b	Dr. Yi Yi Htwe	Wife of Thura Thaung Lwin	F
E19a	Brig-Gen Thura Aung Ko	(Thura is a title), Religious Affairs, USDA, member of the Central Executive Committee (since 17.11.1997)	M
E19b	Myint Myint Yee aka Yi Yi Myint	Wife of Brig-Gen Thura Aung Ko	F
E20a	Kyaw Soe	Science and Technology (since 15.11.2004)	M
E21a	Col Thurein Zaw	National Planning and Economic Development (since 10.8.2005)	M
E21b	Tin Ohn Myint	Wife of Col Thurein Zaw	F
E22a	Brig-Gen Kyaw Myin	Social Welfare, Relief & Resettlement (since 25.8.2003)	M
E22b	Khin Nwe Nwe	Wife of Brig-Gen Kyaw Myin	F
E23a	Pe Than	Rail Transportation (since 14.11.1998)	M
E23b	Cho Cho Tun	Wife of Pe Than	F
E24a	Col Nyan Tun Aung	Transport (since 25.8.2003)	M
E24b	Wai Wai	Wife of Col Nyan Tun Aung	F
E25a	Dr. Paing Soe	Health (additional Deputy Minister) (since 15.5.2006)	M
E25b	Khin Mar Swe	Wife of Dr. Paing Soe	F
E26a	Maj-Gen Thein Tun	Deputy Minister for Posts and Telecommunications	M
E26b	Mya Mya Win	Wife of Thein Tun	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E27a	Maj-Gen Kyaw Swa Khaing	Deputy Minister for Industry	M
E27b	Khin Phyu Mar	Wife of Kyaw Swa Khaing	F
E28a	Maj-Gen Thein Htay	Deputy Minister for Defence	M
E28b	Myint Myint Khine	Wife of Maj-Gen Thein Htay	F
E29a	Brig-Gen Tin Tun Aung	Deputy Minister for Labour (since 7.11.07)	M

F. OTHER TOURISM RELATED APPOINTMENTS

#	Name	Identifying information (inc. post held)	Sex (M/F)
F1a	U Hla Htay	Director General at Hotels & Tourism Directorate (Managing Director, Myanmar Hotels and Tourism Services until August 2004)	M
F2a	Tin Maung Shwe	Deputy Director General, Hotels and Tourism Directorate	M
F3a	Soe Thein	Managing Director, Myanmar Hotels and Tourism Services since October 2004 (Previously General Manager)	M
F4a	Khin Maung Soe	General Manager	M
F5a	Tint Swe	General Manager	M
F6a	Lt-Col Yan Naing	General Manager, Ministry of Hotels & Tourism	M
F7a	Kyi Kyi Aye	Director for Tourism Promotion, Ministry of Hotels & Tourism	F

G. SENIOR MILITARY OFFICERS

#	Name	Identifying information (inc. function)	Sex (M/F)
G1a	Maj-Gen Hla Shwe	Deputy Adjutant General	M
G2a	Maj-Gen Soe Maung	Judge Advocate General	M
G2b	Nang Phyu Phyu Aye	Wife of Maj-Gen Soe Maung	F
G3a	Maj-Gen Thein Htaik a.k.a. Hteik	Inspector General	M
G4a	Maj-Gen Saw Hla	Provost Marshal	M
G4b	Cho Cho Maw	Wife of Maj-Gen Saw Hla	F
G5a	Maj-Gen Htin Aung Kyaw	Vice Quarter Master General	M
G5b	Khin Khin Maw	Wife of Maj-Gen Htin Aung Kyaw	F
G6a	Maj-Gen Lun Maung	Auditor General	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G6b	May Mya Sein	Wife of Maj-Gen Lun Maung	F
G7a	Maj-Gen Nay Win	Military Assistant to the SPDC Chairman	M
G8a	Maj-Gen Hsan Hsint	Military Appointments General, d.o.b. 1951	M
G8b	Khin Ma Lay	Wife of Maj-Gen Hsan Hsint	F
G8c	Okkar San Sint	Son of Maj-Gen Hsan Hsint	M
G9a	Maj-Gen Hla Aung Thein	Camp Commandant, Rangoon	M
G9b	Amy Khaing	Wife of Hla Aung Thein	F
G10a	Maj-Gen Ye Myint	Chief of Military Affairs Security	M
G10b	Myat Ngwe	Wife of Maj-Gen Ye Myint	F
G11a	Brig-Gen Mya Win	Commandant, National Defence College	M
G12a	Brig-Gen Maung Maung Aye	Commandant, General Staff College (since June 2008)	M
G12b	San San Yee	Wife of Brig-Gen Maung Maung Aye	F
G13a	Brig-Gen Tun Tun Oo	Director of Public Relations and Psychological Warfare	M
G14a	Maj-Gen Thein Tun	Director of Signals; member of National Convention Convening Management Committee	M
G15a	Maj-Gen Than Htay	Director of Supply & Transport	M
G15b	Nwe Nwe Win	Wife of Maj-Gen Than Htay	F
G16a	Maj-Gen Khin Maung Tint	Director of Security Printing Works	M
G17a	Maj-Gen Sein Lin	Director, MOD (Precise job not known. Formerly Director Ordnance)	M
G18a	Maj-Gen Kyi Win	Director of Artillery & Armour, Board member UMEHL	M
G18b	Khin Mya Mon	Wife of Maj-Gen Kyi Win	F
G19a	Maj-Gen Tin Tun	Director Military Engineers	M
G19b	Khin Myint Wai	Wife of Maj-Gen Tin Tun	F
G20a	Maj-Gen Aung Thein	Director Resettlement	M
G20b	Htwe Yi aka Htwe Htwe Yi	Wife of Maj-Gen Aung Thein	F
G21a	Brig-Gen Hla Htay Win	Deputy Chief of Armed Forces Training	M
G22a	Brig-Gen Than Maung	Deputy Commandant of National Defence College	M
G23a	Brig-Gen Win Myint	Rector Defence Services Technological Academy	M
G24a	Brig-Gen Tun Nay Lin	Rector/Commandant, Defence Services Medical Academy	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G25a	Brig-Gen Than Sein	Commandant, Defence Services Hospital, Mingaladon, d.o.b. 1.2.1946, p.o.b. Bago	M
G25b	Rosy Mya Than	Wife of Brig-Gen Than Sein	F
G26a	Brig-Gen Win Than	Director of Procurement and Managing Director Union of Myanmar Economic Holdings (prev. Maj-Gen Win Hlaing, K1a)	M
G27a	Brig-Gen Than Maung	Director of Peoples' Militia & Frontier Forces	M
G28a	Maj-Gen Khin Maung Win	Director Defence Industries	M
G29a	Brig-Gen Kyaw Swa Khine	Director Defence Industries	M
G30a	Brig-Gen Win Aung	Member of Civil Service Selection and Training Board	M
G31a	Brig-Gen Soe Oo	Member of Civil Service Selection and Training Board	M
G32a	Brig-Gen Nyi Tun aka Nyi Htun	Member of Civil Service Selection and Training Board	M
G33a	Brig-Gen Kyaw Aung	Member of Civil Service Selection and Training Board	M
G34a	Maj-Gen Myint Hlaing	Chief of Staff (Air Defence)	M
G34b	Khin Thant Sin	Wife of Maj-Gen Myint Hlaing	F
G34c	Hnin Nandar Hlaing	Daughter of Maj-Gen Myint Hlaing	F
G34d	Thant Sin Hlaing	Son of Maj-Gen Myint Hlaing	M
G35a	Maj-Gen Mya Win	Director, Ministry of Defence	M
G36a	Maj-Gen Tin Soe	Director, Ministry of Defence	M
G37a	Maj-Gen Than Aung	Director, Ministry of Defence	M
G38a	Maj-Gen Ngwe Thein	Ministry of Defence	M
G39a	Col Thant Shin	Secretary, Government of the Union of Burma	M
G40a	Maj-Gen Thura Myint Aung	Adjutant General (formerly B8a, promoted from South Western Regional Command)	M
G41a	Maj-Gen Maung Shein	Defence Services Inspection and Auditor General	M
G42a	Maj-Gen Khin Zaw	Chief of Bureau of Special Operations 6 (Naypidaw, Mandalay) Promoted from Central Command	M
G42b	Khin Pyone Win	Wife of Maj-Gen Khin Zaw	F
G42c	Kyi Tha Khin Zaw	Son of Maj-Gen Khin Zaw	M
G42d	Su Khin Zaw	Daughter of Maj-Gen Khin Zaw	F
G43a	Maj-Gen Tha Aye	Ministry of Defence	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G44a	Colonel Myat Thu	Commander Rangoon Military Region 1 (northern Rangoon)	M
G45a	Colonel Nay Myo	Commander Military Region 2 (Eastern Rangoon)	M
G46a	Colonel Tin Hsan	Commander Military Region 3 (Western Rangoon)	M
G47a	Colonel Khin Maung Htun	Commander Military Region 4 (Southern Rangoon)	M
G48a	Colonel Tint Wai	Commander Operation Control Command No. 4 (Mawbi)	M
G49a	San Nyunt	Commander Military Support Unit No. 2 of Military Security Affairs	M
G50a	Lt. Col Zaw Win	Commander Lon Htein Battalion Base 3 Shwemyayar	M
G51a	Major Mya Thaung	Commander Lon Htein Battalion Base 5 Mawbi	M
G52a	Major Aung San Win	Commander Lon Htein Battalion Base 7 Thanlin Township	M

Navy

G53a	Rear Admiral Nyan Tun	Commander in Chief (Navy). Since June 2008. Board member UMEHL. (Previously G39a)	M
G53b	Khin Aye Myint	Wife of Nyan Tun	F
G54a	Commodore Win Shein	Commander, Naval Training Headquarters	M
G55a	Commodore Brig-Gen Thura Thet Swe	Commander Taninthayi Naval Region Command	M
G56a	Commodore Myint Lwin	Commander Irrawaddy Naval Region	M

Air Force

G57a	Lt-Gen Myat Hein	Commander-in-Chief (Air)	M
G57b	Htwe Htwe Nyunt	Wife of Lt-Gen Myat Hein	F
G58a	Maj-Gen Khin Aung Myint	Chief of Staff (Air)	M
G59a	Brig-Gen Ye Chit Pe	Staff of Commander in Chief Air, Mingaladon	M
G60a	Brig-Gen Khin Maung Tin	Commandant of Shande Air Training School, Meiktila	M
G61a	Brig-Gen Zin Yaw	Commander Patheingyi Air Base, Chief of Staff (Air), Member of UMEHL Board	M
G61b	Khin Thiri	Wife of Brig-Gen Zin Yaw	F
G61c	Zin Mon Aye	Daughter of Brig-Gen Zin Yaw, d.o.b. 26.3.1985	F
G61d	Htet Aung	Son of Brig-Gen Zin Yaw, d.o.b. 9.7.1988	M

Light Infantry Divisions (LID)

G62a	Brig-Gen Than Htut	11 LID	M
G63a	Brig-Gen Tun Nay Lin	22 LID	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G64a	Brig-Gen Tin Tun Aung	33 LID, Sagaing	M
G65a	Brig-Gen Hla Myint Shwe	44 LID	M
G66a	Brig-Gen Aye Khin	55 LID, Lalaw	M
G67a	Brig-Gen San Myint	66 LID, Pyi	M
G68a	Brig-Gen Tun Than	77 LID, Bago	M
G69a	Brig-Gen Aung Kyaw Hla	88 LID, Magwe	M
G70a	Brig-Gen Tin Oo Lwin	99 LID, Meiktila	M
G71a	Brig Gen Sein Win	101 LID, Pakokku	M
G72a	Col Than Han	LID 66	M
G73a	Lt-Col Htwe Hla	LID 66	M
G74a	Lt-Col Han Nyunt	LID 66	M
G75a	Col Ohn Myint	LID 77	M
G76a	Lt-Col Aung Kyaw Zaw	LID 77	M
G77a	Major Hla Phyo	LID 77	M
G78a	Colonel Myat Thu	Tactical Commander 11 th LID	M
G79a	Colonel Htein Lin	Tactical Commander 11 th LID	M
G80a	Lt. Col. Tun Hla Aung	Tactical Commander 11 th LID	M
G81a	Col. Aung Tun	Brigade 66	M
G82a	Capt. Thein Han	Brigade 66	M
G82b	Hnin Wutyi Aung	Wife of Capt. Thein Han	F
G83a	Lt. Col Mya Win	Tactical Commander 77 th LID	M
G84a	Colonel Win Te	Tactical Commander 77 th LID	M
G85a	Colonel Soe Htway	Tactical Commander 77 th LID	M
G86a	Lt. Col. Tun Aye	Commander 702 nd Light Infantry Battalion	M
G87a	Nyan Myint Kyaw	Commander Infantry Battalion 281 (Mongyang Shan State East)	M

Other Brigadier-Generals

G88a	Brig-Gen Htein Win	Taikkyi Station	M
G89a	Brig-Gen Khin Maung Aye	Meiktila Station Commander	M
G90a	Brig-Gen Kyaw Oo Lwin	Kalay Station Commander	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G91a	Brig-Gen Khin Zaw Win	Khamaukyi Station	M
G92a	Brig-Gen Kyaw Aung,	Southern MR, Toungoo Station Commander	M
G93a	Brig-Gen Myint Hein	Military Operations Command -3, Mogaung Station,	M
G94a	Brig-Gen Tin Ngwe	Ministry of Defence	M
G95a	Brig-Gen Myo Lwin	Military Operations Command -7, Pekon Station	M
G96a	Brig-Gen Myint Soe	Military Operations Command -5, Taungup Station	M
G97a	Brig-Gen Myint Aye	Military Operations Command -9, Kyauktaw Station	M
G98a	Brig-Gen Nyunt Hlaing	Military Operations Command -17, Mong Pan Station	M
G99a	Brig-Gen Ohn Myint	Mon State USDA CEC member	M
G100a	Brig-Gen Soe Nwe	Military Operations Command -21 Bhamo Station	M
G101a	Brig-Gen Than Tun	Kyaukpadaung Station Commander	M
G102a	Brig-Gen Than Tun Aung	Regional Operations Command-Sittwe	M
G103a	Brig-Gen Thaung Htaik	Aungban Station Commander	M
G104a	Brig-Gen Thein Hteik	Military Operations Command -13, Bokpyin Station	M
G105a	Brig-Gen Thura Myint Thein	Namhsan Tactical Operations Command	M
G106a	Brig-Gen Win Aung	Mong Hsat Station Commander	M
G107a	Brig-Gen Myo Tint	Officer on Special Duty Ministry of Transport	M
G108a	Brig-Gen Thura Sein Thaung	Officer on Special Duty Ministry for Social Welfare	M
G109a	Brig-Gen Phone Zaw Han	Mayor of Mandalay since Feb 2005 and Chairmain of Mandalay City Development Committee, formerly commander of Kyaukme	M
G109b	Moe Thidar	Wife of Brig-Gen Phone Zaw Han	F
G110a	Brig-Gen Win Myint	Pyinmana Station Commander	M
G111a	Brig-Gen Kyaw Swe	Pyin Oo Lwin Station Commander	M
G112a	Brig-Gen Soe Win	Bahtoo Station Commander	M
G113a	Brig-Gen Thein Htay	Ministry of Defence	M
G114a	Brig-Gen Myint Soe	Rangoon Station Commander	M
G115a	Brig-Gen Myo Myint Thein	Commandant, Defence Services Hospital Pyin Oo Lwin	M
G116a	Brig-Gen Sein Myint	Vice Chairman of Bago Division Peace and Development Council	M
G117a	Brig-Gen Hong Ngai (Ngaing)	Chairman of Chin State Peace and Development Council	M
G118a	Brig-Gen Win Myint	Chairman of Kayah State Peace and Development Council	M

H. MILITARY OFFICERS RUNNING PRISONS AND POLICE

#	Name	Identifying information (inc. function)	Sex (M/F)
H1a	Brig-Gen Khin Yi	DG Myanmar Police Force	M
H1b	Khin May Soe	Wife of Brig-Gen Khin Yi	F
H2a	Zaw Win	Director General of the Prisons Dept. (Ministry of Home Affairs) since August 2004, previously Deputy DG Myanmar Police Force, and former Brig-Gen. Former military.	M
H2b	Nwe Ni San	Wife of Zaw Win	F
H3a	Aung Saw Win	Director General, Bureau of Special Investigation	M
H4a	Police Brig-Gen Khin Maung Si	Chief of Police Headquarters	M
H5a	Lt-Col Tin Thaw	Commander of Government Technical Institute	M
H6a	Maung Maung Oo	Head of Military Security Affairs interrogation team at Insein Prison	M
H7a	Myo Aung	Director of Rangoon Detention Facilities	M
H8a	Police Brig-Gen Zaw Win	Deputy Director of Police	M
H9a	Police Lt. Col. Zaw Min Aung	Special Branch	M

I. UNION SOLIDARITY AND DEVELOPMENT ASSOCIATION (USDA)

(senior USDA office-holders who have not been included elsewhere)

#	Name	Identifying information (inc. function)	Sex (M/F)
I1a	Brig-Gen Aung Thein Lin (Lynn)	Mayor of Yangon & Chairman of the Yangon City Development Committee (Secretary) and USDA Central Executive Committee member, d.o.b. 1952	M
I1b	Khin San Nwe	Wife of Brig-Gen Aung Thein Lin	F
I1c	Thidar Myo	Daughter of Brig-Gen Aung Thein Lin	F
I2a	Col Maung Par (Pa)	Vice Mayor of Yangon City Development I (Member of the Central Executive I)	M
I2b	Khin Nyunt Myaing	Wife of Col Maung Par	F
I2c	Naing Win Par	Son of Col Maung Par	M
I3a	Nyan Tun Aung	Member of the Central Executive Committee	M
I4a	Aye Myint	Member of Rangoon Executive Committee	M
I5a	Tin Hlaing	Member of Rangoon Executive Committee	M
I6a	Soe Nyunt	Staff Officer Yangon East	M

#	Name	Identifying information (inc. function)	Sex (M/F)
I7a	Chit Ko Ko	Chairman of the Peace and Development Council in Mingala Taungnyunt Township	M
I8a	Soe Hlaing Oo	Secretary of the Peace and Development Council in Mingala Taungnyunt Township	M
I9a	Captain Kan Win	Head of Mingala Taungnyunt Township Police Force	M
I10a	That Zin Thein	Head of Mingala Taungnyunt Development Affairs Committee	M
I11a	Khin Maung Myint	Head of Mingala Taungnyunt Immigration and Population Dept	M
I12a	Zaw Lin	Secretary Mingala Taungnyunt Township USDA	M
I13a	Win Hlaing	Joint Secretary Mingala Taungnyunt Township USDA	M
I14a	San San Kyaw	Staff Officer of the Information and Public Relations Department of the Ministry of Information in Mingala Taungnyunt Township	F
I15a	Lt-Gen Myint Hlaing	Ministry of Defence and USDA Member	M

J. PERSONS WHO BENEFIT FROM GOVERNMENT ECONOMIC POLICIES AND OTHER PERSONS ASSOCIATED WITH THE REGIME

#	Name	Identifying information (inc. company)	Sex (M/F)
J1a	Tay Za	Managing Director, Htoo Trading Co; Htoo Construction Co., d.o.b 18.7.1964; ID card MYGN 006415. Father: U Myint Swe (6.11.1924) Mother: Daw Ohn (12.8.1934)	M
J1b	Thidar Zaw	Wife of Tay Za; d.o.b. 24.2.1964, ID card KMYT 006865. Parents: Zaw Nyunt (deceased), Htoo (deceased)	F
J1c	Pye Phyo Tay Za	Son of Tay Za , d.o.b. 29.1.1987	M
J1d	Ohn	Mother of Tay Za, d.o.b. 12.8.1934	F
J2a	Thiha	Brother of Tay Za (J1a), d.o.b. 24.6.1960. Director Htoo Trading. Distributor of London cigarettes (Myawaddy Trading)	M
J2b	Shwe Shwe Lin	Wife of Thiha	F
J3a	Aung Ko Win a.k.a. Saya Kyaung	Kanbawza Bank also Myanmar Billion Group, Nilayoma Co. Ltd, East Yoma Co. Ltd and agent for London Cigarettes in Shan and Kayah States	M
J3b	Nan Than Htwe (Htay)	Wife of Aung Ko Win	F
J3c	Nang Lang Kham a.k.a. Nan Lan Khan	Daughter of Aung Ko Win , d.o.b. 1.6.1988	F

#	Name	Identifying information (inc. company)	Sex (M/F)
J4a	Tun (Htun, Htoon) Myint Naing a.k.a. Steven Law	Stewen Law Asia World Co., d.o.b. 15.5.1958 or 27.8.1960	M
J4b	(Ng) Seng Hong, called Cecilia Ng or Ng Sor Hon	Wife of Tun Myint Naing. Chief Executive of Golden Aaron Pte Ltd (Singapore)	F
J4c	Lo Hsing-han	Father of Tun Myint Naing a.k.a. Steven Law of Asia World Co., d.o.b. 1938 or 1935	M
J5a	Khin Shwe	Zaykabar Co, d.o.b. 21.1.1952. See also A3f	M
J5b	San San Kywe	Wife of Khin Shwe	F
J5c	Zay Thiha	Son of Khin Shwe, d.o.b. 1.1.1977, Managing Director of Zaykabar Co. Ltd	M
J5d	Nandar Hlaing	Wife of Zay Thiha	F
J6a	Htay Myint	Yuzana Co., d.o.b. 6.2.1955, also Yuzana Supermarket, Yuzana Hotel, Yuzana Oil Palm Project	M
J6b	Aye Aye Maw	Wife of Htay Myint, d.o.b. 17.11.1957	F
J6c	Win Myint	Brother of Htay Myint, d.o.b. 29.5.1952	M
J6d	Lay Myint	Brother of Htay Myint, d.o.b. 6.2.1955	M
J6e	Kyin Toe	Brother of Htay Myint, d.o.b. 29.4.1957	M
J6f	Zar Chi Htay	Daughter of Htay Myint, Director of Yuzana Co., d.o.b. 17.2.1981	F
J6g	Khin Htay Lin	Director, Yuzana Co., d.o.b. 14.4.1969	M
J7a	Kyaw Win	Shwe Thanlwin Trading Co. (sole distributors of Thaton Tires under Ministry of Industry 2)	M
J7b	Nan Mauk Loung Sai aka. Nang Mauk Lao Hsai	Wife of Kyaw Win	F
J8a	Maj-Gen (Retired) Nyunt Tin	Former Minister of Agriculture & Irrigation, retired September 2004	M
J8b	Khin Myo Oo	Wife of Maj-Gen (Retired) Nyunt Tin	F
J8c	Kyaw Myo Nyunt	Son of Maj-Gen (Retired) Nyunt Tin	M
J8d	Thu Thu Ei Han	Daughter of Maj-Gen (Retired) Nyunt Tin	F
J9a	Than Than Nwe	Wife of Gen Soe Win, former Prime Minister (deceased)	F
J9b	Nay Soe	Son of Gen Soe Win, former Prime Minister (deceased)	M
J9c	Theint Theint Soe	Daughter of Gen Soe Win, former Prime Minister (deceased)	F
J9d	Sabai Myaing	Wife of Nay Soe	F
J9e	Htin Htut	Husband of Theint Theint Soe	M

#	Name	Identifying information (inc. company)	Sex (M/F)
J10a	Maung Maung Myint	Managing Director of Myangon Myint Co. Ltd	M
J11a	Maung Ko	Manager, Htarwara mining company	M
J12a	Zaw Zaw a.k.a. Phoe Zaw	Managing Director of Max Myanmar, d.o.b. 22.10.1966	M
J12b	Htay Htay Khine (Khaing)	Wife of Zaw Zaw	F
J13a	Chit Khaing aka Chit Khine	Managing Director Eden group of companies	M
J14a	Maung Weik	Maung Weik & Co Ltd	M
J15a	Aung Htwe	Managing Director, Golden Flower Construction Company	M
J16a	Kyaw Thein	Director and Partner of Htoo Trading, d.o.b. 25.10.1947	M
J17a	Kyaw Myint	Owner, Golden Flower Co. Ltd., 214 Warden Street, Lamadaw, Yangon	M
J18a	Nay Win Tun	Ruby Dragon Jade and Gems Co. Ltd	M
J19a	Win Myint	President of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and owner of Shwe Nagar Min Co	M
J20a	Eike (Eik) Htun aka Ayke Htun a.k.a. Aik Tun	Managing Director of Olympic Construction Co. and Asia Wealth Bank	M
J20b	Sandar Tun	Daughter of Eike Htun	F
J20c	Aung Zaw Naing	Son of Eike Htun	M
J20d	Mi Mi Khaing	Son of Eike Htun	M
J21a	"Dagon" Win Aung	Dagon International Co. Ltd, d.o.b. 30.9.1953, p. o.b Pyay, ID Card No: PRE 127435	M
J21b	Moe Mya Mya	Wife of "Dagon" Win Aung, d.ob. 28.8.1958, ID Card: B/ RGN 021998	F
J21c	Ei Hnin Pwint aka Christabelle Aung	Daughter of "Dagon" Win Aung, d.o.b. 22.2.1981, Director of Palm Beach Resort Ngwe Saung	F
J21d	Thurane (Thurein) Aung aka Christopher Aung	Son of "Dagon" Win Aung, d.o.b 23.7.1982	M
J21e	Ei Hnin Khine aka Christina Aung	Daughter of "Dagon" Win Aung, d.o.b 18.12.1983	F
J22a	Aung Myat a.k.a. Aung Myint	Mother Trading	M
J23a	Win Lwin	Kyaw Tha Company	M
J24a	Dr. Sai Sam Tun	Loi Hein Co. working in collaboration with Ministry of Industry No. 1	M
J25a	San San Yee (Yi)	Super One Group of Companies	F
J26a	Aung Zaw Ye Myint	Owner of Yetagun Construction Co	M

#	Name	Identifying information (inc. company)	Sex (M/F)
<i>Members of the Judiciary</i>			
J27a	Aung Toe	Chief Justice	M
J28a	Aye Maung	Attorney General	M
J29a	Thaung Nyunt	Legal Adviser	M
J30a	Dr Tun Shin	Deputy Attorney General	M
J31a	Tun Tun (Htun Htun) Oo	Deputy Attorney General	M
J32a	Tun Tun Oo	Deputy Chief Justice	M
J33a	Thein Soe	Deputy Chief Justice	M
J34a	Tin Aung Aye	Supreme Court Judge	M
J35a	Tin Aye	Supreme Court Judge	M
J36a	Myint Thein	Supreme Court Judge	M
J37a	Chit Lwin	Supreme Court Judge	M
J38a	Judge Thaung Lwin	Kyauktada Township Court	M
J39a	Thaung Nyunt	Judge, Northern District Court; Also National Convention Convening Work Committee Secretary	M
J40a	Nyi Nyi Soe	Judge, Western District Court Address: No. (39) Ni-Gyaw-Da Street, (corner of Sake-Ta-Thu-Kha Street), Kyar-Kwet-Thit Ward, Tarmway Township, Rangoon, Burma	M
J41a	Myint Kyine	Government Prosecutor, Northern District Court	M

K. MILITARY OWNED ENTERPRISES

Individuals

#	Name	Identifying information (inc. company)	Sex (M/F)
K1a	Maj-Gen (Retired) Win Hlaing	Formerly Managing Director, Union of Myanmar Economic Holdings, Myawaddy Bank	M
K1b	Ma Ngeh	Daughter of Maj-Gen (Retired) Win Hlaing	F
K1c	Zaw Win Naing	Managing Director of Kambawza (Kanbawza) Bank. Husband of Ma Ngeh (K1b), and nephew of Aung Ko Win (J3a)	M
K1d	Win Htway Hlaing	Son of Maj-Gen (Retired) Win Hlaing, representative for KESCO company	M
K2a	Col Myo Myint	Managing Director Union of Myanmar Economic Holding LTD (UMEH)	

#	Name	Identifying information (inc. company)	Sex (M/F)
K2b	Daw Khin Htay Htay	Wife of Col Myo Myint	
K3a	Col Ye Htut	Myanmar Economic Corporation	M
K4a	Col Myint Aung	Managing Director at Myawaddy Trading Co. d.o.b. 11.8.1949	M
K4b	Nu Nu Yee	Wife of Myint Aung, lab technician, d.o.b. 11.11.1954	F
K4c	Thiha Aung	Son of Myint Aung, employed by Schlumberger, d.o.b. 11.6.1982	M
K4d	Nay Linn Aung	Son of Myint Aung, seaman, d.o.b. 11.4.1981	M
K5a	Col Myo Myint	Managing Director at Bandoola Transportation Co.	M
K6a	Col (Retired) Thant Zin	Managing Director at Myanmar Land and Development	M
K7a	Lt-Col (Retired) Maung Maung Aye	UMEHL	M
K8a	Col Aung San	Managing Director at Hsinmin Cement Plant Construction Project	M
K9a	Maj-Gen Mg Nyo	Board of Directors, Union of Myanmar economic holdings Ltd	M
K10a	Maj-Gen Kyaw Win	Board of Directors, Union of Myanmar economic holdings Ltd	M
K11a	Brig-Gen Khin Aung Myint	Board of Directors, Union of Myanmar economic holdings Ltd	M
K12a	Col Nyun Tun (marines)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K13a	Col Thein Htay (Retired)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K14a	Lt-Col Chit Swe (Retired)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K15a	Myo Nyunt	Board of Directors, Union of Myanmar economic holdings Ltd	M
K16a	Myint Kyine	Board of Directors, Union of Myanmar economic holdings Ltd	M
K17a	Lt-Col Nay Wynn	Departmental Managing Director, Myawaddy trading	M
K18a	Than Nyein	Governor of Central Bank of Myanmar	M
K19a	Maung Maung Win	Governor of Central Bank of Myanmar	
K20a	Mya Than	Acting Managing Director of Myanmar Investment and Commercial Bank (MICB)	M
K21a	Myo Myint Aung	General Manager of MICB	M

Enterprises

#	Name	Address	Director/Owner/additional information	Date of listing
I. UNION OF MYANMAR ECONOMIC HOLDINGS LTD. (UMEHL) aka UNION OF MYANMA ECONOMIC HOLDINGS LTD.				
K22a	Union Of Myanmar Economic Holdings Ltd. aka Union Of Myanma Economic Holdings Ltd. (UMEHL)	189/191 Mahabandoola Road Corner of 50th Street Yangon	Chairman: Lt-Gen Tin Aye, Managing Director: Maj-Gen Win Than	13.8.2009
A. MANUFACTURING				
K22b	Myanmar Ruby Enterprise aka Mayanma Ruby Enterprise	24/26, 2ND fl, Sule Pagoda Road, Yangon (Midway Bank Building)		13.8.2009
K22c	Myanmar Imperial Jade Co. Ltd aka Myanma Imperial Jade Co. Ltd	24/26, 2nd fl, Sule Pagoda Road, Yangon (Midway Bank Building)		13.8.2009
K22d	Myanmar Rubber Wood Co. Ltd. aka Myanma Rubber Wood Co. Ltd.			13.8.2009
K22e	Myanmar Pineapple Juice Production aka Myanma Pineapple Juice Production			13.8.2009
K22f	Myawaddy Clean Drinking Water Service	4/A, No. 3 Main Road, Mingalardon Tsp Yangon		13.8.2009
K22g	Sin Min (King Elephants) Cement Factory (Kyaukse)	189/191 Mahabandoola Road Corner of 50th Street, Yangon	Col Maung Maung Aye, Managing Director	13.8.2009
K22h	Tailoring Shop Service			13.8.2009
K22i	Ngwe Pin Le (Silver Sea) Livestock Breeding And Fishery Co.	1093, Shwe Taung Gyar Street, Industrial Zone II, Ward 63, South Dagon Tsp, Yangon		13.8.2009
K22j	Granite Tile Factory (Kyaikto)	189/191 Mahabandoola Road, Corner of 50th Street Yangon		13.8.2009
K22k	Soap Factory (Paung)	189/191 Mahabandoola Road, Corner of 50th Street Yangon	Col Myint Aung, Managing Director	13.8.2009
B. TRADING				
K22l	Myawaddy Trading Ltd	189/191 Mahabandoola Road, Corner of 50th Street Yangon	Col Myint Aung, Managing Director	13.8.2009
C. SERVICES				
K22m	Bandoola Transportation Co. Ltd.	399, Thiri Mingalar Road, Insein Tsp. Yangon and/or Parami Road, South Okkalapa, Yangon	Col. Myo Myint, Managing Director	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K22n	Myawaddy Travel Services	24-26 Sule Pagoda Road, Yangon		13.8.2009
K22o	Nawaday Hotel And Travel Services	335/357, Bogyoke Aung San Road, Pabedan Tsp. Yangon	Col. (Retired) Maung Thauang, Managing Director	13.8.2009
K22p	Myawaddy Agriculture Services	189/191 Mahabandoola Road, Corner of 50th Street, Yangon		13.8.2009
K22q	Myanmar Ar (Power) Construction Services aka Myanma Ar (Power) Construction Services	189/191 Mahabandoola Road, Corner of 50th Street, Yangon		13.8.2009

Joint ventures**A. MANUFACTURING**

K22r	Myanmar Segal International Ltd. aka Myanma Segal International Ltd.	Pyay Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon	U Be Aung, Manager	13.8.2009
K22s	Myanmar Daewoo International aka Myanma Daewoo International	Pyay Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22t	Rothman Of Pall Mall Myanmar Private Ltd. aka Rothman Of Pall Mall Myanma Private Ltd.	No. 38, Virginia Park, No. 3, Trunk Road, Pyinmabin Industrial Zone, Yangon	CEO Lai Wei Chin	13.8.2009
K22u	Myanmar Brewery Ltd. aka Myanma Brewery Ltd.	No 45, No 3, Trunk Road Pyinmabin Industrial Zone, Mingalardon Tsp, Yangon	Lt-Col (Retired) Ne Win, Chairman aka Nay Win	13.8.2009
K22v	Myanmar Posco Steel Co. Ltd. aka Myanma Posco Steel Co. Ltd.	Plot 22, No. 3, Trunk Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22w	Myanmar Nouveau Steel Co. Ltd. aka Myanma Nouveau Steel Co. Ltd.	No. 3, Trunk Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22x	Berger Paint Manufacturing Co. Ltd.	Plot No. 34/A, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22y	The First Automotive Co. Ltd.	Plot No. 47, Pyinmabin Industrial Zone, Mingalardon Tsp, Yangon	U Aye Cho and/or Lt-Col Tun Myint, Managing Director	13.8.2009

B. SERVICES

K22z	National Development Corp.	3/A, Thamthumar Street, 7 Mile, Mayangone Tsp, Yangon	Dr. Khin Shwe, Chairman	13.8.2009
K22aa	Hantha Waddy Golf Resort and Myodaw (City) Club Ltd.	No 1, Konemyinthta Street, 7 Mile, Mayangone Tsp, Yangon and Thiri Mingalar Road, Insein Tsp, Yangon		13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
II. MYANMAR ECONOMIC CORPORATION (MEC) aka MYANMA ECONOMIC CORPORATION (MEC)				
K23a	Myanmar Economic Corporation (MEC) aka Myanma Economic Corporation (MEC)	Shwedagon Pagoda Road Dagon Tsp, Yangon	Chairman, Lt-Gen Tin Aung Myint Oo, Col Ye Htut or Brig-Gen Kyaw Win, Managing Director: Brig-Gen Myint Thein	13.8.2009
K23b	Myaing Galay (Rhino Brand Cement Factory)	Factories Dept. Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon	Col Khin Maung Soe	13.8.2009
K23c	Dagon Brewery	555/B, No 4, Highway Road, Hlaw Gar Ward, Shwe Pyi Thar Tsp, Yangon		13.8.2009
K23d	Mec Steel Mills (Hmaw Bi/Pyi/Ywama)	Factories Dept. Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon	Col Khin Maung Soe	13.8.2009
K23e	Mec Sugar Mill	Kant Balu		13.8.2009
K23f	Mec Oxygen and Gases Factory	Mindama Road, Mingalardon Tsp, Yangon		13.8.2009
K23g	Mec Marble Mine	Pyinmanar		13.8.2009
K23h	Mec Marble Tiles Factory	Loikaw		13.8.2009
K23i	Mec Myanmar Cable Wire Factory aka Mec Myanma Cable Wire Factory	No 48, Bamaw A Twin Wun Road, Zone (4), Hlaing Thar Yar Industrial Zone, Yangon		13.8.2009
K23j	Mec Ship Breaking Service	Thilawar, Than Nyin Tsp		13.8.2009
K23k	Mec Disposable Syringe Factory	Factories Dept, Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon		13.8.2009
K23l	Gypsum Mine	Thibaw		13.8.2009

III. GOVERNMENT-OWNED COMMERCIAL ENTERPRISES

K24a	Myanma Salt and Marine Chemicals Enterprise aka Myanmar Salt and Marine Chemicals Enterprise	Thakayta Township, Yangon	Managing Director: U Win Htain (Ministry of Mines)	13.8.2009
K25a	Myanmar Defence Products Industry aka Myanma Defence Products Industry	Ngyaung Chay Dauk	(Ministry of Defence)	13.8.2009
K26a	Myanma Timber Enterprise aka Myanma Timber Enterprise	Myanma Timber Enterprise Head Office, Ahlone, Yangon and 504-506, Merchant Road, Kyauktada, Yangon	Managing Director: Win Tun	13.8.2009
K27a	Myanmar Gems Enterprise aka Myanma Gems Enterprise	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Thein Swe	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K28a	Myanmar Pearls Enterprise aka Myanma Pearls Enterprise	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Maung Toe	13.8.2009
K29a	Myanmar Mining Enterprise Number 1 aka Myanma Mining Enterprise Number 1	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Saw Lwin	13.8.2009
K30a	Myanmar Mining Enterprise Number 2 aka Myanma Mining Enterprise Number 2	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Hla Theing	13.8.2009
K31a	Myanmar Mining Enterprise Number 3 aka Myanma Mining Enterprise Number 1	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: San Tun	13.8.2009
K32a	Myanma Machine Tool and Electrical Industries (MTEI) aka Myanmar Machine Tool and Electrical Industries (MTEI)	Block No. (12), Parami Road, Hlaing Township Yangon, Myanmar Telephone: 095-1-660437, 662324, 650822	Managing Director: Kyaw Win Director: Win Tint	13.8.2009
K33a	Myanmar Paper & Chemical Industries aka Myanma Paper & Chemical Industries		Managing Director: Nyunt Aung	13.8.2009
K34a	Myanma General and Maintenance Industries aka Myanmar General and Maintenance Industries		Managing Director: Aye Mauk	13.8.2009
K35a	Road Transport Enterprise	(Ministry of Transport)	Managing Director: Thein Swe	13.8.2009
K36a	Inland Water Transport	No.50, Pansodan Street, Kyauktada Township, Yangon, Union of Myanmar	Managing Director: Soe Tint	13.8.2009
K37a	Myanma Shipyards, aka Myanmar Shipyards, Sinmalike	Bayintnaung Road, Kamayut Township Yangon	Managing Director: Kyi Soe	13.8.2009
K38a	Myanma Five Star Line, aka Myanmar Five Star Line	132-136, Theinbyu Road, P.O. Box,1221,Yangon	Managing Director: Maung Maung Nyein	13.8.2009
K39a	Myanma Automobile and Diesel Engine Industries aka Myanmar Automobile and Diesel Engine Industries	56, Kaba Aye Pagoda Road, Yankin Township, Yangon	Managing Director: Hla Myint Thein	13.8.2009
K40a	Myanmar Infotech aka Myanma Infotech		Ministry of Post and Telecommunications)	13.8.2009
K41a	Myanma Industrial Construction Services aka Myanmar Industrial Construction Services	No. (1), Thitsa Road, Yankin Township, Yangon, Myanmar	Managing Director: Soe Win	13.8.2009
K42a	Myanmar Machinery and Electric Appliances Enterprise aka Myanma Machinery and Electric Appliances Enterprise	Hlaing Township, Yangon		13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
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IV. STATE-OWNED MEDIA COMPANIES INVOLVED IN PROMOTING THE REGIME'S POLICIES AND PROPAGANDA

K43a	Myanmar News and Periodicals Enterprise aka Myanma News and Periodicals Enterprise	212 Theinbyu Road, Botahtaung Township, Yangon (tel: +95-1-200810, +95-1-200809)	Managing Director: Soe Win (wife: Than Than Aye, member of MWAF)	13.8.2009
K44a	Myanmar Radio and Television (MRTV) aka Myanma Radio and Television (MRTV)	Pyay Road, Kamayut Township, Yangon (tel: +95-1-527122, +95-1-527119)	Director General: Khin Maung Htay (wife: Nwe New, member of MWAF)	13.8.2009
K45a	Myawaddy Television, Tatmadaw Telecasting Unit	Hmawbi Township, Yangon (tel: +95-1-600294)		13.8.2009
K46a	Myanma Motion Picture Enterprise, aka Myanmar Motion Picture Enterprise		Managing Director: Aung Myo Myint (wife: Malar Win, member of MWAF)	13.8.2009'

ANNEX II

‘ANNEX III

List of enterprises referred to in Articles 5 and 9

Name	Address	Director/Owner/ additional information	Date of listing
I. UNION OF MYANMAR ECONOMIC HOLDING LTD. (UMEHL)			
SERVICES			
Myawaddy Bank Ltd	24-26 Sule Pagoda Road, Yangon	Brig-Gen Win Hlaing and U Tun Kyi, Managing Directors	25.10.2004
II. MYANMAR ECONOMIC CORPORATION (MEC)			
Innwa Bank	554-556, Merchant Street, Corner of 35 th Street, Kyauktada Tsp, Yangon	U Yin Sein, General Manager	25.10.2004
III. GOVERNMENT OWNED COMMERCIAL ENTERPRISES			
1. Myanma Electric Power Enterprise		(Ministry of Electric Power 2) Managing Director: Dr. San (Sann) Oo	29.4.2008
2. Electric Power Distribution Enterprise		(Ministry of Electric Power 2), Managing Director: Tin Aung	27.4.2009
3. Myanma Agricultural Produce Trading		Managing Director: Kyaw Htoo (Ministry of Commerce)	29.4.2008
4. Myanmar Tyre and Rubber Industries	No. 30, Kaba Aye Pagoda Road, Mayangone Township, Yangon, Myanmar	(Ministry of Industry 2), Managing Director: Oo Zune	29.4.2008
5. Co-Operative Import Export Enterprise		(Ministry of Co-Operatives), Managing Director: Hla Moe	29.4.2008
IV. OTHERS			
1. Htoo Trading Co	5 Pyay Road, Hlaing Township, Yangon	Tay Za	10.3.2008
2. Htoo Transportation Services		Tay Za	10.3.2008
3. Htoo Furniture, a.k.a. Htoo Wood Products, a.k.a. Htoo Wood based Industry, a.k.a. Htoo Wood	21 Thukha Waddy Rd, Yankin Township, Yangon	Tay Za	29.4.2008
4. Treasure Hotels and Resorts	No. 41, Shwe Taung Gyar Street, Bahan Township, Yangon	Tay Za	10.3.2008
5. Aureum Palace Hotels And Resorts	No. 41, Shwe Taung Gyar Street, Bahan Township, Yangon	Tay Za	10.3.2008

Name	Address	Director/Owner/ additional information	Date of listing
6. Air Bagan	No. 56, Shwe Taung Gyar Street, Bahan Township, Yangon		10.3.2008
7. Myanmar Avia Export		Tay Za	10.3.2008
8. Pavo Aircraft Leasing PTE Ltd aka Pavo Trading Pte Ltd.		Tay Za	29.4.2008
9. Kanbawza Bank	Head Office: 615/1 Pyay Road, Kamaryut, Township, Yangon	Aung Ko Win	10.3.2008
10. Zaykabar Co	3 Main Road, Mingalardon Garden City, Mingalardon, Yangon	Chairman: Khin Shwe, Managing Direction: Zay Thiha	10.3.2008
11. Shwe Thanlwin Trading Co	262 Pazundaung Main Road Lower, Pazundaung, Yangon	Kyaw Win	10.3.2008
12. Max Myanmar Co. Ltd	1 Ywama Curve, Bayint Naung Road, Blk (2), Hlaing Township, Yangon	U Zaw Zaw a.k.a. Phoe Zaw, Daw Htay Htay Khaing, wife of Zaw Zaw. Senior Executive Officer, U Than Zaw	10.3.2008
13. Hsinmin Cement Plant Construction Project	Union of Myanmar Economic Holdings Ltd, Kyaukse	Col Aung San	10.3.2008
14. Ayer Shwe Wa (Wah, War)	5 Pyay Road, Hlaing Township, Yangon,	Aung Thet Mann a.k.a. Shwe Mann Ko Ko	10.3.2008
15. Myanmar Land And Development		Col (Retired) Thant Zin	10.3.2008
16. Eden Group of Companies	30-31 Shwe Padauk Yeikmon Bayint Naung Road Kamayut Tsp Yangon	Chit Khaing a.k.a. Chit Khine	10.3.2008
17. Golden Flower Co. Ltd	214 Wardan Street, Lamadaw, Yangon	Managing Director: Aung Htwe, Owner: Kyaw Myint	10.3.2008
18. Maung Weik Et Co., Ltd.	334/344 2nd Floor, Anawratha Road, Bagan Bldg, Lamadaw, Yangon	Maung Weik	10.3.2008
19. National Development Company Ltd.	3/A Thathumar Rd, Cor of Waizayantar Road, Thinhangyun, Yangon		10.3.2008
20. A1 Construction And Trading Co. Ltd	41 Nawady St, Alfa Hotel Building, Dagon, Yangon Tel: 00-95-1-241905/245323/254812 Fax: 00 95 1 252806 Email: aone@mptmail.net.mm	Managing Director: U Yan Win	10.3.2008
21. Asia World Co. Ltd	6062 Wardan Street, Bahosi Development, Lamadaw, Yangon	Tun Myint Naing a.k.a. Steven Law (J4a, Annex II)	10.3.2008

Name	Address	Director/Owner/ additional information	Date of listing
22. Subsidiaries of Asia World: Asia World Industries Asia Light Co. Ltd. Asia World Port Management Co. Ahlon Warves		Chairman/Director: Tun Myint Naing a.k.a. Steven Law (J4a, Annex II)	29.4.2008
23. Yuzana Co. Ltd	No 130 Yuzana Centre, Shwegondaing Road, Bahan Township, Yangon	Chairman/Director: Htay Myint	10.3.2008
24. Yuzana Construction	No 130 Yuzana Centre, Shwegondaing Road, Bahan Township, Yangon	Chairman/Director: Htay Myint	10.3.2008
25. Myangonmyint Co (enterprise held by the USDA)			10.3.2008
26. Dagon International/Dagon Timber Ltd,	262-264 Pyay Road Dagon Centre Sanchaung Yangon	Directors: "Dagon" Win Aung and Daw Moe Mya Mya	29.4.2008
27. Palm Beach Resort	Ngwe Saung	Owned by Dagon International. Directors, "Dagon" Win Aung , Daw Moe Mya Mya and Ei Hnin Pwint a.k.a. Chistabelle Aung	29.4.2008
28. IGE Co Ltd	No.27-B, Kaba Aye Pagoda Road, Bahan Township Yangon Tel: 95-1-558266 Fax: 95-1-555369 and No.H-11, Naypyitaw, Naypyitaw Tel: 95-67-41-4211	Directors Nay Aung (D15e Annex II) and Pyi (Pye) Aung (D15g Annex II) and Managing Director Win Kyaing	29.4.2008
29. Aung Yee Phyoo Co.		Owned by family of Aung Thaung (Ministry of Industry 1)	27.4.2009
30. Queen Star Computer Company		Owned by family of Aung Thaung	27.4.2009
31. Htay Co.		Owned by Maj-Gen Hla Htay Win (A9a Annex II)	27.4.2009
32. Mother Trading and Construction	77/78,Wadan Street,Bahosi Ward, Lanmadaw, Yangon Tel: 95-1-21-0514 Email: mother.trade@mptmail.net.mm	Director Aung Myat a.k.a. Aung Myint	29.4.2008

Name	Address	Director/Owner/ additional information	Date of listing
33. Kyaw Tha Company and Kyaw Tha Construction Group	No. 98, 50th Street, Pazundaung Township, Yangon, Tel: 95-1-296733 Fax: 95-1-296914 E - mail: kyawtha.wl@mptmail.net.mm Website: http://www.kyawtha.com	Director: U Win Lwin, Managing Director: Maung Aye	29.4.2008
34. Ye Ta Khun (Yetagun) Construction Group	Yuzana Plaza West, Tamwe Township Yangoon	Owner Aung Zaw Ye Myint (Previously A9d Annex II) son of General Ye Myint (Previously A9a)	29.4.2008
35. J's Donuts	26-28 Lanmadaw Street Lanmadaw Tsp, Yangon Tel: 95-1-710242 Junction 8 Shopping Centre 8th Mile Mayangon Tsp, Yangon Tel: 95-1-650771 (2nd Floor.) Yuzana Plaza Banyar Dala Road Mingalar Taung Nyunt Tsp, Yangon Tel: 95-1-200747 173-175 Pansodan Street Kyauktada Tsp, Yangon Tel: 95-1-287525 381-383 Near Bogyoke Aung San Market Shwebontha Street Pabedan Tsp, Yangon Tel: 95-1-243178	Owner: Kyaing San Shwe(A1h Annex II) son of Senior General Than Shwe (A1a)	29.4.2008
36. Sun Tac or Sun Tec Suntac Int'l Trading Co. Ltd.	151 (B) Thiri Mingalar Lane Mayangon Township Yangon Tel: 01- 650021 654463	Owner: Sit Taing Aung, son of Aung Phone (former Minister of Forestry)	29.4.2008
37. (MMS) Min Min Soe Group of Companies	23-A, Inya Myaing Street, Bahan Tsp. Tel: 95-1-511098, 514262 E-mail: mms@mptmail.net.mm	Shareholder Kyaw Myo Nyunt (J8c Annex II) son of Maj-Gen Nyunt Tin, Minister of Agriculture (Retired) (J8a Annex II)	29.4.2008
38. Myanmar Information and Communication Technology a.k.a. Myanmar Infotech	MICT Park, Hlaing University Campus	Part Owner: Aung Soe Tha (D20e Annex II)	29.4.2008
39. MNT (Myanmar New Technology)		Owner: Yin Win Thu, Partner: Nandar Aye (A2c Annex II)	29.4.2008
40. Forever Group	No (14 02/03), Olympic Tower I, Corner of Boangkyaw Street and Mahabandoola Street Kyauktada Township. Yangon. Tel: 95-1-204013, 95-1-204107 email Address: forevergroup@mptmail.net.mm	Managing Director: Daw Khin Khin Lay Member of Board of Directors: U Khin Maung Htay Senior Manager U Kyaw Kyaw	29.4.2008'

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