



EUROPEAN COMMISSION

Brussels, 27.06.2012  
C(2012) 4244 final

**Subject: State aid SA.34056 (2012/N) – United Kingdom  
Cable Car for London**

Sir,

**1. PROCEDURE**

- (1) On 6 March 2012, the UK authorities pre-notified the measure providing for the financing of the Cable Car for London (hereinafter “the measure”). The measure was notified on 30 May 2012. The UK authorities consider that the measure does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (“TFEU”), but has notified it for the purpose of legal certainty.

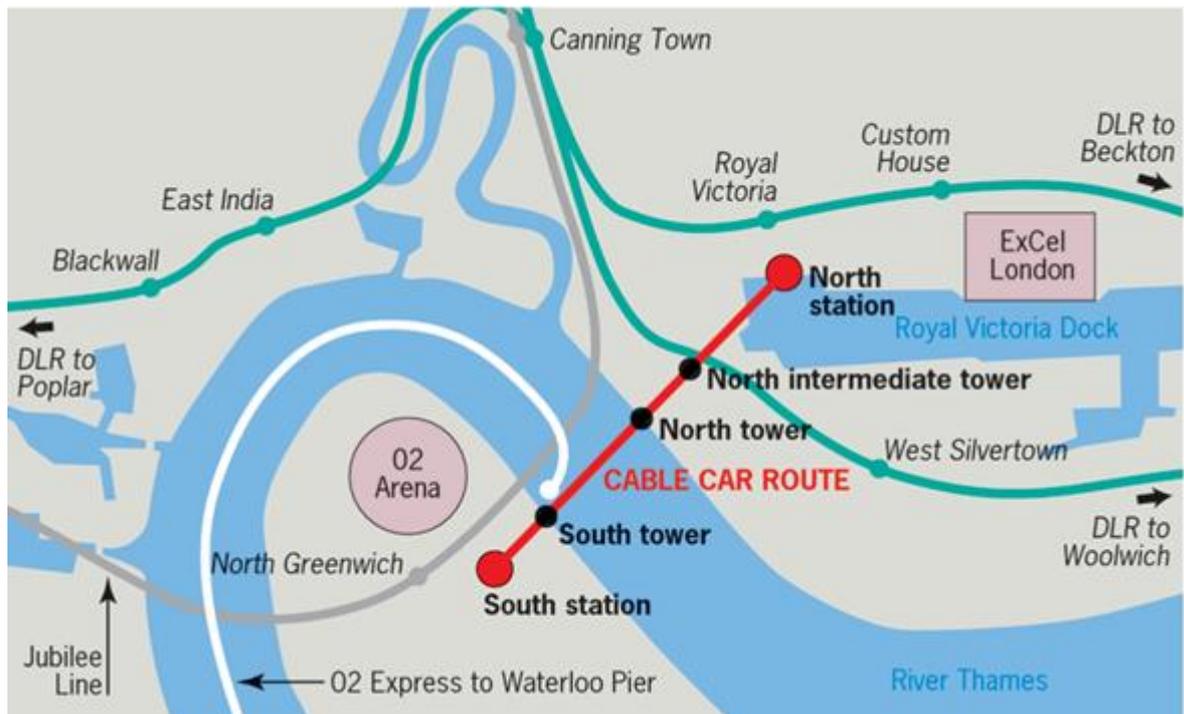
**2. DESCRIPTION OF THE MEASURE**

**2.1. Objective**

- (2) The measure aims at the construction and operation of a cable car for pedestrians and cyclists across the River Thames in East London between the Greenwich Peninsula in the Borough of Greenwich and the Royal Docks area in the Borough of Newham (see map below). Its primary objective is to provide public passenger transport services between these two areas. Moreover, in these economically and socially deprived areas, the project aims to maintain and create new direct and indirect jobs, facilitate cross-river work related trips and reduce CO<sub>2</sub> emissions.

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- (3) The cable car has been named the “Air Line”. It will be a “gondola style” cable car with up to 34 gondola cabins and will operate with a maximum capacity of 2,500 passengers per hour in each direction when operating at its maximum speed of 6 metres per second. Normal operations, however, are likely to see the cable car run at 3-4 metres per second, giving a journey time from one side to the other of 5-6 minutes. Cabins are being designed to accommodate seating for up to ten passengers, with access for wheelchairs and bicycles.
- (4) The cable car mode was chosen in a comparative study as being the most cost efficient, compared in particular with a new metro connection or a pedestrian bridge which would have had to have been particularly high so as not to obstruct the passage of tall seagoing ships.



- (5) Hitherto, there has been no direct passenger transport link between the two areas. Previously, passengers wanting to make the journey by either public or private transport have had to take a long detour across existing bridges or use a combination of metro and light rail.

## 2.2. Beneficiaries

- (6) The direct beneficiary of the measure is Docklands Light Railway Limited (“DLRL”), a wholly-owned subsidiary of Transport for London (“TfL”).
- (7) DLRL owns the assets of the Docklands Light Railway, a light rail driverless train network in East London. Its role is to oversee the operation of that railway and plan its development to meet the transport needs of East London. DLRL works with the franchise operator Serco Docklands and three other concessionaries responsible for building and maintaining various parts of the network.

- (8) TfL is the integrated body responsible for London's public transport system. TfL was established by the Greater London Authority Act 1999 and is under the control of the Greater London Authority and the Mayor of London.
- (9) TfL's core services include London Buses, London Underground, Docklands Light Railway, London Overground, London Trams, London River Services and Victoria Coach Station. TfL is also responsible for the licensing of London's 22,000 taxis (the "black cabs") and private hire vehicles such as minicabs. TfL is further responsible for running London's Congestion Charging scheme. It manages a 580 km network of main roads and all of London's 6,000 traffic lights. TfL also runs Barclays Cycle Hire. As from the summer of 2012, TfL will add the Air Line to its portfolio of transport modes.

### **2.3. Budget, type of financing and intensity**

- (10) The notified measure provides for the financing of the initial investment into the Cable Car project as well as for maintenance and replacement costs and on-going operating expenditure.
- (11) The construction of the cable car and its operation for the first three years was put out to tender using a negotiated procedure and published in the Official Journal of the European Union. Three bidders working in cooperation with the major European cableway manufactures were preselected. Two bidders submitted competitive bids which were evaluated by the TfL project team. The financial evaluation of the bids was undertaken independently of the technical evaluation to avoid one process influencing the other. Following the initial evaluations and scoring of the bids, bidder meetings were held during March 2011 with both bidding parties to negotiate the terms of a contract and the price. Price considerations accounted for 50 % of the overall award criteria. The bid submitted by Mace' was chosen as being more competitive in terms of both price and demonstrated ability to fulfil the criteria of the project.
- (12) DLRL will operate the cable car, determine the level of service and will also be liable for the revenue risk. Mace will run the service on behalf of DLRL for the initial 3 years under a fixed-price contract.
- (13) As a fixed-price contract, Mace is incentivised during the build phase to deliver the agreed scope of work within the agreed timeframe and price. If Mace is late in delivering the required works within the specified timeframe, the contract includes a liquidated damages mechanism which TfL can exercise. During the operation phase, Mace is also required to operate and maintain the cable car within a specified level of availability. The contract includes an availability-based performance framework in which Mace is penalised for not meeting set targets. Mace's profit will therefore be dependent on it being able to deliver and operate the scheme within the required specification, time and at the cost set out in its bid.

#### *2.3.1. Project costs and funding*

- (14) The cost to deliver the cable car is expected to be £62.6m. This includes costs associated with planning, development, land compensation, construction and a contingency reserve.

- (15) Public funding will amount to £26.6m, corresponding to 42.5% of the overall initial investment related costs, while private sponsorship for the project accounts for £36.0m, corresponding to 57.5% of the overall initial investment related costs.
- (16) Funding for the project is expected to comprise of, first, £8.0m of European Union assistance in the form of European Regional Development Fund (ERDF) funding (subject to approval). Second, funding from TfL will amount to £53.8m. £17.8m of that amount will come from TfL's budget which is partly funded by TfL's revised funding settlement with central government in 2010 (following the 2010 Spending Review). The remaining amount will be covered by a sponsorship agreement which TfL, following the tendering process in October 2011, entered into with Emirates whereby the latter will pay TfL £36.0m spread over a ten year period. Finally, the London Development Agency (LDA) will contribute £0.8m in funding. The LDA is a functional body of the Greater London Authority with responsibility for helping the Mayor of London to support the growth of London's economy in line with the Mayor's Economic Development Strategy for the capital.
- (17) The following table provides an overview of the costs and funding to deliver the project:

<b>£m</b>	<b>Total</b>
Planning and development	3.1
Project delivery/management	3.3
Land compensation	2.9
Construction	47.9
Risk	5.3
<b>Total costs</b>	<b>62.6</b>
ERDF funding	8.0
Sponsorship	36.0
TfL funding	17.8
LDA funding	0.8
<b>Total funding</b>	<b>62.6</b>

- (18) In addition to these amounts, the cable car will require on-going investments of around £6.7m (€8m) every 15 years to cover items such as replacement of mechanical components. This amount will be covered by TfL's budget.
- (19) The funding breakdown provided above demonstrates that DLRL is not likely to recoup its investment into the project. Financial modelling, prepared as part of the ERDF funding application, suggests that the project will return a negative financial Net Present Value and generate a financial Internal Rate of Return lower than TfL's internal hurdle rate over a 30 year reference period.

### 2.3.2. *Ongoing operating expenditure and funding*

- (20) Ongoing operations will be funded by a combination of fare revenue collected by DLRL from users and funding provided by TfL. The table below sets out TfL's current 10 year fares and operating forecast with an on-going operating subsidy which will reduce over time. The fare levels are still being finalised and fare projections could change. There is also further work being done to bring down operating costs.

	Financial Year								
£m	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020	2020/ 2021
Passengers (m)*	1.2	1.2	1.3	1.4	1.5	1.5	1.6	1.6	1.6
Yield (cents) **	240.2	241.8	256.7	264.9	279.8	288.9	297.9	307.8	318.6
Fare revenue	3.4	3.6	4.1	4.5	5.0	5.3	5.5	5.8	6.0
Fare revenue	3.4	3.6	4.1	4.5	5.0	5.3	5.5	5.8	6.0
Operating costs	-6.2	-5.9	-5.4	-5.6	-5.8	-6.0	-6.3	-6.4	-6.7
Operating (deficit)/surplus	-2.9	-2.3	-1.3	-1.1	-0.8	-0.7	-0.7	-0.7	-0.7

\* Passenger numbers reflect a mixture of users including: (i).People living and working in the local area using the Air Line as part of the public transport network including cyclists; (ii) People visiting one of the attractions/facilities in the Royal Docks and/or the Greenwich Peninsula and using the Air Line as part of their visit to the area; and (iii) New tourists and visitors attracted to the area by the Emirates Air Line.

\*\* Yield is the average yield per passenger that TfL expects to collect from fares. It takes into account the mix of full price and discount fares potentially available.

(21) Given the nature of the project (it being the first urban cable car in the UK) and its location in an area undergoing regeneration where the rate of economic development is difficult to predict, fare revenues and operating costs could potentially vary over the long-term, reducing or even removing the subsidy requirement. As set out in Appendix 7 of the Fares Strategy report, it is TfL's ambition to move to a position whereby fares cover the Air Line's on-going operating costs and no operating subsidy is required. This will be achieved by on-going review and adjustment of operations and fares. According to the UK authorities, any operating subsidy will be kept to a minimum necessary to cover the difference between operating costs and fare revenues.

### 2.3.3. Fare revenues

(22) DLRL wants to ensure that the cable car, like all public transport services across London, will be accessible to all citizens and be open to all members of the public on the payment of a fare.

(23) Although fares for the cable car have not yet been set, a fares strategy report has been prepared and presented to planning authorities and demonstrates how fares will be affordable for the general public and local residents. The key principles of the report are that:

- fares will be set at a level that, over the longer-term, generates sufficient revenue to cover operating costs (but in the short-to medium term will require a small operating subsidy);
- fares will maximise the use of the cable car as a new cross-river link (which implies that they must not be set at a level where the public will be disinclined to use the cable car); and
- fares will meet the requirements of the legal agreements between the two Boroughs in which the cable car is located, TfL and DLRL to make the cable car affordable for locals.

- (24) On this basis, DLRL intends to set fares at prices that will be on a comparable level to the rest of the transport network. As the cable car is primarily a public transport link, the level of fares will be distinct from more commercial operations, such as the London Eye based in central London which charges a premium fare and targets the tourist market.
- (25) The Fares Strategy has been developed around the following key principles:
- to offer fares that are consistent with other public transport fares wherever possible;
  - to be compatible with Oyster Pay-As-You-Go (PAYG) technology and offer discounts for Oyster PAYG and Travelcard holders; and
  - to offer a “low cost” fare aimed at local people, which is compatible with the cheapest possible fare for an equivalent journey on the London Underground/DLR.
- (26) The “low cost” fare would be available through a multi-ticket or carnet which includes a number of journeys (for example 10) for a fixed price. For a single journey, the fare would be consistent with the cost of the cheapest equivalent single journey on the Jubilee Line (from January 2012, £1.40 (off-peak) with Oyster PAYG). The multi-ticket would be available at both cable car terminals and at other local sales points. Other options will be considered in conjunction with both Boroughs.
- (27) DLRL’s goal is that longer-term increases in demand and the ability to increase fare yields will see fare revenues cover operating costs and possibly even generate a small surplus. In this scenario, any surplus would be diverted into the general TfL funding pot and be used to deliver schemes set out in its business plan in furtherance of its public service obligations (i.e. the provision of public transport).
- (28) It is unlikely that a party acting purely in its own commercial interests would supply the service under the same conditions, if at all. In short, TfL aims at discharging its general public transport obligation in this area of London across the River Thames at a cost affordable to citizens and in line with its overall fare policy.

#### *2.3.4. TfL funding of operating surplus*

- (29) Any operating subsidy that TfL is required to fund will come from TfL’s budget which is partly funded by TfL’s revised funding settlement with central Government in 2010 (following the 2010 Spending Review). TfL will not undertake any additional borrowing or raise any additional funds specifically for the cable car project, nor will it divert funding from any existing budgets.

### **2.4. Legal basis**

- (30) The Legal basis for the financing of the cable car project is the Greater London Authority Act 1999 as amended and, in particular, the decision of the Transport of London Finance and Policy Committee of 30 March 2011.

### **2.5. Cumulation**

- (31) The aid cannot be cumulated with other types of state aid.

### 3. ASSESSMENT OF THE AID

#### 3.1. Presence of State aid within the meaning of Article 107(1) TFEU

- (32) According to Article 107 (1) TFEU: “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*”
- (33) Therefore, in order to determine if the measure under assessment constitutes State aid within the meaning of Article 107 (1) TFEU, it must be established whether,
- 1) the measures confer a selective economic advantage on the undertakings concerned,
  - 2) this advantage is financed through state resources,
  - 3) this advantage distorts or threatens to distort competition and,
  - 4) the measures affect trade between Member States.

##### 3.1.1. Economic activity

- (34) The measures notified by the UK authorities concern the financing of the construction, maintenance and operation of the Cable Car for London.
- (35) In the recent *Leipzig/Halle* judgement<sup>1</sup>, which dealt with airport infrastructure, the General Court decided that not only the operation and management of (airport) infrastructure constitutes an economic activity (in line with previous rulings such as *Aéroports de Paris*<sup>2</sup> and *Ryanair*<sup>3</sup>), but also that the construction of infrastructure, which cannot be separated from its later operation, is economic in nature.<sup>4</sup> The case-law of the Court of Justice defines an economic activity as “*any activity consisting in offering goods and services on a given market*”.<sup>5</sup> In addition, for a certain activity to be classified as an economic activity, it is irrelevant whether a private investor would have carried out the same activity, i.e. whether that activity is profitable.<sup>6</sup>
- (36) As regards the measure under assessment, DLRL will collect fares from passengers transported by the cable car. The operation of the cable car is thus an economic activity. Furthermore, it would not have been possible to pursue this activity without having first constructed the cable car infrastructure. The construction of the cable car infrastructure is therefore also an economic activity.

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<sup>1</sup> Joint Cases T-455/08 Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission and T-443/08 Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission, (hereafter: Leipzig-Halle), [2011], not yet published in ECR.

<sup>2</sup> Judgment of the European Court of Justice of 24 October 2002 in Case C-82/01P *Aéroports de Paris v Commission* [2002] ECR I-9297.

<sup>3</sup> Case T-196/04 *Ryanair Ltd v Commission*, [2008] ECR II-03643.

<sup>4</sup> *Leipzig/Halle*, para. 95.

<sup>5</sup> Case C-309/99, *Wouters, Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, [2002] ECR I-1577, para 48.

<sup>6</sup> *Ibid*, para. 115.

### 3.1.2. *Selective economic advantage*

- (37) DLRL will receive direct subsidies from the LDA and the ERDF for the cable car project, as well as funding from TfL. The Commission considers that the notified measure allows DLRL to build, maintain and operate the cable car, which it would otherwise not have been able to finance from its own resources or through financing on the market. Indeed, a market economy investor would not invest into a project that generates revenues that cover neither its investment costs nor its full operating costs.
- (38) Through the measure, DLRL will be able to construct, maintain and operate an infrastructure without bearing the full market costs of this activity. The measure therefore confers an economic advantage on DLRL. As that advantage is granted exclusively to DLRL, it is selective in nature.

### 3.1.3. *State resources*

- (39) As explained above, funding for the cable car project will come from the LDA, the ERDF and the TfL, as well as from a private sponsorship agreement concluded by the TfL with Emirates.
- (40) As regards the LDA, this is a development agency under the control of a regional authority: the Greater London Authority (GLA). Funding provided by this entity is thus attributable to the State and constitutes State resources. The ERDF's contribution should also be considered as state resources based on a well-established decisional practice<sup>7</sup>.
- (41) As regards funding from the TfL, part of it derives from the private sponsorship agreement TfL concluded with Emirates and thus does not constitute State resources within the meaning of Article 107(1) TFEU. The remainder will be derived from the own budget resources of the TfL for the purpose of its public service remit. As TfL is under the control of the Mayor of London and the Greater London Authority and about one third of its income originates from grants of public authorities, funding derived from TfL's own budget resources is thus attributable to the state and constitutes state resources.

### 3.1.4. *Threat to distort competition and affect trade between Member States*

- (42) At point 25 of its Communication concerning State aid N 376/01 ("Cableways Communication")<sup>8</sup>, the Commission stated the following: *"It may be that in some cases the beneficiary is active only locally and an alternative transport activity would not be economically or technically viable: in those circumstances the measure would not distort competition and affect trade between Member States. In other cases, the transport activity - by cableway or other means - is technically or economically viable and capable of attracting commercial operators who carry out an economic activity within the meaning of Article [107](1) of the Treaty. In view of the progressive liberalisation of the transport sector, the possibility of this transport being provided by*

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<sup>7</sup> The resources of the ERDF which are transferred to the relevant national authority or body designated for that purpose by the Member State before being paid to the beneficiary are considered to be at the disposal of the national authorities and therefore amount to state resources, see point 48, decision of the Commission of 22 February 2012 in case SA.30742 (2010/N) Klaipeda port, OJ C 121, 26.4.2012, p.1; point 38, decision of the Commission of 9.11.2011 in case SA.32632 (2011/N) ETGE, OJ C 82, 21.3.2012, p.2.

<sup>8</sup> Commission communication to the Member States and other interested parties concerning State aid N 376/01 — Aid scheme for cableways — Authorisation of State aid under Articles 87 and 88 of the EC Treaty (Proposal to which the Commission has no objection), OJ C 172, 18.7.2002, p. 2.

*operators of other Member States is not to be excluded. In those latter cases the measures would distort or threaten to distort competition and affect trade between Member States and therefore constitute State aid within the meaning of Article [107](1).”*

- (43) The notified measure has the potential of strengthening the position of DLRL. According to the UK authorities, with the exception of railway undertakings there are currently no other private or public transport service operators within the area of operation of TfL or DLRL and, in particular, between the endpoints of the cable car, except for some railway services. Moreover, TfL is the sole entity responsible for public transport in London. It even licences taxis.
- (44) Nevertheless, it is neither legally prohibited nor can it be excluded that either private taxis, although licensed by TfL, or domestic or foreign bus operators could now or in the future fill the gap in the transport network and provide passenger transport services between the areas connected by the cable car.
- (45) Moreover, as the UK authorities admit, private railway operators, in particular c2c and Southeastern, provide passenger transport services in areas which partially overlap with the area of operation of DLRL.
- (46) Therefore, a potential effect on competition and trade as a result of the notified measure cannot be entirely excluded.

#### *3.1.5. Conclusion as to the existence of aid*

- (47) Based on the analysis above, the Commission considers that the notified measure, that is the financing of the costs to deliver the cable car by LDA, ERDF and TfL’s own resources amounting to £26.5m, on-going investment of around £6.7m (based on current prices) every 15 years to cover items such as replacement of mechanical components, as well as the compensation by TfL of the operating deficit, constitutes state aid within the meaning of Article 107 (1) TFEU.

### **3.2. Compatibility assessment**

- (48) Since the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission must next determine whether the aid in question can be considered to be compatible with the internal market on the basis of the derogations provided for in the TFEU.
- (49) The Commission considers that the notified measure should be assessed under Article 93 TFEU. Article 93 TFEU provides that aid which meets the needs of coordination of transport or that represents reimbursement for the discharge of certain obligations inherent in the concept of a public service shall be declared compatible with the TFEU. While there are some elements that might be considered as public service obligations in the present case, such as tariff and service level requirements, the Commission considers that the specificities of this case justify the application of Article 93 TFEU concerning coordination aid to the overall measure. First, the present case concerns public passenger transport services by cable car, a sector which is excluded from the scope of Regulation 1370/2007, which governs the award of exclusive rights and compensation for public service obligations for passenger transport services by rail and road. Second, the aid concerns to a large extent the initial investment into the infrastructure. Third, the Commission notes that the fixed-price

contract was awarded under a negotiated procedure for which price considerations accounted for 50 % of the overall award criteria.

- (50) The Court of Justice has ruled that Article 93 “acknowledges that aid to transport is compatible with the Treaty only in well-defined cases which do not jeopardise the general interests of the Community”. The concept of "coordination of transport" used in Article 93 TFEU has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest.
- (51) The transport sector may experience “coordination” difficulties in the economic sense of the term, for example, in the connections between different transport networks. The Commission has, on this basis, already authorized State aid under Article 93 TFEU.<sup>9</sup>
- (52) In its Cableways Communication<sup>10</sup>, the Commission set out the requirements which must be met for aid to meet the needs of coordination of transport within the meaning of Article 93 TFEU. According to a constant decisional practice<sup>11</sup>, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- The aid must contribute to a well-defined objective of common interest;
  - The aid must be necessary and provide an incentive effect,
  - The aid must be proportionate,
  - The access to the infrastructure in question must be open to all users on a non-discriminatory basis,
  - The aid must not lead to distortions of competition contrary to the common interest.

### 3.2.1. Objective of common interest

- (53) The EU has pursued the policy of developing and improving the urban transport network. According to the Action Plan on Urban Mobility<sup>12</sup>: “*An integrated approach can best deal with the complexity of urban transport systems, the governance issues and the links between cities and their surrounding areas or regions, the interdependence between transport modes, the limitations within urban space and the role of urban systems in the wider European transport system. An integrated approach is not only needed for the development of transport infrastructure and services, but also for policy making to link transport with environment protection, healthy environments, land use planning, housing, social aspects of accessibility and mobility as well as industrial policy. Developing strategic, integrated transport planning, establishing appropriate mobility planning organisations and setting realistic targets*

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<sup>9</sup> See decision of the Commission of 20 January 2010 in case N 490/2010, Vlaamse regeling voor publiek - private samenwerking voor de bouw van laad- en losinstallaties, OJ C122, 20.4.2011, p.2; see in this sense also decision of the Commission of 20 July 2010 in case C17/2010, Firmin srl, OJ C 278/2010.

<sup>10</sup> Cableways Communication point 39.

<sup>11</sup> See point 52, decision of the Commission of 9.11.2011 in case SA.32632 (2011/N) ETGE, OJ C 82, 21.3.2012, p.2.; point 29 decision of the Commission of 15.6.2011 in case SA.32224 – Netherlands - Development of the Alblaserdam Container Transferium, C 215, 21.7.2011, p. 22.

<sup>12</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Urban Mobility, COM/2009/0490 final.

*are essential to address the long-term challenges of urban mobility, while supporting also cooperation with and between transport operators.”*

- (54) The construction and operation of the cable car project serve the common interest in several ways. The cable car will serve as a connection between the metro and the light railway at either of its terminals and thus strengthen their interdependence. It will serve to improve the environment, as it will reduce road congestion and lower CO<sub>2</sub> and other noxious emissions. It is a significant land use planning project that will increase accessibility and mobility across the River Thames and thus contribute to local development. Finally, it is an innovative project in that it links together two densely populated urban areas separated by a large river used by seagoing vessels.
- (55) The Commission thus concludes that the development of urban transport and of activities that contribute to the reduction of air pollution and road congestion are in the common interest.

### *3.2.2. Necessity of the aid and incentive effect*

- (56) When assessing the necessity and incentive effect of the aid, the Commission takes into account the fact that, without co-financing of the above-mentioned investments, the project was not financially sustainable. The calculations made by the UK authorities show that the cable car was the most cost-effective alternative for pedestrians and cyclists to cross the River Thames. Moreover, a market economy investment into the cable car would not recover the investment cost and the net present value of the project would be negative. Therefore, the project would not be viable without public support and would not have been implemented.
- (57) The UK authorities have stated that the operator would not have been able to increase prices in order to finance the terminal to stimulate demand and to provide services at affordable prices comparable to other means of public passenger transport in London.

### *3.2.3. Proportionality of the aid*

- (58) When assessing the proportionality of the aid, the Commission takes into account the following elements:
- The State aid amounts to £26.5m, corresponding to 42.5% of the overall initial investment related costs, while the private sponsorship for the project amounts to £36.0m, corresponding to 57.5% of the overall initial investment related costs. When the on-going investment of around £6.7m after 15 years is taken into account, the aid intensity increases to 48.1%.
  - TfL only compensates DLRL for its losses from the operation of the cable car. This compensation will be kept to a minimum while increasing the use of the cable car in long term.
  - Any surplus that the cable car may generate for DLRL reverts to DLRL or TfL and would reduce future net public funding.
  - The aid measure cannot be cumulated with other types of aid in relation to the same eligible costs.
- (59) On the basis of these elements, the Commission considers the aid accorded as a result of the notified measure to be proportional.

3.2.4. *The access to the infrastructure in question is open to all users on a non-discriminatory basis*

(60) As a part of the public transport system, the use of the cable car will be open to all passengers on a non-discriminatory basis. The cable car will also be accessible for persons using wheel chairs and for cyclists. The fourth criterion is thus fulfilled.

3.2.5. *The aid does not lead to distortions of competition contrary to the common interest*

(61) The only providers of passenger public transport which were identified by the UK authorities as operating within the same geographical area as the beneficiary and which were independent of the parent company of the beneficiary were the aforementioned railway undertakings *c2c* and *Southeastern*. The beneficiary, DLRL, and its parent company TfL are prevented by their articles of association from being active outside the Greater London area. Moreover, the aid granted is limited to what is necessary to cover the costs of constructing and operating the cable car. Consequently, the distortion of competition is limited to the minimum required to achieve the objective of common interest.

3.2.6. *Conclusion*

(62) In the light of the above, the Commission considers that the aid granted under the notified measure contributes to an objective of common interest that it is necessary and proportionate to this objective and that trade between Member States will not be affected in a way contrary to the common interest. The notified measure can therefore be deemed compatible under Article 93 TFEU.

#### **4. DECISION**

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
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