



EUROPEAN COMMISSION

Brussels, 17.9.2019
C(2019) 6527 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.54766 (2019/NN) – UK – Rescue aid to Wrights Group Ltd

Dear Foreign Secretary,

The European Commission (“the Commission”) wishes to inform the United Kingdom of Great Britain and Northern Ireland that, having examined the information supplied by your authorities on the State aid referred to above, it has decided not to raise any objections, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”).

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) On 25 June 2019, the authorities of the United Kingdom of Great Britain and Northern Ireland (“the UK authorities” or “the UK”) notified to the Commission their plans to grant rescue aid in favour of the Wrights Group Ltd (“the Wrights Group” or “the company”). The Commission requested additional information on 2

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

The Rt Hon Dominic Raab MP
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July 2019, which your authorities supplied by a submission on 12 August 2019 updating and superseding the initial submission, along with the declaration that they had already disbursed part of the notified rescue aid.

2. THE BENEFICIARY AND THE ECONOMIC AND FINANCIAL SITUATION

- (2) The Wrights Group was established in 1999, with headquarters in Ballymena, Northern Ireland. Wrights Group is owned by the founder of the company, Mr Jeff Wright (72.4%) and the Wright Evangelical Trust (27.6%) through the Cornerstone Group Ltd, a mere financial vehicle with no diversified interests other than the Wrights Group. The company designs, manufactures sells and services buses powered through various technologies such as diesel, electric and fuel cell and employs 1 212 staff.
- (3) Following a number of years of profitable trading, the Wrights Group experienced a significant downturn in trading during the past 18 months with annualised turnover reducing [...] (*) from its 2016 level. During this period, the company recorded a loss of [...] ¹ on turnover of [...]. The large fall in sales turnover was due to the end of a successful and lucrative contract [...], which was not replaced by similar contracts in other big UK cities as expected. Beyond company specifics, the bus manufacturing sector is suffering the effect of a general reduction in the market for buses in the UK in 2017 and 2018. There is on-going uncertainty regarding the future shape of the market in terms of hydrogen, electric or diesel powered buses that has led to postponing some purchasing decisions. Since February 2019, the company has continued to lose approximately [...] per month, is experiencing growing cash pressure [...]. The financial situation deteriorated to a point where the company Directors asked the Wrights Group's primary funders and the competent UK authorities to provide GBP 5 million (ca EUR 5.5 million) to buy time to establish the most appropriate course of action to preserve the manufacturing operation.

3. DESCRIPTION OF THE RESCUE AID

- (4) The competent UK authorities have agreed that rescue aid in the form of a loan provided by Invest North Ireland, a regional development agency ("Invest NI") addressing the immediate liquidity needs of the Wrights Group should be provided to a maximum of GBP 5 million (ca EUR 5.5 million). [...] ². [...] has a variety of facilities with the Wrights Group totalling around [...].
- (5) The rescue loan is granted in application of the Industrial Development (Northern Ireland) Order 1982 and will carry an interest rate of [...].
- (6) The UK authorities explain that, since further shareholder funding is not available, the objective and likely outcome of the rescue is the sale of the business in whole

* Confidential information

¹ 1 EUR = 0.91 GBP

² [...]

or in part to new investors who can take and fund the actions necessary to re-establish a viable operation. A process to identify prospective purchasers having already involved a variety of prospective financial investors or trade parties is well advanced and the mandated agent identified strongly interested buyers with whom final talks to take over the Wrights Group are being held.

- (7) To support the continued operation and avoid the insolvency proceedings, the rescue funding totalling GBP 5 million is structured as follows:
- Tranche 1: GBP 2.5 million was advanced and disbursed [...] to buy time to advance the sales process for the company as a trading business.
 - Tranche 2: GBP 2.5 million contingency to be available should a buyer be identified and engaged but requiring further bridging for a longer period.
- (8) The UK authorities have provided a liquidity plan setting out the Wrights Group liquidity needs for a six month-period based on expected operating revenues and ordinary costs of the business. The projections of the company's cash flows show a cash shortfall of [...] whereby the peak will be reached in November 2019 and will amount to [...]. The amount of public funding is calibrated to the short length of time in a matter of weeks within which a purchaser and new owner of the business is expected to be found. The amount is therefore well below the expected cash flow shortfall of the company until December 2019.
- (9) Whilst the competent UK authorities aim at completing the acquisition of the shares or the main assets of the company soon, in any event, they undertake to communicate to the Commission, not later than six months after the rescue aid has been authorised:
- (a) proof that the loan has been reimbursed in full; or
 - (b) provided that the Wright Group still qualifies as an undertaking in difficulty, a restructuring plan; or
 - (c) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the Wright Group within a reasonable time frame without further aid.

4. COUNTERFACTUAL TO THE RESCUE AID

- (10) The UK authorities explain that, in the absence of rescue aid, the Wrights Group will be obliged to enter formal insolvency proceedings, as the company will be unable to pay its debts as they fall due. The UK authorities thus confirm that the Wrights Group fulfils the criteria under domestic law, Article 103 of The Insolvency (Northern Ireland) Order 1989, for being placed in collective insolvency proceedings at the request of its creditors.
- (11) They further put forward that the closure of the Wrights Group would trigger the exit of an undertaking with an important systemic role in Northern Ireland with negative consequences. The Wrights Group is an indigenous manufacturing company of scale, employing 1 212 people directly and up to 1 900 in the wider economy. It has engaged significantly with partners locally, nationally and in the

EU, contributing to regional, national and EU Research & Development & Innovation (RD&I) and fuel reduction initiatives. The Wrights Group is one of a few bus manufacturers focusing on hydrogen cell fuelled buses. In this regard, the Wrights Group is taking part in the Joint Initiative for hydrogen Vehicles across Europe (JIVE) project and has received in 2019 orders for hydrogen cell fuelled busses in Aberdeen and London. Moreover, the Wrights Group is a member of the recently announced Connecting Europe Facility (CEF) H2BUS Europe Consortium. Under this project, the deployment of 200 hydrogen fuel cell electric buses in each of Denmark, Latvia and the UK by 2023 is planned. The H2Bus is to be manufactured by the Wrights Group.

- (12) The immediate liquidation of the company would result in redundancy of the employees. There are also an additional 20 Northern Ireland companies, within the direct supply chain of the Wrights Group that are likely to be impacted. The combined employment in these companies is around 1 212 [...].
- (13) Furthermore, the UK authorities state that the closure of the manufacturing operation of the Wrights Group would lead to an irremediable loss of important technical knowledge and expertise from Northern Ireland. It is the region's only vehicle manufacturer of scale and comprises engineering expertise across a wide range of disciplines including mechanical design, electrical design, software design, industrial design, homologation (legislative requirements), advanced technology, structural design, reliability and manufacturing

5. ASSESSMENT OF THE RESCUE AID

- (14) The Commission first assesses whether the rescue loan under scrutiny entails State aid to the Wrights Group under Article 107(1) TFEU, and then whether such aid is lawful and compatible with the internal market.

5.1. Existence of State aid

- (15) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, 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".
- (16) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (17) Prior to examining if the rescue loan involves State aid pursuant to Article 107(1) TFEU, the Commission notes, that the UK considers the loan does involve State aid.
- (18) The loan shall be granted through the exercise of discretion by an ad hoc decision of Invest NI, a Northern Ireland's regional economic development agency that is a

non-departmental public body of the Department for the Economy, in agreement with the Department of Finance of the Government of Northern Ireland. Therefore, the rescue loan is imputable to the UK and involves State resources.

- (19) This rescue loan will be issued to the benefit of one specific undertaking for an ad hoc amount determined by reference to its specific liquidity needs during the time needed to find a buyer. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective³. This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, the loan is not part of a broader measure of general economic policy to provide support to undertakings, in a comparable legal and economic situation, active in the motor vehicle sector or other economic sectors. Therefore, the Commission concludes that this rescue loan is selective within the meaning of Article 107(1) TFEU.
- (20) The loan confers an economic advantage to the Wrights Group to continue its operations and escape insolvency by allowing access to finance that the company, given its critical financial state, would not have been able to obtain on the market. In that respect, the rescue loan attracts a relatively high interest rate [...].
- (21) The market for manufacturing buses is open to competition in the European Union. There are around 50 bus assembly plants⁴ and around 136 bus manufacturers/importers active in Europe⁵. Large undertakings manufacturing and selling buses in various Member States of the Union include MAN, Mercedes, Scania, Solaris, Van Hool, VDL and also the UK based Alexander Dennis Ltd⁶.
- (22) By granting access to finance which it would not otherwise obtain, the rescue loan is liable to improve the position of the Wrights Group in relation to other competing undertakings active in the UK or in other Member States within the internal market that need to finance their operations at market conditions. The rescue loan consequently distorts or threatens to distort competition and affect trade between Member States.

5.2. Conclusion on the existence of aid

- (23) In light of the above, the Commission concludes that the planned rescue loan in favour of the Wrights Group involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

5.3. Legality of the aid

- (24) Part of the notified rescue loan in the amount of GBP 2.5 million (ca EUR 2.75 million) was already made available to the Wrights Group before the notification

³ See judgment of 4 June 2015 *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 60.

⁴ https://www.acea.be/uploads/publications/factsheet_buses.pdf (Source: ACEA - European Automobile Manufacturers Association)

⁵ <https://bustocoach.com/en/costruttori-in-europa/> (Source: Bus to Coach Magazine)

⁶ Alexander Dennis Ltd had in 2017, according to its annual report 2018 that is filed at Companies House, around 2.5times the turnover of the Wrights Group and 1.6times as many employees.

was complete. Accordingly, the UK did not observe the stand-still obligation laid down in Article 108(3) TFEU. Therefore, the Commission notes that the rescue loan to the Wrights Group constitutes unlawful State aid.

5.4. Compatibility of the aid

- (25) Under Article 107(3)(c) TFEU, the Commission can authorize aid if it is granted to promote the development of certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of the nature and aims of the State aid at stake, the Commission will assess whether the State guarantee complies with the provisions on rescue aid laid down in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁷ (“R&R Guidelines”).

5.4.1. Eligibility

- (26) In order to be eligible for rescue aid, an undertaking must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20 from letter a) to d) of the R&R Guidelines occurs.
- (27) As explained at recital (10), the Wrights Group fulfils the criteria for being placed in collective insolvency proceedings at the request of its creditors under domestic law. The company thus qualifies as a firm in difficulty pursuant to point 20(c) of the R&R Guidelines.
- (28) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. The Wrights Group is not a newly created undertaking, as it was established 20 years ago.
- (29) Furthermore, according to point 22 of the R&R Guidelines, a company belonging to a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (30) The Wrights Group is owned by Cornerstone Group Ltd, a financial vehicle, which is a mere holding company, does not produce goods or services itself and has no diversified interests other than the Wrights Group. The Wrights Group's difficulties, as described in recital (3), appear to be intrinsic to its activity and operation and do not result from an arbitrary allocation of costs within the group. Therefore, the Commission concludes that the requirements of point 22 of the R&R Guidelines are met.

⁷ Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1).

5.4.2. *Contribution to an objective of common interest*

- (31) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In this respect, the Member State must provide clear evidence showing that the aid aims to prevent social hardship or address a market failure. Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that one of the circumstances listed from letter a) to g) are met.
- (32) The Commission notes the arguments put forward by the UK authorities that the Wrights Group is vitally important in Northern Ireland. In particular, a sudden market exit would trigger a severe systemic shock to the Northern Ireland's labour market, the manufacturing sector generally and the 'manufacturing of vehicles trailers and semi trailers' sub-sector in particular. Furthermore, the UK authorities argue that the closure of the Wrights Group would trigger the loss of the third major manufacturer in the locality in the last three years. The immediate closure of an employer on the scale of the Wrights Group significantly increases the risk that the economic impact will be severe and enduring.
- (33) When it comes to the data provided by the UK authorities by which they argue the activity of the Wrights Group would be hard to replicate in Northern Ireland, the Commission points to the fact that there are numerous competitors and manufacturing plants active in the Union in the same sector where the Wrights Group operates (recital (21)). Manufacturing in the motor vehicle industry is always organised around suppliers clustered around the manufacturer and assembler of vehicles and the Wrights Group is not specific in that its exit would more severely affect close suppliers than in the case of any other bus manufacturer. From the data submitted on the company's activities, there is no indication that the Wrights Group possesses unique expertise and know how that would not be replicable. In a term horizon longer than six months, one or several of competitors active in the Union could be able and willing to take over its clients and market share or replace the Wrights Group or any successor company(ies) taking over its shares or its assets.
- (34) Nevertheless, the Commission acknowledges that it is important to preserve the company's activities while searching for an investor as otherwise there would be a risk of sudden disruption of activity with social consequences. This interruption due to a formal insolvency process would endanger the objective currently aimed at of a quick and successful sale and survival of the company under new ownership. This is particularly justified as regards the company's specific R&D and servicing activities that an insolvency process would disrupt and are hard to replicate in the short term by a competitor stepping in ongoing contracts and programmes.
- (35) The short-term rescue loan therefore serves a specific purpose to reduce the disruption of activities and prevent an immediate insolvency of a company that has a good prospect of finding an investor and continue trading, possibly after a restructuring or selling part of it. It seems plausible that, given a focus on zero emission public transport, and ongoing involvement in research programmes (see

recital (11)), investors see the Wrights Group as an attractive investment capable of benefitting from increased demand for cleaner buses once the current uncertainties on technological options referred to in recital (3) are dispelled. [...].

- (36) On the basis of the information provided by the UK authorities, the Commission finds that a limited amount of rescue aid averts a concrete and avoidable risk of formal insolvency proceedings and ensuing disruption of the ongoing activity of bus construction and servicing of the direct and indirect activities induced by the Wrights Group in the period when the company is looking for an investor in order to keep its activity. At the same time, the Commission observes that it is not established at this stage that possible further State aid to support a wider restructuring plan to put the Wrights Group back to long-term viability would necessarily contribute to an objective of common interest of the Union and that, if envisaged, such additional aid would merit further scrutiny.
- (37) Therefore, the Commission concludes that the information provided by the UK authorities demonstrates that by averting an imminent and potentially disruptive formal insolvency process and allowing the swift sale of the company, the rescue aid contributes to a well-defined objective of common interest.

5.4.3. Appropriateness

- (38) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 from letter a) to e) and 56 of the R&R Guidelines.
- (39) The loan to the Wrights Group, covering net cash flow needs up to GBP 5 million (ca EUR 5.5 million) will be used by the company to meet liquidity needs until December 2019, as set out in the liquidity plan provided by the UK authorities (see recital (8)), to keep the firm trading and support the plan to sell the business.
- (40) As described in recital (5) the rescue loan will attract interest at a rate of [...], which is higher than the reference rate for weak undertakings offering normal levels of collateralisation in accordance with point 56 of the R&R Guidelines, namely IBOR plus 400 basis points.
- (41) In their notification, the UK authorities committed to communicating to the Commission proof that the loan has been reimbursed, not later than six months after the authorisation of the rescue aid to the Wrights Group, or a restructuring plan or a liquidation plan. Consequently, the notified rescue loan is in line with point 55(d) of the R&R Guidelines.
- (42) The Commission notes the UK authorities' declaration that the loan shall be used only to meet operating costs set out in the liquidity plan. In other words, the Wrights Group will not use the rescue aid to finance structural measures nor other activities than its current operation (see recital (8)).
- (43) In view of the information provided by the UK authorities, the Commission concludes that the rescue loan meets the conditions laid down in points 38(c) and 55 of the R&R Guidelines and therefore the form of the aid allows rescuing Wrights Group in the least distortive way.

5.4.4. Proportionality of the aid / aid limited to the minimum

- (44) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission takes into account the outcome of the formula set out in Annex I of the R&R Guidelines. The Commission will authorize any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.
- (45) The GBP 5 million amount of rescue aid loan required by the UK authorities to be approved exceeds the result of the formula set out in Annex I to R&R Guidelines.
- (46) However, the UK authorities have provided a liquidity plan for the Wrights Group starting from June 2019 to December 2019 the data of which shows that the notified aid amount corresponds to much less than the liquidity needs of the company for the six months to come.
- (47) The gap is explained by the expectation of the UK authorities that the sale of the business shall take a few weeks and in any case less than six months and, accordingly, the new owner(s) will meet any further liquidity needs that are not covered by the aid even before or in any case as soon as the sale process has been finalized. For these reasons, the UK authorities did not see a reason at this point in time to grant a higher aid amount that would cover all liquidity needs of the company for the next six months.
- (48) The Commission therefore concludes that the rescue aid is [...] lower than the prospective liquidity needs of the company, meant to bridge the gap until the company finds a buyer and therefore is indeed proportionate and restricted to a minimum amount, in line with point 60 of the R&R Guidelines.

5.4.5. Negative effects

- (49) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.
- (50) The Commission notes the declaration provided by the UK authorities that the Wrights Group has not received any notified rescue aid, restructuring aid or temporary restructuring aid in the last ten years and the UK authorities confirm no such aid has been granted. Consequently, the Commission concludes that “one time, last time” principle as required in the section 3.6.1. points 71 and 74 of R&R Guidelines, is respected.

5.4.6. Transparency

- (51) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the UK authorities must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that the UK undertakes to respect those obligations. The relevant information shall be made available on the website:

5.5. Conclusion on the compatibility of the aid

- (52) In the light of the findings above, the Commission concludes that the rescue loan meets the conditions of compatibility with the internal market set out in the R&R Guidelines. The Commission therefore considers that the rescue aid provided to the Wrights Group is compatible with the internal market.
- (53) In addition, the Commission reminds the UK authorities of their obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.
- (54) The Commission notes the plans of the UK authorities to sell the company as described in recital (6) and reminds the UK authorities to notify a restructuring or a liquidation plan for the Wrights Group if the rescue aid cannot be reimbursed by the Wrights Group within six months.

5.6. Additional observations

- (55) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). In accordance with Article 50(3) TEU, the Treaties are to cease to apply to the withdrawing State from the date of entry into force of a withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. The period has been extended twice, last time by European Council Decision (EU) 2019/584⁸, which extended it until 31 October 2019.
- (56) On 11 January 2019, by Decision (EU) 2019/274⁹, the Council authorised the signature of the withdrawal agreement agreed at negotiators' level on 14 November 2018. The Union confirmed that it stands ready to proceed swiftly with its signature and conclusion in the event that the United Kingdom Parliament approves the withdrawal agreement. Part Four of the withdrawal agreement¹⁰ provides for a transition period starting on the date of entry into force of the agreement, during which Union law is to continue to apply to and in the United Kingdom as laid down therein.
- (57) In any event, this Decision applies only as long as Union law applies to and in the United Kingdom.

⁸ European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) TEU (OJ L 101, 11.4.2019, p.1).

⁹ Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 47 I, 19.2.2019, p.1).

¹⁰ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 144 I, 25.4.2019, p.1).

6. CONCLUSION

The Commission regrets that the United Kingdom of Great Britain and Northern Ireland put the rescue aid loan to the Wrights Group into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, it has decided, on the basis of the foregoing assessment, not to raise objections to the rescue aid on the grounds that it is compatible with the internal market pursuant to Article 107(3) (c) of 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>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission