EUROPEAN COMMISSION

Brussels, 23.12.2008

K (2008) 8991

**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject:** State aid N 509/2008 - Poland
Rescue Aid to Tarchominskie Zakłady Farmaceutyczne "POLFA" S.A.

Sir,

## I. PROCEDURE

(1) On 14 October 2008, Poland notified a rescue aid to Tarchominskie Zakłady Farmaceutyczne "POLFA" S.A. *(hereafter:* "POLFA"*)*, a large undertaking active in the manufacture of basic pharmaceutical products. A request of information was sent on 29 October 2008 to which Poland replied by letter of 20 November 2008, registered on 21 November 2008.

## II. DESCRIPTION

### 1. The beneficiary

(2) POLFA, the beneficiary of the rescue aid, is a large undertaking located in a region of Mazowieckie, Warsaw, a Polish region eligible for regional aid under Article 87(3)(a) of the EC Treaty. The company was originally established in 1823. To date the company's workforce counts circa 1800 employees.

(3) POLFA is a part of a business group as of 2004. Its major shareholder is the Polish government which holds 69% of its shares through Polish Pharmaceutical Holding (*Polski*

*Holding Farmaceutyczny S.A., hereafter "PHF"*). In addition, 16% of shares are held directly by the Ministry of Treasury. PHF holds shares also in two other companies: Polfa Pabianice S.A. and Polfa Tarchomin S.A. The two other subsidiaries are not in difficulty.

(4) The Polish authorities state that POLFA is in difficulty as the company fulfils the criteria under Polish law for being subject of collective insolvency proceeding.

### 2. The measure

(5) The Polish authorities notified to the Commission a rescue aid in a form of the PLN 20,500,000.00 (c. EUR 3.6 million) loan. This loan is to be granted to the beneficiary by a public entity, the Industrial Development Agency *(Agencje Rozwoju Przemysłu S.A., hereafter "ARP")*, in one instalment upon being approved by the Commission. The loan is to be repaid within six months of its disbursement, i.e. after the sum is paid to the company's bank account. The interest on the loan is 7.42%. The interest rate is one percent higher than the interest rate established in the Commission methodology for calculating the interest rates on 1 November 2008.[1] The company provides collateral to secure the loan. The aid cannot be cumulated with other aids covering the same eligible costs.

(6) The company is in difficulty. First, the net loss at the end of 2007 was PLN 32.5 million, while the capital of the company was PLN 87.6 million. The net loss at the end of the second quarter of 2008 was PLN 3.3 million and is supposed to be equal to PLN 27.2 million at the end of 2008. Moreover, the turnover has decreased in the period 2005-2007 by PLN 63.5 million; the liquidity of the company has decreased significantly and the level of debt overdue has increased from PLN 2.2 million at the end of 2006 to PLN 14.4 million in February 2008.

## III. ASSESSMENT

### 1. Existence of State aid

(7) Article 87(1) of the EC Treaty lays down that 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 and affects trade among Member States is incompatible with the common market.

(8) The loan in favour of POLFA is provided by ARP, which is a public entity over which the state excises control, and, therefore, the loan is granted from state resources and is imputable to State. The loan constitutes a selective advantage since it will provide POLFA with access to credit that, being in a difficult situation, the company would not have been able to obtain otherwise. Furthermore, as there is trade between the Member States in pharmaceutical products which POLFA manufactures, the measure is apt to improve the

[1] Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

competitive position of the beneficiary in relation to its competitors in Poland and the EU, and it, consequently, distorts or threatens to distort the competition and affects trade between the Member States.

(9) Therefore, the Commission considers that the present loan in favour of POLFA constitutes State aid pursuant to Article 87(1) of the EC Treaty.

**2. Compatibility of the State aid with the Common Market**

(10) The Commission considers a rescue aid compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty if it complies with the criteria under the Rescue and Restructuring Guidelines[2] (hereafter: the Guidelines), which spell out the rules as to the eligibility of the firm for the aid (only firms in difficulty are eligible) and its form, interest rate and other conditions pursuant to chapter 3.1 of the Guidelines.

**Eligibility for the rescue aid**

(11) A firm in difficulty is defined in chapter 2.1 of the Guidelines. According to point 9 of the Guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. Additionally, point 11 of the Guidelines clarifies that the usual signs of a firm in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mouthing debt, rising interest charges and falling or nil assets value.

(12) POLFA is a company in difficulty under point 10(c) of the Guidelines, since Poland confirmed that the firm fulfils the criteria under Polish law for being the subject of collective insolvency proceedings. Indeed, Poland provided the evidence that the company is in difficult financial situation at least as of March 2008 and is insolvent, i.e. enable to honour its financial obligations. In addition, Polish authorities claim that POLFA is in difficulty according to point 11 of the guidelines (see point 6 above).

(13) It should be, however, noted that according to point 13 of the Guidelines, company that is part of a group is only eligible for restructuring aid when it can be demonstrated that company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that its difficulties are too serious to be dealt with by the group itself.

(14) POLFA is a part of group of companies. The Polish authorities, however, claim that the three subsidiaries within the holding are all independent and were integrated in the holding only temporary with an aim of their privatisation. After the planned privatisation, the holding structure will be dissolved. In addition, as to the independency amongst the three subsidiaries is concerned, the Polish authorities claim that there are no personal or

[2] Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ 2004/C 244/02.

financial ties amongst them. On this basis, the Commission accepts that POLFA's difficulties are intrinsic and are not a result of an arbitrary allocation of costs within the group.

(15) As regards the vertical relationship between the holding company and the subsidiaries, the subsidiaries, if making profit, are to pay dividends to PHF. These dividends represent 98.94% of the PHF financial resources. PHF does not perform any commercial activity on its own. PHF can not neither mandate any of its subsidiaries to finance another, nor it can finance any of its subsidies. As PHF can not finance POLFA, and the two other subsidiaries even if being part of the group are de facto independent, the Commission considers that the difficulties of POLFA can not be dealt with by the group.

**Compatibility of rescue aid**

(16) First, the rescue aid to POLFA, in line with point 25(a) of the Guidelines, is a loan granted by ARP. The loan is limited to a period of up to six months from being disbursed to POLFA. In addition, Poland has provided assurance that the loan is granted at an interest rate (see point 4 5 above) above the reference rate adopted by the Commission for Poland[3]. The interest rate is equal to the reference rate for Poland of 6.42% plus 100 basis points.[4]

(17) Second, the aid is, in line with point 25(b) of the Guidelines, warranted on the grounds of serious social difficulty and has no unduly adverse spill-over effects on other Member States. In fact, if POLFA ceased its operations, this would have serious consequences in terms of employment in a region which is an assisted area under Article 87(3)(a) of the EC Treaty. In addition, taking into consideration the very low market share of the company[5], the Commission finds that the aid will not create unduly adverse spill-over effects on other Member States.

(18) Third, the rescue aid is, in line with point 25(c) of the Guidelines, limited to six months as Poland has undertaken to communicate to the Commission, not later than six months after the rescue aid is authorised, a restructuring plan, a liquation or proof that the loan has been repaid in full.

(19) Fourth, the Polish authorities have notified the Commission an aid amount of PLN 20,500,000.00 loan (c. EUR 3.6 million), which is said to be, in line with point 25(d) of the Guidelines, the amount needed to keep the firm in business for six months. According to the Guidelines the amount necessary should be based on the liquidity needs of the company stemming from losses; in determining that amount regard will be had to the outcome of the application of the formula set out in the Annex of the Guidelines. The notified rescue aid amount complies with the formula set out in the Annex.

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[3] On 1 November 2008.

[4] http://ec.europa.eu/comm/competition/state_aid/legislation/reference_rates.html.

[5] According to the Polish authorities EU market share is 0.034%.

(20) Finally, the Polish authorities confirmed that POLFA has neither received rescue nor restructuring aid in the past. Therefore, the notified aid complies with the "one time, last time principle" as laid down in point 72 et seq. and point 25(e) of the Guidelines.

(21) In view of the above, the Commission considers the rescue aid to POLFA to be compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

## IV. CONCLUSION

(22) The Commission has decided, on the basis of the foregoing assessment, to consider that the state aid consisting in a loan of PLN 20,500,000.00 loan (c. EUR 3.6 million) for Tarchominskie Zakłady Farmaceutyczne "POLFA" S.A. is compatible with the common market.

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B - 1049 Brussels
Fax No: +32 2 296 12 42

We would ask you to state the case name and number in all correspondence.

Yours faithfully,

For the Commission

Günter VERHEUGEN
Member of the Commission