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WORKING LANGUAGE

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Subject: **Case SA.32895 – Italy**

Rescue aid to Livingston S.p.A. in A.S.

Sir,

1. PROCEDURE

(1) By notification dated 18 April 2011, registered the same day, the Italian authorities notified their intention to grant a rescue aid to Livingston S.p.A.

2. THE BENEFICIARY

(2) Livingston S.p.A. (hereafter "Livingston" or the "Company") is an airline company which is active in the so-called leisure carrier segment, i.e. air traffic linked to tourism destinations on behalf of tour operators, mainly for charter flights but also, since April 2008, for scheduled flights.

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(3) The history of the Company dates back to 2002, when the major Italian tour operator I Viaggi del Ventaglio S.p.A (hereafter "IVV") took over 40% of Lauda Air S.p.A., specialised in long-haul flights.

(4) In January 2003 Livingston S.p.A. was created in order to focus on short/medium-haul flights corresponding to IVV's demand and the latter simultaneously took over the remaining 60% of Lauda Air S.p.A.

(5) Following a corporate restructuring undertaken the same year, IVV has been Livingston's sole shareholder until February 2009, when the Company was sold to 4 Fly S.p.A., an airline owed by the entrepreneur Massimo Ferrero. Lauda Air S.p.A. was entirely transferred to IVV, but Livingston remained the licensee of the trademark "Lauda Air".

(6) In June 2009 the financial vehicle company FG Holding S.r.l., equally belonging to Mr Ferrero, acquired a 100% shareholding of Livingston from 4 Fly S.p.A. and a 100% shareholding of 4 Fly S.p.A. as well, subsequently merging the two companies into Livingston S.p.A. in August 2009.

(7) Livingston is part of a larger group which is composed by the Company itself and by its 100% owner, FG Holding S.r.l., with no other controlled or related companies. FG Holding S.r.l. is purely a holding which does not itself carry out any activity. It has a registered capital of EUR 0.9 million and its sole asset is the mentioned shareholding in Livingston, registered at the price it was acquired.

(8) Livingston has its registered office and headquarter in Cardano al Campo (Varese), in the region of Lombardy. It also has offices and fleet maintenance services inside Milan Malpensa Airport as well as other airports (Verona, Rome Fiumicino, Havana, Punta Cana and Cancun).

(9) From the latest financial statements it appears that in August 2010 Livingston employed 530 persons and in 2009 it had a turnover of EUR 257 million. Therefore, it qualifies as a large enterprise within the meaning of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[1].

(10) Livingston is currently facing a phase of severe financial, commercial and operational difficulties, which led to the decision of the Italian Civil Aviation Authority to suspend the Company's air carrier license as from 14 October 2010. In November 2010, the Company was declared insolvent by the competent Court and was admitted under Italian law to the collective insolvency procedure called "*Amministrazione Straordinaria*" ("A.S.").

(11) The Italian authorities explained that Livingston's difficulties are not a result of its core business, as until 2009 the Company's accounts constantly show its ability to finance its working capital and a positive EBITDA, with an increase of the gross operating margin

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[1] OJ L 124 of 20.05.2003, p. 36.

from EUR 6.5 million up to 17.9 million (7% of the production value), coherent with an added value increase.

(12) The financial stress and consequent insolvency of Livingston derive from the technical characters of its acquisition by FG Holding S.r.l. in 2009, which was realized by means of a leveraged buy out, entirely using the Company assets and undermining its ability to face short-term commercial and financial obligations. This finding is corroborated by the change in the Company's liquidity ratio, indicating the correlation between on the one hand liquid assets plus credit and on the other hand short term debt. This ratio dropped from 1.32 in 2007 to 0.55 in the critical year 2009.

(13) An additional cause of difficulties is identified with Livingston's excessive commercial dependence on IVV, which represented the large majority of the Company's costumers' portfolio. Following the insolvency of IVV in 2009 and the subsequent bankruptcy declaration by the competent Court in July 2010, Livingston's significant financial exposure toward IVV (around EUR 30 million) had to be drastically depreciated. This circumstance led to a heavily negative cash flow and in mid 2010 to the insolvency, the annulment of airplanes leasing contracts by suppliers and the suspension of its air carrier licenses, ultimately resulting in the discontinuing of its air transport activities since October 2010 and its current financial difficulties.

3. THE MEASURE

(14) The envisaged financial support would consist of a State guarantee on credit lines to be provided by private banks for the amount of EUR 9.8 million. The Italian authorities undertook that the credit lines -whose specific conditions, in line with the relevant national rules, are still to be defined- will be granted at an interest rate comparable to those observed for loans to healthy firms, and in any event above the reference rate adopted by the Commission for Italy; hence, the 1-year EURIBOR increased with at least 100 basis points will be applied[2], in line with the "Communication from the Commission on the revision of the method for setting the reference and discount rates"(hereafter: "the 2008 Reference Rate Communication").

(15) The Italian authorities agreed to respect the stand still obligation. Furthermore, they undertook either to terminate the aid within six months from the date at which the aid will be granted, or to notify a restructuring/liquidation plan within six months of the date of the Commission decision.

(16) The legal basis for the rescue aid has been indicated by the Italian authorities as the following: *Delibera CIPE* No. 110 of 18 December 2008 and *Decreto ministeriale* del *Ministero dello Sviluppo Economico* of 25 February 2010.

4. ASSESSMENT

4.1. Existence of State aid

[2] OJ C 14 of 19.01.2008, p. 6.

(17) Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter, "TFEU") 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 is, insofar as it affects trade among Member States, incompatible with the internal market.

(18) Firstly, the measure at stake consists of a guarantee which is selective as it is deemed to favour a single company, Livingston.

(19) Secondly, the measure will be financed through the general budget of Italy, and thus certainly by a Member State and through State resources.

(20) Thirdly, the guarantee will provide the Company with access to credit lines that -being subject to a collective insolvency procedure- it would not have been able to obtain at comparable conditions. Under those circumstances, point 3(2) of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[3] provides the presumption of the existence of an advantage, which has not been rebutted in the present case.

(21) Finally, the measure is apt to improve the position of the recipient in relation to its competitors in Italy and the EU, and therefore it actually or potentially distorts competition. As the Company is active in the passenger air transport sector, for which the market is opened to competition from other Member States, the aid also affects trade between Member States.

(22) Therefore, the Commission considers that the present guarantee in favour of Livingston constitutes State aid pursuant to Article 107(1) TFEU. The Italian authorities have not contested this finding.

4.2. Compatibility of the aid with the internal market

(23) The Commission considers the present measure to constitute a rescue aid which must be assessed in the light of the criteria under the Community guidelines on State aid for rescuing and restructuring firms in difficulty[4] (hereinafter, “the Guidelines”), in order to establish whether it may be compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(24) Livingston qualifies as a firm in difficulty. It fulfils the criteria of point 10 (c) of the Guidelines as it is subject to collective insolvency proceedings under Italian law. Furthermore, its liquidity ratios dropped dramatically in the last 2-3 years (see paragraphs (10)-(11)).

(25) Currently, Livingston's sole shareholder is FG Holding S.r.l., with the consequence that it shall be considered to be part of a larger group, composed of these two companies only,

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[3] OJ C 155 of 20.06.2008, p. 14.

[4] OJ C 244 of 1.10.2004, p. 2.

with no further controlled or related legal entities. FG Holding S.r.l. is a mere financial vehicle, fully owned by Mr Ferrero, which does not carry out any independent activity and whose sole asset is its shareholding in Livingston (see recital (7) above). The technical characters of the Company's acquisition in 2009 are visible in the latest available financial statements, whereas the consolidated balance sheet for 2009 shows no sign of significant intra-group transfers. In the light of the above, it appears that the difficulty of Livingston cannot be explained in terms of arbitrary allocation of costs within the group and also -since the resources of FG Holding are insufficient to cover the EUR 9.8 million liquidity needs of Livingston- that the holding company cannot deal with the issue internally.

(26) The aid also fulfils all the five conditions for rescue aid to be approved as compatible, as listed at point 25 of the Guidelines:

(27) First, the aid is in line with point 25 (a) of the Guidelines, since it consists of a liquidity support in the form of a loan guarantee. The guarantee is limited to a period of 6 months from the disbursement of the first loan instalment to the Company.

(28) In addition, the Italian authorities have provided assurances that the credit will be granted at an interest rate comparable to those observed for loans to healthy firms, and in any event above the reference rate adopted by the Commission for Italy, increased by at least 100 basis points, as stipulated by footnote 1 under the loan margin table in the 2008 Reference Rate Communication.

(29) Second, the aid, in line with point 25 (b) of the Guidelines, is warranted on the grounds of serious social difficulties and has no unduly adverse spill-over effects on other Member States. In fact, if the company ceased its operations this would have serious consequences for the economy in the area where Livingston has its headquarter and main offices, since the Company with 530 direct employees and around 400 additional workers in satellite industries is one of the main source of local employment. Additionally, a possible liquidation would result in the permanent revocation of Livingston's air carrier licenses.

(30) At the same time, the competitive position of Livingston within the relevant market until 2010 is very limited at EU level, with a 0.02% market share, and even if we take into consideration the Italian market only, the company's share is approximately 3.6%.

(31) Third, the rescue aid, in line with point 25 (c) of the Guidelines, is limited to six months as the Italian authorities have undertaken that the guarantee will expire six months after the granting of the guarantee linked to the first instalment of the loan. Moreover, the Italian authorities undertook to either provide the Commission with a restructuring/liquidation plan within six months from the date of authorisation of the aid by the Commission, or to terminate the aid within six months from the date the aid will be granted.

(32) Fourth, the Italian authorities have notified the Commission an aid amount of EUR 9.8 million to be granted in favour of the Company, which is estimated to be the minimum necessary to keep Livingston in business for six months, as stipulated in point 25 (d) of the Guidelines.

(33) The Italian authorities submitted the required calculations deriving from the formula provided in the Annex to the Guidelines in order to estimate the 6-month liquidity needs of the Company on the basis of the data of the previous financial year, i.e. 2010.

(34) As illustrated in the Table below, the application of the formula on the basis of 2010 financial figures would lead to a result of around EUR 11.7 million.

<u>Table</u>

A. Earnings (loss) before interests and taxes	-18,498,991
B. Depreciation	896,266
C. Change in working capital	-5,909,932
D. Sum of A+B+C	-23,512,657
E. Adjustment needed to have equivalent time periods of 6 months (D. divided by 2)	-11,756,329
F. Liquidity needs for a 6 month period based on the latest financial figures available at the end of each exercise	11,756,329

(in EUR)

(35) In fact, the Italian authorities propose to grant an aid amount that is below the result of the formula above, namely EUR 9.8 million, which in their estimate will be sufficient to keep the company afloat for the next six months. The proposed amount would allow Livingston to restore the leasing contracts for its fleet, resume its air transport activity, avoid the permanent loss of its air carrier licenses and possibly allow the sale of the Company assets to a sound economic entity as foreseen by National law at the end of the insolvency procedure.

(36) The Commission acknowledges that an aid amounting to EUR 9.8 million is in line with the actual liquidity needs of Livingston and that this amount is even lower then the one resulting from the formula used as a proxy to ensure that the aid is limited to the strict minimum. Therefore, the aid fully meets the requirement of the aid being limited to the minimum to keep the company afloat for six months, in accordance with point 25 (d) of the Guidelines.

(37) Finally, the Italian authorities confirmed that the Company has not benefited from any rescue or restructuring aid over the last ten years. Therefore, the notified aid complies with the "one time, last time principle" as set out in point 25 (e) and points 72 *et seq.* of the Guidelines.

4.3. Conclusion

(38) In view of the above, the Commission concludes that the notified measure aimed at rescuing Livingston constitutes a State aid within the meaning of Article 107(1) TFEU, which is compatible with the internal market in accordance with Article 107(3)(c) TFEU.

5. DECISION

(39) The Commission has accordingly decided to consider the EUR 9.8 million State aid to rescue the company Livingston S.p.A. in A.S. to be compatible with the Treaty on the Functioning of the European Union.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President