EUROPEAN COMMISSION

Brussels, 8.08.2011
C(2011) 5675

PUBLIC VERSION

WORKING LANGUAGE

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Subject: **Case SA.33238 (2011/N) – Italy**

Rescue aid to FADALTI S.p.A.

Sir,

The European Commission ("the Commission") wishes to inform Italy that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided not to raise any objections to the relevant measure as it is compatible with the Treaty on the Functioning of the European Union (hereinafter "TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

(1) By notification dated 24 June 2011, registered the same day, the Italian authorities notified their intention to grant a rescue aid to FADALTI S.p.A..

S.E Giulio Terzi di Sant'Agata
Ministero degli Affari Esteri
Piazzale della Farnesina, 1
00135 Roma

2. THE BENEFICIARY

(2) "FADALTI S.p.A" is a trading company established in 1960, operating as professional distributor of products for construction, plant design, energy systems, insulation, finishing construction, covering and heating. The registered office is sited in Sacile (Pordenone), a few kilometers far from the border between the Veneto and Friuli Venezia Giulia region.

(3) Across the years, Fadalti expanded its distribution network from its native Pordenone to the neighbouring provinces of Treviso, Udine, Venezia, Belluno, Trieste, and therefore becoming a steady establishment operating in the eastern Veneto and Friuli Venezia Giulia regions. The company grew in line with the population growth of the area where it was active. In 2008, FADALTI's network covered an area with about 2.000.000 inhabitants with 24 branches employing 416 workers. Today, FADALTI works with 14 branches in the same area (the 10 inactive branches recorded only 20% of total company turnover) and employs around 250 workers.

(4) FADALTI is currently facing severe financial difficulties, which have culminated on 9 December 2010 with the opening of an insolvency proceeding by the competent national court.

(5) According to the Italian authorities, Fadalti's difficulties are due to the following factors:

- External variables such as: global negative economic trend and specific repercussions on the sector at stake; restrictions by the banking system to the reopening of credit lines, and limited willingness of the credit institutions to allow bank overdraft and invoice discounting;

- Internal variables such as: inadequate organizational (and specifically commercial) structure; non competitive cost structure; inefficient allocation of part of the capital, invested in low-productive activities; economic and industrial performance below market standards in terms of profit margin; lack of information procedures and management control; inadequate and slow reaction of the Executive Officers to external variables.

(6) In consequence, sales and services revenues from the company have decreased from EUR 121 million in 2008 to EUR 96 million in 2009 and EUR 47 million in 2010. Net results for the same years were EUR -14 million in 2008, EUR - 13 million in 2009 and EUR -49 million for 2010.

(7) Since it was established the company has always been owned by natural persons from the Fadalti family. At present, after the declaration of insolvency, the company's management and properties' administration are entrusted to Special Commissioners appointed by decree of *Ministero dello Sviluppo Economico*.

3. THE MEASURE

(8) The envisaged financial support consists of a State guarantee of EUR 5 million on credit lines to be provided by private banks. The Italian authorities undertook that the credits – whose specific conditions are still under discussion with the banks, they can for instance take the form of bank overdrafts – 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[1].

(9) The Italian authorities indicated that a guarantee will probably be granted as from 22 August 2011 (in any case not before the approval of the Commission), and will expire at the latest six months after the day it will be granted. Furthermore, the Italian authorities undertook either to terminate the aid within six months from the date it will finally be granted, or to notify a restructuring/liquidation plan within six months of the date of the Commission authorisation.

(10) The legal basis for the present rescue aid has been indicated by the Italian authorities in following texts: *Nuova disciplina dell''amministrazione straordinaria delle grandi imprese in stato di insolvenza, a norma dell''art.1 della legge 30 luglio 1998 n.274. D.lgs. 8 luglio 1999 n.270; decreto legge 23.12.2003 n.347, conertito nella legge 18.02.2004 n.39 e ss.mm.; decreto del Ministero dell''Economia e delle Finanze 23.12.2004, n.319, "Regolamento recante le condizioni e le modalità di prestazione della garanzia statale sui finanziamenti a favore delle grandi mprese in stato di insolvenza, asi sensi dell''art.101 del D.lvo 270/1999*.

4. ASSESSMENT

4.1. Existence of State Aid

(11) Article 107(1) 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.

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

(13) Secondly, the measure will be financed by reserves from the general budget of Italy, and thus through State resources.

(14) 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[2] provides the presumption of the existence of an advantage, which has not been rebutted in the present case.

(15) 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.

[1] In line with the "Communication from the Commission on the revision of the method for setting the reference and discount rates", OJ C 14 of 19.01.2008, p. 6 (hereafter: "the 2008 Reference Rate Communication").

[2] OJ C 155, 20.06.2008, p. 14.

As the company engages in activities for which the market is opened to competition from other Member States, the aid also affects trade between Member States.

(16) Therefore, the Commission considers that the present guarantee in favour of FADALTI constitutes State aid pursuant to Article 107(1) TFEU, neither have the Italian authorities contested this conclusion.

4.2. Compatibility of the aid with the internal market

(17) The Commission considers the present aid 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[3] (hereinafter, "the Guidelines"), in order to establish whether it may be compatible with the internal market pursuant to Article 107(3) TFEU.

(18) FADALTI qualifies as a firm in difficulty. It fulfils criteria of point 10 (a) of the Guidelines as half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months[4]. In addition, it fulfils the criteria of point 10 (c) of the Guidelines as it is subject to collective insolvency proceedings under Italian law (see paragraph (4) above). Its losses for the year 2010 amount to EUR 45,1 million.

(19) The Italian authorities have confirmed that FADALTI is not part of a larger business group.

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

(21) First, the aid, in line with point 25 (a) of the Guidelines, 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 firm.

(22) 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.

(23) 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. Indeed, FADALTI has a strong local character due to the concentration of branches, employees, customers and suppliers in the in the eastern Veneto and Friuli Venezia Giulia regions. If the company ceased its operations this would have serious consequences in terms of employment for the economy in these regions. It would also have negative economic effects for (i) suppliers that could face threats to their own turnovers deriving from the absence of such significant customer (ii) the market in general as only one other large-sized company is to be considered as a similar operator of FADALTI in the eastern Veneto and

[3] OJ C 244, 1.10.2004, p. 2.

[4] FADALTI's registered capital is EUR 12,5 million. The own funds that the company has at its disposal was as follows: end of 2008, EUR 16,2 million; end of 2009, EUR 3,2 million; end of 2010, EUR -46 million.

Friuli Venezia Giulia regions. The same strong local character is also a guarantee that the aid will not have unduly adverse spillover effects on other Member States.

(24) 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 first instalment of the loan will being granted. Moreover, the Italian authorities undertook to either provide the Commission with a restructuring plan within six months from the date of authorisation of the aid by the Commission, or to terminate the aid within 6 months from the date of granting.

(25) Fourth, the Italian authorities have notified the Commission an aid amount of EUR 5 million to be granted in favour of the company, which is estimated to be the minimum necessary to keep FADALTI in business for six months, as stipulated in point 25 (d) of the Guidelines.

(26) 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.

(27) As illustrated in the Table below, the application of the formula on the basis of 2010 financial figures would lead to a result of EUR 25,6 million.

<u>Table</u>

A. Earnings (loss) before interests and taxes	-42.555.755
B. Depreciation	26.326.097
C. Working capital (2010)	-50.352.921
D. Working capital (2009)	15.397.287
E. Sum of A+B+C+D	-51.185.292
F. Adjustment needed to have equivalent time periods of 6 months (E. divided by 2)	-25.592.646
G. Liquidity needs for a 6 month period based on the latest financial figures available at the end of each exercise	25.592.646

(in EUR million)

(28) In fact, the Italian authorities propose to grant a lower amount of aid, namely EUR 5 million, in a form of a guarantee, which in their estimate will be sufficient to keep the company afloat for the next six months. The proposed aid would allow FADALTI to continue its activity until a normal cooperation will be recovered with the banks that, at present, apply particularly unfavourable conditions.

(29) The Commission acknowledges that an aid amounting to EUR 5 million is in line with the actual liquidity needs of FADALTI and that this amount is clearly 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, in accordance with point 25 (d) of the Guidelines.

(30) Finally, the Italian authorities confirmed that the company has not benefited from any rescue or restructuring aid in 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

(31) In view of the above, the Commission concludes that the notified measure aimed at rescuing FADALTI S.p.A. 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

(32) The Commission has accordingly decided to consider the aid to rescue the company FADALTI S.p.A. in A.S. 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/eu_law/state_aids/state_aids_texts_fr.htm.

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

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: +32-2-296 12 4

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission