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WORKING LANGUAGE

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Subject: State aid SA.34169 (2012/NN)
Rescue aid for Seda Solubles S.L. – Spain

Sir,

1. PROCEDURE

(1) By SANI notification of 4 January 2012, Spain formally notified rescue aid to Seda Solubles S.L. (hereinafter "Seda Solubles" or "the company"), registered under number SA.34169 (2012/N).

(2) By letter dated 12 January 2012, registered on the following day, the Spanish authorities confirmed that the rescue aid subject of the notification had been implemented on 23 December 2011. As a consequence, the rescue aid was moved to the register of non-notified aid under number SA.34169 (2012/NN). The Spanish authorities were informed of the change of register by letter of 16 January 2012.

(3) The Commission services requested additional information by letter of 10 April 2012 and by e-mail of 22 May 2012. Spain replied to these requests by letter of 25 May 2012 and by e-mail of 1 June 2012.

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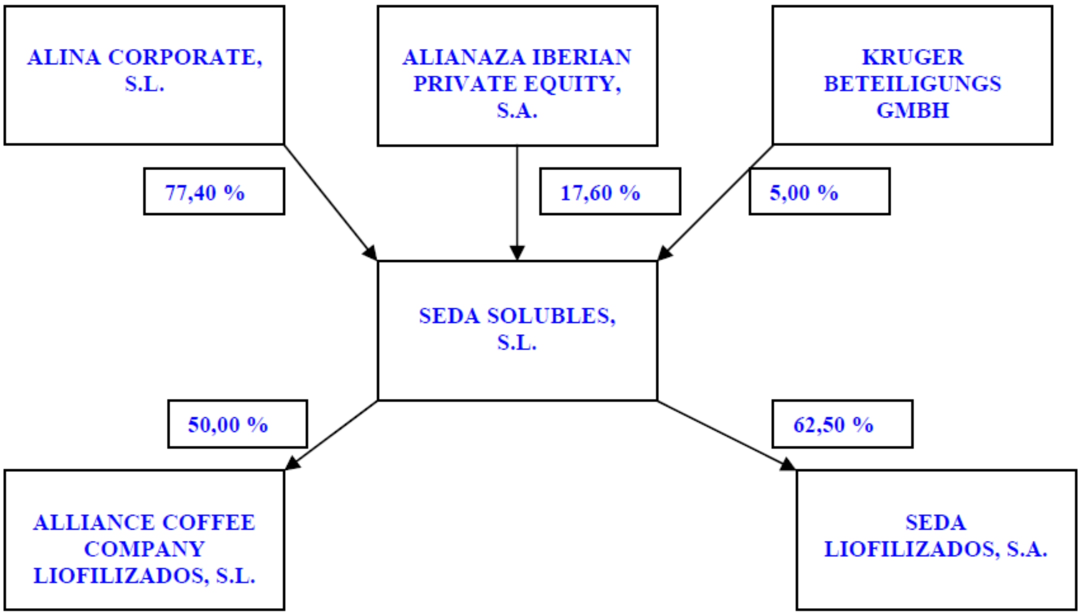
2. DESCRIPTION

2.1. The beneficiary

(4) Seda Solubles is a Spanish company specialized in the production and packing of soluble coffee (spray, agglomerated, agglomerated crystal, freeze dried and espresso) and related products (mixes with or without coffee, including chicory, barley and other cereals), in particular under distribution brands. The company was incorporated in 1999.[1]

(5) Seda Solubles belongs to a group incorporated in 1957, whose current structure is as follows:



(6) Seda Solubles is headquartered in Palencia, in the region of Castilla y León, where two plants are located, one for the production of coffee and the other one for packaging and logistics. It also has a financial and marketing office in the region of Madrid. The main location area of Seda Solubles – Palencia – is eligible for regional aid as a region of economic development under Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU") during the period 2007-2013.[2] As of December 2011, Seda Solubles employed 302 employees, plus 22 employees in its subsidiaries Alliance Coffee Company Liofilizados S.L. and Seda Liofilizados S.A. who exclusively work for Seda Solubles.[3]

(7) Seda Solubles has been facing financial difficulties over the past years. These difficulties are linked in particular to the significant increase in the price of

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1 Further information available on the company's website http://www.sedasolubles.com.

2 The current map of assisted regions in Spain is established in the Commission Decision of 20 December 2006 in State aid case N 626/2006 – Spain – Regional aid map 2007-2013 (OJ C35, 17.2.2007, p. 4), available at http://ec.europa.eu/competition/state_aid/register/ii/doc/N-626-2006-WLWL-en-20.12.2006.pdf.

3 These two companies operate in the production plant of Seda Solubles in Palencia.

green coffee (Seda Solubles' main input) between 2010 and 2011[4] and to the exposure of Seda Solubles to currency risk. In this context, the net turnover of the company decreased from EUR 86.8 million in 2009 to EUR 83.9 million in 2010 and to EUR 41.8 million in 2011.[5] At the same time, while the company was slightly profit-making in 2009 (EUR 0.5 million), it turned to losses in 2010 (EUR -1.9 million) and in 2011 (EUR -11.8 million).[6]

(8) In view of the difficulties that Seda Solubles was facing, the company set up a refinancing plan with the banks and tried to attract a new investor. These plans however proved unsuccessful. Spain claims that the difficulties of Seda Solubles 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.

(9) Due to its difficulties, on 5 December 2011 a Spanish court placed Seda Solubles under the procedure of arrangement with creditors ("*concurso de acreedores necesario*") and named the insolvency administrators. The Spanish authorities claim that at the time of the notification the production plant was at a standstill due to a gas cut off and to the lack of raw materials, and that the employees were under temporary 'redundancy' procedure ("*ERE temporal*").

2.2. The rescue measure

(10) On 23 December 2011, the Junta de Castilla y León (regional government of Castilla y León), through the Agricultural Technological Institute of Castilla y León ("*Instituto Tecnológico Agrario de Castilla y León*"), provided Seda Solubles with a loan of EUR 4.5 million for a maximum duration of 6 months. The interest rate charged is 12-month EURIBOR plus 415 basis points and the loan is secured by way of mortgages on the real estate of the company.

(11) The loan as granted on 23 December 2011 was subject to three conditions: (i) a formal compromise of the insolvency administrators that, in case of sale of the production plan, it would have to be done by tender in which the condition of maintenance of the number of employees of the plants located in Castilla y León would have a weight of not less than 30%; (ii) the professionalization of the management of the company, de-linked to ownership; and (iii) the obligation for the insolvency administrators to obtain supplementary financing for the company to reach a total of EUR 9 million. By letter of 25 May 2012, the Spanish authorities confirmed that condition (i) had been withdrawn and that the notarial deed establishing the aid had been amended accordingly.

(12) Moreover, Spain has committed that the loan will come to an end within a period of not more than six months after the disbursement to the beneficiary, and that it shall submit a restructuring plan or liquidation plan for Seda

[4] On the basis of the statistical data offered by the International Coffee Organization – ICO, the price of one pound (lb) of green coffee passed from USD 1.4724 in 2010 to USD 2.0139 in 20011 (ICO composite price, see http://www.ico.org/prices/p2.htm).

[5] Data as of 30 November 2011.

[6] Data as of 30 November 2011.

Solubles, or proof that the loan has been repaid, within six months (i.e. before 23 June 2012).

(13) Finally, the Spanish authorities confirmed that neither Seda Solubles nor the group it belongs to have received rescue and/or restructuring aid in the last 10 years.

3. ASSESSMENT

3.1. Existence of state aid

(14) Article 107(1) TFEU stipulates 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 internal market. It follows that, for a state measure to be qualified as state aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: use of state resources; selective advantage to the beneficiary; and (potential) distorting effects on competition as well as intra-EU trade.

(15) Prior to examining if the measure involves state aid within the meaning of the above-mentioned TFEU definition, it should be noted that the Spanish authorities themselves consider that this is the case.

State resources

(16) The measure is granted by the Agricultural Technological Institute of Castilla y León, which is a public entity under private law attached to the Department of Agriculture and Livestock ("*Consejería de Agricultura y Ganadería*") of the Junta de Castilla y León and which forms part of the regional administration.[7] Given that the notion of Member State includes all levels of public authorities, regardless of whether it is a national, regional or local authority,[8] it is clear that the measure stems from State resources and is imputable to the State.

Selective advantage to the beneficiary

(17) To be considered state aid, a measure must be specific or selective in that it favours only certain undertakings and/or the production of certain goods.

(18) The measure at stake is selective, as the loan was granted to the benefit of one specific undertaking, i.e. Seda Solubles. The loan confers an undue advantage to the company as it would not have received a similar loan under normal market conditions, allowing it to maintain its production activities for at least six months. It must therefore be concluded that the measure provides a selective advantage to Seda Solubles.

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7 Further information available on the website of the Agricultural Technological Institute of Castilla y León: http://www.itacyl.es/opencms_wf/opencms/index.html.

8 Case C-248/84 *Germany v Commission* [1987] ECR 4013, para.17.

Distortion of competition and affectation of trade

(19) The Commission has analysed whether the measure distorts or threatens to distort competition and affects intra-EU trade. When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.[9]

(20) Spain indicates that Seda Solubles operates worldwide and has a strong presence in Europe, particularly in Spain, France, Portugal and the Russian Federation. Moreover, there are a number of other producers of soluble coffee and related products in the European Union, like for instance Productos Solubles S.A. in Spain (also located in Palencia), Deutsche Extrakt Kaffee GmbH in Germany or Instanta Sp. z o.o. in Poland. Several multinationals are also present in this market and produce and distribute soluble coffee under their own brands. It is thus clear that there is trade between Member States in the market for soluble coffee and related products.

(21) The measure is apt to improve the competitive position of the beneficiary in relation to its competitors in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

Conclusion on the existence of aid

(22) In light of the above, the Commission considers that the measure constitutes state aid pursuant to Article 107(1) TFEU.

3.2. Legality of the measure

(23) The Spanish authorities committed in their notification not to grant the aid to Seda Solubles before the Commission had taken a decision authorising it, in respect of its obligation under Article 108(3) TFEU. However, by letter of 12 January 2012 the Spanish authorities confirmed that the rescue aid subject of the notification had been implemented on 23 December 2011.

(24) The aid measure thus constitutes unlawful state aid in breach of Article 108(3) TFEU.

3.3. Compatibility of the aid

(25) The Commission may authorise rescue aid as compatible with the internal market according to Article 107(3)(c) TFEU if it complies with the compatibility criteria laid down in the 2004 Rescue and Restructuring Guidelines[10] (hereinafter "the R&R Guidelines"), which set out specific rules as to the eligibility of the firm for rescue and/or restructuring aid, its form,

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[9] See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, para.11; Case C-53/00 *Ferring* [2001] ECR I-9067, para.21; Case C-372/97 *Italy v Commission* [2004] ECR I-3679, para.44.

[10] Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p.2, prolonged in 2009, OJ C 156, 9.7.2009, p.3.

interest rate, and other conditions pursuant to chapter 3.1 of the R&R Guidelines.

Eligibility for rescue aid

(26) According to Points 12(a) and 14 of the R&R Guidelines, only firms in difficulty are eligible for rescue aid.

(27) According to Point 9 of the R&R 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.

(28) Under Point 10 of the R&R Guidelines, a firm is considered to be in difficulty in the following circumstances:

(a) In the case of limited liability companies, more than half of the registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months.

(b) In the case of companies where some members have unlimited liability, where more than half of the capital as shown in the accounts has disappeared and more than one quarter has been lost in the preceding 12 months.

(c) Whatever the type company concerned, when the criteria under domestic law for being the subject of collective insolvency proceedings are met.

(29) The Spanish authorities have provided evidence that Seda Solubles was put under the procedure of arrangement with creditors by judicial decision of 5 December 2011. Under the relevant national provisions this procedure is applicable to insolvent companies.[11] The Spanish authorities have explained that Seda Solubles recognized its insolvency on 24 June 2011.

(30) It results from the above that Seda Solubles is to be considered a firm in difficulty on the basis of Point 10(c) of the R&R Guidelines, and is therefore eligible for rescue aid.

(31) According to Point 12 of the R&R Guidelines, a newly-created firm is not eligible for rescue aid. On this account, the Commission verified that Seda Solubles did not start operations in its relevant field of activity less than three years prior to the granting of the aid. Indeed, while the firm was constituted in 1999, it belongs to a group incorporated in 1957.

(32) Finally, Point 13 of the R&R Guidelines establishes that a firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's

[11] See Article 1 of Law 22/2003 of 9 July, "*Concursal*" (Spanish Official Gazette 164, of 10.7.2003, p.26905).

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. The Spanish authorities confirmed that the difficulties of Seda Solubles are intrinsic and are not the result of an arbitrary allocation of costs within the group. In addition, the situation of insolvency of Seda Solubles proves that the difficulties are too serious to be dealt with by the group itself.

Compatibility conditions of Point 25 of the R&R Guidelines

(33) Rescue aid must meet the conditions set out in Point 25 of the R&R Guidelines in order to be declared compatible with the internal market.

(34) According to Points 15 and 25(a) of the R&R Guidelines, the rescue aid must consist of liquidity support in form of a loan or a guarantee; in both cases it must be granted at an interest rate at least comparable to that observed for loans for healthy firms, and in particular the reference rates adopted by the Commission. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.

(35) In the case at hand, the measure is a loan of EUR 4.5 million that Seda Solubles will use to continue its productive activities. The interest rate charged is 12-month EURIBOR plus 415 basis points: at the time the measure was granted, i.e. 23 December 2011, the 12-month EURIBOR was 1.988%, which makes a total interest rate of 6.138%. This rate largely exceeds the reference rate adopted by the Commission, which for rescue aid cases is 1-year IBOR increased with at least 100 basis points.[12]

(36) The Spanish authorities also committed in the same context that the loan will be terminated within six months after the disbursement of the first instalment to Seda Solubles, i.e. before 23 June 2012. The Commission therefore concludes that the rescue aid measure satisfies the compatibility conditions laid down in Point 25(a) of the R&R Guidelines.

(37) According to Point 25(b) of the R&R Guidelines, rescue aid must be warranted on the grounds of serious social difficulties and have no undue spill-over effects on other Member States. Spain claims that a total of 324 direct jobs would be lost if Seda Solubles were to close down its plants, which would have significant social consequences in the context of the current economic crisis. This would particularly be the case in a region like Castilla y León, characterised by an ageing population and hardly hit by unemployment. In light of these considerations, the Commission considers that the aid is warranted on the grounds of serious social difficulties. Moreover, given the relatively small amount of the aid and the presence of numerous competitors of Seda Solubles in Spain and other Member States, the Commission finds that the aid will not create undue adverse spill-over effects on other Member States. On the basis of the above, it can be concluded that the aid is in line with Point 25(b) of the R&R Guidelines.

12 *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.

(38) Point 25(c) of the R&R Guidelines stipulates, in the case of non-notified rescue aid, that the Member State must communicate, no later than six months after the first implementation of the rescue aid measure, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated. As explained in paragraph (12) above, the Spanish authorities have committed that the loan will come to an end within a period of not more than six months after the disbursement to the beneficiary, and that it shall submit a restructuring plan or liquidation plan for Seda Solubles, or proof that the loan has been repaid, within six months (i.e. before 23 June 2012). Consequently, the rescue measure is in line with Point 25(c) of the R&R Guidelines.

(39) According to Point 25(d) of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. The amount necessary should be based on the liquidity needs of the company stemming from losses. In determining this amount, regard will be had to the outcome of the application of the formula set out in the Annex to the R&R Guidelines, and any amount exceeding the result of that calculation would have to be duly explained. This formula can only be applied where the result is a negative amount.

(40) Based on the financial reports of the company for 2010 and 2011,[13] the Commission identified the following elements to be taken into account in the formula for the case of Seda Solubles:

- EBIT in 2011: EUR -10.37 million.
- Depreciation in 2011: EUR 2.31 million.
- Working capital for 2011: EUR -5.16 (current assets: EUR 63.24 million, minus current liabilities: EUR 68.40 million).
- Working capital for 2010: EUR 1 million (current assets: EUR 58.22 million, minus current liabilities: EUR 57.22 million).

(41) The outcome of the application of the formula is therefore EUR -6.11 million.

(42) The Commission first notes that the outcome of the application of the formula in the case of Seda Solubles is negative. Secondly, the amount of the rescue aid (EUR 4.5 million) is lower than the maximum resulting from the application of the formula. The Commission therefore concludes that the rescue aid is indeed restricted to a minimum amount, as required by Point 25(d) of the R&R Guidelines.

(43) Finally, with reference to Point 25(e) of the R&R Guidelines, i.e. compliance with the "one time, last time" principle as stipulated in section 3.3 of the R&R Guidelines, the Spanish authorities confirmed that neither Seda Solubles nor the group it belongs to have received rescue and/or restructuring aid in the last

[13] Balance sheet data as of 30 October 2011 and profit and loss account data as of 30 November 2011.

10 years. Therefore, the aid also complies with Point 25(e) of the R&R Guidelines.

(44) In the light of the findings above, the Commission concludes that the measure meets the compatibility conditions resulting from Point 25 of the R&R Guidelines.

4. CONCLUSION

The Commission regrets that Spain put into effect the loan of EUR 4.5 million in favour of Seda Solubles S.L., 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, to consider the rescue aid to Seda Solubles S.L., consisting of a loan of EUR 4.5 million, to be compatible with the internal market under Article 107(3)(c) of the Treaty on the Functioning of the European Union pursuant to the 2004 Rescue and Restructuring Guidelines.

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_es.htm.

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

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Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-president of the Commission