



EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State aid SA.37640 – Rescue aid to ACC Compressors S.p.A. – Italy

Sir,

1. PROCEDURE

- (1) By SANI notification of 5 November 2013 and further clarification sent on 27 November 2013, Italy notified rescue aid to ACC Compressors S.p.A. (hereinafter "ACC" or "the Company").

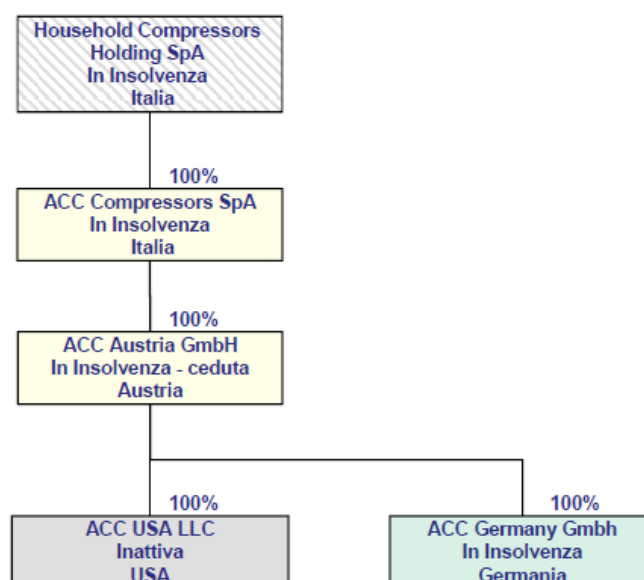
2. DESCRIPTION

2.1. The beneficiary

- (2) ACC is an Italian large undertaking active since 1960 in the manufacturing and sale of compressors for domestic refrigerators. These compressors are sold as components to original equipment manufacturers (OEM) or producers of refrigerators who assemble the compressors into their final products ultimately sold to consumers.

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- (3) ACC has its headquarters in Pordenone in the Friuli-Venezia Giulia region, and only production site in Belluno in the Veneto region. That area is not eligible for regional aid during the period 2007-2013.¹ The Italian authorities confirmed that ACC is a large undertaking. As of at 21 October 2013, ACC employed 618 employees.
- (4) ACC is 100% owned by Household Compressors Holding S.p.A. (HCH), which operates only as a holding and has no production activity. The Italian authorities explained that HCH is a firm in difficulty since it was declared insolvent on 12 October 2013. ACC also directly owns 100% of ACC Austria GmbH, which is at present subject to Austrian insolvency proceedings, and indirectly 100% of ACC Germany GmbH, which is also subject to insolvency proceedings as at October 2012, and 100% of ACC USA LLC, which is inactive.
- (5) As of 30 September 2013 the HCH Group was structured as follows:



- (6) ACC was first declared insolvent by the court of Pordenone on 28 June 2013 and on 27 August 2013 the court put ACC into extraordinary administration.
- (7) The Italian authorities have confirmed that the resources of HCH are not sufficient to cover the liquidity needs of ACC and that ACC's problems cannot be solved within the group since all the companies in the group are inactive and/or in difficulty. Additionally, they also explained that ACC's difficulties

¹ The current map of assisted regions in Italy is established through State aid case N 324/2007 – Italy – Regional aid map 2007-2013, OJ C90, 11.04.2008, p. 4, and following amendments.

are intrinsic to the undertaking itself since it is the only producing company within the group and there are no intra-group cost allocations. The Italian authorities also declared that the problems of ACC derive from the negative situation on the market and past strategic and industrial decisions.

2.2. The notified measure

- (8) Italy intends to provide ACC aid through the Ministry of Development. The aid consists of a 6-month State guarantee for lines of credits that are being defined (overdraft facilities and bid/performance/advance payments) in order to meet liquidity needs of EUR 13.6 million. The notified measure aims at keeping the firm in business and supporting the plan to sell the company's assets.
- (9) The exact conditions of the credit lines are not yet defined, but the Italian authorities have assured that the interest rates for these lines of credit will be in line with normal banking conditions for active undertakings, and will not be lower than the Commission's reference rate.²
- (10) Moreover, Italy has undertaken to ensure that the guarantee will expire six months after the disbursement of the first instalment of the loan to the beneficiary, and that it shall submit 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 within six months of the authorisation of the rescue aid measure.
- (11) Finally, the Italian authorities confirmed that ACC has not received any rescue or restructuring aid in the past.

3. ASSESSMENT

3.1. Existence of state aid

- (12) 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.

State resources

- (13) The notified measure, i.e. State guarantee, is granted by the Italian Ministry of Development. Therefore the guarantee involves State resources in case of borrower's default and is imputable to the Italian State.

² 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.

Selective advantage to the beneficiary

- (14) 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.
- (15) The notified measure is selective, as the State guarantee shall be issued to the benefit of one specific undertaking, i.e. ACC. The State guarantee confers an economic advantage on the beneficiary insofar as it will allow it to have access to liquidity that it would not have obtained on the market without the State's support, given its financial condition. It must therefore be concluded that the measure provides a selective advantage to ACC.

Distortion of competition and affectation of trade

- (16) 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.³
- (17) The market for sale of compressors for domestic refrigerators is open to competition in the EU. ACC's products are sold in other Member States and it currently holds 6% of the EU market and is notably in competition with other producers, such as SECOP, which holds 12% of the same market and other non-EU producers, which hold the remainder.
- (18) By granting ACC access to liquidity which it would not otherwise obtain at market conditions, the State guarantee is apt to improve the competitive position of ACC 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

- (19) In light of the above, the Commission considers that the measure constitutes State aid pursuant to Article 107(1) TFEU. The Italian authorities share the same view.

3.2. Compatibility of the aid

- (20) The Commission may authorise rescue aid as compatible with the internal market pursuant to Article 107(3)(c) TFEU if it complies with the compatibility criteria laid down in the 2004 Rescue and Restructuring Guidelines⁴ (hereinafter "the R&R Guidelines"), which set out specific rules as

³ 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.

⁴ 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, and in 2012, OJ C 296, 02.10.2012, p. 3

to the eligibility of the firm for rescue and/or restructuring aid, its form, interest rate, and other conditions pursuant to chapter 3.1 thereof.

Eligibility for rescue aid

- (21) According to Points 12(a) and 14 of the R&R Guidelines, only firms in difficulty are eligible for rescue aid.
- (22) 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.
- (23) 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 of company concerned, when the criteria under domestic law for being the subject of collective insolvency proceedings are met.
- (24) In their notification, the Italian authorities explain that ACC qualifies as a firm in difficulty under Point 10(c) of the R&R Guidelines. Indeed, an Italian court has already declared ACC insolvent and opened the proceedings for extraordinary administration⁵.
- (25) ACC qualifies, therefore, as a firm in difficulty pursuant to point 10(c) of the R&R Guidelines.
- (26) According to Point 12 of the R&R Guidelines, a newly-created firm having started operations in its relevant field of activity less than three years prior to the notification is not eligible for rescue aid. ACC is not a newly-created firm. It is a historical company whose activities in the compressors sector date back to 1960.
- (27) 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 difficulties are intrinsic and are not the result of an arbitrary allocation of costs

⁵ Judgment of the Court of Pordenone no. 47/2013 declaring the insolvency of ACC dated 28 June 2013 and Decree of the Court of Pordenone n. 382/2013 dated 27 August 2013.

within the group, and that the difficulties are too serious to be dealt with by the group itself. As explained in recital (7) above, HCH is a mere holding company with interest in either insolvent or inactive subsidiaries and is currently unable to provide the financing necessary for meeting ACC's short-term financing needs. ACC's difficulties are the result of market developments and intrinsic commercial choices and not of artificial intra-group cost allocation, which would unjustifiably burden ACC. As a result, despite being part of the larger HCH Group, ACC is eligible for rescue aid.

Compatibility conditions in Point 25 of the R&R Guidelines

- (28) 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.
- (29) 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. 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.
- (30) In the case in question, the notified measure is a State guarantee covering 100% of credit lines up to EUR 13.6 million, to be used by the company in order to meet liquidity needs, keep the firm in business and support the plan to sell the company's assets. As indicated in recitals (9) and (10) above, the Italian authorities committed in the notification that the interest rates for the credits backed by the State guarantee will be in line with normal banking conditions for active undertakings, and in any case will not be lower than the Commission's reference rate applicable for the period during which the said credit lines will be granted.⁶ The Italian authorities also committed in the same context that the guarantee shall expire within six months after the disbursement of the first instalment of any loan to ACC. The Commission therefore concludes that the notified measure satisfies the compatibility conditions laid down in Point 25(a) of the R&R Guidelines.
- (31) 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. In the present case, if the company ceased its operations, this would – according to Italy – have serious social consequences, direct loss of up to 624 jobs at ACC but also an indirect effect on up to 2,500 persons in the Veneto and Friuli-Venezia Giulia regions that are related to the activity of ACC.
- (32) Moreover, ACC is geographically and industrially part of an "integrated supply chain for kitchens" (*filiera integrata della cucina*), which involves other producers of components (e.g. *Distretto della meccanica* COMET), household appliances (e.g. Electrolux, Haier) and kitchen producers (*Distretti del mobile di Pordenone e Treviso*). Since this system is complex and involves

⁶ 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.

undertakings depending on each other, the weakening or, even worse, the disappearance of one of them (e.g. ACC) would have an impact with serious consequences for the whole supply chain and the local industry. In light of these considerations, the aid appears to be warranted on grounds of serious social difficulties. In addition, considering that ACC is active in a diversified industry and has a relatively weak position on the relevant product market as explained above under recital (17), the aid does 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.

- (33) Point 25(c) of the R&R Guidelines stipulates that rescue aid must be accompanied by the undertaking of the Member State that, not later than six months after the rescue aid is authorised, a restructuring, liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated is to be communicated to the Commission. In their notification, the Italian authorities committed to communicating to the Commission a restructuring plan or a liquidation plan, or proof that the loan has been reimbursed in full and/or proof that the guarantee has been terminated, not later than six months after the authorisation of the rescue aid measure. Consequently, the notified measure is in line with Point 25(c) of the R&R Guidelines.
- (34) 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 Guidelines⁷, and any amount exceeding the result of that calculation would have to be duly explained.
- (35) Based on the financial reports of the company for the year 2012, the following figures need to be taken into account for ACC:
 - EBIT in 2012: EUR -60.71 million.
 - Depreciation in 2012: EUR 51.33 million.
 - Working capital for 2012: EUR - 99.24 million (current assets: EUR 29.14 million, minus current liabilities: EUR 128.38 million).
 - Working capital for 2011: EUR – 79.84 million (current assets: EUR 37.94 million, minus current liabilities: EUR 117.79 million).

⁷ The formula takes into account the beneficiary's EBIT (earnings before interest and taxes) in the year preceding to notification (2012), depreciation in the same reference year, and the variation in the beneficiary's working capital (calculated as the difference between current assets and current liabilities) with respect to the year preceding the reference year. The sum of all these elements is then divided by 2, so as to approximate the liquidity needs of the company over a six-month period – i.e. the duration of the rescue aid.

- (36) The outcome of the application of the formula is therefore EUR – 14.12 million.
- (37) First, the outcome of the application of the formula in the case of ACC is negative, so that the pre-condition for the application of the formula is satisfied. Second, the EUR 13.6 million of liquidity supported with rescue aid is lower than the maximum resulting from the application of the formula. The aid is indeed restricted to a minimum amount, as required by Point 25(d) of the R&R Guidelines.
- (38) Finally, with reference to compliance with the "one time, last time" principle set out in section 3.3 and Point 25(e) of the R&R Guidelines, the Italian authorities have confirmed that ACC has not received rescue or restructuring aid over the last ten years. Therefore, the notified aid also complies with Point 25(e) of the R&R Guidelines.
- (39) In the light of the foregoing, the notified aid meets the compatibility conditions resulting from Point 25 of the R&R Guidelines.
- (40) Moreover, Italy declares that ACC did not receive any unlawful aid with respect to which the Commission has adopted a negative decision with a recovery order. Therefore, the notified aid also meets the condition set out in Point 23 of the R&R Guidelines.

4. CONCLUSION

- (41) The Commission has accordingly decided not to raise objections to the notified state 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.
- (42) 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>
- (43)

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president