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PUBLIC VERSION

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Subject: State aid SA.38129 (2014/N) – Rescue aid to Franco Tosi Meccanica S.p.A. in a.s. – Italy

Sir,

1. PROCEDURE

(1) By notification of 9 January 2014 and further information and clarification sent, respectively, on 24 and 30 January 2014, Italy notified rescue aid to Franco Tosi Meccanica S.p.A. in a.s. (hereinafter "FTM" or "the Company").

2. DESCRIPTION

2.1. The beneficiary

(2) FTM is an Italian large undertaking active since 1881 in the manufacturing and sale of steam and hydraulic turbines for industrial use and energy production, and heat exchange apparatuses.

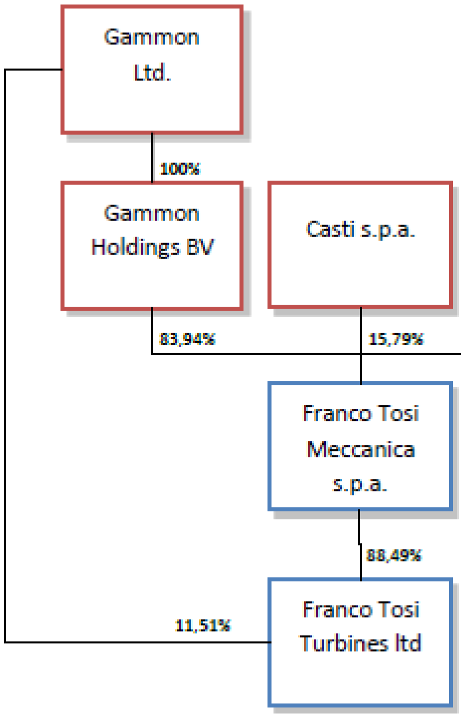
(3) FTM has its headquarters and only production site in Legnano (Lombardia region), where it has always played a central role because of its economic and industrial importance in terms of direct and indirect jobs. That area is not eligible for regional aid during the period 2007-2013.[1] The Italian authorities

[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, the

explained that due to the economic and financial crisis, the Legnano area suffered from the closure of many important firms, which also affected the labour market. At the moment of the declaration of insolvency in July 2013, FTM employed 400 employees.

(4) FTM is 83.94% owned by Gammon Holdings B.V., 15.79% by Casti SpA and 0.87% by Mr Gianfranco Castiglioni. Gammon Holdings B.V. is 100% owned by, Gammon Ltd, incorporated in India. The Italian authorities explained that Gammon Ltd bought 75.10% of FTM shares through Gammon Holding BV in June 2008 and that the latter operates only as a holding and has no production activity. FTM also directly owns 88.49% of Franco Tosi Turbines Ltd., which is also an Indian company.

(5) As of the time of the notification, the group was structured as follows:



(6) FTM was first declared insolvent by the court of Milan on 25 July 2013 and on 28 September 2013 the court put FTM into extraordinary administration.

(7) The Italian authorities have indicated that the firm's difficulties are too serious to be dealt with by the group itself. Already in 2007, before Gammon Holding BV entered into FTM's capital, the Company's balance sheets showed considerable debts towards suppliers (EUR 63.7 million) and public authorities (EUR 54.6 million), all deriving from its core business activity. Notwithstanding a EUR 11 million capital increase in 2012 which led to the current shareholders' structure, and the provision of a loan, the majority shareholder has not been able to restore the company's viability. After having

validity of which has been prolonged until 30 June 2014 through case SA.37407 Prolongation of the Italian regional aid map 2007-13 until 30 June 2014, available at http://ec.europa.eu/competition/state_aid/cases/250043/250043_1482619_55_2.pdf .

lost their power to intervene in the direction of the company with the declaration of insolvency, the current shareholders also explicitly expressed their inability to financially support their subsidiary.

(8) The Italian authorities have also indicated that the difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, as demonstrated by the report of the special commissioner (*Commissario Straordinario*) appointed in the context of the extraordinary administration proceedings. The Italian authorities explained that, according to that report, the causes of the Company's difficulties had to be found in the constant financial deficit that characterised FTM's core activity. Additionally, they highlighted that since all the claims filed so far by the creditors in the context of the extraordinary administration proceedings refer to FTM's core activity only, any artificial allocation of debts, contracts or supplies within the Gammon Group can be excluded.

(9) The Italian authorities have explained that FTM is almost exclusively active outside the territory of the European Union.[2]

2.2. The notified measure

(10) Italy intends to provide FTM aid through the Ministry of Economic Development. The measure 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 20 million. The notified measure aims at keeping the firm in business and supporting the plan to sell the Company's assets.

(11) The exact conditions of the credit lines are not yet defined, but the Italian authorities have committed 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.[3]

(12) Moreover, Italy has undertaken to ensure that the guarantee will expire six months after the disbursement of the first instalment of the lines of credit 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.

(13) Finally, the Italian authorities indicated that FTM has not received any rescue or restructuring aid in the past.

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[2] See also the list of steam and hydro projects on the Company's website: http://www.francotosimeccanica.it/hydro-projects.html and http://www.francotosimeccanica.it/steam-projects.html

[3] 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.

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.

State origin of the measure

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

Selective advantage to the beneficiary

(16) The notified measure is selective, as the State guarantee shall be issued to the benefit of one specific undertaking, i.e. FTM. 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 FTM.

Distortion of competition and affectation of trade

(17) 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.[4]

(18) The market for sale of steam and hydraulic turbines for industrial use and energy production and heat exchange apparatuses is open to competition in the EU. Despite FTM being almost exclusively active outside the European Union (see recital (9) above), the company's products appear to be also sold by competitors established in other Member States.[5]

(19) By granting FTM access to liquidity which it would not otherwise obtain at market conditions, the State guarantee is apt to improve the competitive position of FTM in relation to its competitors in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

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[4] 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.

[5] See footnote 2 above

Conclusion on the existence of aid

(20) 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

(21) 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 Guidelines[6] (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, interest rate, and other conditions pursuant to chapter 3.1 thereof.

Eligibility for rescue aid

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

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

(…)

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

(24) As explained in recital 6, an Italian court has already declared FTM insolvent and opened the proceedings for extraordinary administration. FTM qualifies, therefore, as a firm in difficulty pursuant to point 10(c) of the R&R Guidelines.

(25) 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. FTM is not a newly-created firm. It is a historical company whose activities in the turbines sector date back to 1881.

(26) 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 within the group, and that the difficulties are too serious to be dealt with by the group itself. As explained in recitals (7)-(8) above, despite a capital increase in 2012 and the provision of a loan, the majority shareholder has not been able to

[6] 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

restore the company's viability and explicitly expressed his inability to provide the financing necessary for meeting FTM's short-term financing needs. FTM's difficulties appear to be the result of intrinsic and not of artificial intra-group cost allocation, which would unjustifiably burden FTM. As a result, despite being part of the larger Gammon Group, FTM is eligible for rescue aid.

Compatibility conditions in Point 25 of the R&R Guidelines

(27) 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.

(28) 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.

(29) The notified measure is a State guarantee covering 100% of credit lines up to EUR 20 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 (11) and (12) above, Italy undertakes 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.[7] Italy also undertakes that the guarantee shall expire within six months after the disbursement of the first instalment of any loan to FTM. The notified measure therefore meets the compatibility conditions laid down in Point 25(a) of the R&R Guidelines.

(30) 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 – on the basis of the information provided by Italy – have serious social consequences, direct loss of up to 400 jobs at FTM but also an indirect effect on a considerable number of jobs in the area that are related to the activity of FTM. Moreover, as explained above under recital (3), the economic crisis had a considerable impact in the industrial area of Legnano in terms companies closed and decrease of job opportunities. In light of these considerations, the aid appears to be warranted on grounds of serious social difficulties. On the other hand, FTM is active in a diversified industry and is almost exclusively active outside the EU, as explained above in recitals (18) - (19), which appears to indicate that 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.

[7] 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.

(31) 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 guarantee has been terminated, not later than six months after the authorisation of the rescue aid measure to FTM. Consequently, the notified measure is in line with Point 25(c) of the R&R Guidelines.

(32) 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,[8] and any amount exceeding the result of that calculation would have to be duly explained.

(33) Based on the financial reports of the company for the year 2012, the following figures need to be taken into account for FTM:

- EBIT in 2012: EUR -28.257 million.

- Depreciation in 2012: EUR 15.566 million.

- Working capital for 2012: EUR – 112.169 million (current assets: EUR 81.456 million, minus current liabilities: EUR 193.626 million).

- Working capital for 2011: EUR – 78.104 million (current assets: EUR 97.562 million, minus current liabilities: EUR 175.666 million).

(34) The outcome of the application of the formula is therefore EUR – 23.378 million.

(35) First, the outcome of the application of the formula in the case of FTM is negative, so that the pre-condition for the application of the formula is satisfied. Second, the EUR 20 million of liquidity supported with rescue aid is lower than the maximum resulting from the application of the formula.

(36) The aid is indeed restricted to a minimum amount, as required by Point 25(d) of the R&R Guidelines.

(37) 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

[8] 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.

authorities have confirmed that FTM 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.

(38) In the light of the foregoing, the notified aid meets the compatibility conditions resulting from Point 25 of the R&R Guidelines.

(39) Moreover, Italy declares that FTM 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

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.

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

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Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-president