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Competition DG

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**Subject: SA.37792 (2013/N) – Restructuring program of Cimos d.d.**

Sir,

The Commission wishes to inform Slovenia that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

## I. PROCEDURE

(1) On 21 November 2013, Slovenia notified a restructuring aid of EUR 35 million for the Cimos Group[1] ("Cimos", "the Company"). The notified measure was preceded by a notification on 17 April 2013 of a rescue aid in the form of a State guarantee covering

[1] Since the beneficiary of the rescue aid was the Cimos Group and the restructuring aid must be assessed at the same level, Slovenia clarified that it considers the Cimos Group to be the beneficiary of the restructuring aid. Henceforth all references to Cimos or to "the Company" should be understood as references to the Cimos Group.

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Minister za zunanje zadeve Republike Slovenije
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short-term loans from banks and shareholders of EUR 35 million which the Commission approved 2 July 2013[2].

(2) The Commission requested additional information on 17 December 2013. Slovenia asked for an extension of the deadline to reply, by letter of 27 December 2013 and supplementary e-mail of 13 January 2014, which was granted on 13 January 2014 until 7 February 2014. On 7 February 2014 Slovenia replied to 5 out of 17 questions and explained that it was not in a position to provide final and reliable answers to the outstanding questions because key elements of the restructuring plan were subject to ongoing negotiations among stakeholders. Slovenia informed that answers to remaining questions would be provided "in due course".

## II. DESCRIPTION

### 2.1 Beneficiary

(3) Cimos is one of the largest Slovenian industrial companies and one of the largest producers of automotive components in Central Europe. Its core business is the manufacturing of automotive components (e.g. power train components, turbochargers, hinges, parking breaks, brake discs and drums, pedal boxes, flywheels). The Company supplies a number of major car producers including BMW, Citroen, Peugeot, Renault, Volkswagen, General Motors, Audi, Toyota, Saab, Opel and Daimler. The automotive segment accounts for 86% of its sales revenue. The Company is also active in the machine building and tooling (7%), energy (6%) and agricultural machinery sectors (1%).

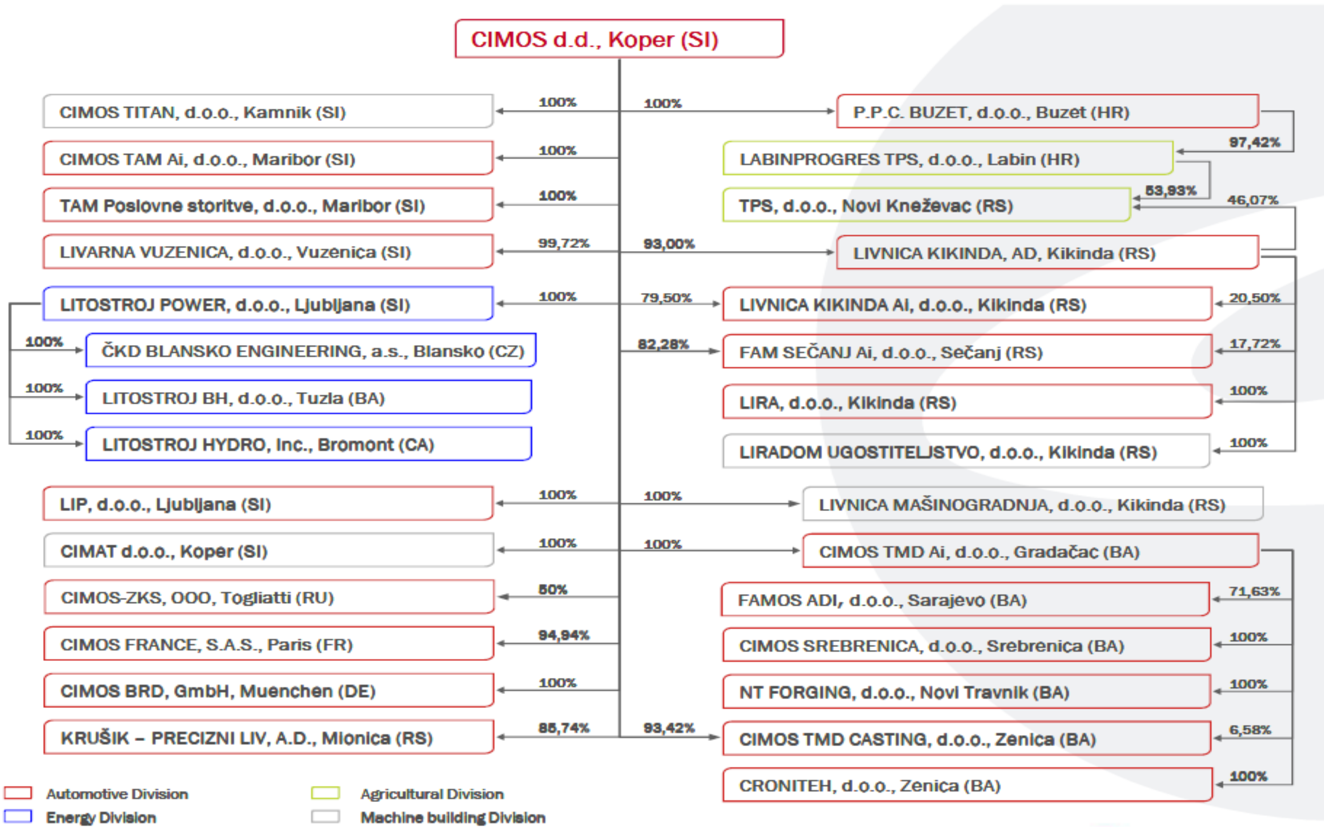
(4) The main competitors of Cimos in the EU in the automotive segment include Le Bélier, SHW AG, Renk AG, Montupet SA and Cie Automotive S.A.

(5) The Company employs 6,920 people (of which 2,614 in Slovenia) and is classified as a large enterprise. It had a turnover of EUR 446 million and a net loss of EUR 98 million for 2012. Slovenia estimates Cimos' share in the European market to be below 15% for most product families, with the exception of central and turbo housing components where it is estimated at 20-33%.

(6) Cimos d.d. is the parent company of the Cimos Group which consists of 30 subsidiaries (as of 30 June 2013) with operations in nine countries. The organisational structure of the Cimos Group is shown below.

[2] Commission Decision of 2 July 2013 in the case SA.36548 (2013/N) – Rescue aid for Cimos, OJ C 287/2, 03.10.2013 ("the Rescue Aid Decision").

**Figure 1 - Cimos Group structure**




(7) The Slovenian State holds indirectly – through state-controlled companies – 38.6% of the shares of Cimos. According to the Slovenian authorities the ownership structure and control, as of 30 September 2013, was as follows:

| Shareholder | Share | Control |
|---|---|---|
| Modra Zavarovalnica d.d. | 21.4% | State |
| Banka Koper d.d. | 20.4% | Private |
| Cimos d.d. | 13.3% | Private |
| Kovinoplastika Lož d.d. | 13.1% | Private |
| D.S.U. d.o.o. | 6.9% | State |
| Others | 24.9% | State and private |

Source: Restructuring plan

(8) Cimos is located in an assisted area according to Article 107 (3) (c) of the TFEU.

(9) In recent years the Company has experienced significant financial difficulties. Having achieved small profits in 2011 and 2010, Cimos reported a significant net loss of EUR 97.9 million in 2012. As a result, net assets fell sharply and the debt to equity ratio increased from 4.2 in 2011 to 25.3 in 2012. Although the overall debt did not increase, the liquidity situation deteriorated as the ratio of current assets to current liabilities fell from 0.85 in 2010 to 0.54 in 2012. Selected financial data of the Company are presented in Table 1 below.

**Tab. 1** Selected financial data of Cimos Group in 2010-2012 (in EUR million)

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Sales revenue | 445.6 | 480.7 | 444.8 |
| Net loss | -97.9 | 3.4 | 4.1 |
| Net assets | 22.5 | 139.3 | 133.1 |
| Debt | 569.3 | 581.6 | 594.2 |
| Current assets | 206.7 | 265.3 | 263.5 |
| Current liabilities | 383.4 | 313.5 | 311.0 |
| Debt/Equity | 25.3 | 4.2 | 4.5 |
| Current ratio[3] | 0.54 | 0.85 | 0.85 |

Source: Consolidated financial statements for the years: 2012, 2011, 2010

(10) The financial situation of Cimos continued to be difficult in 2013. Based on the preliminary financial data as of 30 September 2013, the Company's annualised revenue was lower than in 2012 and it recorded again a significant net loss which led to a fall of net assets below zero. Cash flow from operations decreased from EUR 17.4 million in 2012 to minus EUR 25.9 million for the first three quarters of 2013.

(11) Cimos' difficulties result mainly from severe liquidity problems. In 2000-2008 the Company grew rapidly, financed primarily through external borrowings. This was followed by a decrease of demand linked to the economic crisis coupled with poor investment decisions and mismanagement. As a result, the Company has amassed considerable debt and found itself unable to refinance or settle its financial liabilities. On 15 June 2012 Cimos signed a restructuring agreement with its banks to postpone the repayment of its debt. The agreement was extended several times but the Company did not manage to regain liquidity on its own and was forced to ask for rescue aid.

(12) Cimos has also considerable trade payables which, according to Slovenia, disrupt the supply chain and would threaten the very existence of the Company if the suppliers took steps to limit their exposure.

(13) The Company is currently negotiating with the a consortium of bank creditors (the "Club Banks"), comprising of Slovenian banks which hold approximately 80% of Cimos' outstanding bank loans, a comprehensive Master Restructuring Agreement ("MRA") that is to set forth the terms and conditions of debt restructuring. According to the information provided by Slovenian authorities, seven out of eight "Club Banks" are State controlled. In parallel, Cimos is negotiating individually with bilateral lenders (the "non-Club Bank" creditors – both private and state controlled) with the intention of agreeing the same restructuring terms. Cimos initially expected that the MRA could be signed by the end of 2013. However, Slovenia informed that the Company had not reached agreement on the substantive terms of MRA yet. It did not provide any timing at all as regards the bilateral talks.

[3] Current assets/current liabilities.

### 2.2 The aid measure(s)

(14) According to the restructuring plan the State will support the restructuring by a recapitalisation in the amount of EUR 35 million through a conversion of the State's claim against Cimos resulting from the rescue aid guarantee to equity ("Measure 1").

(15) In addition to Measure 1, the plan provides for the following forms of, what is termed in the restructuring plan, "State intervention":

- the injection of fresh capital in the amount of EUR 6.5 million by two public shareholders of Cimos, namely Modra Zavarovalnica d.d. (EUR 4.915 million) and D.S.U. d.o.o. (EUR 1.585 million) ("Measure 2");

- the conversion into equity of bank loans in the envisaged amount of EUR 171 million and the deferral of repayment for 10 years of further bank loans of EUR 80-100 million (including to a large extent the debt held by State-owned banks) ("Measure 3").

(16) In addition, the amount of Measure 1 may further increase, depending on how much debt will be converted under Measure 3 on the basis of the Master Restructuring Agreement.

(17) Slovenia considers that Measures 2 and 3 do not involve State aid on the grounds of their presumed market-conformity. In view of the Commission the measures may not be market-conform and hence constitute State aid, as explained in Section 4.4.3 below.

## III. THE RESTRUCTURING PLAN

(18) According to the restructuring plan the Company's current difficult situation is a result of years of poor investment decisions and mismanagement, coupled with a downturn in the automotive market linked to the global recession. This, according to Slovenia, has resulted in a vicious circle where cash shortages have led to under-spending in key operational areas, which in turn has driven efficiency down, which further reduces the ability to generate cash. The Company's current efficiency issues stem from two key areas: supply shortages, caused by a failure to respect supplier payment terms (leading to excess production and transport costs) and underlying operational poor performance resulting in higher cost of sales.

(19) To address the above reasons for difficulty, the Company has drawn up a restructuring plan which provides for the implementation of financial and operational restructuring measures.

### 3.1 Financial restructuring

(20) According to Slovenia the realisation of the operational benefits, which is crucial for long-term existence of the Company, is predicated on a financial restructuring which comprises the measures described below.

(21) The State will convert the rescue aid guarantee of EUR 35 million into equity and two public shareholders of Cimos will subscribe additional share capital in the Company of

EUR 6.5 million (Measures 1 and 2 mentioned above). These measures are intended to improve liquidity and increase working capital.

(22) In addition, the plan envisages the restructuring and conversion of Cimos' bank debt (Measure 3 mentioned above). After the implementation of this measure the Company's debt is planned to consist of three components:

- a serviceable, sustainable "core debt" on which the Company will pay principal and interest (ca. EUR 80 million);

- a subordinated "non-core debt" on which the interest will accrue. It will, according to a proposal made by Cimos to its creditors, be settled in the form of a "bullet" repayment (principal with accrued interest) after 10 years (EUR 80-100 million);

- a remaining debt which is to be converted into equity (EUR 171 million excluding capitalisation of the rescue aid guarantee).

The measure aims to improve the Company's capital structure and is expected to decrease Cimos' finance cost and improve its creditworthiness in the eyes of customers and suppliers.

(23) Finally, the Company has begun to dispose of non-core assets in an effort to raise additional cash needed to finance the restructuring. In particular, Cimos sold its Agriculture Division for EUR 1.1 million. It also plans to sell part of the Machinery Division for EUR 0.7 million and the Energy Division which is expected to bring proceeds between EUR 10 million and EUR 30 million.

### 3.2 Operational restructuring

(24) The operational restructuring consists of the following measures: implementation of "Lean", consolidation of production capabilities, Business Unit roles and responsibilities enhancements, procurement improvement, inventory optimisation and human resource restructuring.

(25) Cimos plans to implement "Lean", which it considers as a leading practice in the automotive supply chain and a key for the running of an efficient and effective operation. The Company plans to make savings linked to four areas: reduction of scrap in the foundries, improving labour efficiency, increasing equipment productivity and educating the planning personnel. The annualised benefits are expected to be EUR 4.75 million in 2014 and EUR 9.5 million in 2015.

(26) The restructuring plan provides for the consolidation of selected production sites of the Automotive Division through relocation of production capabilities with the aim to increase the overall efficiency of operations. The savings are estimated at EUR 1.3 million per year.

(27) Under the Business Unit roles and responsibilities enhancements measure the Company intends to assign responsibility for the profitability of its projects to the Business Unit heads for the life time of the project, update the methodology and process for product costing, implement a programme that monitors product margins, enhance the existing implementation of the Advanced Product Quality Planning and initiate a Customer

Recovery Programme to inform customers of the results of the restructuring activities and rebuild trust.

(28) The Company plans, in addition, to improve procurement by negotiating with its existing suppliers to obtain volume discounts and/or switching between suppliers to secure more advantageous prices. The current liquidity problems have led many suppliers to refuse to deal with Cimos which restricted its ability to optimise costs by switching suppliers. Benefits from the improved procurement are expected to be EUR 9.2 million in 2014.

(29) Under the inventory optimisation measure Cimos plans to remove obsolete stock of raw materials, implement consignment stocking, improve management of semi-finished goods and increase inventory of finished products to safeguard customer service. This is expected to optimise and re-balance inventory and deliver savings of EUR 5.5 million.

(30) As human resource restructuring the Company plans to reduce headcount by 699 employees.

### 3.3 Overview of the restructuring costs and sources of financing

(31) The total restructuring costs of Cimos between 2013 and 2016 amount to EUR 203.1 million and consist of: (i) restoration of a "normal" working capital level (EUR 107.5 million); (ii) recovery of recent capital under-investment (EUR 55.3 million); (iii) cost of external advice on financial restructuring (EUR 10 million) and (iv) operational restructuring (EUR 30.3 million).

(32) The restructuring costs are planned to be covered from: (i) the savings from the conversion of debt to equity (EUR 70.5 million); (ii) the proceeds from sale of Energy and Agriculture Divisions (EUR 31.1 million); (iii) a revolving loan facility (EUR 60 million); (iv) the capital injection by shareholders (EUR 6.5 million) and (v) the notified State aid (EUR 35 million).

**Tab. 2** Restructuring costs and sources of financing

| **Restructuring costs** | EUR million |
|---|---|
| Restoration of a "normal" working capital level | 107.5 |
| Recovery of recent capital under-investment | 55.3 |
| External advice on financial restructuring | 10 |
| Operational restructuring | 30.3 |
| Total restructuring cost | 203.1 |
| **Sources of financing** | |
| Conversion of debt to equity (savings on interest and principle repayments) | 70.5 |
| Sale of Energy Division | 30 |
| Sale of Agriculture Division | 1.1 |
| Revolving loan facility | 60 |
| Capital injection by shareholders | 6.5 |
| Total own contribution declared by Slovenia | 168.1 |
| State aid (capitalization of State guarantee) | 35 |

Source: Restructuring plan

(33) The declared level of own contribution amounts to 82.8% of total restructuring costs.

*Restructuring costs*

(34) The Company has assessed its working capital performance by comparison with peer group companies in the automotive sector and found that it underperforms and needs to increase its working capital by EUR 29.6 million in 2013 and a further EUR 78 million in the medium term to achieve a "normal" level.

(35) The Company has reduced its capital investment considerably since 2009 when the financial crisis started to impact its business. Cimos estimates that it needs to spend EUR 25.3 million in 2013-2014 and a further EUR 30 million until 2016 to recover the under-investment and return equipment to serviceable levels. The investment is planned at a level which is necessary to achieve the financial projection targets.

(36) Cimos plans to spend EUR 10 million for external advisors to support cash flow management and financial restructuring.

(37) The Company needs EUR 30.3 million to finance the implementation of the operational restructuring measures (e.g. severance payments for redundant workers, cost of relocation of production capabilities).

*Sources of financing*

(38) The Company expects to generate a cash benefit of EUR 70.5 million between 2013 and 2016 from the debt to equity conversion thanks to a reduction of principal and interest payments. This assumes a "one year payment holiday" at the beginning of the

restructuring period (the terms of financial restructuring are subject to ongoing negotiations with the banks).

(39) The sale of Agriculture and Energy Divisions is planned to bring EUR 31.1 million (see recital 23) while the capital injection by shareholders an additional EUR 6.5 million (see recital 15).

(40) The restructuring plan does not provide details on the revolving loan facility envisaged to generate EUR 60 million of own contribution.

(41) The remaining part of the restructuring costs is to be covered from the capitalisation of State guarantee described in recital 14.

### 3.4 Restoration of long term viability

(42) The target date for the restoration of long-term viability is not explicitly set in the restructuring plan. The restructuring measures are planned to be implemented by 2016 and the financial projections cover the period until 2017. The Company has prepared financial projections under optimistic, realistic and pessimistic scenarios. The table below presents selected projected financial data under the realistic scenario.

**Tab. 3** Selected projected financial data under the realistic scenario (numbers in EUR million)

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Sales revenue | 402.3 | 384.3 | 400 | 400 | 400 |
| Net profit/loss | -28.1 | -14.4 | -7.9 | -2.3 | -1.3 |
| Cash flows (total) | -0.9[4] | -31.8 | 1.0 | 1.6 | -2.6 |
| Net assets | 17.2 | 192.0 | 184.1 | 181.7 | 180.4 |
| Return on capital | -163.1% | -7.5% | -4.3% | -1.3% | -0.7% |

Source: Restructuring plan.

### 3.5 Compensatory measures

(43) The Company has offered compensatory measures in the form of a sale of the Agriculture Division, the Energy Division and part of the Machining Division. The divestments add up to a 18% reduction of total sales. A further compensatory measure, to be introduced gradually, is the winding down of the Cross-Industry Business Unit ("CIBU") which accounts for 5% of the revenues of the Automotive Division.

## IV. ASSESSMENT OF THE AID

### 4.1 Existence of State aid

(44) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by

[4] For the second half of 2013.

favouring certain undertakings or the production of certain goods and affects trade among Member States, is incompatible with the internal market.

*Conversion of the State's claim resulting from the rescue aid guarantee to equity ("Measure 1")*

(45) The notified aid in the form of a conversion of the State guarantee into equity is to be granted by the Ministry of Finance. Therefore, it clearly involves State resources and is imputable to the State.

(46) The capital is to be provided to one specific undertaking only, i.e. Cimos. It will provide the beneficiary with additional liquidity (by releasing the Company from the obligation to repay the loans covered by the guarantee) that it would otherwise not be able to obtain on the market, given its difficult financial situation. This is confirmed by the fact that the Company is not even able to repay its current debt and must negotiate a debt restructuring agreement with the banks, let alone to raise additional capital. In view of the above, the Commission concludes that the measure provides the beneficiary with a selective advantage.

(47) Furthermore, the aid is apt to improve the competitive position of Cimos on the markets on which it operates. Those markets (automotive components, machine building and tooling, energy and agricultural machinery) are open to competition from other Member States. Therefore, it distorts or threatens to distort competition and affects trade between Member States.

(48) On the basis of the above, the Commission concludes that the notified measure constitutes State aid pursuant to Article 107(1) TFEU. The Slovenian authorities do not dispute the classification of the measure (conversion of the State guarantee into equity) as State aid.

*Capital injection in the amount of EUR 6.5 million by two public shareholders of Cimos ("Measure 2")*

(49) Another State intervention envisaged in the restructuring plan is the injection of fresh capital in the amount of EUR 6.5 million by two public shareholders of Cimos, namely Modra Zavarovalnica d.d. (EUR 4.915 million) and D.S.U. d.o.o. (EUR 1.585 million).

(50) Both Modra Zavarovalnica d.d. and D.S.U. d.o.o., are 100% owned by the State and the restructuring plan confirms that they are both "*publicly controlled entities*"[5]. In addition, the Commission has already held in previous decisions[6] that the actions of the various Slovenian state funds, including D.S.U. d.o.o., are imputable to the State. This finding was based i.a. on state-ownership and control. As these arguments also seem to be valid in this case and since the Slovenian authorities have not replied to the request to substantiate their claim that Measure 2 does not involve State aid, the Commission considers on a

[5] See e.g. page 75 of the restructuring plan.

[6] Commission Decision of 19 September 2012 in the case SA.26379 (C13/2010) (ex NN 17/2010) – Alleged aid to Elan, not yet published, as well as Commission Decision of 20 November 2012 in the case SA.32715 (2012/C) (ex 2012/NN) – Alleged aid to Adria Airways, OJ C 69/04, 08.03.2013.

preliminary basis that the recapitalisation by Modra Zavarovalnica d.d. and D.S.U. d.o.o. could be imputable to the State and thus involve State resources.

(51) The capital injection is provided directly to Cimos only and is thus clearly selective. Slovenia argues that the capital increase does not provide any advantage to Cimos since it can be considered to be taken on a commercial basis in light of the economically less advantageous alternative scenarios. However, the Commission has at this stage doubts about validity of this argumentation based on the market economy investor principle. First, Slovenia has provided no details about the comparison of alternative scenarios and their respective economic advantages for the public shareholders. Second, no existing private shareholders will participate in this recapitalisation. Third, the justification provided by Slovenia does not take into account that the behaviour of a hypothetical private investor could have been influenced by the perspective of Cimos being granted State aid (Measure 1).

(52) Finally, the capital increase is apt to improve the competitive position of Cimos on the markets that are open to competition from other Member States. Therefore, it distorts or threatens to distort competition and affects trade between Member States.

(53) In view of the above, the Commission at this stage considers that, despite the claims of the Slovenian authorities, Measure 2 may involve State aid in addition to the notified aid (Measure 1).

*Restructuring and conversion of Cimos' bank debt ("Measure 3")*

(54) The conversion into equity and the deferral of repayment for 10 years of part of Cimos' bank loans ("Measure 3") constitutes additional possible public intervention. Seven out of in total eight banks of the "Club Bank" are State-controlled and they account for more than EUR 250 million of the outstanding debt amount (i.e. more than 90% of the total outstanding amount of all the Club Banks).

(55) In the Adria Airways case[7], the Commission raised doubts about the imputability of the actions of such State-controlled banks to the Slovenian State on the basis of their ownership and decision-making structure. In the present case, the Commission does not have all the information necessary to assess the possible indicators of imputability, as defined by the case law (see in particular the Stardust Marine judgment[8]). Slovenia did not reply to the Commission's request to substantiate its claim that Measure 3 does not involve State aid. Nevertheless, on the basis of the information available, and in particular the ownership structure and governance of the banks concerned[9] and the fact that the

7 Commission Decision of 20 November 2012 in the case SA.32715 (2012/C) (ex 2012/NN) – Alleged aid to Adria Airways, OJ C 69/04, 08.03.2013.

8 Case C-482/99 French Republic v Commission (Stardust Marine) [2002] ECR I-4397.

9 For example, a State Secretary at the Ministry of Finance serves as a non-executive director at the Board of Directors of DUTB with more than EUR 64 million outstanding debt (see http://www.dutb.eu/en/about-us/organisation); further another Club Bank member SID with more than EUR 65 million outstanding debt operates as export-credit bank and as authorized Slovene export-credit agency with the Slovenian State as the sole shareholder (http://www.sid.si/about-sid-bank/General-information).

Slovenian State participates in the negotiations with the Club Banks[10], the imputability of their actions to the State in the present case cannot be excluded. Slovenia is invited to provide the necessary justification, if it considers otherwise.

(56) The debt restructuring and conversion relates to Cimos only and is thus clearly selective. Slovenia argues that the capital increase does not provide any advantage to Cimos since the participation of the banks complies with the market economy creditor test[11] and is on *pari passu* terms. However, the Commission has at this stage doubts about validity of this argumentation based on the market economy investor principle. Slovenia does not take into account the fact that there is only one private bank among the eight Club Banks, with less than 10% of the total Club Banks outstanding debt. Its participation thus cannot be considered as significant from the perspective of *pari passu* assessment. Further, its willingness to participate in the restructuring may be influenced not only by the perspective of Cimos being granted restructuring aid (Measure 1) but also by the significant participation of public creditors and shareholders under Measures 2 and 3. The link between Measure 3 and Measure 1 is also apparent from the fact that, as indicated in the restructuring plan, the ultimate amount of Measure 1 depends on how much debt will be converted under Measure 3. Finally, Slovenia does not clarify how the recovery amounts in case of restructuring and liquidation were estimated. In view of the above, the Commission has doubts that Measure 3 can be considered as not constituting aid on the basis of the market economy creditor principle.

(57) Finally, the debt restructuring and conversion is apt to improve the competitive position of Cimos on the markets that are open to competition from other Member States. Therefore, it distorts or threatens to distort competition and affects trade between Member States.

(58) In view of the above, the Commission at this stage considers that, despite the claims of the Slovenian authorities, Measure 3 may involve State aid in addition to the notified aid (Measure 1).

*Legal basis for the assessment of the compatibility of aid*

(59) Article 107 (3) (c) TFEU provides that State aid can be authorised where it is granted to promote the development of certain economic sectors and where this aid does not adversely affect trading conditions to an extent contrary to the common interest.

(60) The Slovenian authorities have notified the measures as restructuring aid under the Rescue and Restructuring Aid Guidelines[12] ("the Guidelines"). In view of the previous Commission decision concerning the rescue aid to Cimos and the financial difficulty of Cimos described below, the Commission agrees that the present case involves a restructuring aid which must be assessed in the light of the criteria under the Guidelines in order to establish whether it may be compatible with the internal market pursuant to Article 107 (3) (c) TFEU.

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[10] See letter of the Slovenian authorities of 6 February 2014.

[11] Slovenia estimates that the banks would recover approximately 50c per 1 EUR in case of a successful restructuring of Cimos vs. 17c per 1 EUR in case of a liquidation.

[12] Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p.2.

## 4.2 Legality of restructuring aid

(61) In accordance with Article 3 of Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty[13], aid shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid ("standstill obligation").

(62) According to the restructuring plan the conversion of the State guarantee to equity was planned in early 2014. According to the Commission's knowledge, however, no restructuring aid has been granted to Cimos to date. Therefore, it appears that Slovenia has complied with the standstill obligation so far.

## 4.3 Eligibility of the restructuring aid

### 4.3.1 Company in difficulty

(63) According to points 12(a) and 14 of the Guidelines only firms in difficulty are eligible for restructuring aid. In order to qualify as a firm in difficulty the company must fulfil the criteria listed in point 10 or point 11 of the Guidelines.

(64) Under point 10, a firm is considered to be in difficulty when:

(a) in the case of a limited liability company, more than half of its 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 a company where at least some members have unlimited liability for the debt of the company, more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

(c) whatever type of company concerned, it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(65) The Commission observes that Cimos, being a limited liability company, fulfils the criteria listed in point 10(a) of the Guidelines. According to the consolidated financial statements as of 31 December 2012, it has lost more than half of its registered capital (108%) and more than one quarter thereof over the preceding 12 months (137%)[14]. Therefore the Commission considers that Cimos qualifies as a firm in difficulty based on point 10(a) of the Guidelines.

(66) According to point 12 of the Guidelines, newly created firms are not eligible for rescue or restructuring aid. A firm is in principle considered as newly created for the first three years following the start of operations in the relevant field of activities. Cimos started

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13 OJ L 83, 27.3.1999, p.1 with further amendments.

14 The loss of capital over the preceding 12 months is bigger than the total loss of capital because Cimos reported accumulated profits in the past.

operations in 1972, was registered in its present form in 1975 and has been operating in the current field of activities ever since. Therefore it cannot be considered as a newly created firm.

(67) Point 13 of the 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.

(68) Cimos does not belong or is not being taken over by a larger business group. Therefore the criteria set out in Point 13 of the Guidelines do not preclude it from being eligible for restructuring aid.

(69) On the basis of the above, the Commission concludes that Cimos is a firm in difficulty and is eligible for restructuring aid.

#### 4.3.2 The 'one time, last time' principle

(70) According to point 73 of the Guidelines, if the firm concerned has already received rescue or restructuring aid in the past, including any un-notified aid, and where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted (whichever is the latest), the Commission will not allow further rescue or restructuring aid.

(71) Slovenia informed the Commission that the Company did not receive any rescue or restructuring aid in the last ten years, apart from the notified rescue aid approved by the Commission (see recital 1).

### 4.4 Compatibility of the restructuring aid

#### 4.4.1 Restoration of long-term viability

(72) In order to consider a measure compatible under points 34-37 of the Guidelines, the restructuring plan must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. The plan should enable the company to cover all its costs, including depreciation and financial charges, after restructuring and the expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits. The Commission has identified the following issues that cast doubts on the fulfilment of these conditions by Cimos.

(73) The restructuring plan does not explicitly set a target date for the restoration of long-term viability (restructuring measures are to be implemented by 2016). According to the financial projections, under the realistic scenario, Cimos is forecasted to generate net losses in the whole projection horizon and a negative total cash flows in 2013, 2014 and 2017 (the last year of the projection, i.e. after the end of the restructuring). On the basis of

these projections the Company will not be able to cover all its costs after restructuring. Cimos is also forecasted to record a negative return on capital (net profit/equity) in the whole projection horizon. This cannot be considered enough to enable the Company to compete on the marketplace on its own merits. In view of the foregoing it is doubtful that the plan will restore the long-term viability of the Company.

(74) Restoration of viability is based on the assumption that the banks will agree to restructuring and converting to equity EUR 171 million of Cimos' debt and to a deferral and "bullet" repayment of a further EUR 80-100 million of debt after 10 years. However, the MRA setting out conditions of such debt restructuring has not been agreed yet. Even though it was planned to be signed by end 2013, the Slovenian authorities stated in their letter of 6 February 2014 that despite on-going negotiations the Club Bank creditors, the shareholders, the Slovenian State and Cimos have not yet reached an agreement on the substantive terms of the MRA. As acknowledged in the restructuring plan, it is still uncertain to what extent and under which conditions the banks will agree to the debt restructuring. Therefore, at this stage it is doubtful that the assumptions of the restructuring plan concerning the debt restructuring are realistic.

(75) With regard to the deferral and "bullet" repayment of EUR 80-100 million of debt with accrued interest after 10 years, even assuming that such deferral is agreed with the banks, it is not clear on what basis Slovenia considers that Cimos will be able to repay this liability. The financial projections cover only the period until 2017 and do not take into account the financial impact of the repayment. Slovenia is invited to demonstrate with quantitative evidence that Cimos will be able to repay the deferred debt with accrued interest (e.g by duly extending the horizon of the financial projections or by amortizing an attributable part of the liability in each financial year under the current projections) and still remain viable.

(76) According to the plan, if the restructuring is successfully implemented, the exit value of the banks would be approximately 50c per 1 EUR. Whereas a partial haircut of the debt does not rule out restoration of long-term viability, in view of the on-going negotiations with the banks, the expectation that the latter will only recover 50% of their debt, even after a successful restructuring, casts further doubt on the assumption that the lenders will agree to the debt restructuring terms underlying the restructuring plan.

(77) Further, according to the A&M Cimos Group Independent Business Review[15] ("A&M Review") the above financial measures are insufficient to turn the Company around as significant cash is required to finance upfront investments and expenses associated with the implementation of the Group's operational turnaround program. According to the A&M Review, a new super-senior debt financing should be sought to provide the short-term liquidity enabling the Group to improve operations, generate operating cash flow and service remaining (post-restructuring) debt. This apparent lack of sufficient financing casts further doubts on the capacity of the restructuring plan to restore long-term viability of Cimos.

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[15] The A&M Cimos Group Independent Business Review dated 28 October 2013 was prepared by Cimos' advisor Alvarez & Marsal to assist the Company in negotiating a restructuring deal with creditors.

(78) In parallel to the MRA, Cimos is negotiating individually with bilateral lenders ("Non-Club Bank" creditors) with the intention to agree on the same restructuring terms as with the "Club Bank" creditors. Slovenia anticipates that over 50% of the bilateral banks will accept the restructuring. It is not clear what the status of the negotiations is, what the financial impact of this restructuring would be and whether it has been accounted for in the financial projections. If not, restoration of long-term viability would be in further doubt as the bilateral talks appear to be even less advanced than the negotiations of the MRA.

(79) The financial projection under the realistic scenario assumes that EUR 30 million will be generated in 2014 from the sale of *Litostroj Power* (Cimos' Energy Division). Elsewhere in the restructuring plan the proceeds from this sale are estimated at EUR 10-30 million. The assumption of the upper value in the projection has not been justified. Slovenia is invited to substantiate this assumption and provide an update on the sale process which was planned to be concluded by March 2014.

(80) Finally, the cost and estimated financial impact of some of the operational restructuring measures is not clear. In particular, the financial impact of the human resource restructuring measures, consolidation of production of casting alloys as well as the business unit roles and responsibilities enhancements is not provided in the plan. It is thus not possible to verify all the assumptions underlying the measures concerned.

(81) In view of the above, the Commission has doubts that the notified restructuring plan will restore the long-term viability of the Company.

#### 4.4.2 Avoidance of undue distortions of competition

(82) Pursuant to points 38-42 of the Guidelines, measures must be taken to ensure that the aid's adverse effects on trading conditions are mitigated as far as possible. The aid shall not unduly distort competition. The measures may comprise divestments of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned. The closure of loss-making activities cannot be considered as valid compensatory measures. Moreover, according to point 7 of the Guidelines the Commission will request compensatory measures which minimise the effect on competitors.

(83) Slovenia submits that the restructuring aid for Cimos may be approved without compensatory measures as Cimos' market share is small to negligible and the Company is located in an assisted area. The Slovenian authorities base this argument on the claim that the share of Cimos' sales on the overall European automotive supplier market is approximately 0.5%.

(84) The Commission notes, however, that Cimos' market share, according to Slovenia's estimate provided in the notification of the rescue aid to Cimos, is up to 20-33% for central and turbo housing components and up to 15% for other product families[16]. Such market shares cannot be considered as negligible.

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[16] See recital 36 of the Rescue Aid Decision.

(85) In addition, the Commission cannot accept market shares calculation based on a market definition which would comprise of the overall European automotive supplier market irrespective of the products supplied. It is a standard practice of the Commission to distinguish various separate markets for automotive parts taking into account the purpose and technical characteristics of the products concerned and the resulting supply and demand substitutability[17].

(86) The Commission further notes that whereas according to point 56 of the Guidelines, the conditions for authorising aid are less stringent as regards the implementation of compensatory measures in assisted areas, they are still applicable, even if the needs of regional development are considered.

(87) Therefore, the Commission considers that compensatory measures are necessary and that they should be appropriate to mitigate the adverse effects of the aid.

(88) The Company has offered compensatory measures in the form a sale of the Agriculture Division, the Energy Division and part of the Machining Division. The divestments add up to a 18% reduction of total sales. A further compensatory measure, to be introduced gradually, is the winding down of the Cross-Industry Business Unit ("CIBU") which accounts for 5% of the revenues of the Automotive Division.

(89) According to the case law, only compensatory measures which affect the beneficiary's presence on the main market can be considered sufficient[18]. In addition, the Guidelines in point 40 provide that compensatory measures should take place in the market(s) where the firm will have a significant position after restructuring. From the proposed compensatory measures only the winding down of CIBU appears to be potentially related to the main market. On the other hand, according to the restructuring plan, CIBU manufactures products for non-automotive applications, such as drain covers and parasol bases. Therefore its association with the main market is questionable. Slovenia is invited to justify why it considers CIBU to be related to Cimos' main market and provide the precise schedule of its envisaged gradual closure.

(90) In addition, the closure of loss-making activities cannot be considered a reduction of capacity or market presence for the purpose of the assessment of the compensatory measures. In this context it is noted that Slovenia has not provided information on the profitability of CIBU while the Agriculture Division recorded a net loss of –EUR 800k in 2012. Therefore, Slovenia should provide the relevant profitability data and justify (if necessary) that the activities concerned were not loss-making prior to restructuring.

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17 See e.g. numerous merger decisions of the Commission concerning various automotive parts manufacturers (from recent decisions see e.g. Case No COMP/M.6876 – Sumitomo Electric Industries/ Anvis Group (anti-vibration systems), Case No COMP/M.6748 - MAGNA/ IXETIC (vacuum pumps and transmission oil pumps), Case No COMP/M.6207 – GESTAMP/ TKMF (structural chassis assemblies, foot controls, hinge systems) and many others).

18 Joined cases T-115/09 and T-116/09 *Electrolux AB and Whirlpool Europe BV v. Commission* (FagorBrandt) [2012] ECR II-000.

### 4.4.3 Aid limited to the minimum, own contribution

(91) According to points 43-45 of the Guidelines, the aid must be limited to the strict minimum, necessary to enable the restructuring. The beneficiary is expected to make a significant contribution to the restructuring plan from its own resources, including the sale of assets not essential to the company's survival, or from external financing at market conditions. Such contribution must be real, i.e. actual, excluding all future profits such as cash flow and is a sign that the markets believe in the feasibility of the return to viability of the company. For a large enterprises, such as Cimos, the share of own contribution must be at least 50% of restructuring cost.

(92) Cimos' declared that its own contribution accounts for 82.8% of the total restructuring cost and consists of the following sources:

| | Source | Amount, mEUR |
|---|---|---|
| (a) | Recapitalisation of existing debt ("Measure 3") | 70.5 |
| (b) | Revolving loan facility | 60 |
| (c) | Sale of the Energy Division | 30 |
| (d) | Recapitalisation by public shareholders ("Measure 2") | 6.5 |
| (e) | Sale of the Agriculture Division | 1.1 |
| | Total declared own contribution (% of restructuring cost) | 168.1 (82.8%) |
| | State aid (% of restructuring cost) | 35 (17.2%) |

(93) With regard to the recapitalisation of existing debt, the amount of EUR 70.5 million represents the expected cash benefit to Cimos between 2013 and 2016 from the reduction in principal and interest payments due to implementation of the financial restructuring measures and assuming a "one year payment holiday". On the basis of the information available so far, it is questionable whether this can be considered as a valid source of own contribution. First, the potential benefit is not "real, i.e. actual" as it may be realised only in the future. Secondly, the potential benefit is estimated on the assumption that the banks will agree on the restructuring terms outlined in the plan. This is far from certain, given that no agreement has been reached so far and that the negotiations are already behind schedule. In addition, it is not clear how the amount of EUR 70.5 million has been determined.

(94) In addition, the recapitalisation appears questionable as a source of an own contribution to the extent that it may involve State aid (see above Section 4.1).

(95) Concerning the revolving loan facility, there is no information in the restructuring plan and Slovenia has not replied to the Commission's request for explanation in this respect. Consequently, there is no evidence to assess the validity of this source of an own contribution.

(96) With regard to the sale of the Energy Division, Slovenia has informed that three bidders are negotiating with Cimos and that a closure of the transaction is expected in March 2014. This is not a sufficient evidence to consider the proceeds from the sale of the Energy Division as a real source of own contribution, especially given that the use of cash

proceeds from the sales of non-core businesses by the Company to fund operations appears not to have been agreed by the secured lenders[19]. In addition, the proceeds from the sales may be overestimated, as explained in recital 69 above. In order to take the proceeds of the sales into account as own contribution, Slovenia should provide more reliable evidence, e.g. a signed sales agreement or a valuation by an independent expert.

(97) On the other hand, the proceeds from the sale of CIBU and the Machine Division could potentially also be considered as an own contribution which would again require that Slovenia provides reliable evidence, e.g. a signed sales agreement or a valuation by an independent expert.

(98) Regarding the recapitalisation by the public shareholders, Modra Zavarovalnica d.d. and D.S.U. d.o.o. (Measure 2), it cannot be excluded that it may also involve State aid (see Section 4.1).

(99) In view of the above, at this stage the Commission considers that the only clearly acceptable own contribution are the proceeds from the sale of the Agriculture Division in the amount of EUR 1.1 million which constitute only 0.5% of the notified restructuring cost of 203.1 million.

(100) The aid amount of EUR 35 million notified by Slovenia consists of the recapitalisation of the rescue aid. Nevertheless, in the event that Measures 2 and (partly) 3 also constituted State aid (as discussed above), the aid amount would increase to more than EUR 200 million which would substantially increase the amount of the required own contribution and the scale of compensatory measures that would be necessary for the aid to be assessed as compatible.

(101) For the reasons stated above, the Commission has doubts whether Cimos has provided a sufficient own contribution to the restructuring costs as required in point 44 of the Guidelines. It invites the interested third parties to provide comments in this regard.

(102) For the reasons stated above, at this stage of the investigation, the Commission has doubts about the compatibility of the notified measure with the internal market and invites Slovenia and all interested parties to submit their comments. The Commission in particular invites Slovenia and interested parties to submit comments as regards the State aid classification of the recapitalisation of Cimos by its two public shareholders (Measure 2) and the restructuring and conversion of bank debt, including debt held by State-owned banks (Measure 3).

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests Slovenia to submit its comments and to provide all such information as may help to assess the compatibility with State aid rules of the measures at stake, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

[19] The A&M Review (page 13).

The Commission wishes to remind Slovenia that Article 108(3) of the TFEU has suspensive effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Slovenia that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries that are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information that should not be published, 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 publication of the full text of the letter.

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

European Commission
Directorate-General for Competition
B-1049 Brussels

Fax No: +0032 (0) 2 2961242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission