



EUROPEAN COMMISSION

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Subject: State aid No N 584/2004 – Lithuania – Restructuring aid in favor of AB Vingriai

Sir, /Madam***,

1. Procedure:

- (1) By letter dated 14 December 2004, registered by the Commission on 17 December 2004 Lithuania notified its intention to grant restructuring aid to the company AB Vingriai. On 21 December 2004 the Commission requested further information to which the Lithuanian authorities replied by letter dated 26 January 2005, registered on 31 January 2005. On 1 February 2005 the Commission requested additional information to which the Lithuanian authorities replied on 4 February 2004. Finally, on 11 March 2005 the Commission requested further information to which the Lithuanian authorities replied by letters of 5 April 2005 and of 19 April 2005, respectively registered on 7 April 2005 and on 21 April 2005.

2. Detailed description of the aid

The beneficiary

- (2) AB Vingriai, former Vilnius State Machine-Building Plant, was privatized in 1995. In 1998, it bought a majority stake in the newly privatised AB Slifavimo. It is the only metal-cutting machine-tools plant in Lithuania and one of the remaining producers among metal-cutting machine-tools manufacturers in Eastern Europe.

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- (3) In 2003 the number of employees was 240. In recent years the annual turnover fluctuated between LTL 6 and 12 million (€1.7 to 3.5 million)¹. The Lithuanian authorities therefore consider the company as an SME. However, two other undertakings, HIC Hermis investicija and HIC Hermis alfa, which qualify as institutional investors under local legislation and which are linked to each other as the former holds 76% of the shares of the latter, hold together a majority stake in AB Vingriai and in other companies². All these companies constitute a group of linked companies within the meaning of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises³ (hereafter “the Recommendation”), because there is no indication that the majority stakes held by the two aforementioned companies do not allow them to control the majority of the shareholders voting rights (see in particular Article 3 (2) and (3) of the Annex to the Recommendation). As this group of linked companies has 430 employees, it exceeds the thresholds provided by the Recommendation and therefore constitutes a large undertaking (see in particular Article 2 (1) of the Annex to the Recommendation).

The markets

- (4) AB Vingriai markets two main lines of products. Firstly, half of the firm’s turnover stems from the production of cheap universal metal-cutting machine-tools (mainly universal milling machines for tool-room production and grinding machines for tool-room production). A large part of this production is exported, mainly to Western Europe and to countries of the former Soviet Union. On the European market for metal-cutting machine-tools, AB Vingriai holds a market share of less than 0.01%. This industry is suffering from overcapacity.
- (5) Secondly, the company produces vacuum metallization chambers’ parts. This activity accounts for the other half of the turnover. The production is exported in full to a single client, namely L&M International, which is an Israeli subsidiary of the US semiconductors’ producer Applied Materials Inc. AB Vingriai is the only producer of such products in Lithuania. In the European Union, the company does not have direct competitors due to the reason that it does not sell this product on the Community market. At the export level, AB Vingriai has not been facing direct competition from other European producers as it was the only exporter of such products to Israel. Over several years, AB Vingriai holds 13.5% of total EU external export share of this very specialized product, categorized as *parts of apparatus for chemical vapour deposition on LCD substrates*⁴. There is no data available on the production capacity and demand of this product at Community level. The Lithuanian authorities assert that “it can be clearly stated that manufacturing of parts of apparatus for chemical vapour deposition on LCD substrates in the EU does not have excess capacity”. The Commission agrees with this assertion. At the world level, AB Vingriai holds a market share of less than 0.1%.

¹ Exchange rate of 22 February 2005: 1 EUR = 3.45 LTL

² AB Akvilegija: 10 employees, AB Rokiskio machine plant: 120 employees, AB Ukmerges biofabrikas: 50 employees. HIC Hermis Investicija and HIC Hermis alfa employ each 4 persons.

³ OJ L 124, 20.5.2003, p. 36

⁴ Unified code 84199050 of the combined nomenclature

The restructuring since 1999

- (6) AB Vingriai inherited excessive workforce and debts from the period when it was State owned and Lithuania was in transition from a planned economy to a market economy. During this period, the company lost all its markets in the former Soviet Union. It had to reorganize its business completely and to adapt to new market conditions. From 1999, in order to avoid bankruptcy, AB Vingriai started a deed financial and operational restructuring. On the operational side, the workforce was reduced from 1900 in 1999 to the current figure of 240. On the financial side, in order to have new resources at its disposal the company sold in 1999 its buildings located in Vilnius. In addition, in 2002 and 2003, it benefited from fiscal and social security debts waivers amounting to LTL 8.7 million (€2.5 million), plus a six year tax deferral of LTL 5.2 million (€1.5 million). The company pays interests on the latter tax loan and also provided some securities to the State as collateral.
- (7) The Commission's Progress Report on Lithuania⁵ of 13 October 1999 indicates, within its section 2.4 "General Evaluation", that "Lithuania has continued to make progress in establishing a functioning market economy and is on the way to being able to cope with competitive pressure and market forces within the Union in the medium term, provided it completes the remaining reform agenda." It follows from this report that when AB Vingriai started its restructuring in 1999, the Lithuanian economy could not be regarded as a functioning market economy yet.

The two aid measures notified

- (8) Today, the company still needs to reimburse several debts to the State. Among the latter, the notified aid would consist in the waiver of two overdue debts, one which follows from a bad investment made by AB Vingriai in 1993 when the company was still State owned. The other consists in a fine imposed by the Social Security Insurance fund at the time, between 1992 and 1998, when the markets of the company broke down and it was unable to pay salaries and joint social taxes (3300 employees in 1992). These two measures would represent an aid of LTL 7 million (€2 million). If the Commission authorises the aid, the State will stop requesting the reimbursement of these two overdue debts, but the waiver will become irrevocable only at the end of the restructuring period, if the company has fulfilled its obligation following from the restructuring plan.

3. Assessment of the measures

Existence of aid

- (9) Firstly, the two measures concerned constitute a waiver of debts by the State. The latter will therefore lose resources in favour of AB Vingriai which will not have to repay these debts. Secondly, the measure is reserved to AB Vingriai and

⁵ 1999 Regular Report from the Commission on Lithuania's Progress towards Accession, 13.10.1999, http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/lithuania_en.pdf

will allow it to have more financial means at its disposal. Thirdly, AB Vingriai will be able to use this selective advantage to distort competition by remaining on the market and quoting lower prices for instance. Fourthly, the company operates on two markets where there is trade between Member States. The two measures qualify as State aid within the meaning of Article 87 (1), which is not contested by Lithuania. Similarly, the fiscal and social debts waivers and the tax deferral granted in 2002 and 2003 (see point 19 above) were also State aid although not applicable after Accession.

Legal basis for the assessment

- (10) As the firm is in difficulties and its very existence is in danger, the aid can only be considered compatible on the basis of Article 87 (3) (c) and this if the conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁶ (here after “the Guidelines”) are respected. In the next sections the Commission therefore analyses the two measures on the basis of the Guidelines, after clarifications about the perimeter of the analysis.

Size of AB Vingriai and limitation of the perimeter of analysis

- (11) Since AB Vingriai belongs to a group of linked companies which exceeds the thresholds foreseen in the Recommendation, the rules for large undertakings laid down in the Guidelines apply.
- (12) Although belonging to a group of linked companies, AB Vingriai is in itself eligible to restructuring aid. Firstly, AB Vingriai accounts for the largest part of the group of linked companies (240 employees out of 430). Secondly, it looks independently managed from the other companies belonging to its two majority shareholders. Thirdly, AB Vingriai looks large compared to the very limited size of its two majority shareholders (8 employees in total). In this respect, the Commission notes that AB Aleksoto stiklo fabrikas, a company in which AB Vingriai’s two majority shareholders held an important participation, went recently bankrupt, without benefiting of support from the latter. These elements indicate that AB Vingriai’s difficulties are intrinsic and 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 in line with point 13 of the Guidelines.

Eligibility

- (13) The firm fulfils the criteria under domestic law for being subject of collective insolvency proceedings. This follows from the fact that the company has a lot of overdue liabilities (mainly fiscal and social security debt) in comparison with its assets. The company therefore satisfies the eligibility criteria laid down in point 10 (c) of the Guidelines

⁶ OJ C 244, 1.10.2004, p. 2

Restoration of long-term viability

- (14) Given the dramatic workforce reduction in the previous years, the company is now efficiently organised and no additional operational restructuring is planned in the notified restructuring plan. The recovery should derive, on the one hand, from the financial restructuring – the aid currently examined and the sales of some fixed tangible assets representing LTL 1.8 millions (€0.5 million) – and, on the other hand, from an increase of the sales. According to the restructuring plan, the latter increase should follow from the growth of the semiconductors' market in line with the forecasts of “Gartner Dataquest”. Consecutively, the sales of vacuum metallization chambers' parts to L&M International should develop. This single client should represent up to 70% of the total sales of the company in the next years, from 50% today.
- (15) As it hinges on one category of products sold to one client, the restructuring plan is highly risky. At the same time it relies on market forecasts coming from a third party. The Commission therefore considers that it is able to restore the long term viability of the company in line with points 35 to 37 of the Guidelines.

Avoidance of undue distortions of competition (points 38 to 40 of the Guidelines)

- (16) The notification form does not contain any proposal for compensatory measures. However, the absence of such measures can exceptionally be accepted in the current case given the conjunction of the three following elements. Firstly, as previously indicated, the company has a totally negligible market share on the two markets where it is present. Therefore, the competitors will not be hurt by the distortion created by the aid. Secondly, since the beginning of the restructuring in 1999, the company has reduced its workforce from 1900 to 240. Even if it could have been justified by the mere necessity to save the company, such a reduction, because it concerns more than 85% of the employees – percentage which is far above the size usually observed in the cases analysed by the Commission and which represents the vast majority of the workforce -, also represents a proportionally significant contribution from the company to the reduction of overcapacity on the European market for metal-cutting machine-tools Thirdly the company is installed in an area eligible for regional aid under Article 87 (3) (a). This regional consideration (point 56 of the Guidelines) incites the Commission to accept less compensatory measures, as the on going restructuring has already led to job losses amounting to nearly 90% of the employees.
- (17) In order to ensure that potential additional aid will not lead to a distortion of competition of an extend contrary to the common interest, the Lithuanian authorities have committed not to grant any other types of aid to AB Vingriai during the next five years, in line with points 46 (c) of the Guidelines.

Aid limited to the minimum: real contribution, free of aid

- (18) The notified restructuring plan indicates that the company will sell some fixed assets (buildings and land) which are not used in the framework of its main

activities, representing an amount of LTL 1.8 million (€ 0.5 million). This private contribution will account for 20% of the financial means collected in the framework of the notified restructuring plan, the remaining 80% being the two aid measures. However, when considering the whole restructuring period from 1999 to the end of the notified restructuring plan, the private contribution amounts to 46%⁷. The minimum intensity of 50% required by the Guidelines is not reached but the small gap can be accepted as the firm is located in an 87 (3) (a) region (see point 43 and 44 of the Guidelines read in conjunction with point 56). It is also clear that the aid does not provide the company with extra-cash (see point 45 of the Guidelines).

Full implementation of the restructuring plan and Monitoring

- (19) The Commission notes that Lithuania has committed to monitor the correct implementation of the restructuring plan (see point 47 of the Guidelines) and to submit monitoring reports to the Commission (see point 49 and 50 of the Guidelines).

'One time, last time' principle (points 72 and ss of the Guidelines)

- (20) In its current assessment, the Commission considers that both the restructuring – including the granting of aid - that took place between 1999 and today and the restructuring plan notified by Lithuania - which spreads until the end of 2009 - constitute parts of the same and single restructuring. The Commission usually does not accept to consider such a long period as one single restructuring. If it would be the case, it could deprive the “one time, last time” principle of its useful effect. However, in the current case the Commission has found a conjunction of exceptional circumstances justifying that operations realised since as far as in 1999 should be seen as being parts of the same restructuring as the notified measures. Firstly, as already mentioned, when the restructuring started in 1999, Lithuania could not yet be considered as a functioning market economy. Secondly, the two overdue debts which could be waived and constitute the aid currently examined directly find their origin in this period before 1999 when Lithuania was not yet a market economy. In other words, the current insupportable debt burden on AB Vingriai is inherited from this period. Thirdly, and very importantly, the workforce reduction that took place over these years, decreasing the number of employees by nearly 90%, is extreme and far above the size usually observed in the cases analysed by the Commission. Such a dramatic operational restructuring justifies accepting a longer restructuring period.
- (21) Concerning the potential future application of the “one time, last time principle”, the Commission wishes to underline that these exceptional circumstances, which lead to consider the period between 1999 and the end of the notified restructuring plan as one single restructuring, are fully integrated in the current assessment, including in the assessment of the amount of aid.

⁷ This percentage includes the following amounts (all figures in LTL million)

Private contribution: Sales of fixed tangible assets to UAB in 1999 : 14.4, Sales of other fixed tangible assets in 1999: 1.67, Additional sales of fixed tangible assets foreseen in the restructuring plan: 1.8
State aid: Write off of Social Security debt in 2002: 1.0, Write off of Vilnius State Tax in 2003: 3.79 + 3.83, Tax deferral in 2003: 5.17, State debt waivers foreseen in the restructuring plan: 3.0 + 4.0

Consequently, they could not justify any prolongation of the restructuring beyond the dates included in the notified plan or the granting of any additional rescue or restructuring aid.

- (22) In addition, the Commission wishes to underline the following. As already indicated in the analysis of the restoration of long term viability, the restructuring plan, since it relies on the development of the sales of a single category of products to be sold to a single client, is intrinsically risky. The company consciously follows this high risk strategy and is responsible for not diversifying its risk. Consecutively, it is clear that the unfavourable development of the sales to that client, of the situation of that client, or of the market on which the latter is present, can not in the future be considered as “unforeseeable circumstances for which the company is not responsible” within the meaning of point 73 of the Guidelines.

4. Decision.

As it fulfils the criteria laid down in the Guidelines, the Commission has decided to consider the aid to be compatible with the EC Treaty on the basis of Article 87 (3) (c).

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Yours faithfully,
For the Commission

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