



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION DECISION

of 11.III.2008

amending Commission Decision of 10 May 2007

on the measures No C 1/2006 (ex NN 103/2005)

implemented by Spain

for Chupa Chups

(Only the Spanish version is authentic)

(Text with EEA relevance)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1) (a) thereof,

Having regard to the Community Guidelines for rescuing and restructuring firms in difficulty¹,

Whereas:

- (1) The Commission adopted a decision on 10 May 2007 on the measures No C 1/2006 (ex NN 103/2005) implemented by Spain for Chupa Chups².
- (2) Following an application introduced by Chupa Chups S.A. (hereinafter "Chupa Chups") before the Court of First Instance of the European Communities against the decision in question, the Commission came to the conclusion that it committed an error of appreciation as regards one part of measure 4 consisting of EUR 800.000 granted in 2003 under a regional scheme.

¹ OJ C 288, 9.10.1999, p. 2-18.

² OJ L 244, 19.09.2007, p. 20. Notified on 11.05.2007 with the number C(2007) 1710.

- (3) In point 43 of the appealed decision, the Commission noted that the regional aid scheme could not apply to companies in difficulties. Further to the heavy losses incurred by Chupa Chups in 2002 (EUR 22.078 million, corresponding to 86,5% of the capital subscribed at the end of the financial year) and its performance during 2003, the Commission considered that Chupa Chups had to be regarded as a company in difficulties at the time the aid was granted. The Commission concluded that this part of the aid was thus incompatible with the common market and could therefore not be implemented.
- (4) Now on the contrary, the Commission notes that the EUR 800 000 in regional aid granted in 2003 under "Minería 2" is an approved aid scheme³. Furthermore, contrary to its first assessment at the initiation of the formal investigation procedure, the Commission considers that Chupa Chups was eligible for this aid since, at the time the aid was granted (2003), the company was not in difficulties⁴. In particular:
- (a) Despite the heavy losses of EUR 22 078 000 incurred in 2002, at the end of that financial year, Chupa Chups accounts still showed reserves of ca. EUR 59 930 000. Those reserves sufficed to absorb the totality of losses, and, therefore, the negative results had no impact on the company's registered capital of EUR 12 000 000. Moreover, after deduction of 2002 losses, Chupa Chups' own resources still amounted to EUR 49 850 000;
- (b) The Commission considers that many usual signs of a firm in difficulty, as described in point 6 of the Guidelines, were neither present in the period 2002-2003. In particular, negative results followed a downward trend⁵, together with debts (both long and short term) and stock inventories⁶, whereas financial expenses remained stable;
- (c) Finally, the positive evolution of Chupa Chups since 2002-2003 has made apparent that the company did not fall under the general criterion in point 4 of the Guidelines, according to which a firm is to be regarded as being in difficulty "*where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term*".

³ Orden de 17 de diciembre de 2001 por la que se establecen las bases reguladoras para la concesión de ayudas dirigidas a proyectos empresariales generadores de empleo, que promuevan el desarrollo alternativo de las zonas mineras. The "Minería 2" programme was approved by the Commission on 27 November 2001 (letter C(2011)3628).

⁴ In the light of the 1999 Community Guidelines on state aid for rescuing and restructuring firms in difficulty.

⁵ EUR 22 078 000 in 2002; EUR 4 700 000 in 2003.

⁶ EUR 28 700 000 in 2002; EUR 23 290 000 in 2003.

Therefore, the EUR 800 000 subsidy granted to Chupa Chups under this regional aid scheme constitutes compatible aid.

- (5) Furthermore, in the application, it is argued that Chupa Chups was not a company in difficulties within the meaning of point 5(a) of the 1999 Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁷. Accordingly, a firm is regarded as being in difficulty "*where 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*".
- (6) Even though, it appears that Chupa Chups had losses corresponding to more than half of its registered capital, the criterion that more than half of the registered capital has disappeared is not met in this case, because Chupa Chups had other reserves.
- (7) In consequence, the Commission reconsiders its assessment and amends Decision dated 10 May 2007 as regards the assessment of the EUR 800.000 subsidy under measure 4.
- (8) Therefore, the Decision of 10 May 2007 on the measures No C1/2006 (ex NN 103/2005) implemented by Spain for Chupa Chups should be amended in consequence:

HAS ADOPTED THIS DECISION:

Article 1

In the Decision of 10 May 2007 on the measures No C1/2006 (ex NN 103/2005) implemented by Spain for Chupa Chups paragraph 2 of Article 1 will be replaced by the following text:

"2. The state aid measure granted by Spain to Chupa Chups consisting of EUR 800 000 of regional aid granted under "Minería 2" is compatible with the Common Market."

This Decision is addressed to Spain.

Done at Brussels, 11.III.2008

For the Commission,

Neelie Kroes
Member of the Commission

⁷ See footnote 1.