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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid N 116/2009 - Poland
Rescue Aid for Diora Swidnica Sp. z o.o.

Sir,

I. PROCEDURE

(1) On 26 February 2009, Poland notified a rescue aid to Diora Swidnica Sp. z o.o. (hereinafter referred to as "Diora"), an undertaking active in the manufacture of sound systems (boxes, speakers, concert hall products and televisions set stands). A request for information was sent on 3 March 2009 to which Poland replied by letter of 10 March 2009.

II. DESCRIPTION

1. The beneficiary

(2) Diora, the beneficiary of the rescue aid, is located in a region of Dolnoslaskie, a Polish region eligible for regional aid under Article 87(3)(a) of the EC Treaty. The company operates on the market from 1991.

(3) Diora employs 160 workers. In 2007 the company's turnover amounted to PLN 12.2 million (EUR 2.7 million)[1] and the balance sheet totalled PLN 6.0 million (EUR 1.3

[1] Assuming 1 EUR = 4.5 PLN.

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million). With these figures the company meets the SME thresholds. However, Diora is owned by 68% by the state-controlled Industrial Development Agency (Agencje Rozwoju Przemysłu S.A., hereinafter referred to as "ARP"), therefore, it needs to be classified as a large enterprise[2]. In addition, the remaining shares of the company, 32%, are held by a Polish private company UNITRA THP S.A. (hereinafter referred to as "UNITRA"), which holds also shares in seven other companies. For this reason Diora cannot be considered as an independent undertaking, but forms part of a larger business group.

(4) The Polish authorities state that Diora is in difficulty under point 10(a) of the Community guidelines on state aid for rescuing and restructuring firms in difficulty (hereinafter referred to as "the Guidelines")[3].

(5) In 2007 the turnover of the company amounted to PLN 12.2 million (EUR 2.7 million), but in 2008 it decreased to PLN 7.9 million (EUR 1.8 million). At the end of 2007 the company's registered capital amounted to PLN 2.8 million (EUR 0.6 million). In 2007 the company managed to made a profit of PLN 0.1 million (EUR 0.02 million), but in 2008 the company made a loss of PLN 2.1 million (EUR 0.5 million). Consequently, Diora accumulated significant liabilities. At the end of 2008 only the short-term liabilities totalled PLN 3.8 million (EUR 0.8 million).

2. The measure

(6) The Polish authorities notified to the Commission a rescue aid in a form of a loan in the amount of PLN 1,200,000 (EUR 0.27 million). This loan is to be granted to the beneficiary by a public entity, ARP, in one instalment upon being approved by the Commission. The loan is to be repaid within six months of its disbursement, i.e. after the sum is paid to the company's bank account. The interest will be charged at the rate of 7.78%, which is 100b.p. higher than the reference rate established by the Commission for Poland.[4] The company provides collateral to secure the loan. The aid cannot be cumulated with other aids.

III. ASSESSMENT

1. Existence of State aid

(7) Article 87(1) of the EC Treaty 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 common market.

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2 Article 3(3) of the Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise, OJ 2003/L 124/36.

3 Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ 2004/C 244/02.

4 Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ 2008/C 14/6.

(8) The loan in favour of Diora is provided by ARP, which is a public entity over which the state excises control, and, therefore, the loan is granted from state resources and is imputable to the State. The loan constitutes a selective advantage since it will provide Diora with access to credit that, being in a difficult situation, the company would not be able to obtain on the market. Furthermore, as there is trade between the Member States in sounds systems which Diora manufactures, the measure is apt to improve the competitive position of the beneficiary in relation to its competitors in Poland and the EU, and it, consequently, distorts or threatens to distort the competition and affects trade between the Member States.

(9) Therefore, the Commission considers that the present loan in favour of Diora constitutes State aid pursuant to Article 87(1) of the EC Treaty.

2. Compatibility of the State aid with the Common Market

(10) The Commission considers a rescue aid compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty if it complies with the criteria under the Guidelines which in chapter 3.1 spell out the rules as to the eligibility of the firm for the aid (only firms in difficulty are eligible), the form of aid, interest rate and other conditions.

Eligibility for the rescue aid

(11) Diora is regarded as belonging to a business group (see recital 3). Therefore, it should be noted that according to point 13 of the Guidelines, a company that is part of a group is only eligible for restructuring aid when it can be demonstrated that company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that its difficulties are too serious to be dealt with by the group itself.

(12) The public funds, in the form of rescue aid, in the present case are granted by the majority shareholder, state-controlled ARP. It has to be therefore determined if the minority shareholder UNITRA is able to provide financial resources necessary to rescue Diora.

(13) UNITRA holds only 32% of shares in Diora, thus, under the Polish law the companies are not obliged to prepare a consolidated financial statement. UNITRA holds shares also in seven other companies; two of them are in liquidation and one of them suspended its economic activity. In other companies UNITRA's stake is either below 25% or the company's size is insignificant (share capital is of PLN 60,500, i.e. EUR 13,444).

(14) At the end of 2008 the share capital of UNITRA amounted to PLN 4 million (EUR 0.9 million). According to financial results of UNITRA, in 2007 the company had a turnover of PLN 12.2 million (EUR 2.7 million) and made a loss amounting to PLN 7.9 million (EUR 1.8 million). Although in 2008 UNITRA managed to make a profit of PLN 0.27 million (EUR 0.06 million), the company does not have the necessary financial resources in order to rescue Diora.

(15) Furthermore, since Diora does not have any trade relations with UNITRA or any other company linked to UNITRA, the Commission considers that the difficulties of Diora are intrinsic and are not a result of arbitrary allocation of the costs within the group.

(16) According to point 9 of the Guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. Additionally, point 11 of the Guidelines clarifies that the usual signs of a firm in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mouthing debt, rising interest charges and falling or nil assets value.

(17) The Commission notes that more than half of the registered capital in Diora disappeared in the year preceding the notification and the planned granting of the rescue aid (see recital 5).

(18) On the basis of the above, the Commission considers that Diora is a company in difficulty under point 10(a) of the Guidelines and is eligible to receive rescue aid.

Compatibility of rescue aid

(19) First, the notified aid to Diora, in line with point 25(a) of the Guidelines, is a loan. The loan is limited to a period of six months from being disbursed to Diora. In addition, Poland has provided assurance that the loan is granted at an interest rate (see recital 7) above the reference rate adopted by the Commission for Poland. The interest rate amounts to the reference rate applicable to Poland as of 1 March 2009 (6.78%) increased by 100 basis points.[5]

(20) Second, the aid is, in line with point 25(b) of the Guidelines, warranted on the grounds of serious social difficulties and has no unduly adverse spill-over effects on other Member States. In fact, if Diora ceased its operations, this would have serious consequences in terms of employment in a region which is an assisted area under Article 87(3)(a) of the EC Treaty. In addition, taking into consideration the low overall turnover of the company[6] the Commission finds that the aid will not create unduly adverse spill-over effects on other Member States.

(21) Third, the rescue aid is, in line with point 25(c) of the Guidelines, limited to six months as Poland has undertaken to communicate to the Commission, not later than six months after the rescue aid is authorised, a restructuring plan, a liquation or proof that the loan has been repaid in full.

(22) Fourth, the notified aid amount of PLN 1,200,000.00 loan (EUR 0.27 million), is in line with point 25(d) of the Guidelines, the amount needed to keep the firm in business for six months. According to the Guidelines the amount necessary should be based on the liquidity needs of the company stemming from losses; in determining that amount regard needs to be taken to the outcome of the application of the formula set out in the Annex of

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[5] http://ec.europa.eu/comm/competition/state_aid/legislation/reference_rates.html.

[6] In 2008, PLN 7.9 million (EUR 1.8 million).

the Guidelines. In the present case the formula is as follows: -1872+189+[-693-(+1271)]/2= -1824 thousand (in PLN). Thus, applying the formula in the Annex of the Guidelines, the maximum amount of rescue aid is PLN 1.8 million. As the notified aid amount is lower than PLN 1.8 million, it complies with the formula set out in the Annex.

(23) Finally, the Polish authorities confirmed that Diora has neither received rescue nor restructuring aid in the past. Therefore, the notified aid complies with the "one time, last time principle" as laid down in point 72 et seq. and point 25(e) of the Guidelines.

(24) In view of the above, the Commission considers the rescue aid to Diora to be compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

IV. CONCLUSION

(25) The Commission has decided, on the basis of the foregoing assessment, to consider that the state aid consisting in a loan of PLN 1,200,000.00 (EUR 0.27 million) for Diora Swidnica Sp. z o.o. is compatible with the common market.

[If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site http://ec.europa.eu/community_law/state_aids/index.htm.]

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

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B - 1049 Brussels
Fax No: +32 2 296 12 42

We would ask you to state the case name and number in all correspondence.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission