



EUROPEAN COMMISSION

Brussels, 7.08.2009

C(2009)6379

**Subject: State aid NN 41/2009 (ex N 313 / 2009) – United Kingdom
Rescue Aid for LDV Group Limited**

Sir,

I. PROCEDURE

- 1) On 25 May 2009, the United Kingdom notified a rescue aid in favour of the firm LDV Group Limited (hereafter "LDV"), which had been granted on 18 May 2009. The Commission requested further information by letters of 28 May, 4 June and electronic message of 23 June 2009. The UK authorities replied by letter of 10 June 2009 and electronic messages of 25 June and 17 July 2009 thus completing the notification.

II. DESCRIPTION OF THE MEASURE

The Beneficiary

- 2) The entity receiving the rescue aid is LDV, a company based in Washwood Heath, Birmingham. LDV is a manufacturer of commercial vans which it produces in a number of different versions: conventional vans, "combi", minibus and "chassis cab" variants. It directly employs about 850 workers.
- 3) The business was originally formed by being spun out of British Leylands in the 1980's being named Leyland Daf Vehicles. Following the administration of Duf Trucks (parent company) in 1992 Leyland Daf Vehicles was bought from the receiver of Daf Trucks in April 1993 being renamed LDV in January 1994. In December 2005, the company went into Administration and the business and assets were bought by Sun Capital Partners, through a company called LV Holdings Limited. In July 2006, LDV Holdings Limited was acquired by Gaz International Group Ltd ("Gaz Russia"), a private limited company, based in Russia. Both LDV group and LDV holdings are registered in the UK.

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- 4) According to the notification, LDV total output in 2008 was 9,308 vehicles, representing a market share of about 0,5% of the European light commercial vehicle market. The later is estimated to amount to 1,992,648 units in 2008¹.

The company's difficulties

- 5) Despite several capital injections by the owner, Gaz Russia, since acquisition (total investment amounting to £108 million) LDV has been in difficulties for some time. The UK authorities explained that this was largely due to a critical deal that would have seen a new product (the Maxus) brought to market in 2000, in a joint partnership arrangement with Korea's Daewoo, which eventually failed. Although LDV subsequently brought the Maxus vehicle to the market on its own, it has struggled to recover from the late introduction of the vehicle, finding it difficult to build a situation that has worsened with the current financial crisis, with demand for the Maxus sharply down in the UK (the company's biggest market). As a result LDV's accounts for year end 2008 show losses before tax of £ 57.3 million and an insolvent balance sheet with negative net assets of £ 29.5 million.
- 6) Production was suspended in December 2008 due to insufficient funding to continue production. The company filed for Administration on 27 April 2009 but later withdrew this application (on 18 May 2009), in view of the possibility of a deal with a potential buyer –Malaysia's Weststar which was already importing LDV vehicles into Malaysia– with support from public funding (see below, the aid measure).

The Aid Measure

- 7) The notified rescue aid measure consists in a loan guarantee provided by the Department for Business Enterprise and Regulatory Reform (BERR) in respect of a loan in the maximum amount of up to £ 5 million provided by Barclays Bank plc to LDV. The UK Government's liability is backed by a Standby Letter of Credit from USB bank (Singapore Branch) on behalf of Weststar (the "counter indemnity").
- 8) Both the loan and the guarantee are subject to an initial sub-limit of £ 2.5 million which could be increased to a maximum of £ 5 million, provided the counter indemnity by UBS to the UK Government would be increased by an equal amount.
- 9) The guarantee was issued on 18 May 2009 and terminated on 12 June 2009, coinciding with the duration of the loan. At any time up to 9 June 2009, the expiry date of the loan could be extended to 30 June 2009 provided that the associated guarantee from the Government and in turn, the counter indemnity from UBS were extended for the same period. The UK authorities informed the Commission that neither the possibility of increasing the loan amount nor of extending its respective duration was used by the beneficiary.
- 10) The loan granted by Barclays Bank is at a rate of 3,5%, which is 300 basis points above the Bank's Base Rate. In addition, LDV pays a guarantee fee of 1%. The total cost of capital for LDV for this operation is therefore 4,5%.

¹ Figures provided in the notification with reference to data from the European Automobile Manufacturers Association (ACEA).

New developments after the notification

- 11) As explained before, the bridging loan was given to allow a potential buyer, Weststar, time to complete its due diligence and finalise a deal with the current owners, while at the same time holding off administration procedures. However, in their letter of 10 June 2009 –i.e. after the notification- the UK authorities informed the Commission that the deal with Weststar had fallen through and that as a result LDV was put into Administration on 8 June 2009.
- 12) Further, the UK authorities explained that the appointment of Administrators to LDV was a termination event under the loan provided to LDV by Barclays, which was subject to the BERR guarantee. Barclays made demand on BERR for £1,432,064, this being the amount outstanding under the loan. According to the UK authorities BERR have paid this amount to Barclays and have no further liability under the guarantee to Barclays; on 9 June 2009, BERR made demand on LDV and then on 12 June 2009 on UBS. The UK authorities confirmed that BERR has in the meantime received payment from UBS.

III. ASSESSMENT

1. Existence of State aid

- 13) Article 87 (1) EC Treaty lays down 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.
- 14) The loan guarantee of £ 5 million is provided by the Department for business enterprise and regulatory reform (BERR) in the UK and involves therefore state resources. Given the financial difficulties of LDV, it is unlikely that the company would be able to obtain a loan from the market without the State guarantee. Therefore, the firm benefits from an advantage compared to other companies that do not benefit from the aid. The measure, thus, improves the position of the beneficiary in relation to its competitors and it consequently distorts competition and affects trade between Member States.
- 15) Therefore, the Commission considers that the present loan guarantee in favour of LDV constitutes State aid pursuant to Article 87(1) of the EC Treaty.
- 16) The Commission notes that the aid was granted prior to the notification. The UK did not, therefore respect its notification obligation under Article 88(3) of the Treaty and the aid is consequently considered unlawful.

2. Compatibility of the Aid Measure with the Common Market

- 17) The Commission considers a rescue aid compatible with the common market pursuant to Article 87 (3) (c) EC Treaty, if it complies with the criteria under the Rescue and Restructuring Guidelines² (hereinafter: the Guidelines), i.e. the eligibility of the firm to

² Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ 2004/C 244/02.

the aid (only firms in difficulty are eligible); the aid must consist of liquidity support in form of loan guarantees or loans; the aid must be warranted on the grounds of serious social difficulties and have no unduly adverse spill over effects on other member states; in the case of a non-notified aid the member state must - not later than six months after the first implementation of a rescue aid measure – communicate a restructuring plan or a liquidation plan or a proof that the loan has been reimbursed in full and/or the guarantee has been terminated; the rescue aid has to be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised and finally the rescue aid has to respect the "one time, last time" principle.

- 18) Furthermore, a firm in difficulty belonging to a larger business group is normally not eligible to receive aid under the Guidelines 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.
- 19) The notion of firm in difficulty is defined in point 9 to 13 of the Guidelines. LDV can be regarded as a firm in difficulty in the sense of point 10 (c) of the Guidelines, since the UK provided evidence that the firm fulfils the criteria under British Law for being the subject of collective insolvency proceedings. In fact, LDV had filed for Administration on 27 April 2009 and later withdrew this application (on 18 May 2009), in view of the possibility of a deal with a potential buyer (Weststar) supported by the loan guarantee at stake. In addition, following failure to conclude a deal with the potential buyer LDV filed again for Administration on 8 June 2009.
- 20) The UK authorities explained that, although LDV is part of a group, the difficulties described under points 5 and 6 above are intrinsic to the company itself and do not arise from an arbitrary allocation of costs within the group. According to the notification, the current owner Gaz Russia, has already made substantial investments in LVD and is not willing to invest further funds to support the group. Indeed, according to the UK authorities, the financial difficulties of LDV, showing negative net assets of £29.5 million and losses before taxes of £57.3 million in 2008, were beyond the capabilities of the group to sustain, which is why LDV had to file for Administration.
- 21) The aid measure described fulfils all five conditions for a compatible rescue aid as stipulated in point 25 of the Guidelines.
- 22) First, in accordance with point 25(a), the rescue aid to LDV consists of loan guarantee applying for a total period of less than six months. The interest charged for the loan from Barclays is 3,5% (i.e. 300 basis points above Barclays Base Rate); in addition, BERR charges LDV a guarantee premium of 1%. Hence, the total fee payable by LDV sums up to 4.5% p.a. This fee is well above the reference rate for healthy firms in the UK at the time the aid was granted (3.84%)³.

³ The reference rate for the UK at the time the aid was granted was 2.84%, to which 100 basis points must be added according to the Communication from the Commission on the revision on the method for setting the reference and discount rates (O J C 14, of 19.01.2008, p.1).

See also for the applicable reference rate:

http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

- 23) In addition, the UK authorities committed that the aid will be reimbursed by the beneficiary or that the company will be liquidated within six months from the disbursement of the aid, thus ensuring that the effects of the guarantee will come to an end within the six-month deadline in conformity with point 25 (a).
- 24) Second, following point 25 (b), the aid was warranted on the grounds of social serious difficulties. LDV is based in an assisted area in the sense of Article 87 (3) (c). At the time of granting the aid the UK authorities considered that if LDV ceased activities, this would have serious consequences in terms of local employment (c.850 direct jobs at stake) in a region (the Birmingham district) that already suffers from unemployment levels above the UK average.
- 25) Adverse spill over effects on other member states are not to be expected in this case, given the limited market share of LDV in the European light commercial vehicle market (between 0.3 and 0.5% in recent years). In addition, the Commission notes that LDV has in the meantime been put into Administration.
- 26) Third, the UK authorities have confirmed that, following the application for Administrators on 8 June 2009, the guarantee has been terminated, thus complying with point 25(c).
- 27) Fourth, the rescue aid was restricted to the amount needed to keep the firm in business for the period during which the aid is authorised, pursuant to point 25(d). The aid was granted for a period from 18 May 2009 to 12 June 2009, with the possibility of this duration being extended, under certain conditions, up to 30 June 2009 which did not, however take place. The UK authorities calculated the amount of aid on the basis of the average 1-week liquidity needs of the company, taking into account that the business was operating at minimum cost, without any significant manufacturing, and focusing activities on the discussions with the potential new investor. The average 1-week liquidity needs thus calculated amounted to £ 0.625 million. This amount was then multiplied by the four-week period of duration of the loan guarantee, totalling 2.5 million.
- 28) It should be noted that while, the amount of the loan and the guarantee could have been increased up to £ 5 million, as explained in point 8 above, the UK authorities confirmed that the initial amount of £2.5 million was never increased. Furthermore, the UK authorities confirmed that there is no possibility of this amount being still increased because the appointment of Administrators to LDV on 8 June 2009 was a termination event under the loan provided by Barclays to LDV and consequently of the State guarantee.
- 29) On the basis of the above the Commission considers that the State guarantee amounting to £2.5 million is deemed to correspond to the liquidity needs of LDV during the period for which the aid is authorised (i.e. from 18 May to 12 June 2009).
- 30) Finally, the UK authorities confirmed that LDV has neither received rescue nor restructuring aid before. Therefore the "one time, last time principle" as laid down in section 3.3 and point 25(e) of the Guidelines is fulfilled.
- 31) In view of the above, the Commission considers the rescue aid to LDV to be compatible with the common market in accordance with Article 87(3) (c) EC Treaty.

CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, to consider the aid 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

Ján FIGEL'
Member of the Commission