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Subject: **State aid No C 10/2010 (ex N 562/2009) – Spain**
Restructuring aid to A NOVO Comlink SL

Sir,

The Commission wishes to inform the Kingdom of Spain that, having examined the information supplied by its authorities on the measures referred to above, notified on the basis of Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU")¹, it has decided to initiate the procedure laid down in Article 108(2) TFEU.

1. PROCEDURE

- (1) On 16 October 2009 Spain notified a restructuring aid planned by the region of Andalusia in favour of A NOVO Comlink SL. On 12 November 2009 the Commission requested additional information. On 25 January 2010, Spain submitted information in reply to the request.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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2. DESCRIPTION

2.1. The beneficiary

- (2) A NOVO Comlink SL is a large company active in the area of after sales activities for computers, mobile telephones and other electronic devices. It is a 100% subsidiary of the French company A NOVO SA. A NOVO Comlink SL (hereafter A NOVO) is holding 100% of A NOVO Arce SL and of Cedro Soluciones SL. Originally, A NOVO produced telephones. Between 2004 and 2006 A NOVO ceased the production activities and concentrated on after sales services. A NOVO is situated in Málaga, in the region of Andalusia, in an area qualifying for regional aid under the derogation of Article 107(3)a TFEU.
- (3) A NOVO's workforce grew from 263 in 2006 to 402 in 2008. In 2008 A NOVO had a turnover of 15.3 million. Sales of after sales services amounted to EUR 14.889 million in 2008, growing from EUR 8.672 million in 2006 and EUR 12.984 million in 2007 (estimation for 2009: EUR 16.118 million). A NOVO is not suffering from an overcapacity regarding workforce or equipment. It plans a turnover growth of nearly 10% for 2009 and of 6% for the following business year. Current market shares in after sales services in Spain are for computers 40%, for mobile phones 30% and for TV decoders 10% approximately.

2.2. Financial difficulties

- (4) According to Spain, A NOVO fulfils the conditions for insolvency. Spain submits that of the initial registered capital in 2001 of EUR 15 million more than EUR 10 million have disappeared, and more than one quarter has been lost in 2008 alone:

	2001	2004	2005	2006	2007	2008
Capital	15 000 000	14 684 923	6 167 668	6 167 668	8 967 667	4 056 802

Spain also stresses increasing debts and losses and decreasing turnover:

	Euro		
	2006	2007	2008
Increasing losses	-2 603 000	-4 549 000	-3 923 000
Diminishing turnover	22 090 000	21 853 000	15 305 000
Mounting debt	4 281 000	5 836 000	6 997 000

However, the decrease of turnover until 2008 is mainly due to the phasing out of the production activities. For the after sales service activities, which were the sole remaining activity in 2008, the figure for 2006 is EUR 8.672 million, and for 2007 it is EUR 12.984 million. In other words, the turnover of the only activities of relevance since 2008 has been increasing since 2006.

- (5) In July 2005, a restructuring of A NOVO was initiated, in view of switching the activities from telephone production to after sales services. At this occasion, a restructuring plan was drafted which provided for wage reductions and an early retirement scheme for the production staff. A NOVO contributed to this plan EUR 14.7 million from a sale and lease back operation covering its real estate. Due to

the redundancy scheme, A NOVO accumulated from 2005 to 2008 losses of EUR 12.3 million. The plan of 2005 also provided that the region of Andalusia would make payments directly to certain workers until their incorporation into a partial retirement scheme at the age of 60. Today A NOVO is, according to Spain, having difficulties to obtain money on the capital markets.

2.3. The notified restructuring plan

- (6) The notified restructuring plan does not describe the reasons which led to the current difficulties. It refers to the 2005 restructuring plan and the structural measures and financial engagements taken at that time, but it does not reveal whether the difficulties are caused by wrong assumptions in the plan of 2005 or by unexpected developments.
- (7) The restructuring plan of November 2008, notified in October 2009, stretches over the period 2009-2013. It has been drafted by the beneficiary itself, apparently without an external independent check. It provides for restructuring aid to A NOVO on the basis of the Ministerial Order *Orden de 5 de noviembre de 2008 por la que se establecen las bases reguladoras del programa de ayudas a empresas viables con dificultades coyunturales en Andalucía*, of the region of Andalusia. This Order has been approved by the Commission in May 2009, as an aid scheme on rescue and restructuring aid for SME, which requires notification for individual grants of such aid to large companies (case N608/2008). The only objective of the plan is a financial restructuring in the form of injection of fresh capital.
- (8) The aid envisaged by the region of Andalusia consists in
 - an 80% guarantee for a loan of EUR 4 375 000 with a duration of 10 years. The interest rate is described as Euribor plus 1.25%, the guarantee commission is 1.50% per year. The loan is counter-guaranteed by the sole shareholder of A NOVO, A NOVO SA France.
 - a further support to this loan by covering 0,89 percentage points of the interest. This constitutes 50% of the 1.77% base rate published by the Commission for the purposes of determining reference rates for September 2009². This amounts, according to the notification, to an aid of EUR 357 136.
 - a government loan of EUR 2 000 000 over 10 years, granted by the region of Andalusia's *Agencia de Innovación y Desarrollo (IDEA)*. The interest rate will be the interbank market rate at the date of conclusion of the loan agreement in September 2009 (1.77%). Apparently no margin is added to this base rate. This loan has as collateral a guarantee by the sole shareholder of A NOVO, A NOVO SA France.
- (9) The region of Andalusia made it a condition for the aid that A NOVO hires 37 workers from the company Servivation as of September 2009. Servivation employs staff made redundant by a closing mobile telephone producer.
- (10) As regards the amount of cash needed, Spain submits that the current due debts consist of
 - Debts to suppliers of EUR 2.7 million;

² http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

- Debts of EUR 650 000 towards the State;
- Debts towards other undertakings of the A NOVO Group of EUR 1.6 million;
- Other needs deriving from the expansion of activities.

This amounts to a cash need of around EUR 5 million.

- (11) Apart from the described injection of fresh capital, the restructuring plan does not foresee any restructuring regarding the activities of the company, its organisation and management, or the workforce. Instead, it insists on continuing as before, with the hope of getting out of the financial difficulties without changes to the operation and structure of the beneficiary. Regarding the company's structure, the plan reports on the measures of the restructuring plan of 2005, which have been implemented in the years 2004-2007, consisting in the gradual cease of production for the benefit of after sales services for other producers. It describes the different fields of current activities, possibilities how they may expand, and mentions in all areas the hope to grow in volume with current clients and by acquiring new clients - with the help of the injection of fresh capital. In fact, the plan just states that A NOVO wants to go on as intended in the restructuring plan of 2005. As no restructuring measures are foreseen, it does not contain any timetable for the implementation of such measures.
- (12) The plan does not refer to any own contribution of the beneficiary or its parent company. Regarding compensatory measures, the plan does not foresee any capacity reduction or asset sales. On the contrary, it intends to increase workforce in order to increase its sales.
- (13) As regards perspectives, the only scenario presented for the development of demand for the company's services is moderately optimistic, as it expects growth in all areas of activities of the beneficiary. No distinction is made between best-case, intermediate and worst-case assumptions.

2.4. Measures not notified to the Commission

- (14) During the assessment of the restructuring plan, it became known, that a rescue aid was granted to A NOVO in May 2009 in the form of an 80% guarantee to a EUR 1 825 000 loan for 6 months for a commission of 1.5% per year. The interest rate is 2.86%. Spain did not notify this guarantee. The restructuring plan submitted with the notification in October 2009 was drafted in November 2008, before the grant of the rescue aid.
- (15) In addition the Commission notes that the restructuring plan of 2005 provided, according to a reference made in the 2008 restructuring plan, that the region of Andalusia would make direct payments to certain workers until their incorporation into a partial retirement scheme at the age of 60.

3. ASSESSMENT

3.1. State aid within the meaning of Article 107(1) TFEU

- (16) Article 107(1) TFEU declares as incompatible with the common market 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 between Member States.

- (17) The measures at hand, the guarantees, the interest subsidy, the loan by the region of Andalusia, and the direct payments to employees of A NOVO involve State resources. They are allocated by the region of Andalusia and are imputable to the State.
- (18) To qualify as State aid, the measures need to confer an advantage to the recipient which it couldn't obtain under normal market conditions. This is the case for the interest subsidy worth EUR 357 136. As far as the two State guarantees are concerned, a guarantee has to be considered to constitute aid if the borrower is in financial difficulty (point 3.2.(a) of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees)³. In such a case the Commission considers that the guarantees confer an advantage to the borrower. As to the determination of the amount of aid, the Commission is not able at this stage to determine the grant equivalent of the guarantees, as it lacks information on the credit rating of A NOVO. Finally, the loan by the region of Andalusia confers an advantage to A NOVO. The interest rate is determined by the interbank 1-year money market rate. No margin is added to this base rate. However, even assuming high collateral through the guarantee given by A NOVO SA, France, for a loan to a company in financial difficulties 220 to 400 basis points would need to be added to the base rate⁴. Therefore the loan equally constitutes aid. The determination of the grant equivalent of the loan would require more information on the credit rating of A NOVO.
- (19) Accordingly, these four measures favour the beneficiary individually and confer an advantage to it in the context of its restructuring which, as Spain states in her submission, it could not have obtained on the financial market. As a result, the position of the benefiting company is strengthened compared to that of its competitors. Hence, the measures are selective and likely to distort competition.
- (20) Regarding the direct payments by the region of Andalusia to certain workers until their incorporation into a partial retirement scheme, Spain did not provide information which would allow the Commission to assess, whether they do constitute aid or not. If the payments took place under a general social security scheme they would not be regarded as State aid. If they would normally have to be borne – under employment legislation or collective agreements – by the company itself, the payments would have formed part of the normal costs of the business. If the state takes over these payments, they must be counted as aid.⁵
- (21) As regards the effect on trade, Spain claims that the after sales services, in which the beneficiary is active, are provided locally and are limited to the territory of Spain. However, the Court has confirmed that the effect on trade does not depend on the local or regional character of the services supplied or on the scale of the

³ OJ C 155 of 20.6.2008, p. 10.

⁴ Communication from the Commission on the revision of the method for setting the reference and discount rates of 19.1.2008, OJ C 14, p. 6.

⁵ Cf. also paragraphs 61 and 63 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244 of 1.10.2004, p.2.

field of activity concerned.⁶ Moreover, such services are freely traded within the Union. Finally, the ownership of the firms providing such services extends to more than one Member State. This is so in particular in the case of the beneficiary which is part of the French A NOVO Group, a major player in after sales services in Europe. Therefore the condition of the affectation of trade between Member States is fulfilled.

- (22) Therefore, the two guarantees, the interest subsidy, and the loan described constitute State aid in the meaning of Article 107(1) TFEU. The Commission lacks the information necessary to determine whether also the direct payments to employees promised in 2005 by the region of Andalusia constitute aid.

3.2. Compatibility of the aid with the internal market under the guidelines on State aid for rescuing and restructuring firms in difficulty

3.2.1. The non-notified rescue aid

- (23) Spain has not notified the rescue aid of May 2009 and has not provided the information necessary to assess its compatibility with the internal market, in particular with regard to point 25 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁷ (hereinafter "the Guidelines") and its role in the 2008 restructuring plan, which was adopted before the grant of this aid. Therefore, the Commission has, at this stage, doubts regarding the compatibility of this aid measure with the internal market.

3.2.2. The notified restructuring aid

- (24) According to the notification, the objective of the aid is the restructuring of an undertaking in difficulty. According to Article 107(3)(c) TFEU, State aid granted to promote the development of certain economic activities can be authorised, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Aid for the rescue or restructuring of companies in difficulty may be considered compatible with the internal market on the basis of this provision if the conditions laid down in the Guidelines are respected.

Eligibility of the beneficiary as a firm in difficulty

- (25) This requires in the first place that the beneficiary company can be considered to be a firm in difficulty. According to the Guidelines, a firm is considered to be in difficulty, if it is unable to recover through its own resources or by raising the funds it needs from shareholders or on the market, and without the intervention of public authorities. The Guidelines also list some usual signs of such companies, such as mounting debt and falling net asset value.
- (26) From the data mentioned in paragraph 4 above, it could in principle be concluded that A NOVO is a firm in difficulty within the meaning of the Guidelines, regarding the disappearance of more than half of its registered capital, and more than one quarter of that capital over the preceding 12 months (point 10(a) of the

⁶ Case C-280/00 Altmark Trans, [2003] ECR I-7747, para. 82; Case C-172/03, Heiser/Finanzamt Innsbruck, [2005] ECR I-1627, Rn. 33.

⁷ OJ C 244 of 1.10.2004, p.2.

Guidelines). According to Spain, the company furthermore fulfils the criteria under Spanish law for being subject to bankruptcy proceedings (point 10(c) of the Guidelines). In any case, it had increasing losses and an overall diminishing turnover, as stipulated in point 11 of the Guidelines. However, as described in paragraph 4 above, the turnover of relevance for the current and future activity of A NOVO, the after sales services, has been growing considerably.

- (27) It is not clear from which date the company should be considered to be in difficulty. From the data submitted (see paragraph 4 above) one may conclude that this has been already the case during 2008.
- (28) The difficulty of the company to obtain credit may also be caused by the fact that it is not any more proprietor of the real estate it uses, following the sale and lease back exercise mentioned in paragraph 5 above. This should however be further assessed, and should be subject to further investigation.
- (29) Furthermore, A NOVO is a 100% subsidiary of the French undertaking A NOVO SA with a turnover of around EUR 350 million and a net benefit of EUR 12 million in 2009. According to point 11 of the Guidelines a firm in difficulty is only eligible where it cannot recover with the funds it obtains from its owners. Furthermore, point 13 of the Guidelines requires a Member State in case of a firm belonging to a larger business group to demonstrate that the firm's difficulties are intrinsic and too serious to be dealt with by the group itself. Spain has not submitted information which would allow determining whether these conditions are met.
- (30) Therefore the Commission has doubts whether the company is eligible for restructuring aid.

Restoration of long-term viability

- (31) According to point 34 of the Guidelines, the grant of aid must be conditional upon the implementation of the restructuring plan which must be endorsed by the Commission in all cases of individual aid to large companies.
- (32) According to point 35 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. According to point 36 of the Guidelines, it must contain best-case, worst-case and intermediate assumptions on the future prospects.
- (33) The restructuring plan does not contain the description of internal measures to improve the firm's viability and structure. It does not describe the reasons that led to the difficulties. It refers to a 2005 restructuring plan and the structural measures and financial engagements taken at that time, but does not reveal whether the firm is currently in difficulty because of wrong assumptions in the former plan or unexpected developments. The plan does not describe scenarios reflecting best-case, worst-case and intermediate assumptions on the future prospects or an analysis of the firm's strengths and weaknesses. Eventually, the plan envisages the restoration of the company's long-term viability just through the reduction of debts.
- (34) As regards the company's outlook, sales are foreseen to reach EUR 16.118 million in 2009, EUR 17.658 million in 2010, EUR 18.630 million in 2011, EUR 18.923

million in 2012, and EUR 19.721 million in 2013. The company is foreseen to have a loss of EUR 254 000 in 2009 and positive results of EUR 414 000 in 2010, EUR 835 000 in 2011, EUR 1.261 million in 2012, and EUR 1.863 million in 2013.

- (35) The above sales projections are based on the consultation of the principal clients of A NOVO. Spain submitted only 1 scenario. As it is furthermore not clear why A NOVO is in difficulty now, despite the implementation of the 2005 restructuring plan as foreseen, it is not evident whether the foreseen measure of a merely financial restructuring is tackling the sources of the company's difficulties.
- (36) Therefore, the Commission has doubts as to the restoration of long-term viability of the firm by the implementation of the notified plan.

Avoiding undue distortions of competition

- (37) Pursuant to points 38-42 of the Guidelines, measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. The aid shall not unduly distort competition. This usually means a limitation of the presence which the company can enjoy on its markets at the end of the restructuring period. The compulsory limitation or reduction of the company's presence on the relevant market represents a compensatory factor in favour of its competitors.
- (38) The plan does not contain any compensatory measure like divestment of assets or capacity or market presence reductions. On the contrary, it foresees an expansion of business and the hiring of additional employees. Although nothing is suggesting that the repair market for electronic devices suffers from excess capacity, it is not in line with points 38 and 39 of the Guidelines to include such an expansion perspective in a measure of public aid to an ailing company. This.
- (39) The Commission therefore has serious doubts that these important conditions for the compatibility of restructuring aid are met.

Aid limited to the minimum

- (40) Pursuant to point 43 of the Guidelines, the amount and intensity of aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken, taking into account the existing financial resources of the company. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, i.e. through the sale of assets that are not essential to the firm's survival, or through external financing at market conditions.
- (41) The plan lacks any element of an own contribution of the beneficiary, e.g. in form of external financing at market conditions. The EUR 2 million government loan and the guarantee for the EUR 4,375,000 loan do not fulfil market conditions (see paragraph 17 above). The restructuring plan also does not describe any plans for the sale of assets.

- (42) The Commission notes that the parent company A NOVO SA, France, which is making profits, is not guaranteeing new loans on its own, but is only offering a counter guarantee, despite the optimistic outlook presented (see paragraph 32 above).
- (43) Furthermore, according to point 45 of the Guidelines, the aid should avoid providing the benefiting company with surplus cash. The necessity of the amount of the loans guaranteed and provided of together EUR 6.375 million (without counting the rescue measure of a guarantee for a EUR 1.825 million loan) could be questioned. According to Spain, the beneficiary is in need to cover external debts of around EUR 3.4 million (or EUR 5 million, if one added the EUR 1.6 million debts towards other undertakings within the A NOVO group) (see paragraph 10 above). Other investments beyond the restoration of liquidity are not foreseen. The Commission would also have to assess whether the group internal debts could serve as a legitimate reason for considering a company to be in difficulty. A NOVO is located in an assisted area within the meaning of Article 107(3)a TFEU. However, Spain has so far not pointed to any specific regional development needs justifying a less stringent application of the criteria of the guidelines.
- (44) Therefore the Commission has serious doubts that the conditions to keep the aid limited to the minimum are fulfilled.

The "one time, last time" principle

- (45) Regarding the direct payments by the region of Andalusia to certain workers until their incorporation into a partial retirement scheme, it is possible that they constitute aid, as set out in paragraph 20 above. If the payments qualified as aid, A NOVO would have already received restructuring aid in the past. However, restructuring aid should be granted once only (point 72 of the Guidelines). If less than 10 years have elapsed since the previous restructuring period, according to point 73 of the Guidelines the Commission could not approve further restructuring aid.
- (46) Therefore the Commission has also doubts whether the "one time, last time" principle has been respected.

3.3. Compatibility under the Temporary Framework

- (47) It is doubtful that the rescue aid in the form of a guarantee for a EUR 1 825 000 loan could benefit from the temporary Community framework for State aid measures to support access to finance in the current financial and economic crises (the "Temporary Framework")⁸. An aid of a gross grant equivalent of up to EUR 500,000 may be possible, provided it is granted under a scheme (point 4.2.2.(a) and (b) of the Temporary Framework). However, the only general Spanish temporary aid scheme for granting limited amounts of compatible aid (N307/2009 of 8 June 2009) was not yet in force at the time of the grant. The scheme is furthermore limited to aid of up to EUR 500 000 direct grants. Guarantees would still have required a notification. Furthermore, the company seemed to be in difficulty

⁸ OJ C 83 of 7.4.2009, p. 1.

already before 1 July 2008, which would exclude the application of the Temporary Framework (see point 4.3.2.(i)).

- (48) There are also doubts whether the restructuring measure notified by Spain may fall under the temporary framework. First, it is not clear when A NOVO started to be in difficulty. Second, as regards the interest subsidy, its effect is not limited to the end of 2012 (cf. point 4.4.2(a) of the Temporary Framework). Furthermore, the Commission lacks the information to assess whether the conditions for the guarantee commission to be compatible (in particular with point 4.3.2.(b) of the Temporary Framework) are fulfilled. Finally, the loan granted by the region of Andalusia does not fulfil the conditions of the Spanish temporary aid scheme mentioned in the previous paragraph which Spain has limited to transparent forms of aid, as defined by Article 2(6) of the General Block Exemption Regulation⁹, which means aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without need to undertake a risk assessment. Such a risk assessment is however necessary in a case of a loan to a company in difficulty.

4. CONCLUSION

- (49) The Commission has therefore decided to open the formal investigation procedure provided for in Article 108(2) TFEU in relation to the measures described for the following reasons:
- With regard to the notified restructuring aid, the Commission has doubts on its compliance with the relevant guidelines, in particular in view of the eligibility of A NOVO for restructuring aid, the restoration of its long term viability, the necessity of the amount of aid, the absence of compensatory measures and of an own contribution of the beneficiary, and the respect of the "one time, last time" principle for restructuring aid. It furthermore lacks information necessary to determine the grant equivalent of the loan and the loan guarantee for ANOVO and from which point in time A NOVO could have been considered to be in difficulty.
 - The Commission has doubts as regards the compatibility of the non-notified rescue aid granted in May 2009.

5. DECISION

- (50) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests the Kingdom of Spain to submit its comments and to provide all such information as may help to assess the aid/measure, 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.
- (51) The Commission wishes to remind that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your

⁹ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3.

attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

- (52) The Commission warns the Kingdom of Spain 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 which 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 which 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 this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

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State Aid Greffe
B-1049 Brussels

Fax No: +32-2-296.12.42

Yours faithfully,

For the Commission

Joaquín Almunia
Vice-President of the Commission