# COMMISSION

## COMMISSION DECISION

**of 21 October 2008**

**on State aid C 44/07 (ex N 460/07) which France is planning to implement for FagorBrandt**

*(notified under document number C(2008) 5995)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2009/485/EC)

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 called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

### 1. PROCEDURE

(1) By letter dated 6 August 2007, France notified the Commission of restructuring aid for the FagorBrandt group.

(2) By letter dated 10 October 2007, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission's decision to initiate the procedure (hereinafter the opening decision) was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments on the aid.

(4) The Commission received comments from three interested parties, namely two competitors and the aid recipient. Comments were submitted by Electrolux by letter dated 14 December 2007. Following a meeting with the Commission's departments on 20 February 2008, Electrolux submitted additional comments by letters dated 26 February and 12 March 2008. A competitor which wishes to remain anonymous submitted comments by letter dated 17 December 2007 [3]. FagorBrandt submitted comments by letter dated 17 December 2007. By letters dated 15 January and 13 March 2008, the Commission forwarded these comments to France, inviting it to comment on them, which it did by letter dated 15 February 2008 and in a document presented at a meeting on 18 March 2008 (see below).

(5) By letter dated 13 November 2007, France submitted to the Commission its comments on the opening decision. On 18 March 2008, a meeting was held between the Commission's departments, the French authorities and FagorBrandt. Following that meeting, the French authorities submitted information by letters dated 24 April and 7 May 2008. A second meeting was held between the same parties on 12 June 2008. Following that meeting, the French authorities submitted information by letter dated 9 July 2008. On 15 July 2008, the Commission requested additional information, which the French authorities provided on 16 July 2008.

### 2. DESCRIPTION

(6) The aid at issue is restructuring aid. It would amount to EUR 31 million, to be made available by the French Ministry of Economic Affairs, Finance and Employment.

[1] OJ C 275, 16.11.2007, p. 18.
[2] See footnote 1.
[3] The interested party in question had requested, by telephone and by letter dated 16 December 2007, an extension of the one-month time limit within which to submit comments. The Commission raised no objection to the request.

(7) The aid recipient is FagorBrandt SA, which has several subsidiaries that conduct its production and marketing business. The group (hereinafter FagorBrandt) belongs indirectly to Fagor Electrodomésticos S. Coop (hereinafter Fagor), a cooperative incorporated under Spanish law. The cooperative's capital is divided among approximately 3 500 members (worker-cooperators), none of whom may hold more than 25 %.

(8) Fagor in turn forms part of a grouping of cooperatives called Mondragón Corporación Cooperativa (hereinafter MCC), within which each cooperative retains its legal and financial autonomy. Fagor belongs to the 'Household' division of MCC's 'Industry' sectoral group.

(9) In 2007 FagorBrandt achieved a turnover of EUR 903 million. It is present in all segments of the large electrical household appliance market, which can be broken down into three large product families: washing appliances (dishwashers, washing machines, tumble dryers, washer-dryers), refrigeration appliances (refrigerators, chest and upright freezers) and cooking appliances (conventional ovens, microwave ovens, cookers, hobs, extractor hoods).

(10) In section 2.1 of the opening decision, the Commission provided further information on the aid recipient and explained the reasons for its difficulties.

## 3. GROUNDS FOR OPENING THE PROCEDURE

(11) The Commission expressed doubts for the following five reasons: (i) a risk of circumvention of the prohibition on restructuring aid to newly created firms; (ii) a risk of circumvention of the obligation to reimburse incompatible aid; (iii) doubt about the restoration of the company's long-term viability; (iv) inadequacy of the compensatory measures; and (v) doubt about whether the aid was limited to the necessary minimum, and in particular about the aid recipient's contribution.

### 3.1. Risk of circumvention of the prohibition on restructuring aid to newly created firms

(12) FagorBrandt was established in January 2002 and was therefore, for the purposes of point 12 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter the restructuring guidelines) [4], a newly created firm until January 2005, that is, three years after it was set up. This means that, both at the time when the company benefited from the tax exemption provided for in Article 44 *septies* of the French General Tax Code (hereinafter the Article 44 *septies* aid) and at the time when, in December 2003, the Commission declared that aid incompatible and ordered its recovery [5], FagorBrandt was a newly created firm. Pursuant to point 12 of the restructuring guidelines, it was therefore ineligible for restructuring aid. Consequently, the delay by France in recovering the aid declared incompatible in December 2003 until the time when the company no longer constituted a newly created firm and became eligible for restructuring aid may constitute a circumvention of the prohibition in point 12 of the restructuring guidelines.

### 3.2. Risk of circumvention of the obligation to reimburse incompatible aid

(13) Observing that the notified aid seemed to serve largely to finance the reimbursement of the Article 44 *septies* aid, the Commission expressed concerns that it might constitute a circumvention of the obligation to reimburse that incompatible aid, undermining and rendering nugatory its recovery.

### 3.3. Doubts about the company's long-term viability

(14) As regards the restoration of the company's long-term viability, the Commission expressed two concerns. First, observing that the turnover forecast for 2007 was approximately 20 % up on the previous year, it wondered what factors that forecast was based on. Secondly, it noted that the restructuring plan did not indicate how FagorBrandt intended to reimburse the incompatible aid received by its Italian subsidiary.

### 3.4. Inadequacy of the compensatory measures

(15) The Commission expressed doubts as to whether the non-implementation of compensatory measures additional to those already taken as part of the restructuring plan was acceptable. It bore in mind the following:

(i) the restructuring guidelines (points 38 to 41) oblige aid recipients fulfilling the 'large enterprise' criterion to take compensatory measures;

(ii) without aid, FagorBrandt would be forced out of the market, but on the other hand FagorBrandt's competitors are for the most part European; the disappearance of FagorBrandt would accordingly enable its European competitors to increase their sales and output significantly;

[4] OJ C 244, 1.10.2004, p. 2.

[5] Commission Decision 2004/343/EC of 16 December 2003 on the State aid scheme implemented by France for the takeover of firms in difficulty (OJ L 108, 16.4.2004, p. 38).

(iii) it would appear, in the light of point 40 of the restructuring guidelines, that not all the measures already taken can be counted as compensatory measures; and

(iv) the guidelines applicable when the *Bull* ([6]) and *Euromoteurs* ([7]) cases cited by France were examined did not require companies to take compensatory measures. There were also other major differences between those cases and the present one.

### 3.5. **Doubts about the aid recipient's contribution**

(16) Finally, the Commission expressed doubts about whether the requirements of points 43 and 44 of the restructuring guidelines were met. Firstly, the French authorities had not included the reimbursement of the Article 44 *septies* aid in the costs of restructuring, and secondly they had not explained where certain amounts classed as 'recipient's own share' came from.

## 4. **COMMENTS FROM INTERESTED PARTIES**

### 4.1. **Comments from Electrolux**

(17) Electrolux states that, in order to meet the challenges of global competition, it has implemented major and very costly restructuring plans. To remain competitive, the company has had to take drastic measures such as closing eight plants in western Europe, the output of which has been mainly relocated to other existing plants in Europe and to new plants in Poland and Hungary. Most companies in the large electrical household appliances sector have carried out similar restructuring operations. Consequently, Electrolux is unhappy at the possibility of FagorBrandt receiving a subsidy to help it cope with a situation which the rest of the sector is having to manage without similar assistance. The aid will distort competition at other companies' expense.

### 4.2. **Comments from the second competitor**

(18) First of all, this competitor, which wishes to remain anonymous, considers that the planned aid will not enable the recipient to restore its long-term viability. It is of the opinion that substantial industrial reorganisation is needed if the company is to survive. It believes FagorBrandt will have insufficient means with which to finance the necessary investment. Nor will the aid enable FagorBrandt to attain the size needed to improve its position in negotiations with the major distributors, which prefer suppliers with a larger presence in the European Union.

(19) Secondly, it considers that the aid is not limited to the necessary minimum inasmuch as FagorBrandt could find the financing needed for its restructuring from its shareholder and from the cooperative to which its shareholder belongs (MCC, of which the bank Caja Laboral forms part).

(20) Thirdly, it considers that the aid is likely to affect competition and trade between Member States. Most companies in the sector have their manufacturing base in Europe and can therefore be considered European. Asian and Turkish competitors have a significant presence only in certain product areas. FagorBrandt is the fifth largest operator at European level with a strong position in the French, Spanish and Polish markets. The competitor considers, therefore, that, in the absence of compensatory measures, the aid cannot be declared compatible by the Commission.

(21) Fourthly, the granting in the past by France and Italy of unlawful aid leads to two conclusions: firstly, FagorBrandt's difficulties are recurring, raising the question of its viability; and secondly, the notified aid will probably be used to reimburse unlawful aid, thereby circumventing the reimbursement obligation.

### 4.3. **Comments from FagorBrandt**

(22) FagorBrandt's comments are similar to those of the French authorities, which are summarised below.

## 5. **COMMENTS FROM FRANCE**

### 5.1. **Comments from France on the opening decision**

(23) Regarding a possible circumvention of the prohibition on restructuring aid to newly created firms, the French authorities do not contest that, in accordance with point 12 of the restructuring guidelines, FagorBrandt was to be considered 'a newly created firm' during the three years following its formation. They point out, however, that the question of the possibility of restructuring aid to FagorBrandt started to be posed only in 2006, following the difficulties first encountered in 2004 and the company's worsening financial situation in 2005, that is to say during the fifth year of its existence. In other words, the company had no reason to seek restructuring aid before being in a situation calling for such aid, a situation which came about in 2006. The question of a possible circumvention of the 'three year' rule therefore simply does not arise.

([6]) Commission Decision 2005/941/EC of 1 December 2004 on the State aid which France is planning to implement for Bull (OJ L 342, 24.12.2005, p. 81) at paragraphs 55 to 63.

([7]) Commission Decision 2006/747/EC of 26 April 2006 on State aid which France is planning to implement for Euromoteurs (C 1/2005 (ex N 426/2004)) (OJ L 307, 7.11.2006, p. 213) at paragraphs 30-31 and 42.

(24) Regarding the possibility that the notified aid deprives the reimbursement obligation of its effectiveness, France states that the company's difficulties are not caused only by the reimbursement of the aid. The financial difficulties began in 2004 and the situation grew much worse in 2005 and 2006. As the Commission concluded in the opening decision, the company is indeed in difficulty within the meaning of the restructuring guidelines. France concludes from this that the company is eligible on this score for restructuring aid if the other conditions for such aid are otherwise met. The question whether the company might survive beyond 2007 or 2008 if it did not have to reimburse the aid is irrelevant, as the reimbursement of the aid is obligatory and has been so since the Commission's negative decision on the Article 44 *septies* scheme in 2003. It is therefore in point of fact the accumulation of financial difficulties that justifies the request for aid, these difficulties being the result of the restructuring costs already borne by the company, the ongoing state of the restructuring process and all the other costs the company has to take into account, among which is the aid reimbursement.

(25) Regarding the restoration of long-term viability and the corresponding doubts raised in the opening decision, the French authorities make a number of comments. The forecast 20 % growth in turnover in 2007 compared with 2006 is due primarily to the change in scope of FagorBrandt's activities in 2006. As for the failure to take into account the reimbursement of the unlawful aid received by the Italian subsidiary (against the background of the takeover by Brandt Italia of the electrical household appliance business of Ocean Spa), this reimbursement should not affect the company's viability given that the amount ultimately borne by Brandt Italia should be less than EUR [1 million] (*), the balance being borne by the vendor of the business in question.

(26) Regarding the absence of compensatory measures, France points out that in 2004 the company sold Brandt Components (Nevers plant). The company has also reduced its production capacity by ceasing manufacture of chest freezers and freestanding microwave ovens. France maintains that the aid has caused very little distortion and that this reduces the need for compensatory measures. FagorBrandt has a [0-5] % share of the European market, which is very little compared with its main competitors. The French authorities consider, moreover, that the company's presence in the market helps to prevent oligopoly situations from arising. During the formal investigation procedure, the French authorities offered to take additional compensatory measures.

(27) Regarding the Commission's doubts about the limitation of the aid to the minimum and the recipient's own contribution, the French authorities make the following comments. On the failure to take the reimbursement of the aid into account in the costs of restructuring, they point out that the reimbursement of incompatible aid cannot, *prima facie*, be counted as a restructuring cost. As for the 'recipient's own share' (*effort propre du bénéficiaire*), as it is called in the notification, the French authorities explain that this consists of bank loans.

(*) Information covered by business secrecy.

### 5.2. **Comments from France on the interested parties' comments**

(28) In relation to Electrolux's comments, France states that the restructuring measures taken by Electrolux and other competitors were aimed not at remedying a difficult economic situation but at bolstering positions in the large electrical household appliance market. France accordingly considers that there is no comparison between the situations of FagorBrandt and its competitors, which in any case have far greater financial resources at their disposal owing to their much bigger size.

(29) In response to the comments concerning FagorBrandt's long-term viability put forward by the company requesting anonymity, the French authorities state, firstly, that FagorBrandt has taken measures aimed initially at stemming losses and strengthening margins so as to be able ultimately to attain a better position in the market, notably by developing […]. They state, secondly, that FagorBrandt will continue to have at its disposal genuine R & D capacities 'which will enable it to place on the market innovative, high-value-added products'.

(30) Concerning, secondly, the assertion that the aid is not limited to the minimum inasmuch as FagorBrandt could obtain financing from its shareholders, the French authorities point out that MCC is a cooperative movement, not a holding company. In this cooperative movement, each cooperative, including Fagor and the bank Caja Laboral, is autonomous, and depends on the decisions of its own worker-cooperators, who are its owners. FagorBrandt can therefore count only on the financial support of Fagor, to the extent of the latter's existing capabilities. The acquisition of FagorBrandt has reduced the amount of cash available to Fagor and Fagor cannot now provide any financing above a certain threshold.

(31) Thirdly, in answer to the supposed negative impact on competition, the French authorities point to contradictions in the comments from the interested party requesting anonymity. On the one hand, the latter asserts that the aid would affect competition in the European market, while on the other it states that FagorBrandt is too small compared with the majors and that this threatens its viability. Moreover, as regards the absence of compensatory measures, the French authorities indicate that they have already taken meaningful compensatory measures and that they propose to take further such measures.

(32) Fourthly, in answer to the statements based on the earlier award of unlawful aid by France and Italy, France points out that those unlawful aid measures were directed, not at a restructuring programme for the company, but at a scheme to promote the maintenance of employment in France. It stresses, moreover, that, on the basis of the information FagorBrandt provided to the Commission on 17 December 2007, there is no actual relationship between the amount of aid granted (approximately EUR 20 million net after tax) and the amount of incompatible aid (approximately EUR [25-30] million including interest). Furthermore, the restructuring costs are estimated at EUR [50-90] million and hence are significantly higher than the amount of restructuring aid sought. Finally, France points to the fungible nature of the expenditure.

(33) As regards the comments submitted to the Commission by FagorBrandt, the French authorities state that they cannot but agree with these clarifications, all the more so since they complement their own observations.

## 6. ASSESSMENT OF THE AID

### 6.1. Existence of aid within the meaning of Article 87(1) of the EC Treaty

(34) In section 3.1 of the opening decision, the Commission concluded that the measure constituted aid within the meaning of Article 87(1) of the EC Treaty. None of the parties has challenged that finding.

### 6.2. Legal basis of the assessment

(35) Article 87(2) and (3) of the Treaty lays down exceptions to the general ban in Article 87(1). The exceptions in Article 87(2) of the Treaty are clearly not applicable here.

(36) As for the exceptions in Article 87(3) of the Treaty, the Commission would point out that, inasmuch as the objective of the aid is not regional and the exception in Article 87(3)(b) is clearly not applicable, only the exception in Article 87(3)(c) can apply. This provides for the authorisation of State aid granted to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In this context, it is common ground that the aid was granted with a view to restoring the long-term viability of a firm in difficulty. How the Commission assesses the compatibility of such aid is explained in the restructuring guidelines. It is therefore those guidelines that will serve as the legal basis for the assessment. The Commission considers that no other Community rules could apply in the present case. France has, moreover, invoked no other exception provided for in the Treaty. Nor has any of the interested parties criticised this choice of legal basis, which was already announced in the opening decision.

### 6.3. Eligibility of the company for restructuring aid

(37) In order to be eligible for restructuring aid, the company must first qualify as a firm in difficulty as defined in section 2.1 of the restructuring guidelines.

(38) In paragraph 24 of the opening decision, the Commission indicated that the company appeared to be in difficulty within the meaning of point 11 of the restructuring guidelines. In paragraph 27 of the opening decision, the Commission also indicated that, in line with the scenario in point 13 of the restructuring guidelines, the company's difficulties had become too serious to be dealt with by its Spanish shareholder. Disagreeing with this preliminary assessment, the competitor requesting anonymity took the view that FagorBrandt could obtain from Fagor and MCC whatever financial support it needed to overcome its difficulties. It must therefore be considered whether the preliminary assessment contained in the opening decision needs to be modified. The Commission would observe that the competitor bases its assertion on a press article ([8]) which seems to indicate that Fagor can easily raise funds on the financial markets. It should be noted, however, that the article in question dates from April 2005 and that Fagor's financial situation has greatly deteriorated since then. The French authorities point out in this connection that Fagor's financial debts (not including those of FagorBrandt) […] ([9]) in 2005 following the acquisition of all of FagorBrandt's shares and heavy industrial investment by Fagor. Moreover, Fagor injected EUR 26,9 million of capital into FagorBrandt in 2006. All of this almost exhausted the debt-servicing capacity of the cooperative, the indebtedness ratios of which greatly exceeded the generally permitted limits. The Commission considers, therefore, that there is no need to revise the assessment contained in the opening decision as regards the company's eligibility under points 11 and 13 of the restructuring guidelines.

(39) Regarding the company's eligibility under the conditions set out in section 2.1 of the restructuring guidelines, the opening decision raises only one concern, namely the possible circumvention of the prohibition on restructuring aid to newly created firms (see section 3 above, 'Grounds for opening the procedure').

([8]) *La Tribune*, 14 April 2005.
([9]) Read 'increased significantly'.

(40) The Commission has analysed the company's financial situation, which is illustrated by Table 1 below. Clearly, during the first three years of its existence, the company — even if it had reimbursed the Article 44 *septies* aid — did not satisfy the tests of points 10 and 11 of the restructuring guidelines for being considered in difficulty. As regards point 10 of the restructuring guidelines, even if the company had reimbursed the EUR 22,5 million of aid in 2004 (that is to say, in the months following the Commission's final negative decision), it would still not have lost half of its capital in 2004. As regards point 11 of the restructuring guidelines, even if the company had reimbursed the EUR 22,5 million of aid in 2004, it would have posted only one loss-making year (2004), which is insufficient for it to be considered in difficulty under that point. It was from 2005 onwards that the financial difficulties of the FagorBrandt group increased, with the result that the company might be considered a firm in difficulty within the meaning of the restructuring guidelines (that is to say, a firm which, 'without outside intervention by the public authorities', will 'almost certainly [be condemned to go] out of business in the short or medium term') starting possibly from the following year (bearing in mind the obligation to reimburse the Article 44 *septies* aid), but definitely from 2007.

*Table 1*

*(in million EUR)*

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|
| Turnover | 847,1 | 857,6 | 813,2 | 743,6 | 779,7 | 903,0 |
| Gross margin | 205,2 | 215,1 | 207,0 | […] | […] | […] |
| Net result | 15,5 | 13,8 | (3,6) | […] | […] | […] |
| Capital | 69,8 | 83,4 | 79,8 | […] | […] | […] |

(41) The Commission also notes that, during the first quarter of 2005, the Fagor group decided to buy 90 % of the company's shares at a cost of EUR [150-200] million. This would indicate that the market did not consider the company to be in difficulty within the meaning of the restructuring guidelines, that is to say, a company which, without outside intervention by the public authorities, was almost certainly condemned to go out of business in the short or medium term.

(42) On the basis of the above, the Commission considers that the company, which was established in January 2002, could not be deemed to be in difficulty during its first three years of existence even if it had reimbursed the Article 44 *septies* aid immediately. Consequently, it considers that the delay by France in recovering the Article 44 *septies* aid until January 2005 — that is to say, three years after the creation of FagorBrandt — did not have the effect of keeping artificially afloat a company which would otherwise have exited the market. It also considers that, during that period, the company had no reason to seek restructuring aid. In the light of this, the Commission takes the view that the delay by France in recovering the Article 44 *septies* aid until January 2005 does not constitute a circumvention of the prohibition on restructuring aid in favour of newly created firms within the meaning of point 12 of the restructuring guidelines.

(43) In conclusion, the doubts about the company's eligibility have been removed and the Commission considers that the conditions laid down in section 2.1 of the restructuring guidelines are fulfilled.

### 6.4. **Provisions concerning recipients of previous unlawful aid**

(44) On the basis of point 23 of the restructuring guidelines and the fact that the notified aid seems to be aimed primarily at financing the reimbursement of the Article 44 *septies* aid, paragraph 30 of the opening decision raises concerns as to whether the notified aid constitutes a circumvention of the reimbursement obligation and renders the latter meaningless and redundant.

(45) In assessing this question, the Commission has taken into account the following factors.

(46) Firstly, according to settled case law, the reimbursement of incompatible aid with interest makes it possible to re-establish the situation which existed before the aid was granted and hence to eliminate the resulting distortion of competition. Consequently, in the present case, the reimbursement of the Article 44 *septies* aid with interest — which is a precondition for the payment of the new aid — is intended to re-establish the situation which existed before the aid was granted.

(47) Secondly, the company is eligible for restructuring aid. First of all, its financial difficulties do not stem primarily from the reimbursement of the incompatible aid. They stem from other sources, which are at the root of the losses incurred since 2004 (see Table 1 above). The future reimbursement of the incompatible aid will merely worsen these difficulties to a point where the company can no longer face up to them without State aid. Secondly, a business restructuring plan costing EUR [50-90] million has been implemented. This shows that the operational restructuring needed to re-establish business profitability is engendering very substantial costs — more substantial than the reimbursement of the Article 44 *septies* aid, which comes to EUR 22,5 million, not including interest. These elements indicate that FagorBrandt is a firm in difficulty whose existence is in danger. It can, therefore, like any company in such a situation, receive restructuring aid if it satisfies the other conditions laid down in the restructuring guidelines.

(48) Thirdly, in its 1991 decision in the *Deggendorf* case ([10]), the Commission, observing that 'The cumulative effect of the illegal aid which Deggendorf has been refusing to repay since 1986 and the present new […] aid would give it an excessive and undue advantage which would adversely affect trading conditions to an extent contrary to the common interest', considered the new aid compatible on condition that 'The […] authorities […] suspend payment to Deggendorf of the aid […] until such time as they have recovered the incompatible aids'. In its judgment of 15 May 1997 ([11]), the Court of Justice endorsed the Commission's approach. Since then, the Commission has adopted several decisions in which it follows the same line, finding a new aid measure to be compatible while at the same time requiring that its payment be suspended pending reimbursement of unlawful aid ([12]). The Commission would point out that, in the present case, once the new aid fulfils the conditions laid down by the restructuring guidelines, nothing seems to stand in the way of applying the *Deggendorf* approach, i.e. finding the new aid compatible provided its payment is suspended pending recovery of the Article 44 *septies* aid.

([10]) Commission Decision 91/391/EEC of 26 March 1991 on aid granted by the German Government to Deggendorf GmbH, a producer of polyamide and polyester yarns located in Deggendorf (Bavaria) (OJ L 215, 2.8.1991, p. 16).

([11]) Judgment of the Court of Justice in Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549 (the *Deggendorf* judgment), at paragraphs 25-26. This judgment confirms the judgment of the Court of First Instance in Joined Cases T-244/93 and T-486/93 *TWD* v *Commission* [1995] ECR II-2265.

([12]) In this connection, the Commission Notice *Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid* (OJ C 272, 15.11.2007, p. 4) states that 'the Commission has […] started to apply Deggendorf case law in a more systematic manner. This case law enables the Commission, if certain conditions have been satisfied, to order Member States to suspend the payment of a new compatible aid to a company until that company has reimbursed old unlawful and incompatible aid that is subject to a recovery decision.'

(49) In the light of the above considerations, the Commission's concerns have been allayed.

(50) In this context, the Commission would point out the following. Point 23 of the restructuring guidelines requires the Commission, when assessing restructuring aid, to 'take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid.' As indicated in the corresponding footnote of the restructuring guidelines, this provision is based on the above-cited *Deggendorf* judgment. In the present case, France has undertaken to recover the Article 44 *septies* aid before paying the new aid. In this Decision, the Commission is required, on the basis of the findings in *Deggendorf*, to transform this commitment into a condition precedent to the compatibility of the notified aid. It will thus ensure that there is no combination of the old aid with the new aid and that the old aid is reimbursed. Hence it will no longer be necessary, in the remainder of the assessment of the new aid, to take into account the cumulative effect of the aid or the absence of reimbursement.

### 6.5. **Restoration of the company's viability**

#### 6.5.1. *Market prospects and credibility of the forecasts included in the restructuring plan*

(51) In section 2.2 of the opening decision, the Commission described the principal measures in the restructuring plan ([13]). In section 3.3.3 of the opening decision, it stated that the plan *prima facie* complied with the requirements of points 35 to 37 of the restructuring guidelines. In other words, the restructuring plan seemed to be suited to restoring the company's long-term viability. During the formal investigation procedure culminating in this Decision, the Commission analysed in greater detail the elements on which the plan was based so as to be able to establish whether or not this initial assessment was correct.

(52) The Commission evaluated the forecasts resulting from the restructuring plan, notably in terms of growth prospects. It compared them with recent trends.

([13]) The restructuring plan provided basically for a refocusing and development targeted on high-value-added and innovative products, a rationalisation of purchasing policy and a sourcing policy (products manufactured by third parties on behalf of FagorBrandt). FagorBrandt has taken three types of restructuring measure: (a) plant closures and disposals; (b) workforce reductions; and (c) measures to help ensure the continuation of the business.

(53) According to CECED ([14]), the volume trend in the European market between 2005 and 2007 shows moderate growth in western Europe (approximately 2 % a year) and sustained growth in eastern Europe (approximately 7 % a year). However, the latter growth rate is anything but a foregone conclusion, as it is subject to the fluctuations of the economy, with double-digit expansion and double-digit contraction readily alternating.

(54) Although in the long run a convergence in purchasing behaviour between eastern Europe and western Europe is possible, the weak purchasing power of the former means that demand is concentrated on essential goods (washing machines and refrigerators) and entry-level appliances. It is these markets, however, that Turkish and Asian competitors are entering.

(55) The markets showing potential as far as FagorBrandt is concerned are therefore those of western Europe, as they are larger in both value and volume and less dependent on low-end products where FagorBrandt can no longer be competitive and whereon the strong growth in eastern Europe is based.

(56) More particularly, FagorBrandt's reference market is the French market, where the group achieves [50-80] % of its sales, produces [75-100] % of its volumes and employs [75-100] % of the group's workforce. According to GIFAM ([15]), in 2007 the French market for large electrical household appliances grew by 1 % compared with 2006, in both volume and value terms. More specifically, the market for […] appliances, on which FagorBrandt wishes to concentrate, grew by […] % compared with 2006, whereas in the case of […] appliances sales fell by […] %.

(57) The trends by type of product show that the high-growth markets developing in Europe and particularly in France are essentially those for […] products. Growth in […] products is significant, whereas the market for refrigeration products is virtually at a standstill, as can be seen from the following table taken from the GIFAM study:

[…]

(58) Consequently, FagorBrandt's decision to refocus in particular on […] and to develop […] seems consistent with the trend in the various segments and products.

(59) Having analysed the other basic components of the restructuring plan aimed at justifying the relevance of the forecasts relating to FagorBrandt's long-term operational profitability, the Commission considers that those forecasts are realistic. The remainder of this analysis will be limited, therefore, to the two specific concerns regarding the realistic nature and adequacy of the restructuring plan raised in the opening decision.

(60) First of all, the Commission sought explanations for the expected 20 % increase in turnover in 2007. The French authorities explained that FagorBrandt's area of activity changed in 2006 owing to the transfer by Fagor to FagorBrandt of responsibility for distributing the Fagor brand in the British and French markets, followed by the transfer of Fagor's entire French business ([16]). That business's turnover was put at EUR [50-100] million for 2007 and was included in FagorBrandt's 2007 turnover. Taking an unchanged area of activity as a basis, the forecast increase in turnover would come to only [5-10] %. Since then, France has communicated to the Commission the turnover actually achieved in 2007. It came to EUR 903 million compared with EUR 779,7 million in 2006 — a year-on-year increase of approximately 16 %.

(61) Secondly, the Commission noted that the restructuring plan did not indicate how FagorBrandt intended to reimburse the incompatible aid received by its Italian subsidiary, thus placing the restoration of the company's viability in doubt. The French authorities stated that the recovery of the incompatible aid by the Italian authorities should have no impact on the group's financial situation. The purchase price paid by Brandt Italia for the electrical household appliance business of Ocean SpA was increased by the estimated amount of the aid receivable by Brandt Italia, namely EUR [5-10]

([14]) CECED: European Committee of Domestic Equipment Manufacturers, an organisation bringing together 15 manufacturers of an at least European dimension and 26 trade associations present in several European countries (both members and non-members of the European Union).

([15]) GIFAM: Groupement interprofessionnel des fabricants d'appareils d'équipements ménagers, which groups together 50 or so companies present in the electrical household appliance markets.

([16]) The Commission carried out an analysis of whether this increased integration of FagorBrandt in Fagor called into question the conclusions drawn in paragraph 27 of the opening decision concerning FagorBrandt's eligibility. It concluded that such was not the case, as the great majority of the factors mentioned in that paragraph remained valid.

million (against an actual aid amount received by Brandt Italia of EUR [5-10 million]). The French authorities accordingly observe that the benefit of the unlawful aid was almost entirely passed on to the seller Ocean SpA (leaving a balance of EUR [< 1 million]). They add that this assertion is borne out by a decision of 5 July 2004 of a court in Brescia, which, on an application by Brandt Italia following the Commission's negative decision of 30 March 2004 on the Italian aid scheme, ordered the sequestration of the final instalment of the purchase price paid by Brandt Italia, namely EUR [5-10] million. Consequently, the amount of Italian aid reimbursable by Brandt Italia would probably be less than EUR [1 million].

(62) On the basis of the above considerations, the Commission concludes that the doubts about the restoration of viability raised in the opening decision are allayed.

6.5.2. *Doubts about the restoration of viability raised by the interested party*

(63) As indicated above, the competitor requesting anonymity challenges the claim that the restructuring can restore the company's long-term viability. First of all, it considers that the company should have transferred part of its production to low-cost production areas where it could benefit from economies of scale. Secondly, the company will be unable to afford the investment needed to improve its products in an industry which each year requires significant investment in plant, design and R & D. Thirdly, the company is still too small compared with its rivals. In the paragraphs that follow, the Commission will seek to ascertain whether these comments by the competitor requesting anonymity call into question its conclusions concerning the restoration of viability.

(64) On the need to transfer part of production to lower-cost countries, the Commission would observe that the French authorities have in fact answered this point. Those authorities stress that the development targeted by FagorBrandt (high-value-added and innovative products), like that of some of its strictly European competitors, is incompatible with the systematic transfer of production to low-cost countries. […]. For the majors, the establishment of production units in low-cost countries also reflects a wish to expand sales there.

(65) On the assertions by the competitor requesting anonymity regarding FagorBrandt's inability to afford the significant investment needed in order to remain competitive and regarding the company's excessive smallness compared with the majors, the Commission would observe that it itself pointed out in paragraph 8 of the opening decision that these factors had contributed to the company's difficulties. It would observe, however, that the restructuring plan seems to respond to these challenges. The company intends […]. The Commission would also observe that, despite their small size compared with the majors and their focus on production in the countries of western Europe, some companies in the sector manage to remain competitive by concentrating on certain products and segments. It would observe, further, that the ever closer integration of FagorBrandt into the Fagor group is also helping to resolve these size-related problems. To sum up, the Commission recognises that the points raised by the competitor represent challenges for FagorBrandt, but it considers that the restructuring plan is up to meeting those challenges and makes it sufficiently probable that viability will be restored.

(66) In the light of the above, the Commission considers that the comments from the competitor requesting anonymity do not call into question its assessment that the restructuring plan permits the restoration of FagorBrandt's long-term viability.

6.5.3. *Effect of the additional compensatory measures on the restoration of viability*

(67) Finally, still on the subject of the restoration of long-term viability, the Commission must, as is provided for in the last sentence of point 38 of the restructuring guidelines, verify whether the planned compensatory measures endanger the company's viability. As will be analysed below, following the opening of the procedure the French authorities proposed additional compensatory measures which were therefore not included in the financial forecasts attached to the notification. As the Commission considers these additional measures to be necessary, they will have to be implemented. Inasmuch as these measures — cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand for a period of five years — will bring about a worsening of the company's financial results, it must be examined whether they can be borne by the company.

(68) According to the French authorities, the following two tables show the company's financial results after factoring in implementation of the additional compensatory measures described above. The first table depicts an optimistic scenario, the second a pessimistic one.

*(in million EUR)*

| Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand | Optimistic scenario | | | | | |
|---|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Turnover | 903,0 | […] | […] | […] | […] | […] |
| Gross margin | […] | […] | […] | […] | […] | […] |
| Operating result before non-recurrent items | […] | […] | […] | […] | […] | […] |
| Operating result (EBIT) | […] | […] | […] | […] | […] | […] |
| Result before tax | […] | […] | […] | […] | […] | […] |
| Net result | […] | […] | […] | […] | […] | […] |
| Free cash flow | […] | […] | […] | […] | […] | […] |
| Accumulated free cash flow | […] | […] | […] | […] | […] | […] |

*(in million EUR)*

| Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand | Pessimistic scenario | | | | | |
|---|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Turnover | 903,0 | […] | […] | […] | […] | […] |
| Gross margin | […] | […] | […] | […] | […] | […] |
| Operating result before non-recurrent items | […] | […] | […] | […] | […] | […] |
| Operating result (EBIT) | […] | […] | […] | […] | […] | […] |
| Result before tax | […] | […] | […] | […] | […] | […] |
| Net result | […] | […] | […] | […] | […] | […] |
| Free cash flow | […] | […] | […] | […] | […] | […] |
| Accumulated free cash flow | […] | […] | […] | […] | […] | […] |

(69) The tables are based on the following hypotheses concerning the losses of turnover that will be caused by the withdrawal of several product families marketed under the Vedette brand. Such a withdrawal may lead to:

(a) a reduction in sales in the family of products of the Vedette brand the marketing of which is being suspended;

(b) a reduction in sales in the other families of products marketed under the Vedette brand ([17]) (negative range effect on products of the Vedette brand);

(c) a reduction in sales of other brands (negative portfolio effect on all brands of the FagorBrandt group).

(70) The optimistic scenario takes account only of the effects mentioned at (a) and (b) above, the loss related to the cessation of the marketing of a product being equivalent to a loss of [60-90] % of the turnover from the ceased product line […] and [20-30] % of the turnover from the other products marketed under the Vedette brand. The pessimistic scenario takes account of the factor mentioned at (c) above and presupposes a loss rate of [110-140] % for the ceased product line (the loss may not be confined to […] and […]). The French authorities explain that such a pessimistic hypothesis corresponds to the company's actual experience: it decided in 2003 to abandon […] in France in order to concentrate on […], which benefited from a specific sales force. This had a highly negative knock-on effect, as not only was the entire turnover achieved […] lost but the loss also affected […] (total loss on these two brands of […] appliances over two years compared with initial sales of […] units, including […] […], being equivalent to a loss of [120-140] % of the abandoned volumes) ([18]).

([17]) This reduction is due to the impact of suspending the marketing of some products on the visibility of the Vedette brand among distributors.

([18]) The Commission considers, in the light of the information supplied by the French authorities, that the pessimistic scenario is unlikely to materialise. The French authorities base this scenario on experience with Vedette microwave ovens. As will be demonstrated, however, this is a product in respect of which FagorBrandt was no longer competitive (which is why it decided to cease in-house production) and in respect of which producers from low-cost countries have achieved a high rate of penetration. The hypothesis adopted by the French authorities whereby the whole of the decline in microwave oven sales observed over the two-year period is attributed entirely to the decision to stop marketing microwave ovens under the Vedette brand therefore seems to be an extreme one.

(71) On the basis of the analysis of the data in the above two tables and of the other data provided by the French authorities, the Commission would observe that the compensatory measures adopted will weaken the company as they will lead to a worsening of its results starting in 2009, the year of their implementation. However, the company will once more achieve a net positive result in 2010, increasing in subsequent years. The Commission considers therefore that, despite weakening the company, the compensatory measures will not prevent a restoration of viability.

### 6.6. **Avoidance of undue distortions of competition**

#### 6.6.1. *Analysis of the necessity of the compensatory measures*

(72) Point 38 of the restructuring guidelines provides that, in order for restructuring aid to be authorised by the Commission, compensatory measures must be taken to lessen the adverse effects of the aid on trading conditions. Otherwise, the aid will be regarded as 'contrary to the common interest' and declared incompatible with the common market. This condition often takes the form of a limitation on the presence which the company can maintain in its market or markets after the end of the restructuring period.

(73) In its notification, France asserted that compensatory measures did not appear necessary in this case, inter alia, because the aid would not have any excessive distortive effects. In paragraphs 37, 38 and 40 of the opening decision, the Commission explained briefly why it rejected this assertion.

(74) In the paragraphs that follow, the Commission explains in greater detail why it considers that the aid causes distortion and why, contrary to what the French authorities assert, the implementation of the compensatory measures is necessary.

(75) As already indicated, FagorBrandt is present in the sector of the manufacture and marketing to distributors (as opposed to the distribution and sale to private individuals) of large electrical household appliances. As regards the geographic dimension of the large electrical household appliance market, the Commission has in the past considered it to be at least Community-wide owing, among other things, to the absence of entry barriers, technical harmonisation and relatively low transport costs ([19]). The data provided by FagorBrandt and the two competitors which submitted comments confirm that the market is Community-wide in scale.

(76) The Commission considers that restructuring aid automatically creates a distortion of competition by preventing the recipient from being forced out of the market and thus hindering the development of competing firms. Such aid therefore obstructs the market exit of the least efficient firms, which is, in the words of point 4 of the restructuring guidelines, 'a normal part of the operation of the market'. The notified aid in favour of FagorBrandt therefore gives rise to the abovementioned distortion of competition. The Commission would observe, however, that the following factors tend to limit the negative consequences of this distortion of competition. Firstly, in the European market for large electrical appliances, FagorBrandt has a market share of at most 5 % ([20]). Secondly, there are in this market four competitors (Indesit, Whirlpool, BSH and Electrolux) with market shares of 10 % or more ([21]). The competitor requesting anonymity acknowledges, moreover, that FagorBrandt is a relatively small player in the European market (see above the doubts expressed by this competitor concerning the company's return to viability, related to its small size) whose market share is diminishing ([22]). Thirdly, the aid amount is small in relation to FagorBrandt's European turnover (being equal to less than 4 % of 2007 turnover) — even more so when compared with that of the four main market operators, whose turnovers are larger than that of FagorBrandt ([23]).

([19]) The Commission Decision of 21 June 1994 declaring a concentration to be compatible with the common market (Case No IV/M458 — Electrolux/AEG) according to Council Regulation (EEC) No 4064/89 (OJ C 187, 9.7.1994) concluded that the geographic market for large electrical household appliances was western Europe. The Commission Decision 2000/475/EC of 24 January 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case IV.F.1/36.718.CEDE) (OJ L 187, 26.7.2000, p. 47) concluded that the geographic market was the EEA. The latter case concerned the washing machine sector.

([20]) The combined market share of FagorBrandt and Fagor Electrodomésticos is at most 8 %.

([21]) The Commission cannot accept France's argument that FagorBrandt's continued presence in the market has a positive effect by preventing the creation of an oligopolistic situation. The French authorities have not backed up their assertion with specific evidence. It is contradicted, moreover, by their notification, which described a highly competitive market with diversified competition from, among others, distributor brands. Lastly, point 39 of the restructuring guidelines states that account will be taken of 'a monopoly or a tight oligopolistic situation', which is not the case here given that, counting just the majors alone, the number of competitors already comes to four.

([22]) […]

([23]) If the analysis is done at world level the difference is even bigger, as groups like Electrolux and Whirlpool have very substantial business interests outside Europe. For example, in 2005, the combined turnover of FagorBrandt and Fagor Electrodomésticos came to less than EUR 2 billion, whereas the worldwide turnover in large electrical household appliances of Whirlpool, Electrolux, BSH and Indesit, expressed in euro, came to 11,8 billion, 10,8 billion, 7,3 billion and 3,1 billion respectively.

(77) While the previous paragraph analyses the distortion of competition brought about by the aid, it is also necessary, as indicated in point 38 of the restructuring guidelines, which in turn reflects Article 87(3)(c) of the Treaty, to analyse the scale of the 'adverse effects on trading conditions' between Member States. As already observed in paragraph 38 of the opening decision, the aid distorts the location of economic activities, and hence trade, between Member States. FagorBrandt is a company the great majority of whose production activities and employees are located in France ([75-100] % of the volumes produced by the company are produced there). Without aid from the French State, FagorBrandt would soon exit the market. However, the products manufactured at FagorBrandt's production sites are in competition mainly with products manufactured by competitors in other Member States ([24]). Consequently, the disappearance of FagorBrandt would enable those European competitors to increase appreciably their sales and hence their production. The aid has the effect of maintaining in France production activities which would otherwise have been partly moved to other Member States. It therefore has an adverse effect on trading conditions by reducing the opportunities for competitors based in other Member States to export to France ([25]). The aid also reduces the opportunities for selling to those countries where FagorBrandt is going to continue to export its products. In view of the scale of FagorBrandt's sales and the corresponding number of jobs, these adverse effects on trading conditions are not negligible.

(78) On the basis of the above analysis, the Commission considers that real (i.e. non-negligible) compensatory measures, the size of which is nevertheless limited, are necessary.

6.6.2. *Analysis of the measures already implemented*

(79) In paragraph 39 of the opening decision, the Commission expressed doubts about whether the measures notified by the French authorities were acceptable as compensatory measures inasmuch as point 40 of the restructuring guidelines states that 'Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence for the purpose of the assessment of the compensatory measures.' It appeared that all of the measures described by the French authorities fell under that exclusion. During the course of the formal investigation procedure, France repeated that it considered that the cessation of the manufacture of chest freezers and freestanding microwave ovens, together with the sale of Brandt Components, constituted three meaningful compensatory measures. The Commission accordingly conducted a detailed analysis of these measures and drew the following conclusions.

(80) Regarding the closure of the chest freezer manufacturing plant (at Lesquin) in 2005, France indicated in its notification of 6 August 2007 that this plant, 'which made chest freezers and wine cellars for the whole FagorBrandt group, had fallen to a size … which no longer enabled it to cover either its variable costs or its fixed costs and had generated an operating loss of EUR [5-10] million in 2004'. There can therefore be no doubt that what is involved here is a closure of a loss-making business rendered necessary in order to restore viability ([26]) and that, in accordance with point 40 of the restructuring guidelines, it cannot be taken into account as a compensatory measure.

(81) The cessation of production of freestanding microwave ovens at the Aizenay plant also involved the closure of a loss-making activity needed in order to re-establish viability — something which the French authorities explicitly acknowledged in their submissions ([27]). The unprofitability of that activity is not surprising given that freestanding microwave ovens are

([24]) […]

([25]) [50-80] % of FagorBrandt's sales are made in the French market. The Court of Justice has repeatedly held in this connection that 'Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State.' See Case C-102/87 *France* v *Commission* [1988] ECR 4067, at paragraph 19; Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, at paragraph 40; Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, at paragraphs 84-86; Case T-152/99 *HAMSA* v *Commission* [2002] ECR II-3049, at paragraphs 220-221.

([26]) The French press widely reported the lack of profitability of the freezer business. An article in *Ouest France* dated 8 July 2004 stated, for example, that 'In 2005, ElcoBrand, the French domestic appliance group, will close its freezer manufacturing plant in Lesquin (Nord) because it is "no longer profitable". Elco took over the plant from Brandt two years ago. The 600 employees agreed to a redundancy programme under which 150 jobs were to be maintained, but they have now been lost.' More specifically, in an article published in *Les Echos* on 7 July 2004, Brandt executives were quoted as saying that 'Despite a major drive to boost competitiveness, consisting in buying 35 % of components from China and improving quality and productivity, the fall in market prices has outpaced us' and that 'Maintaining a chest freezer production activity no longer makes economic sense within the ElcoBrandt group. Each time we sell one of those products, we now make a loss of 25 %.'

([27]) In the notification, the French authorities state that one of the restructuring plan's objectives is 'to rationalise production by abandoning certain bottom-end segments which have become structurally loss-making in order to limit the losses related to the market share gains by low-cost country manufacturers (freestanding microwave ovens, freezers and small refrigerators).' In their letter of 15 February 2008, in which they comment on the comments from interested parties, the French authorities state that 'The French authorities would remind you that […] the various measures already taken are intended initially to stem the losses (closure of a loss-making production plant, Lesquin, and abandonment of certain unprofitable product lines, including freestanding microwave ovens).' These two extracts confirm the earlier conclusions concerning the closure of the Lesquin plant.

one of the market segments products from low-cost countries have penetrated the most ([28]). Moreover, the Aizenay plant had lost important microwave oven production contracts for other groups ([29]). In conclusion, on the basis of point 40 of the restructuring guidelines, this measure cannot be taken into account as a compensatory measure.

(82) By contrast, in March 2004 the company divested its subsidiary Brandt Components (Nevers plant) to the Austrian group ATB for EUR [2-5] million. What was involved here, therefore, was neither a write-off ([30]) nor a closure of an activity. This measure is therefore not excluded by the said provision in point 40 of the restructuring guidelines. The business divested in March 2004 ([31]) had in 2003 a turnover of EUR [25-45] million — equivalent to [2-5] % of the company's 2003 turnover — and [250-500] employees — equivalent to [5-10] % of the company's workforce. It was active in the design, development, manufacture and marketing of electric motors for washing machines. The divestment has accordingly led to a reduction in the company's presence in the washing machine component market.

(83) While accepting that this measure constitutes a compensatory measure, the Commission considers that it cannot on its own outweigh the adverse effects of the aid described above. The Commission would observe notably that the measure does not reduce FagorBrandt's presence in the large electrical household appliance market ([32]), the main market in which FagorBrandt will remain present.

([28]) This fact was stressed by the French authorities, notably in Annex 7 to the notification.

([29]) See, for example, the article entitled 'Brandt: end of Miele contract confirmed. After the withdrawal of Electrolux, another blow for Aizenay' appearing in *Ouest France* on 3 March 2005.

([30]) All the less so as the company made a gain of EUR [0-1 million] on the sale.

([31]) As indicated in section 2.2 of the opening decision, FagorBrandt began to restructure itself in 2004 when the lack of competitiveness and the first financial difficulties became apparent. The Commission considers, therefore, that this divestment is 'part of the same restructuring', as required by point 40 of the restructuring guidelines.

([32]) The French authorities state that the activity of Brandt Components enabled the company to benefit from a strongly integrated production of high-end washing machines, which is historically a strength of the FagorBrandt group. According to those authorities, this type of integration is particularly highly sought after in the case of innovative products or products requiring specific know-how and is practised by the major operators in the sector (e.g. BSH or Miele). The Commission would observe, however, that, beyond the earlier assertions, the French authorities have not furnished any evidence such as might enable it to establish beyond doubt — and even less to quantify the resulting effect — that the divestment of Brandt Components will reduce FagorBrandt's ability to develop competitive washing machines and will consequently reduce the presence of FagorBrandt in the washing machine market. The Commission cannot therefore conclude that the divestment of Brandt Components has a real effect on the large electrical household appliance market.

6.6.3. *Additional compensatory measures proposed by the French authorities*

(84) To meet the concerns raised in the opening decision regarding the inadequacy of the notified compensatory measures, the French authorities propose the cessation of the marketing of Vedette refrigeration appliances and cooking appliances for a period of five years. Moreover, they propose either the cessation of the marketing of Vedette dishwashers or the divestment of the […] brand.

(85) As indicated above, FagorBrandt achieves [50-80] % of its sales in the French market, where in 2006 the company had a market share of [10-20] % in terms of value and [10-20] % in terms of volume. This means that if FagorBrandt had ceased trading, it is mainly its competitors in the French market that would have benefited in the form of increased sales. It is therefore those companies that are the most affected by the continued existence of FagorBrandt due to the aid. Conversely, FagorBrandt's sales in the Italian market are very limited. The Commission would therefore give preference as a compensatory measure to cessation of the marketing of dishwashers under the Vedette brand as opposed to divestment of the […] brand, products of the Vedette brand ([33]) being sold exclusively in the French market whereas products […] are sold primarily […].

(86) The scale of these additional compensatory measures must therefore be analysed to establish their adequacy.

Refrigeration products

(87) Sales of refrigeration products (refrigerators and freezers) of the Vedette brand were worth, in 2007, EUR [10-20] million, equivalent to [1-3] % of the FagorBrandt group's turnover.

([33]) In the French market, Vedette is a brand positioned at the top of the second quartile and in the third quartile of the freestanding products market. The measures proposed do not therefore reduce the presence of FagorBrandt in the market for built-in products. However, the great majority of the groups competing with FagorBrandt in the built-in products market already possess brands competing with Vedette in the freestanding products market. They will therefore benefit from the withdrawal of the Vedette products described above.

(88) Cessation of the marketing of refrigeration products for a period of five years will enable competitors in the French market to strengthen their position in the refrigeration segment. According to the 2007 GfK study, the main competitors of FagorBrandt — which has a market share based on value of […] % — in the refrigerator market in France are Whirlpool ([…] %), Indesit ([…] %) and Electrolux ([…] %). In the freezer market, the main competitors of FagorBrandt ([…] %) are Whirlpool ([…] %), Liebherr ([…] %) and Electrolux ([…] %).

Cooking products

(89) Sales of cooking products of the Vedette brand were worth, in 2007, EUR [5-10] million, equivalent to [0,5-1,5] % of the FagorBrandt group's turnover.

(90) Cessation of the marketing of cooking products for a period of five years will therefore enable competitors to strengthen their position in the cooker market. According to the 2007 GfK study, the main competitors of FagorBrandt (which has a market share based on value of […] %) in the cooker market in France are Indesit ([…] %), Electrolux ([…] %) and Candy ([…] %).

Dishwashers

(91) Sales of dishwashers of the Vedette brand were worth, in 2007, EUR [5-10] million, equivalent to [0,5-1,5] % of the FagorBrandt group's turnover.

(92) According to the 2007 GfK study, the main competitors of FagorBrandt (which has a market share based on value of […] %) in the dishwasher market in France are BSH ([…] %), Whirlpool ([…] %) and Electrolux ([…] %). Consequently, cessation of the marketing of dishwashers under the Vedette brand will enable competitors to expand their presence in the market.

Conclusion on the additional compensatory measures

(93) To sum up, the Vedette products the marketing of which will be stopped account for [3-5] % of the group's turnover ([34]). The French authorities indicate that this will necessitate significant adjustments within the company […].

([34]) In 2007, they accounted for [30-40] % of the Vedette brand's turnover and [4-6] % of FagorBrandt's sales of large electrical household appliances in the French market.

6.6.4. *Conclusion on all the compensatory measures*

(94) The compensatory measures are the cessation of the marketing for a period of five years of certain products of the Vedette brand (cooking, refrigeration and dishwashing) ([35]) and the divestment of Brandt Components. The result is a real (i.e. non-negligible) reduction in market presence, the size of which is, however, limited. This reduction is therefore proportionate to the extent of the distortion of competition and trade as analysed above.

(95) Consequently, the Commission considers that these measures can avert the risk of excessive distortions of competition within the meaning of points 38 to 40 of the restructuring guidelines.

### 6.7. **Aid limited to the minimum: real contribution, free of aid**

(96) In order for aid to be authorised, the amount and intensity of the aid must, pursuant to points 43 to 45 of the restructuring guidelines, be limited to the strict minimum necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid recipients must make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing on market conditions.

(97) As indicated in paragraph 43 of the opening decision, the restructuring costs, as described in the French authorities' notification, come to EUR [50-90] million. They are financed as follows ([36]):

| | million EUR | % |
|---|---|---|
| Restructuring costs | [50-90] | 100 |
| Financed by: | | |
| Aid recipient's own share | [0-10] | […] |
| Shareholder contribution | 26,9 | […] |
| State aid | 31 | [40-50] |

([35]) The purpose of this measure is to withdraw the Vedette products concerned from the market. Clearly, therefore, the effect of the measure would be lost if FagorBrandt were to grant another company a licence for the production and/or marketing of these products under the Vedette brand.

([36]) The opening decision stated wrongly that the 'recipient's own share' came to 4,6 %, whereas the notification clearly stated EUR 4,6 million.

(98) In paragraph 44 of the opening decision, the Commission raised two points regarding these data. Firstly, it asked the French authorities to explain why they had not included the aid reimbursement in the restructuring costs. Secondly, it asked for an explanation as to the nature of the 'recipient's own share'.

(99) The French authorities answered the second point by stating that the 'recipient's own share' consisted of bank loans raised by FagorBrandt on the market. Specifically, the company had contracted bank loans amounting to EUR [25-30] million in 2006, increased to EUR [30-35] million in 2007 ([37]). The bank loans had been secured by stocks of finished products. The Commission considers that this amounts to 'external financing at market conditions' as referred to in point 43 of the restructuring guidelines and hence constitutes a valid contribution.

(100) In reply to the Commission's first point, the French authorities stated that the reimbursement of incompatible aid could not, on the face of it, be classed as a restructuring cost (or as an own share of the recipient firm within the meaning of points 43 and 44 of the restructuring guidelines). It was for that reason that they had not counted it among the restructuring costs. However, the reimbursement — estimated at approximately EUR [25-30] million (including interest) — was, of course, included in the business plan attached to the notification just like any other normal financial expenditure. The Commission considers it essential that the reimbursement be taken into account in the business plan, as is the case here ([38]). As to whether the reimbursement must be formally considered a restructuring cost within the meaning of point 43 of the restructuring guidelines, the Commission would observe that, even if that were the case, it would not have the effect of reducing the aid recipient's own contribution to below the 50 % required by point 44 of the restructuring guidelines. Even if the reimbursement of the aid with interest were included as a restructuring cost — bringing the total to some EUR [75-100] million — this would have the effect of reducing further the share of the restructuring costs financed by aid and of increasing the share of those costs financed by the aid recipient ([39]) and its shareholders. Consequently, it is not necessary for the Commission to decide on this matter.

([37]) Letter from the French authorities dated 15 February 2008.

([38]) In its Decision 2006/747/EC, the Commission found that the fact that the restructuring plan submitted did not take into account the reimbursement of incompatible aid received by the company justified concluding that the plan did not enable the company's long-term viability to be restored.

([39]) The abovementioned bank loans amounting to EUR [30-35] million would then be counted as an own contribution in their totality.

(101) The doubts raised by the Commission in the opening decision are therefore allayed and the Commission concludes that the 'recipient's own share' and that of its shareholder is greater than 50 % of the restructuring costs, as required for large firms by point 44 of the restructuring guidelines.

(102) As for the assertion by the competitor requesting anonymity that the aid is not limited to the minimum inasmuch as FagorBrandt can obtain financing from its shareholder and the group to which it belongs, the Commission has already answered this point in its analysis of the company's eligibility.

(103) Finally, besides verifying compliance with the formal criterion of an own contribution greater than 50 %, the Commission has also assessed, in the light in particular of the criteria set out in point 45 of the restructuring guidelines, whether the aid is limited to the strict minimum. The Commission considers that such is the case and that the amount of the aid does not provide the company with 'surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.' It would point out that, once the aid has been granted and the restructuring is completed, the group will still be significantly indebted.

### 6.8. **Full implementation of the plan**

(104) FagorBrandt's restructuring plan, including all of France's commitments, must be implemented in full ([40]). The Commission would ask to be kept informed of progress with the implementation of the plan and of the related commitments.

## 7. **CONCLUSION**

(105) The aid may be declared compatible with the common market provided all the conditions imposed are met,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid amounting to EUR 31 million which France is planning to implement for FagorBrandt is compatible with the common market, subject to the conditions laid down in Article 2.

([40]) As indicated above, the restructuring plan started in 2004 and most of the restructuring measures have already been implemented.

*Article 2*

1. The French authorities shall suspend payment to FagorBrandt of the aid referred to in Article 1 of this Decision until such time as the recovery from FagorBrandt of the incompatible aid referred to in Decision 2004/343/EC has become effective.

2. FagorBrandt's restructuring plan, as communicated to the Commission by France on 6 August 2006 ([41]), shall be implemented in full.

3. FagorBrandt shall cease marketing refrigeration, cooking and dishwashing products of the Vedette brand for a period of five years beginning at the latest seven months after the date of notification of this Decision.

4. In order to ensure that the conditions laid down in paragraphs 1 to 3 of this Article are observed, France shall inform the Commission, by means of annual reports, of progress with the restructuring of FagorBrandt, the recovery of the incompatible aid described in paragraph 1, payment of the compatible aid, and implementation of the compensatory measures.

*Article 3*

France shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 21 October 2008.

*For the Commission*
Neelie KROES
*Member of the Commission*

([41]) Clerical error: read '2007' instead of '2006'.