II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 25 July 2012

on state aid that France plans to grant to FagorBrandt (SA.23839 (C 44/2007))

(notified under document C(2012) 5043)

(Only the French text is authentic)

(Text with EEA relevance)

(2013/283/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof [1],

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 above Articles [2] 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 that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid.

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

(4) The Commission received comments from three interested parties, namely two competitors and the aid recipient. Electrolux submitted comments 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 who wishes to remain anonymous submitted comments by letter dated 17 December 2007 [4]. 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 paragraph 5).

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The substance of the two articles has not changed. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood where appropriate as references to Articles 87 and 88 respectively of the EC Treaty. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology used in this decision is that of the TFEU.

[2] OJ C 275, 16.11.2007, p. 18.

[3] See footnote 2.

[4] 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.

(5) France submitted its comments on the opening decision to the Commission by letter dated 13 November 2007. 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.

(6) On 21 October 2008 the Commission adopted a decision finding that the restructuring aid of EUR 31 million to be granted to FagorBrandt was compatible with the common market, subject to conditions ('the decision of 21 October 2008') ([5]).

(7) On 14 February 2012, in *Electrolux and Whirlpool Europe* v *Commission*, that decision was annulled by the General Court, on the ground that it contained two manifest errors of assessment: it took account of an invalid compensatory measure, and it failed to analyse the cumulative effect on competition of the aid it approved together with aid previously granted by the Italian authorities which had been held incompatible and had not yet been recovered ('the Italian aid') ([6]).

(8) The Commission must therefore adopt a final decision afresh. In order to do so, as the General Court has held ([7]), the Commission must take account only of the information that was available to it at the relevant time, that is to say on 21 October 2008 (see section 6.2.2, 'The relevant period for purposes of the assessment').

2. DESCRIPTION

(9) The aid at issue is restructuring aid. It amounts to EUR 31 million. It is to be provided by the French Ministry of Economic Affairs, Finance and Employment. The aid recipient is FagorBrandt SA, which has several subsidiaries that conduct its production and marketing business.

(10) The French authorities indicate that given the resources available FagorBrandt would not be able to overcome its difficulties without state aid. According to France, the direct grant of EUR 31 million will enable FagorBrandt to finance half the cost of its restructuring ([8]).

(11) The group ('FagorBrandt') belongs indirectly to Fagor Electrodomésticos S Coop ('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 %.

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

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

3. GROUNDS FOR INITIATING THE PROCEDURE

(14) In the opening decision the Commission expressed doubts for the following five reasons: a risk of circumvention of the prohibition on restructuring aid to newly created firms; a risk of circumvention of the obligation to reimburse incompatible aid; doubt about the restoration of the firm's long-term viability; inadequacy of the compensatory measures; and 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

(15) FagorBrandt was established in January 2002: accordingly, for the purposes of point 12 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the restructuring aid guidelines') ([9]), it was 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 ('the Article 44 *septies* aid') and at the time when, in December 2003, the Commission declared that that aid was incompatible and ordered its

([5]) OJ L 160, 23.6.2009, p. 11.
([6]) Joined Cases T-115/09 and T-116/09, not yet published in the *European Court Reports*.
([7]) Judgment of the General Court in Case T-301/01 *Alitalia* v *Commission* [2008] ECR II-1753.
([8]) For a description of the restructuring plan see paragraphs 11 ff. of the opening decision.
([9]) OJ C 244, 1.10.2004, p. 2.

recovery ([10]), FagorBrandt was a newly created firm. Pursuant to point 12 of the restructuring aid guidelines, therefore, it was 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, might constitute a circumvention of the prohibition in point 12 of the restructuring aid guidelines

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

(16) 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, rendering its recovery meaningless and redundant.

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

(17) 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**

(18) The Commission doubted whether the absence of compensatory measures additional to those already taken as part of the restructuring plan was acceptable. It drew attention to the following:

(i) the restructuring aid guidelines (points 38 to 41) obliged 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 were for the most part European; the disappearance of FagorBrandt would accordingly enable its European competitors to increase their sales and output significantly;

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

(iv) the guidelines applicable when the *Bull* ([11]) and *Euromoteurs* ([12]) 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**

(19) Finally, the Commission expressed doubts about whether the requirements of points 43 and 44 of the restructuring aid 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**

(20) 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**

(21) 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

([10]) 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).

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

([12]) Commission Decision of 26 April 2006 on State Aid which France is planning to implement for Euromoteurs, paragraphs 30-31 and 42 (OJ L 307, 7.11.2006, p. 213).

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.

(22) Secondly, it considers that the aid is not limited to the necessary minimum, inasmuch as FagorBrandt could obtain 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).

(23) 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 Commission cannot declare the aid compatible.

(24) Fourthly, the granting of unlawful aid by France and Italy in the past 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**

(25) 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**

(26) 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 aid 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.

(27) 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 aid 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.

(28) Regarding the restoration of long-term viability and the two 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 200 000, the balance being borne by the vendor of the business in question.

(29) 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.

(*) Business secret.

(30) 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', as it is called in the notification *(effort propre du bénéficiaire)*, the French authorities explain that this consists of bank loans.

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

(31) In response 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.

(32) 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 […].

(33) 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 on the financial support only 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.

(34) 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, that party 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.

(35) 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 27,3 million including interest). Furthermore, the restructuring costs are estimated at EUR 62,5 million and hence are significantly higher than the amount of restructuring aid sought. Finally, France points to the fungible nature of the expenditure.

(36) 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 107(1) TFEU**

(37) The Commission considers that the measure constitutes state aid within the meaning of Article 107(1) of the TFEU. It takes the form of a grant given by the French Government, and is consequently financed out of state resources and is imputable to the State. It is aimed solely at FagorBrandt, and is thus a selective measure. The grant favours FagorBrandt by providing it with additional resources and preventing it from having to cease trading. It therefore threatens to distort competition between manufacturers of large electrical household appliances. In the market for large electrical household appliances there is extensive trade between Member States. The Commission concludes that the notified measure constitutes state aid. France does not dispute that conclusion.

6.2. **Legal basis of the assessment**

6.2.1. *Legal basis for a finding of compatibility*

(38) Article 107(1) of the TFEU imposes a general ban on state aid, and Article 107(2) and (3) provide for exceptions. The exceptions in Article 107(2) of the Treaty are clearly not applicable here.

(39) As for the exceptions in Article 107(3), the Commission would point out that the objective of the aid is not regional, and the exception in point (b) is clearly not applicable, so that only the exception in point (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. It is common ground that the aid at issue 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 aid 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 TFEU. Nor has any of the interested parties criticised this choice of legal basis, which was already announced in the opening decision.

6.2.2. *The relevant period for purposes of the assessment*

(40) The General Court has held that when one of its decisions is annulled the Commission is required to base its new analysis solely on information which was available to it at the time it adopted the decision ([13]), which in this case is 21 October 2008.

(41) No account is to be taken of events that may have taken place after 21 October 2008. Changes that may have taken place in the market or in the situation of the recipient of the aid must be excluded from the analysis. Nor will the Commission consider the period of implementation of the restructuring plan from October 2008 onward ([14]).

(42) In the same way, the Commission is not under an obligation to start the investigation of the case afresh or even to supplement it by resorting to new technical expertise ([15]). The annulment of an act concluding an administrative proceeding which comprises several stages does not necessarily entail the annulment of the entire procedure prior to the adoption of the contested act. In cases, such as the present one, where, in spite of the fact that investigation measures have been taken allowing an exhaustive analysis to be made of the compatibility of the aid, the analysis carried out by the Commission is incomplete, thus making the decision unlawful, the procedure for replacing that decision can be resumed at that point by means of a fresh analysis of the investigation measures taken previously ([16]).

(43) Since the Commission is required to base its new analysis solely on information which was available to it in October 2008, information in respect of which both the French authorities and FagorBrandt have already defined their position, it is unnecessary to consult them afresh ([17]). Finally, the right of interested parties to submit their comments was ensured when the opening decision was published in the *Official Journal* ([18]), and there is no provision in Regulation No 659/1999 requiring that that opportunity be made available to them again where the original plan has been amended during the investigation procedure ([19]).

([13]) Judgment in *Alitalia* v *Commission*, cited in footnote 7 above.
([14]) *Alitalia*, paragraph 137.
([15]) *Alitalia*, paragraphs 144 and 159.
([16]) Alitalia, paragraphs 99 to 101 and 142.
([17]) *Alitalia*, paragraph 174.
([18]) See footnote 2.
([19]) *Alitalia*, paragraph 174.

(44) The present decision is accordingly based solely on the information available on 21 October 2008.

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

(45) 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 aid guidelines.

(46) 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 aid guidelines. In paragraph 27 of the opening decision, the Commission also indicated that, in line with the scenario in point 13 of the restructuring aid 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 ([20]) 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 deteriorated markedly thereafter. The French authorities point out in this connection that Fagor's financial debts (not including those of FagorBrandt) trebled 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.

(47) The French authorities have also explained that the FagorBrandt group's sole shareholder, Fagor, is a cooperative society incorporated under Spanish law. Fagor's capital is divided among approximately 3 500 members, all of them worker-cooperators; no member may hold more than 25 % of the capital.

(48) As a result of this legal form Fagor is unable to launch increases in capital open to outside subscribers. In order to increase its capital it would have to rely on its own members, whose financial capacity is limited to their own personal savings. To finance its development the only courses open to it are to borrow from banks or to issue bonds.

([20]) *La Tribune*, 14 April 2005.

(49) MCC is a grouping of cooperatives of which Fagor forms part. Each cooperative in the grouping retains its legal and financial autonomy. In other words, there are no capital links between Fagor and MCC. MCC is a cooperative movement, not a holding company. In this grouping 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. The relations between MCC and its members are not those of a conventional capital-based group.

(50) As a result of its legal form, MCC could not raise funds as a public limited company might, and cannot be considered a parent company for purposes of point 13 of the restructuring aid guidelines. FagorBrandt could therefore count on the support only of its parent association Fagor, to the extent that its capacity to contribute permitted.

(51) 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 aid guidelines.

(52) Regarding the company's eligibility under the conditions set out in section 2.1 of the restructuring aid 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 initiating the procedure').

(53) 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 aid guidelines for being considered in difficulty As regards point 10 of the restructuring aid 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 aid 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 aid guidelines (that is to say, a firm which is unable to stem losses 'which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term'), starting possibly from the following year (bearing in mind the obligation to reimburse the Article 44 *septies* aid), but definitely from 2007.

Table 1

(EUR million)	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	180,6	171,6	190,4
Profit or loss	15,5	13,8	(3,6)	(13,4)	(18,2)	(5,7)
Capital and reserves	69,8	83,4	79,8	70,6	79,4	73,6

(54) The Commission also notes that in 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 aid guidelines, that is to say to be 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.

(55) 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 fact that France had not yet recovered the Article 44 *septies* aid in January 2005 — three years after the creation of FagorBrandt — did not have the effect of artificially keeping 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. The Commission accordingly takes the view that the fact that in January 2005 France had not yet recovered the Article 44 *septies* aid 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 aid guidelines.

(56) 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 aid guidelines are fulfilled.

6.4. **Previsions concerning previous unlawful and incompatible aid**

6.4.1. *The aid granted by France*

(57) On the basis of point 23 of the restructuring aid guidelines and the fact that the notified aid was *prima facie* aimed mainly at financing the reimbursement of the Article 44 *septies* aid, the Commission stated in paragraph 30 of the opening decision that it had misgivings about whether the notified aid constituted a circumvention of the reimbursement obligation and rendered that obligation meaningless and redundant.

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

(59) 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.

(60) 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 62,5 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 Fagor-Brandt 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 aid guidelines.

(61) Thirdly, in its 1991 decision in the *Deggendorf* case, 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' ([21]). In a judgment delivered on 15 May 1997 the Court of Justice endorsed the Commission's approach ([22]). 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 ([23]). The Commission would point out that, in the present case, once the new aid fulfils the conditions laid down by the restructuring aid 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.

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

(63) In this context, the Commission would point out the following. Point 23 of the restructuring aid 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 footnote 2 to point 23 of the restructuring aid guidelines, this provision is based on the rule in *Deggendorf* ([24]). 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 that 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.

6.4.2. *The unlawful Italian aid*

(64) On 21 October 2008 Brandt Italia, the Italian subsidiary of FagorBrandt, remained liable for the repayment of part of the aid granted by the Italian authorities. The Commission declared this aid incompatible in a Decision adopted on 30 March 2004 ([25]).

([21]) Commission Decision of 26 March 1991 on aid granted by the German Government to Deggendorf GmbH (OJ L 215, 2.8.1991, p. 16).

([22]) 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. That judgment upheld the judgment of the General Court in Joined Cases T-244/93 and T-486/93 *TWD* v *Commission* [1995] ECR II-2265.

([23]) 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.'

([24]) Judgments cited in footnote 22 above.

([25]) OJ L 352, 27.11.2004, p. 10. That Decision was challenged by Brandt Italia and by Italy before the General Court, which dismissed the actions on 12 September 2007 (Joined Cases T-239/04 and T-323/04). On 6 December 2007 the Court of Justice held that by failing to comply with the Commission Decision of 30 March 2004 Italy had failed to fulfil its obligations (Case C-280/05).

(65) In such a case, as has been explained in paragraph 61, the findings in *Deggendorf* confirm that the Commission does not exceed the limits of its discretion where it requires recovery of the previous aid as a condition precedent to the payment of fresh aid ([26]). If the Commission makes the grant of the planned aid subject to the prior recovery of earlier aid, it is not obliged to examine the cumulative effect of the aid on competition: the imposition of such a condition prevents the advantage conferred by the planned aid from combining with that conferred by the earlier aid ([27]).

(66) In its decision-making practice, therefore, rather than applying point 23 of the restructuring aid guidelines, which would allow it to examine the cumulative effect of the unlawful aid and the new aid, the Commission has preferred to require the recovery of the incompatible aid before the fresh aid is paid ([28]).

(67) In view of the particular circumstances of this case, however, the Commission will apply point 23 of the restructuring aid guidelines. The Commission here has to adopt a fresh Decision following the annulment by the General Court of the Commission's Decision of 21 October 2008. The Commission cannot consider information that was not in its possession at the time of the first Decision. It consequently cannot take account of fresh commitments that may have been given by the Member State or of the manner of any recovery of unlawful aid that may have taken place since that date.

(68) In line with the judgment of the General Court in *Electrolux and Whirlpool*, therefore, the Commission must examine the cumulative effect of the Italian aid and the restructuring aid notified ([29]).

(69) It must first be determined what is the amount of the Italian aid that needed to be considered on 21 October 2008.

([26]) Judgments cited in footnote 22 above.

([27]) Judgment in *Electrolux and Whirlpool*, cited in footnote 6, at paragraph 67.

([28]) See the following Commission Decisions: Commission Decision of 21 October 2003 on the research and development aid to the site at Zamudio (Basque Country) which Spain is planning to implement for the company 'Industria de Turbo Propulsores, SA' (ITP) (OJ L 61, 27.2.2004, p. 87, paragraphs 32–36, 55 and 117–119); Commission Decision of 16 March 2005 concerning State aid that Italy (Regione Lazio) intends to grant for the reduction of greenhouse gas emissions (OJ L 244, 7.9.2006, p. 8); and Commission Decision of 8 November 2006 on State aid C 11/06 (ex N 127/05) which Italy is planning to implement for AEM Torino (OJ L 366, 21.12.2006, p. 62, paragraphs 39–41).

([29]) Judgment cited in footnote 6, at paragraph 71: 'Since the Commission did not make the grant of the aid at issue conditional on the recovery of the incompatible Italian aid, it should therefore have examined the cumulative effect of the two types of aid, which it failed to do in the present case.'

The amount of the Italian aid

(70) FagorBrandt takes the view that the amount of the Italian aid to be repaid by Brandt Italia will probably be less than EUR 200 000.

(71) In 2003 FagorBrandt, through its subsidiary Brandt Italia, bought the Verolanuova works and its assets from Ocean, which was in court-supervised administration. The price Brandt Italia offered for the assets was EUR 10 million.

(72) Ocean's court-appointed administrators considered this sum to be insufficient, and the Italian authorities then sought to extend to takeover operations of this kind certain provisions of two schemes considered compatible with European law, the laid-off workers' mobility scheme *(mobilità)* and the lay-off fund *(cassa integrazione)*. Those provisions allowed firms recruiting unemployed workers to enjoy an exemption from social security contributions. The purpose of extending these measures was that the benefit to the purchaser would increase the value of the assets proportionally.

(73) The Italian authorities therefore enacted a decree-law, dated 14 February 2003, which provided that the purchaser of any company in special administration *(amministrazione straordinaria)* that employed more than 1 000 people would qualify for a reduction in social security contributions and an additional grant for every employee transferred. The acquisition by Brandt Italia of Ocean's electrical household appliances business, which took place on 7 March 2003, was eligible for the scheme set up by this legislation. The value of the exemptions, estimated at EUR 8,5 million, was consequently added to the purchase price offered by Brandt Italia, which now increased to EUR 18,5 million.

(74) On 30 March 2004 the Commission adopted a Decision finding that the Decree-law of 14 February 2003, converted into statute by an Act of 17 April 2003, was a state aid measure that was unlawful and incompatible with the internal market ([30]). When Brandt Italia learned of the Commission Decision, it obtained an order from the Ordinary Court *(Tribunale)* of Brescia, dated 5 July 2004, seizing the last instalment of the purchase price (EUR 5,7 million), and approached the supervisors of the Ocean proceedings with a view to recovering the amount paid in excess. Brandt Italia took the view that the Italian State was required to recover the unlawful aid from the real beneficiary.

([30]) OJ L 352, 27.11.2004, p. 10.

(75) Although the recipient of the aid granted under the scheme that the Commission had held unlawful was Brandt Italia, FagorBrandt considered that the ultimate benefit of the aid had been transferred almost entirely to the creditors recognised by the court-appointed administrators of Ocean, via an increase of EUR 8,5 million in the purchase price of the assets, compared with EUR 8 624 283 in benefits actually granted. The French authorities took the view that the balance for which Brandt Italia/FagorBrandt was still liable was consequently EUR 124 283 plus interest.

(76) The Italian authorities have provided the Commission with information that invalidates this reasoning.

(77) On 13 May 2008 the Italian authorities sent the Commission two judgments delivered by courts in Brescia. They concerned a dispute between the National Social Security Institute (INPS) and Brandt Italia over aid Brandt Italia had received in the form of exemptions from social security contributions.

(78) The first judgment, dated 1 February 2008, suspended a recovery order issued against Brandt Italia by the INPS on 18 December 2007. The INPS appealed against that judgment. On 29 April 2008 the appeal court annulled the suspension of the recovery order.

(79) A third judgment dates from 8 July 2008, and was sent to the Commission on 20 October 2008: it finds in favour of the INPS, on the substance, and upholds the order to Brandt Italia to repay the aid in full. Brandt Italia was notified of that judgment on 15 September 2008.

(80) In the light of this information the Commission must determine the amount of aid to be repaid by Brandt Italia/FagorBrandt that could reasonably have been estimated on 21 October 2008. The Commission observes that the judgment of the Ordinary Court of Brescia of 8 July 2008 ordered Brandt Italia to repay EUR 8 890 878,02.

(81) The Commission considers, however, that the sum seized, EUR 5,7 million, must be deducted from that figure. That sum was provisionally frozen by the judgment of the Ordinary Court of Brescia of 5 July 2004, and was not available to Brandt Italia thereafter. The order to freeze it was made by reason of the Commission's Decision of 30 March 2004: thus the sum was frozen as a precaution against the need to recover it. On 21 October 2008, therefore, it could reasonably be supposed that the sum would serve to repay part of the aid. This conclusion is supported by the following:

— In paragraph 18 of its Decision of 30 March 2004, the Commission said that the aid scheme it held incompatible might benefit the purchaser of a firm in difficulty or the firm in difficulty itself. It was reasonable to suppose, in other words, that Ocean would be liable for at least part of the sum to be recovered.

— The judgment of the Ordinary Court of Brescia of 8 July 2008 refers to the fact that this sum is being held in a frozen account, and considers it 'evident' that the sum may serve to repay the INPS in part.

(82) In the light of the circumstances set out in paragraphs 76 to 81, the Commission considers that the final amount of the Italian aid to be taken into account for purposes of the present analysis is EUR 3 190 878,02, plus interest running to 21 October 2008.

(83) The Commission takes the view that the date to be considered in order to determine the amount of interest is not the date of the actual recovery of the aid but the date of the decision that was annulled, because the Commission is here assessing the compatibility of the French aid on 21 October 2008. On 21 October 2008 the French aid was combined with the Italian aid including the interest running to that date. The Commission must take account of the cumulative effect of those two aid measures, but must not add interest running to the date of the actual recovery.

(84) The advantage conferred by the interest running from 21 October 2008 to the date of recovery will be removed by the recovery itself, in which that interest will of course have to be included.

The cumulative effect of the restructuring aid and the Italian aid

(85) FagorBrandt consequently had at its disposal a sum of EUR 3 190 878,02, plus interest, in addition to the EUR 31 million in aid it was granted by the French authorities. This advantage had an impact on competition: FagorBrandt had additional liquidity that it would not have had under normal market conditions (i.e. in the absence of the incompatible Italian aid).

(86) In line with point 23 of the restructuring aid guidelines and with the judgment in *Electrolux and Whirlpool*, the Commission proposes as part of its assessment of the compatibility of the restructuring aid to examine the cumulative effect of the restructuring aid and the Italian aid.

(87) This examination of the cumulative effect requires the Commission to verify two things. First, the Commission must check that the compensatory measures (see paragraphs 89 ff. and especially paragraphs 118 ff.) do offset the damage to competition caused by the additional liquidity available to FagorBrandt. Second, the Commission will also seek to ensure that the recipient's own contribution is free of any aid component (see paragraphs 154 ff.). This is because it is not impossible that the contribution envisaged by the firm may incorporate the sum in question.

(88) When it verifies these aspects the Commission may impose new conditions on the Member State, irrespective of any proposals the Member State has made (and in the present case the Commission cannot take account of any such proposals made after 21 October 2008). This is confirmed by point 46 of the restructuring aid guidelines: 'the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Member State concerned has not given a commitment that it will adopt such provisions'.

6.5. **No undue distortion of competition**

6.5.1. *The need for compensatory measures*

(89) Point 38 of the restructuring aid 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.

(90) 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.

(91) 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, compensatory measures are needed.

(92) As already indicated, FagorBrandt manufactures large electrical household appliances and markets them to distributors (it does not distribute or sell to private individuals). The Commission has in the past considered that the geographic market for large electrical household appliances is at least Community-wide, owing, among other things, to the absence of entry barriers, technical harmonisation, and relatively low transport costs ([31]). The data provided by FagorBrandt and by the two competitors that submitted comments confirm that the market is Community-wide in scale.

(93) The Commission considers that restructuring aid automatically distorts competition, because it prevents the recipient from being forced out of the market, and thus hinders the development of competing firms. Such aid therefore obstructs the exit of the least efficient firms, which is, in the words of point 4 of the restructuring aid guidelines, 'a normal part of the operation of the market'. The notified aid to FagorBrandt therefore gives rise to distortion of competition of this kind. The Commission would observe, however, that the following factors tend to limit the scale of this distortion of competition. First, in the European market for large electrical appliances, FagorBrandt has a market share of at most [0–5] % ([32]). Second, there are four competitors in the market — Indesit, Whirlpool, BSH and Electrolux — with market

([31]) In its Decision of 21 June 1994 in *Electrolux/AEG* (OJ C 187, 9.7.1994, p. 14), the Commission concluded that for large electric household appliances the geographic market was western Europe. In a Decision 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.*CECED*) (OJ L 187, 26.7.2000, p. 47), the Commission concluded that the geographic market was the EEA. That case concerned washing machines.

([32]) The combined market share of FagorBrandt and Fagor Electrodomésticos is at most [5–10] %.

shares of 10 % or more ([33]). The competitor requesting anonymity acknowledges that FagorBrandt is a relatively small player in the European market whose market share is diminishing (see above the doubts expressed by this competitor concerning the company's return to viability, which are related to its small size) ([34]). Third, the amount of the aid is small by comparison with FagorBrandt's European turnover (at less than 4 % of turnover in 2007), and smaller again by comparison with the turnovers of the four main market operators, which are larger than that of FagorBrandt ([35]).

(94) 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 aid guidelines, which in turn reflects Article 107(3)(c) of the TFEU, to analyse the scale of the 'adverse effects on trading conditions' between Member States. As observed in paragraph 38 of the opening decision, the aid distorts the location of economic activities, and hence trade, between Member States. The bulk of FagorBrandt's production activities and employees are located in France ([80–100] % 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 plants are in competition mainly with products manufactured by competitors in other Member States ([36]). Consequently, the disappearance of FagorBrandt would enable those European competitors appreciably to increase their sales and hence their production. The aid has the effect of maintaining production activities in France which would otherwise have moved partly to other Member States. It therefore has an adverse effect on trading conditions in that it reduces the opportunities for competitors based in other Member States to export to France ([37]). 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.

(95) On the basis of the above analysis, the Commission considers that compensatory measures should be taken which are real (i.e. non-negligible) but nevertheless limited in scope.

6.5.2. *Analysis of the measures already implemented*

(96) 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 aid 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.

([33]) The Commission cannot accept France's argument that FagorBrandt's continued presence in the market has a positive effect because it prevents the creation of an oligopolistic situation. The French authorities have not backed up that assertion with specific evidence. The assertion is contradicted, moreover, by their notification, which describes a highly competitive market with diversified competition from, among others, distributor brands. Lastly, point 39 of the restructuring aid 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.

([34]) According to the data supplied by that competitor, FagorBrandt's market share in Europe, by volume, fell from 5,3 % in 2004 to 5,2 % in 2005 and 5 % in 2006 and 2007.

([35]) If this analysis is carried out 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 euros, came to EUR 11,8 billion, EUR 10,8 billion, EUR 7,3 billion and EUR 3,1 billion respectively.

([36]) As indicated, FagorBrandt will no longer itself manufacture […]. It will produce […]. In those segments the proportion of products manufactured outside the European Union is smaller. The proportion manufactured outside the European Union is biggest in the case of […].

([37]) [50–80] % of FagorBrandt's sales take place in the French market. The Court of Justice has repeatedly held 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] 4067, paragraph 19; Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 40; Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraphs 84 to 86; Case T-152/99 *HAMSA* v *Commission* [2002] ECR II-3049, paragraphs 220 and 221.

(97) 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 5,8 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 ([38]) and that, in accordance with point 40 of the restructuring aid guidelines, it cannot be taken into account as a compensatory measure.

(98) The cessation of production of freestanding microwave ovens at the Aizenay plant also involved a closure of a loss-making activity which was needed in order to re-establish viability — something which the French authorities explicitly acknowledged in their submissions ([39]). The unprofitability of that activity is not surprising given that freestanding microwave ovens are one of the market segments that products from low-cost countries have penetrated the most ([40]). Moreover, the Aizenay plant had lost important contracts under which it produced microwave ovens for other groups ([41]). In conclusion, on the basis of point 40 of the restructuring aid guidelines, this measure cannot be taken into account as a compensatory measure.

(99) By contrast, in March 2004 the company divested its subsidiary Brandt Components (Nevers plant) to the Austrian group ATB for EUR 3 million. What was involved here, therefore, was neither a write-off ([42]) nor a closure of an activity. This measure is therefore not excluded by the said provision in point 40 of the restructuring aid guidelines. The business divested in March 2004 ([43]) had in 2003 a turnover of EUR 35,4 million — equivalent to 4 % of the company's 2003 turnover — and 306 employees — equivalent to 6 % 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.

(100) But this measure cannot be regarded as a valid compensatory measure. Brandt Components was sold about three and a half years before the notification of the aid under scrutiny. The measure does not reduce FagorBrandt's presence in the large electrical household appliance market ([44]), the main market in which FagorBrandt will remain present. Thus the measure did not have as its object — and could not have as its effect — a lessening of the distortion of competition generated by the planned aid.

([38]) The lack of profitability of the freezer business was widely reported in the French press. An article in *Ouest France* dated 8 July 2004 stated, for example, that 'In 2005, ElcoBrandt, 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 Échos* 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 %.'

([39]) 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.

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

([41]) 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.

([42]) All the less so as the company made a gain of EUR 774 000 on the sale.

([43]) As indicated in section 2.2 of the opening decision, FagorBrandt began to restructure 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 aid guidelines.

([44]) 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 the French 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.

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

(101) To meet the concerns raised in the opening decision regarding the adequacy 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.

(102) 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. As a compensatory measure, therefore, the Commission would give preference to cessation of the marketing of dishwashers under the Vedette brand as opposed to divestment of the […] brand, products of the Vedette brand being sold exclusively in the French market whereas products […] are sold primarily […] ([45]).

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

Refrigeration products

(104) Sales of refrigeration products (refrigerators and freezers) of the Vedette brand were worth, in 2007, EUR [10–20] million, equivalent to [0–5] % of the FagorBrandt group's turnover.

(105) Cessation of the marketing of these 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, FagorBrandt's main competitors in the refrigerator market in France — where FagorBrandt had a market share based on value of […] % — were Whirlpool ([…] %), Indesit ([…] %) and Electrolux ([…] %). In the freezer market, the main competitors of FagorBrandt (which had […] %) were Whirlpool ([…] %), Liebherr ([…] %) and Electrolux ([…] %).

([45]) In the French market, Vedette is a brand positioned […] of the […] products market. The measures proposed do not therefore reduce the presence of FagorBrandt in the market for […] products. However, the great majority of the groups competing with FagorBrandt in the […] market already possess brands competing with Vedette in the […] products market. They will therefore benefit from the withdrawal of the Vedette products described above.

Cooking products

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

(107) 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, FagorBrandt's main competitors in the cooking products market in France — where FagorBrandt had a market share based on value of […] % — were Indesit ([…] %), Electrolux ([…] %) and Candy ([…] %).

Dishwashers

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

(109) According to the 2007 GfK study, FagorBrandt's main competitors in the dishwashers market in France — where FagorBrandt had a market share based on value of […] % — were 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

(110) To sum up, the Vedette products the marketing of which will be stopped account for [0–5] % of the group's turnover ([46]). The French authorities indicate that this will necessitate significant adjustments within the company […].

6.5.4. *Conclusion regarding the compensatory measures proposed by the French authorities; imposition by the Commission of an additional compensatory measure*

(111) The compensatory measures proposed are the cessation of the marketing for a period of five years of certain products of the Vedette brand (cooking, refrigeration and dishwashing) ([47]) 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.

([46]) In 2007, they accounted for [30–40] % of the Vedette brand's turnover and [0-10] % of FagorBrandt's sales of large electrical household appliances in the French market.

([47]) 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.

(112) However, the Commission considers that the only valid compensatory measure proposed by the French authorities is the measure relating to the Vedette brand, and that it is not sufficient. The Commission will therefore impose, as a condition of compatibility, the extension of the cessation of the marketing of products of the Vedette brand for a further three years. The ban proposed has a duration of five years; this will be extended by three years, making a total of eight.

(113) According to the information in the Commission's possession on 21 October 2008, the impact of this compensatory measure ('CM') in terms of loss of turnover can be evaluated in two ways, shown in Table 2 ([48]):

Table 2

EUR million	2009	2010	2011	2012	2013	2014	2015	2016
FagorBrandt turnover	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]
Impact CM, higher estimate	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]
Impact CM, lower estimate	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]

(114) The figures shown in Table 2 for the years 2009 to 2012 are the figures supplied by the French authorities and FagorBrandt for the impact of the compensatory measure they propose (for the scale of the impact see also paragraphs 143 ff.).

(115) The first way to calculate the impact of the additional compensatory measure imposed by the Commission is to multiply by 3 the loss of turnover for the last year evaluated by the French authorities, namely 2012. In an optimistic scenario for the company, the impact estimated in this fashion is therefore 3 × EUR [40–60] million, or EUR [120-180] million.

(116) The second way to estimate the impact of the additional compensatory measure is to extrapolate figures for 2013 to 2016 by applying a linear increase of [1,5–3] % to the figures for 2012, in continuation of the estimated [1,5–3] % growth in the company's turnover from 2009 to 2012. This estimate of growth in turnover is considered reasonable, in the light of group strategy and market prospects, for the reasons set out in paragraphs 125 ff. In an optimistic scenario for the company, following this approach, the compensatory measure will deprive FagorBrandt of turnover of EUR [120–180] million.

(117) The compensatory measure proposed therefore appears to be adequate, and is enough by itself to bring about a proportionate reduction in the adverse effects of the grant of the aid: in an optimistic scenario, it deprives the company of turnover of between [120-180] million over the period 2014–2016. The turnover lost will allow competitors to increase their sales. It will also be more difficult for the company to reintroduce the Vedette products concerned after eight years of absence as a result of the measure (the only Vedette products currently marketed are washing machines). Even if the brand does not disappear entirely, the cost of a return will be proportional to the years of absence from the market. The longer the brand has been absent from the market, the less it will be recognised.

(118) It has to be considered whether this additional compensatory measure will also offset the competitive advantage conferred by the cumulative effect of the Italian aid and the restructuring aid. On 21 October 2008 FagorBrandt had at its disposal a sum of EUR 3 190 878,02, or about EUR 4 million including interest, which it ought not to have received. This advantage had an impact on competition: the company had additional liquidity. But the additional compensatory measure offsets the damage done to competition.

([48]) The table assumes that the measure does indeed begin on 1 January 2009.

(119) Table 3 shows the net loss (or negative free cash flow) resulting from the compensatory measure. The figures for the years 2009-2012 are the figures notified to the Commission by the French authorities. The figures for the years 2013–2016 are an extrapolation obtained by increasing the 2012 figures by [1,5–3] % each year ([49]).

Table 3

EUR million	2009	2010	2011	2012	2013	2014	2015	2016
Final profit or loss without CM	[0-5]	[5-10]	[10-15]	[10-15]	*[15-20]*	*[15-20]*	*[15-20]*	*[15-20]*
Impact CM, higher estimate	– [10-15]	– [5-10]	– [5-10]	– [5-10]	*– [5-10]*	*– [5-10]*	*– [5-10]*	*– [5-10]*
Impact CM, lower estimate	– [15-20]	– [5-10]	– [5-10]	– [5-10]	*– [5-10]*	*– [5-10]*	*– [5-10]*	*– [5-10]*

(120) In an optimistic scenario for the company, three additional years deprive FagorBrandt of liquidity amounting to EUR [10–20] million (if we multiply the 2012 figure by 3) or EUR [10–20] million (if we add the extrapolated figures). In other words, the imposition of this new compensatory measure very amply offsets the advantage conferred by liquidity of about EUR 4 million.

(121) The fact that the compensatory measures extend beyond the period of restructuring (which is to end on 31 December 2012) does not mean that they are inappropriate. The compensatory measures arise out of the granting of restructuring aid, but they are not part of the restructuring process itself: they are intended to compensate the assisted firm's competitors for the damage to competition they may suffer. The fact that the measures extend beyond the period of restructuring does not in any way deprive them of their purpose, given that they were put in place by reason of a restructuring operation facilitated by state aid, and that their object and effect is to compensate for the damage to competition that results from that aid.

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

6.6. **Restoration of the company's viability**

6.6.1. *Restructuring plan, market prospects and credibility of the forecasts in the plan*

(123) FagorBrandt's restructuring plan is already under way; essentially it provides for:

— a refocusing and development targeted on […];

— a rationalisation of purchasing policy and […];

— plant closures and disposals ([50]);

— workforce reductions ([51]);

— measures to help ensure the continuation of the business ([52]).

(124) Having examined the plan the Commission confirms what it suggested in the opening decision, namely that it believes the plan complies with the requirements of points 35 to 37 of the restructuring aid guidelines. In other words, the restructuring plan can be expected to restore the company's long-term viability.

(125) The Commission wishes to explain its analysis and conclusions regarding the prospects for the market and the credibility of the forecasts in the restructuring plan.

(126) The Commission has evaluated the forecasts in the restructuring plan, notably in terms of growth prospects. The Commission would point out once again that this Decision takes account only of information available in October 2008.

([49]) All other things being equal, the rate of [1,5–3] % is considered a reasonable hypothesis for turnover growth in the light of group strategy and market prospects (see paragraphs 125 ff.).

([50]) In March 2004 FagorBrandt sold its Nevers plant (electric motors), and in January 2005 it closed its Lesquin plant (freezers). In 2006 it stopped production of freestanding microwave ovens at its Aizenay plant.

([51]) The group put in place […]. Several other measures were taken in France in 2006. In 2006 the group also began to rationalise the plant in Verolanuova in Italy.

([52]) As part of the measures to help ensure the continuity of the business, following studies carried out in March 2004 and February 2005, the group […].

(127) According to CECED ([53]), 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 growth rate in eastern Europe 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.

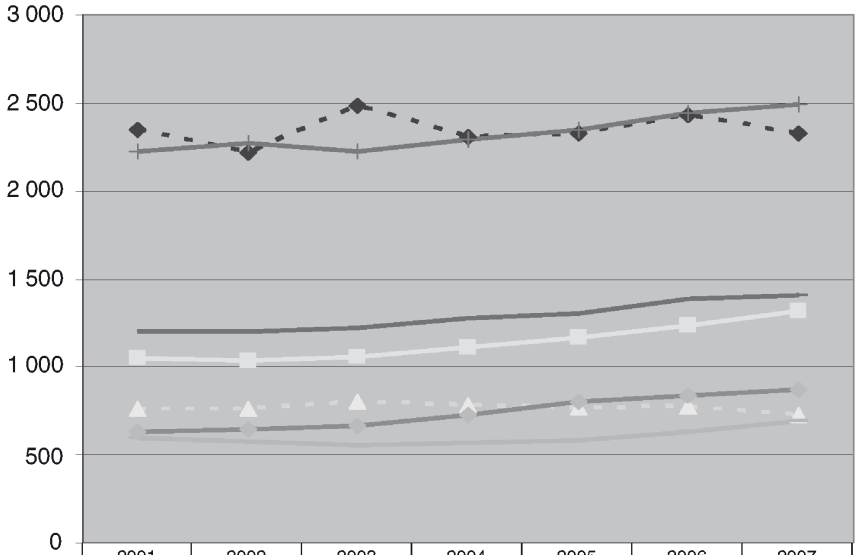
(128) Although in the long run a convergence in purchasing behaviour between eastern Europe and western Europe is possible, weak purchasing power in eastern European countries currently means that demand is concentrated on essential goods (washing machines and refrigerators) and entry-level appliances.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

(129) 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.

(130) More particularly, FagorBrandt's reference market is the French market, where the group achieves [50–80] % of its sales, produces [80–100] % of its volumes and employs [80–100] % of the group's workforce. According to GIFAM ([54]), 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 […] %.

(131) 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:

Table 4



	2001	2002	2003	2004	2005	2006	2007
Refrigerators	2 350	2 220	2 485	2 310	2 330	2 428	2 330
Freezers	760	760	800	785	770	775	730
Washing machines	2 225	2 270	2 225	2 290	2 350	2 446	2 490
Tumble dryers	595	580	555	570	585	631	690
Dishwashers	1 050	1 040	1 055	1 110	1 166	1 237	1 320
Hobs	1 200	1 200	1 220	1 280	1 305	1 384	1 410
Built-in cookers	630	645	665	730	800	840	870

([53]) 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).

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

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

(133) 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.

Table 5

EUR million	2009	2010	2011	2012
FagorBrandt turnover	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]
Final profit or loss	[0-5]	[5-10]	[10-15]	[10-15]

(134) 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.

(135) 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 ([55]). 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 %.

(136) Secondly, the Commission noted that the restructuring plan did not indicate how FagorBrandt intended to reimburse the incompatible aid received by its Italian subsidiary, which might place the restoration of the company's viability in doubt. The French authorities state that the amount of the Italian aid to be repaid by Brandt Italia will probably be less than EUR 200 000 (see paragraphs 70 ff.). As the Commission has already stated, however (see paragraphs 76 ff.), the final amount of the Italian aid that should be taken into account for purposes of the present Decision is EUR 3 190 878,02, plus interest to 21 October 2008. But the Commission believes that the repayment of this sum will not jeopardise the company's return to viability if Fagor Brandt is required to increase its own contribution by a sum equal to EUR 3 190 878,02 plus interest (see paragraphs 149 ff.).

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

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

(138) As indicated above, the competitor requesting anonymity challenges the claim that the restructuring operation 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 the Commission's conclusions concerning the restoration of viability

(139) 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. The French 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.

([55]) 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.

(140) 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. However, the restructuring plan seems to respond to the challenges. The company intends to concentrate on […]. 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 (these are 'niche' players such as Miele, Smeg, Liebherr or Teka, or small manufacturers with only a national dimension, such as Candy or Gorenje). 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.

(141) 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.

6.6.3. *Effect of the compensatory measures on the restoration of viability*

(142) 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 aid guidelines, verify whether the planned compensatory measures endanger the company's viability. As has been explained, the French authorities have proposed compensatory measures that were not included in the financial forecasts attached to the notification. The Commission considers these additional measures to be necessary, and they will consequently 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.

(143) According to the French authorities, Tables 6 and 7 show the company's financial results after factoring in the implementation of the compensatory measures that the French authorities propose. Table 6 depicts an optimistic scenario, Table 7 a pessimistic one.

Table 6

Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand	Best case					
	2007	2008	2009	2010	2011	2012
Turnover	903,0	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]
Gross margin	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit before non-recurrent items	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT)	[…]	[…]	[…]	[…]	[…]	[…]
Pre-tax profit	[…]	[…]	[…]	[…]	[…]	[…]
Profit or loss	– [5-10]	– [5-10]	– [5-10]	[0-5]	[5-10]	[5-10]
Free cash flow	[…]	[…]	[…]	[…]	[…]	[…]
Accumulated free cash flow	[…]	[…]	[…]	[…]	[…]	[…]

Table 7

Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand	Worst case					
	2007	2008	2009	2010	2011	2012
Turnover	903,0	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]
Gross margin	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit before non-recurrent items	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT)	[…]	[…]	[…]	[…]	[…]	[…]
Pre-tax profit	[…]	[…]	[…]	[…]	[…]	[…]
Profit or loss	– [5-10]	– [5-10]	– [10-15]	[0-5]	[0-5]	[5-10]
Free cash flow	[…]	[…]	[…]	[…]	[…]	[…]
Accumulated free cash flow	[…]	[…]	[…]	[…]	[…]	[…]

(144) The withdrawal of several product families marketed under the Vedette brand will cause losses of turnover; the losses shown in the tables are based on the following hypotheses. The withdrawal may lead to:

a) a reduction in sales in the particular 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 (negative range effect on products of the Vedette brand) ([56]);

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

(145) The optimistic scenario takes account only of the effects mentioned at (a) and (b) in paragraph 144: the loss related to the cessation of the marketing of a product is taken to be equivalent to a loss of [70–90] % of the turnover from the ceased product line (the remaining [10–30] % being recovered by FagorBrandt via the increase in sales of identical products sold under brands other than Vedette) and the loss of turnover from the other products marketed under the Vedette brand is taken to be [20–30] %. The pessimistic scenario takes account of the factor mentioned at (c) in paragraph 144: it presupposes a loss rate of [110–130] % for the ceased product line (as well as the loss of 100 % of turnover in the product line that has been dropped, there may be losses on other products and brands too), and a loss rate of [20–40] % for the other products sold under the Vedette brand. The French authorities explain that such a pessimistic hypothesis corresponds to the company's actual experience: it decided in 2003 to abandon the marketing of microwave ovens under the Vedette brand in France in order to concentrate on the Brandt brand, which had its own specific sales force. This had a highly negative knock-on effect, as not only was the entire turnover achieved under the Vedette brand lost, but the loss also affected the Brandt brand (total loss on these two brands of […] appliances over two years compared with initial sales of […] units, including […] under the Vedette brand, being equivalent to a loss of [120–140] % of the abandoned volumes ([57]).

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

([57]) 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 to be attributed entirely to the decision to stop marketing microwave ovens under the Vedette brand therefore seems to be an extreme one.

(146) On the basis of the analysis of the data in the two tables above 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 profits 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.

(147) This conclusion is not called into question by the Commission's imposition of an additional compensatory measure, namely a three-year extension of the ban on marketing products under the Vedette brand.

(148) The impact of the additional compensatory measure on the company's final profits is shown in Table 3: it will be seen that profits remain positive over the years 2014 to 2016, growing by an estimated [1,5–3] % a year. The conclusion with regard to the compensatory measure imposed by the Commission is therefore the same: it will weaken the company, but it will not prevent it from returning to viability.

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

(149) In order for aid to be authorised, the amount and intensity of the aid must, pursuant to points 43 to 45 of the restructuring aid 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.

(150) As indicated in paragraph 43 of the opening decision, the restructuring costs, as described in the French authorities' notification, come to EUR 62,5 million. The company expects to contribute EUR 31,5 million, and to receive aid amounting to EUR 31 million.

	EUR million	%
Restructuring costs	62,5	100 %
Financed by:		
Aid recipient's own share	4,6	7,4 %
Shareholder contribution	26,9	43 %
State aid	31	49,6 %

(151) 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 repayment of the Article 44 *septies* aid in the restructuring costs. Secondly, it asked for an explanation as to the nature of the recipient's own share.

(152) 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 [20–40] million in 2006, increased to EUR [20–40] million in 2007 ([58]). The bank loans had been secured by […]. The Commission considers that this amounts to 'external financing at market conditions' as referred to in point 43 of the restructuring aid guidelines and hence constitutes a valid contribution.

(153) 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 a contribution by the recipient firm within the meaning of points 43 and 44 of the restructuring aid guidelines). It was for that reason that they had not counted the Article 44 *septies* aid 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 allowed for in the business plan, as is the case here ([59]).

([58]) Letter from the French authorities of 15 February 2008.

([59]) In its Decision of 26 April 2006 on State Aid which France is planning to implement for Euromoteurs (OJ L 307, 7.11.2006, p. 213), the Commission found that the fact that the restructuring plan submitted did not allow for the reimbursement of incompatible aid received by the company justified a finding that the plan did not enable the company's long-term viability to be restored.

(154) But the fact remains that on 21 October 2008 the Italian aid that had been received by Brandt Italia amounted to EUR 3 190 878,02, to which interest must be added. It cannot be ruled out, therefore, that the contribution envisaged by the firm may incorporate the sum in question. The recipient's own contribution would then fall below the 50 % threshold required by point 44 of the restructuring aid guidelines.

(155) In order to be sure that the recipient's own contribution is indeed free of aid and amounts to at least 50 % of the cost of restructuring, the Commission will make it a condition of this positive decision that the company's own contribution be increased by the amount of the Italian aid, namely EUR 3 190 878,02, to which must be added interest running to 21 October 2008.

(156) Specifically, the contribution to the cost of restructuring proposed by FagorBrandt must be increased by this amount (by borrowing, by a contribution from the shareholders or otherwise) before the end of the restructuring period, which has been set at 31 December 2012. The French authorities must produce evidence of this increase within two months after 31 December 2012.

(157) Turning to the assertion made by the competitor requesting anonymity that the aid is not limited to the minimum, the Commission confirms that, as well as ascertaining that the formal requirement of a contribution of at least 50 % has been met, it has also examined whether the aid is limited to the strict minimum in the light in particular of the tests in point 45 of the restructuring aid guidelines. The Commission considers that that is indeed 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.'

(158) The Commission would observe in particular that after the aid has been granted, at the end of the restructuring period, the group will still be heavily indebted, with a debt-equity ratio still above 1. FagorBrandt will therefore have to use the cash generated to reduce its level of indebtedness.

6.8. **'One time, last time' principle**

(159) Points 72 ff. of the restructuring aid guidelines state that restructuring aid is to be granted only once in any period of ten years.

(160) In this case the Italian and French aid that FagorBrandt received earlier cannot be described as aid for rescue and restructuring. When that aid was granted, in 2002 and 2003 respectively, FagorBrandt was not in difficulty, as has been shown in paragraphs 45 to 56.

(161) The 'one time, last time' principle laid down in the restructuring aid guidelines has consequently been complied with.

6.9. **Full implementation of the plan**

(162) FagorBrandt's restructuring plan, including all of France's commitments, must be implemented in full ([60]). The Commission asks to be kept informed of progress with the implementation of the plan and of the related commitments.

7. **CONCLUSION**

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

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to EUR 31 million which France plans to grant to FagorBrandt is compatible with the internal market subject to the conditions laid down in Article 2.

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 Commission Decision 2004/343/EC of 16 December 2003 ([61]) has become effective.

2. FagorBrandt's restructuring plan, as communicated to the Commission by France on 6 August 2007, must be implemented in full.

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

([61]) 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).

3. FagorBrandt's own contribution to the cost of restructuring, which FagorBrandt proposes should be EUR 31,5 million, must be increased by EUR 3 190 878,02 plus the interest on that sum running from the date on which the Italian aid was put at FagorBrandt's disposal until 21 October 2008. The increase must take place before the end of the period of restructuring of the undertaking, which has been set at 31 December 2012. The French authorities must produce evidence of this increase within two months after 31 December 2012.

4. FagorBrandt shall cease marketing refrigeration, cooking and dishwashing products of the Vedette brand for a period of eight years.

5. In order to ensure that the conditions laid down in paragraphs 1 to 4 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, the payment of the compatible aid, and the implementation of the compensatory measures.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 25 July 2012.

For the Commission
Joaquín ALMUNIA
Vice-President