DECISIONS

COMMISSION DECISION (EU) 2016/1092

of 15 March 2016

on State aid SA.38644 2014/C (ex 2014/NN) implemented by France in favour of FagorBrandt and Groupe Brandt

(notified under document C(2016) 1549)

(Only the French text is authentic)

(Text with EEA relevance)

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,

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 those articles ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 26 November 2013, following the publication of various press articles about a possible intervention by France in favour of FagorBrandt SAS ('FagorBrandt'), the Commission sent France a request for information. By letter dated 13 December 2013, France replied that a loan of EUR 10 million from the Economic and Social Development Fund (FDES) had been paid to FagorBrandt in a single instalment in December 2013.

(2) An additional request for information was sent on 4 April 2014, to which France replied by letters dated 15 and 28 April and 13 May. That request was followed by the request dated 27 June 2014, to which France replied on 10 July.

(3) At the Commission's suggestion, a meeting was held with the French authorities on 9 July 2014.

(4) Since the loan had been paid before 31 December 2013, the Commission entered the measure in the register of non-notified aid.

(5) By letter dated 16 September 2014 the Commission informed France of its decision to open the procedure provided for in Article 108(2) TFEU in respect of the aid ('the formal investigation procedure'). On 24 October 2014, the Commission received France's observations.

(6) The Commission's decision to initiate the procedure (the 'opening decision') was published in the *Official Journal of the European Union* ([2]). The Commission invited interested parties to submit their comments on the measures in question.

([1]) OJ C 460, 19.12.2014, p. 66.
([2]) See footnote 1.

(7) The Commission received observations on this subject from one interested party and forwarded them to France, giving it the opportunity to comment on them, and received France's comments by letter dated 26 February 2015.

(8) On 18 November 2014 and 26 February 2015, the Commission sent requests for information to France, which replied on 17 December 2014 and 6 March 2015 respectively.

(9) A meeting between the French authorities and the Commission was held on 12 November 2015. On 1 March 2016, France sent additional information to the Commission.

2. **BACKGROUND**

2.1. **Beneficiaries and timeline**

(10) FagorBrandt was involved in the production, marketing and repair of domestic appliances, the purchase and sale of spare parts for domestic appliances and all electrical and electromechanical machinery or equipment. In 2013, the company employed around 1 800 staff in France across four industrial sites.

(11) FagorBrandt was placed in court-supervised administration by judgment of Nanterre Commercial Court of 7 November 2013.

(12) After the opening of the court-supervised administration procedure, the official receiver found that the cash-flow forecasts, which had been reviewed by the consultancy Ernst&Young Advisory on 12 November 2013, showed that the company in question would be faced with a cash-flow shortfall of some EUR […] (*) million as early as January 2014 despite an order book of approximately EUR [50-100] million. The restart of part of FagorBrandt's activities would have generated positive cash flows, thereby financing the continuation of activities until at least March 2014, and resulting in the postponement of the deadline for submission of takeover bids.

(13) From 12 November 2013, the official receiver approached the banks Thémis and […], which are specialised in the financing of undertakings in court-supervised administration, with a view to obtaining loans of EUR 10 million. On 17 November 2013 Thémis agreed to grant a loan of EUR 5 million to FagorBrandt, on condition that another bank, […], committed itself on the same terms and that France granted a loan of the same amount to FagorBrandt. On 18 November 2013, […] refused to grant a loan of EUR 5 million, considering the guarantees provided to be insufficient, in particular the pledge on the stock of spare parts. The official receiver approached a third financial institution, the bank […], which on 19 November 2013 refused to grant the loan. Since Thémis had ruled out an exposure of more than EUR 5 million, the official receiver therefore made a request to the Inter-Ministerial Committee for Industrial Restructuring (*Comité interministériel de restructuration industrielle* — 'CIRI').

(14) At the same time, by judgment of Nanterre Commercial Court of 21 November 2013, FagorBrandt obtained the restructuring of a financing of EUR [20-50] million with a banking pool ([3]). It was also authorised to pay to the creditors holding a pledge on the stocks of finished products an amount corresponding to 50 % of the value of goods as and when they were released and to borrow up to EUR 15 million, with the provision of collateral and the benefit of the privilege laid down by Article L.622-17 of the French Commercial Code ([4]). This limit of EUR 15 million was authorised having regard to the undertaking's ability to repay that was assessed by the consultancy Ernst&Young Advisory.

(*) Confidential information

([3]) Société Générale, Natixis, CACIB, Arkea and BBVA.

([4]) 'I. — Claims arising in a proper manner after the issue of the commencement order for the needs of the proceedings or the observation period or as consideration for a service provided to the debtor during this period, shall be paid as they fall due.
II. — Where they are not paid as they fall due, these claims will be paid in priority before all the other claims, whether these are secured or not by privileges or guarantees, except for those claims secured by the privilege provided for in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code, legal fees arising in a proper manner after the issue of the commencement order for the needs of the proceedings and those claims secured by the privilege created by Article L. 611-11 of this Code.…'.

(15) This resulted in the granting of two loans to FagorBrandt, one for EUR 5 million by Thémis, in the form of a seasonal credit ([5]), the other for EUR 10 million by the FDES.

(16) The FDES loan was granted to FagorBrandt on 28 November 2013 under the agreement dated that day. The terms of the loan are described in section 2.2.

(17) After these loans were granted, an initial takeover bid was submitted on 17 January 2014 by Cevital, which is active in the agri-food, services, industrial and distribution sectors. The Cevital group employs more than 13 000 staff and had a consolidated turnover of EUR 2,4 billion in 2013. Its proposed takeover involved the acquisition of FagorBrandt's assets through Exagon, a subsidiary of the Cevital group, by setting up a new company, Groupe Brandt. The initial bid provided for a financing contribution of EUR [20-50] million from Cevital, with the opening of a short-term line of credit and the obtaining of a medium-long-term line of credit without the intervention of France and banks.

(18) Subsequently, a number of successive takeover bids were tabled by Cevital until the firm bid dated 8 April 2014, which was validated by judgment of Nanterre Commercial Court of 15 April 2014.

(19) The financing needed to buy FagorBrandt's assets and to take over operations amounted to EUR 207,5 million and consisted of the following:

(a) a contribution from Cevital to Groupe Brandt ([6]) of EUR [20-60] million ([7]);

(b) a total contribution from Natixis and Société Générale of EUR [90-150] million in the form of short-term loans (factoring agreement for EUR [20-60] million and a credit of EUR [10-20] million secured by the stock of finished goods); and medium-term loans, each of EUR [10-20] million (see section 2.2);

(c) an FDES loan of EUR 47,5 million to Groupe Brandt, in three tranches: EUR 11,2 million for tranche A, EUR 23,8 million for tranche B and EUR 12,5 million for tranche C (see section 2.3).

(20) Cevital's commitment was conditional on the obtainment of the financing needed to implement the takeover plan.

(21) By judgment of 15 April 2014, Nanterre Commercial Court ordered the transfer at a price of EUR 550 000 of most of FagorBrandt's assets to Cevital and its subsidiary Exagon. The assets were pooled in Groupe Brandt. For the rest, the judgment also ordered the transfer at a price of EUR 150 002 of the subcontracting activities in plastics processing, general maintenance, tools and metrology carried out at FagorBrandt's Aizenay site to Variance Technologies and the transfer of the activities and assets at FagorBrandt's Roche-sur-Yon site to Mr Pierre Jullien at a price of EUR 1,50, excluding stock.

2.2. **Description of the loans to FagorBrandt**

(22) *FDES loan*. France granted a loan of EUR 10 million to FagorBrandt through the FDES. The loan was formally granted by an Order of 28 November 2013 of the Minister for Economic and Financial Affairs.

(23) The rate on this loan was the Eonia rate + [300-600] basis points.

(24) The loan was in two tranches:

(a) tranche A of EUR 5 million repayable in instalments and guaranteed by the same collateral as the bank loan from Thémis, and

([5]) A seasonal credit is a short-term professional credit to meet the needs of a periodic activity, and therefore of the seasonal nature of purchases and manufacturing, or sales.
([6]) Initially called Electrom SAS.
([7]) EUR […] million in the form of a capital injection and EUR […] million in a blocked current account, payment of which was conditional on the obtainment of the bank financing and the participation of the FDES.

(b) tranche B of EUR 5 million repayable at term at the end of March 2014 and accompanied by:

— a first-rank pledge without dispossession on the stock of spare parts, and a pledge on the claim for repayment held on Eurofactor in the form of the guarantee account, also first-rank, *pari passu* with tranche A and the bank Thémis for its loan of EUR 5 million;

— a second-rank pledge on the proceeds of sale of immovable property in Lyon that was the subject of an undertaking to sell for EUR [10-20] million.

(25) *Thémis loan*. The Thémis bank loan of EUR 5 million was granted on the following terms:

(a) the rate was the Eonia rate + [300-600] basis points;

(b) a monthly and linear repayment with payment of EUR 1 million at the end of December 2013, EUR 1 million at the end of January 2014, EUR 1 million at the end of February 2014 and EUR 2 million at the end of March 2014;

(c) a guarantee consisting of the privilege laid down by Article L. 622-17 of the Commercial Code and by:

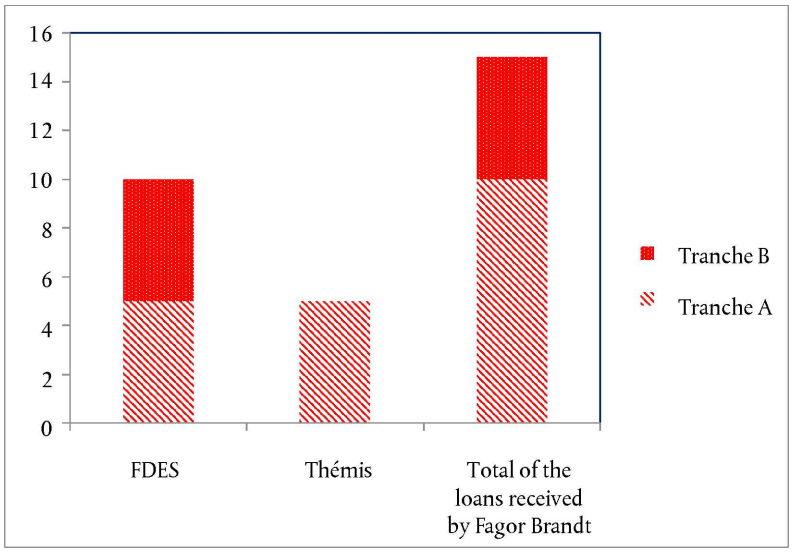
(i) a charge on the stock of finished goods with dispossession for a minimum stock level of EUR 5 million until the end of December 2013, EUR 4 million until the end of February 2014 and EUR 3 million until the end of March 2014;

(ii) a charge on the stock of spare parts (gross value EUR [10-20] million) without dispossession;

(iii) a first-rank pledge on the Eurofactor guarantee account.

Graph 1

Comparison between the FDES loan of EUR 10 million and the Thémis bank loan



Source: Commission

(26) The FDES loan to FagorBrandt was granted by Natixis on behalf of France under the agreement of 28 November 2013.

(27) Tranche A of the loan has been fully repaid in accordance with the due dates laid down in the loan agreement, i.e. 31 December 2013, 31 January 2014, 28 February 2014 and the balance on 31 March 2014.

(28) The repayment of tranche B was to take place by 31 March 2014 in the form of a single payment of EUR 5 million. By letter dated 27 March 2014, the official receiver requested deferral of the payment of tranche B until 30 April 2014 because payment would have resulted in negative cash flow of EUR [0-5] million at the end of March 2014. According to the official receiver, this situation would have led to the company being wound up by decision of the court. France agreed to the postponement of the due date of this payment by one month, until 30 April 2014. France has confirmed that the balance on the loan, i.e. EUR 3,5 million, had been repaid on 25 April 2014.

2.3. **Description of the loans to Groupe Brandt**

(29) *FDES loan*. France granted a loan of EUR 47,5 million to Groupe Brandt through the FDES. The loan was formally granted by an Order of 10 April 2014 of the Minister for Economic and Financial Affairs, and signed on 24 April 2014. The loan was to be used to manage cash flow needs and financing of the assets taken over.

(30) The loan consists of three tranches: EUR 11,2 million (tranche A), EUR 23,8 million (tranche B) and EUR 12,5 million (tranche C). The loan must be repaid on the following terms: tranche A, 31 October 2015; tranche B, in 14 equal quarterly payments, the first due on 31 January 2015 and the last on 30 April 2018; tranche C, in 3 equal payments, on 30 April 2015, 30 April 2016 and 30 April 2017.

(31) The applicable interest rate is the EURIBOR rate, increased by 3 % per year for tranche A, 3,5 % per year for tranche B, and 4,25 % per year for tranche C.

(32) Tranches B and C of the loan, totalling EUR 36,3 million, were paid on 28 April 2014. Tranche A, of EUR 11,2 million, was paid on 4 July 2014.

(33) *Loans from Natixis and Société Générale*. Natixis and Société Générale each granted a loan of EUR [5-10] million. These two loans each comprised two tranches: tranche A of EUR [1-5] million and tranche B of EUR [3-6] million. The terms of this financing are identical to those applied to tranches A and B of the FDES loan.

Graph 2

Composition of the three loans granted by the FDES, Société Générale and Natixis

[…]

Source: Commission

(34) According to France, the FDES loan is guaranteed by total collateral of EUR 150 million. France has collateral provided by the borrowing company, Groupe Brandt (pledge on the securities accounts of Brandt France, pledge on the advances of Groupe Brandt), and collateral provided by Exagon (guarantee deposit by Exagon, pledge on the securities accounts of Groupe Brandt, pledge on the advances of Exagon). The FDES loan also has the following guarantee undertakings: pledge on trademarks and patents, pledge on the licence contract of […], pledge on future dividends paid by […] from 2017 and mortgages on the buildings in Cergy, Orléans and Vendôme. All of the collateral guarantees the loans from Société Générale and Natixis. The collateral is first-rank, *pari passu* with the private investors, for tranches A and B of the three medium-term loans, and second-rank for tranche C of the FDES loan. In return, for tranche C, the repayment period is shorter, the remuneration is higher and the first due date has priority in the event of early repayment.

(35) The instalment on tranche A must be repaid on 31 October 2015. Tranche B must be repaid by 30 April 2018. Finally, tranche C will be repaid in three instalments in 2015, 2016 and 2017.

2.4. **Write-off of social security and tax debts**

(36) In the memo dated 28 April 2014, France briefly refers to the possible write-off of social security and tax claims on FagorBrandt amounting to EUR 3 million.

3. **ASSESSMENT BY FRANCE BEFORE THE OPENING DECISION**

(37) With regard to the FDES loans, France took the view that the first FDES loan had been granted under market conditions using a loan granted by a private credit institution as a benchmark. This view was based on the simultaneous presence of the Thémis bank loan and its terms. France considered that the second FDES loan had been granted under market conditions, particularly given the reliability of the Cevital business plan, the scale of the investments made by all the private-market participants, the rates applied and the value of the collateral used as security.

(38) France was of the opinion that the possible cancellation of EUR 3 million in social security and tax debts concerned FagorBrandt and its subsidiaries. This amount constituted a debt incurred during the collective proceedings and it was to be treated during the liquidation on the same basis as the other group debts, regardless of the activity of the buyers.

4. **DOUBTS RAISED IN THE OPENING DECISION**

(39) On 16 September 2014, the Commission opened the formal investigation procedure.

(40) In the opening decision, the Commission expressed doubts in relation to both the classification of the measures under investigation and their possible compatibility with the rules applicable to State aid to firms in difficulty ([8]).

4.1. **Classification as State aid**

(41) With regard to the two FDES loans, the Commission had concerns about the presence of an economic advantage and, if there were one, about its amount.

4.1.1. *The FDES loan of EUR 10 million*

(42) With regard to the granting of the first FDES loan, the Commission noted that only tranche A of that loan was guaranteed by the same collateral as the bank loan granted by Thémis. The Commission therefore noted that tranche B did not have the same collateral, even though the interest rate was the same. Moreover, it emerged from the information provided by France that the private lender agreed to commit itself only up to EUR 5 million. Accordingly, tranche B of the FDES loan and the corresponding risks run by France seemed to confer an advantage on FagorBrandt, since a number of private creditors, which were none the less specialised in the financing of firms in collective procedures, had refused to grant FagorBrandt financing of more than EUR 5 million on the given terms and had considered that the corresponding guarantees were insufficient in relation to the risks. Since tranche B of the loan had lower collateral, it involved a higher risk for the FDES. Under normal market conditions, the FDES should therefore have asked for a higher interest rate.

(43) The Commission therefore concluded at this stage that tranche B of the FDES loan involved an advantage that a prudent private creditor would not have agreed to.

([8]) See footnote 1.

4.1.2. *The FDES loan of EUR 47,5 million*

(44) The Commission had doubts about whether the granting of this new loan to Groupe Brandt complied with the principle of the prudent private creditor.

(45) *Value of collateral*. According to France, collateral of EUR 150 million covered tranches A and B of the loan in the same way as the bank loans from Société Générale and Natixis.

(46) However, the Commission noted that France had not provided any information on the estimate of the value of the collateral. At the stage of the opening decision, the Commission was not aware of the method used to value the collateral (net book value, market value or another method). Furthermore, the Commission noted that the banks Société Générale and Natixis used the collateral only for their medium-term financing of EUR [5-10] million each, i.e. EUR [10-20] million in total, whereas the FDES loan amounted to EUR 47,5 million.

(47) *Level of remuneration of the loan*. The loan is remunerated at different rates, depending on the tranches. By way of illustration, the Commission estimated that, if one applied the Communication from the Commission on the revision of the method for setting the reference and discount rates ([9]) ('the 2008 Communication'), the rate used should have been at least 0,53 % (base rate in France from January to July 2014), to which would be added between 650 and 1 000 basis points (undertaking rated CCC), depending on the level of collateral, i.e. a minimum rate of between 7,03 % and 10,53 %.

(48) The Commission also considered another approach, based on data from Bloomberg and Capital IQ, which resulted in rates higher than those obtained using the 2008 Communication.

(49) It seemed, therefore, that the rate on the FDES loan was lower than market rates, whatever the calculation method used.

(50) The Commission therefore considered, at the stage of the opening decision, that the terms of the FDES loan could have constituted an advantage for Groupe Brandt.

4.1.3. *Write-off of social security and tax debts*

(51) Unlike France, the Commission took the view that the write-off of social security and tax debts could be considered a cancellation of public claims and involve the granting of an advantage to FagorBrandt by enabling it to reduce its costs.

4.2. **Compatibility assessment**

(52) With regard to the compatibility of the measures with the State aid rules, the Commission considered that the applicable legal basis was the 2004 Community guidelines on State aid for rescuing and restructuring firms in difficulty ([10]) ('the 2004 Guidelines'). On this basis, the Commission raised doubts concerning (i) eligibility under the 2004 Guidelines and (ii) compliance with the 'one time, last time' principle. Furthermore, the Commission noted that France had not provided any analysis of the compatibility of the measures under investigation. Admittedly it had produced a business plan for the 2014-2016 financial years that was likely to provide indications on the return to viability, but it did not constitute a restructuring plan. In particular, it did not include the information required under points 35 and 36 of the 2004 Guidelines (market survey, description of the circumstances that led to the company's difficulties, scenarios reflecting best-case, worst-case and intermediate assumptions).

([9]) OJ C 14, 19.1.2008, p. 6.
([10]) OJ C 244, 1.10.2004, p. 2.

4.2.1. *Eligibility: firm in difficulty within the meaning of the 2004 Guidelines*

(53) In the opening decision, the Commission did not contest the fact that FagorBrandt fulfilled the criteria for a firm in difficulty set out under point 10 of the 2004 Guidelines.

(54) However, the Commission took the view that it was unable to verify whether FagorBrandt's difficulties were intrinsic, despite its belonging to the Fagor group, and consequently whether the conditions set out under point 13 of the 2004 Guidelines were met.

(55) Lastly, point 12 of the 2004 Guidelines provides that: 'a newly created firm is not eligible for rescue or restructuring aid … This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets.' With regard to Groupe Brandt, a company created on 15 January 2014, the Commission had doubts about the classification as a new company of a company that had bought a relatively large part of the assets of a firm in difficulty to carry on apparently the same activity.

4.2.2. *Compliance with the 'one time, last time' principle*

(56) The Commission also had doubts about compliance with the 'one time, last time' principle set out in section 3.3 of the 2004 Guidelines. FagorBrandt had already benefited from restructuring aid in 2008 ([11]). Therefore, the firm cannot, a priori, benefit from new rescue or restructuring aid before 2018. The Commission pointed out that, in any event, the change in the ownership of the beneficiary company, following the granting of aid, did not call into question this rule, since it seemed to be the continuation of the same firm.

4.2.3. *Economic continuity*

(57) Lastly, the Commission pointed out that, according to the settled case-law of the Court of Justice of the European Union, the obligation imposed by a Commission decision on a Member State to abolish aid regarded as being incompatible with the internal market has as its purpose to re-establish the previously existing situation. This objective is attained once the recipient has repaid the aid, thus forfeiting the advantage which it had enjoyed over its competitors in the market ([12]). Still according to case-law, the obligation to recover aid may be extended to a new company to which the company in question has transferred part of its assets, where that transfer permits the conclusion that there is an economic continuity between the two companies ([13]). The obligation to recover aid may be extended to another company, provided that it is established that the latter is effectively benefiting from the aid in question due to an economic continuity between the two entities.

(58) In this case, the aid granted to FagorBrandt by way of the EUR 10 million loan and the write-off of social security and tax debts seemed to provide an advantage to Groupe Brandt, which was the economic successor to FagorBrandt. A number of indicators of economic continuity between FagorBrandt and Groupe Brandt seemed to be present ([14]): in particular, the takeover of almost all the tangible and intangible assets of a number of companies belonging to the Fagor group in France, the retention of more than two thirds of the staff, the pursuit of the same production activity with the same brands and the same economic logic of the operation.

(59) Furthermore, the Commission had concerns about the fact that this aid, and the aid granted directly to Groupe Brandt by way of the EUR 47,5 million loan, could have given an advantage to Cevital and Exagon, which took over the above-mentioned assets of FagorBrandt through the medium of the subsidiary Groupe Brandt.

([11]) Commission Decision 2013/283/EU of 25 July 2012 on state aid that France plans to grant to FagorBrandt (SA.23839 (C 44/2007)) (OJ L 166, 18.6.2013, p. 1).

([12]) Judgments of the Court of Justice of 4 April 1995, *Commission* v *Italy*, C-348/93, ECLI:EU:C:1995:95, paragraphs 24, 26 and 27, of 4 April 1995, *Commission* v *Italy*, C-350/93, ECLI:EU:C:1995:96, paragraphs 19, 21 and 22, and of 29 April 2004, *Germany* v *Commission*, C-277/00, ECLI:EU:C:2004:238, paragraphs 74, 75 and 76.

([13]) Judgment of the General Court of 28 March 2012, *Ryanair* v *Commission*, T-123/09, ECLI:EU:T:2012:164, paragraph 155.

([14]) See Commission Decision of 17 September 2008, State Aid N 321/08, N 322/08 and N 323/08 — Greece — *Sale of certain assets of Olympic Airlines/Olympic Airways Services* (OJ C 18, 23.1.2010, p. 9).

5. RESPONSE BY FRANCE TO THE OPENING DECISION

5.1. Classification as State aid

5.1.1. *The FDES loan of EUR 10 million*

(60) Contrary to the argument put forward by the Commission in the opening decision, France considers that the collateral for tranche B of the loan is not lower than the collateral for tranche A, and that it is at least as strong as the latter.

(61) As described in Article 10 of the loan agreement of 28 November 2013, tranche A had, *pari passu* with the EUR 5 million loan granted by Thémis, the following collateral:

(a) a charge on the stock of finished goods with dispossession for a minimum stock level of EUR 5 million until the end of December 2013, EUR 4 million until the end of February 2014 and EUR 3 million until the end of March 2014,

(b) a charge on the stock of spare parts (gross value EUR [10-20] million) without dispossession, and

(c) a first-rank pledge on the Eurofactor guarantee account.

(62) Tranche B had the following collateral:

(a) a promise of repayment, for the amount of the tranche, of the proceeds of sale of immovable property in Lyon that was the subject of an undertaking to sell for EUR [10-20] million, or, alternatively, a promise of a first-rank mortgage on that immovable asset,

(b) a charge on the stock of spare parts (gross value EUR [10-20] million) without dispossession, and

(c) a first-rank pledge on the Eurofactor guarantee account.

(63) Therefore, in addition to (b) and (c), which were identical to the collateral provided for tranche A and for the Thémis loan, tranche B had a second-rank pledge on the proceeds of sale of immovable property in Lyon that was the subject of an undertaking to sell for EUR [10-20] million. The market value of this property had also been estimated on 31 December 2012 at EUR [15-25] million vacant and EUR [15-25] million occupied. This information shows that the value of the property concerned by the undertaking to sell, i.e. EUR [10-20] million, did indeed constitute a minimum value.

(64) Although the pledge for tranche B of EUR 5 million of the FDES loan was second rank, it was more than enough to guarantee that tranche, having regard to the fact that the first-rank creditor had the collateral only up to an amount of EUR 5 million.

(65) Therefore, although part of the collateral provided for tranche B was different from that provided for tranche A, it was none the less reinforced by the existence of a pledge on an asset with a value well above that of the amount of the loan.

(66) Furthermore, France stresses that the loan had been fully repaid in April 2014.

5.1.2. *The FDES loan of EUR 47,5 million*

(67) *Collateral*. France describes in more detail the list of collateral that it had presented in its letter of 10 July 2014 as totalling EUR 150 million. France therefore provides additional information and expert reports in support of this amount.

(68) *Interest rate*. France considers that the Commission's calculation is mistaken, as are its conclusions drawn therefrom.

(69) First, the Commission takes as its starting point the fact that Electrom, which is now called Groupe Brandt, had a CCC rating. France considers that such a rating is not justified. The Cevital group, which includes Groupe Brandt, had a particularly healthy financial situation, as shown by the consolidated accounts for 2013, which were audited by KPMG.

(70) France therefore takes the view that this very robust data would enable the Cevital group to obtain a very favourable rating of at least A, or even AA, had it instructed a ratings agency to that effect. In any event, France believes that the 2008 Communication demonstrates unequivocally that the rate chosen for the EUR 47,5 million loan corresponds to a category of firm with a financial situation between weak (B) and satisfactory (BB). There is no question that the financial situation of the Cevital group is not at all comparable to that of a firm rated CCC.

(71) Second, France points out that private lenders also took part in the financing of Groupe Brandt. These private lenders, Société Générale and Natixis, agreed to lend to Groupe Brandt with margins of [0-5] % and [0-5] %. This is enough to demonstrate as such that the calculation of the 'market' interest rate as presented in the opening decision (between 7,03 % in recital 49 and 17,77 % in recital 50) is mistaken.

(72) Lastly, the interest rates on tranches A and B of the FDES loan were set with reference to the interest rates on tranches A and B of the bank loans granted by Société Générale and Natixis. These two private investors clearly form the point of reference for tranches A and B of the FDES loans. Tranches A and B of the FDES loan were granted at the same time as the tranches of the loans from these banks and on comparable terms: the terms on which tranches A and B of the FDES loan were granted are therefore undoubtedly in line with market conditions ([15]).

(73) France recognises that tranche C of the FDES loan was not granted on the same terms as the bank loans. None the less, for this tranche too, the bank loans provide an indication of the market rate without the need to go into the detail of the calculation presented by the Commission in recitals 49 and 50 of the opening decision. Moreover, tranche C of the FDES loan has the same collateral as tranches A and B (of the FDES loan and the bank loans), but it is second rank, which is enough to guarantee tranche C. To compensate for the junior nature of the collateral for tranche C in relation to tranches A and B, it should be noted that tranche C has a significantly higher interest rate than tranches A and B, i.e. a margin of [0-5] % (against [0-5] % and [0-5] % for tranches A and B respectively). Furthermore, tranche C also has a tighter repayment schedule and a shorter repayment period than the other tranches. Lastly, the first due date for tranche C takes precedence over tranches A and B of the FDES loan and of the loan from the private banks in the event of voluntary or mandatory early repayment, which constitutes an element of seniority of tranche C in relation to tranches A and B.

(74) In conclusion, France considers that the FDES loan of EUR 47,5 million granted by it, including tranche C thereof, has more than enough collateral and an interest rate in line with the principle of the prudent private creditor in a market economy.

5.1.3. *Write-off of social security and tax debts*

(75) France takes the view that the information it provided on the social security and tax debts incurred by FagorBrandt during the observation period that followed the opening of the court-supervised administration procedure has been misinterpreted.

(76) France explains that, as is always the case for companies in court-supervised administration, FagorBrandt, with the assistance of the official receiver, continued its activity, which implies that all or some of the employees continue to work (and that social security contributions are due) and that this activity is likely to generate tax obligations. In this case they are social security contributions and tax debts (in particular vocational training, apprenticeship tax, tax on office premises) included in the company's liabilities. Such claims enjoy the privilege laid down in Article L. 622-17 of the Commercial Code and will therefore be paid before all the other claims, whether or not these are secured by privileges or collateral, except for those claims secured by the privilege provided for in Articles L. 3253-2, L. 3253-4 and L. 7313-8 of the Labour Code, legal fees arising in a proper manner after the issue of the commencement order for the needs of the proceedings and those claims secured by the privilege created by Article L. 611-11 of the Commercial Code. Article L. 622-17 of the Commercial Code provides that, if the claims are not paid on their due date, they will be paid as a priority before all other claims.

([15]) See judgment of the General Court of 12 December 2000, *Alitalia* v *Commission*, T-296/97, ECLI:EU:T:2000:289, paragraph 81.

(77) The application of Article L. 622-17 of the Commercial Code, which, according to France, is current in the case of most court-supervised administration procedures and is intrinsically linked to making it easier for the undertaking to continue its activity, cannot be interpreted as a write-off of claims.

(78) During the observation period, the company continued to pay its social security contributions and taxes but part of those charges was not due on liquidation and was entered in the books as a liability of the company during the observation period. According to information obtained from the receiver, it should be possible to pay the outstanding taxes on the liquidation of FagorBrandt. The social security contributions, which include costs relating to the company restructuring under way (redundancies), will continue to be repaid in accordance with the rules applicable in the matter under French legislation on collective proceedings, without the possibility of giving a full guarantee of repayment at this stage. In any event, there was no write-off and the recovery of the social security and tax claims is being carried out in accordance with their ranking laid down in the Commercial Code.

(79) Therefore, the social security and tax debts were incurred in the usual way under court-supervised administration proceedings, as is the case in the Member States.

5.2. **Compatibility assessment**

(80) France did not provide any compatibility assessment in its response to the opening decision or during the rest of the procedure.

6. **COMMENTS FROM INTERESTED PARTIES AND OBSERVATIONS BY FRANCE**

6.1. **Comments from interested parties**

(81) The Commission received comments from a single interested party, which submitted them on 19 January 2015 and wished to remain anonymous.

(82) By way of introduction, the interested party takes the view that the aid measure in question is incompatible with Article 107 TFEU and the 2004 Guidelines.

(83) According to the interested party, everything seems to indicate that, for more than 10 years, the recipient FagorBrandt had not been able to stay in the market without a succession of State aid measures that were incompatible with the internal market, in particular since a judgment of Nanterre Commercial Court resulted in a debt reduction and an acquisition of FagorBrandt's assets by Elco Holding Limited and Fagor Electrodomésticos at a price below the market price in 2002, restructuring aid granted to an Italian subsidiary, and restructuring aid of EUR 31 million granted in 2008. It seems to the interested party that the recipient's financial difficulties are the result of an inability to adopt binding restructuring measures, unlike its competitors.

6.1.1. *Classification as State aid*

(84) The interested party points out, first, that there is no doubt in its view that the cancellation of the tax and social security debts constitutes State aid granted through State resources that affects competition on the market and trade between Member States.

(85) Nor, according to the interested party, is there any doubt that the two FDES loans are a State resource allocated selectively to a certain undertaking.

(86) The interested party then sets out its argument on the economic advantage conferred by the two FDES loans.

(87) The interested party emphasises that the EUR 10 million loan had been granted at a time when private investors had refused to grant a loan of more than EUR 5 million to the recipient on such terms. That fact alone proves that the private investor principle was not complied with. Moreover, the collateral for tranche B of the same loan was lower than that for a loan granted by a private investor. The loan should therefore have been granted at a higher interest rate. Lastly, the repayment of tranche B of the loan was deferred by one month without conditions.

(88) With regard to the EUR 47,5 million loan, the interested party expressed its reservations about the advisability for a private investor to grant a loan to a company with a CCC rating for that amount and under those circumstances.

(89) Lastly, the interested party agreed with the Commission's observations that the aid measures affect competition in the market and trade between Member States. The company would have had to be liquidated had the repayment date for tranche B of the EUR 10 million FDES loan not been deferred, the result being that the impact on the competitive structure of the market is non-negligible. This consideration becomes all the more important if one takes into account the size and importance of the recipient on the French household appliance market.

6.1.2. *Compatibility assessment*

(90) The interested party stresses that the recipient company had already been granted restructuring aid of EUR 31 million in 2008 (authorised by the Commission on 25 July 2012 ([16])), with the result that the 'one time, last time' principle set out in the 2004 Guidelines is not respected. Since this argument is valid only in the event of economic continuity between FagorBrandt and Groupe Brandt, the interested party stresses a number of points: the new owner acquired almost all the tangible and intangible fixed assets of the companies belonging to FagorBrandt in France; Groupe Brandt today employs more than two thirds of the workers of the old structure; it engages in the same economic activity and similar production, and, lastly, most of the senior management remained in their posts.

(91) The interested party points out that, in the event that economic continuity between the two entities was not recognised, two of the three measures constituting State aid would still infringe the 'one time, last time' principle.

(92) Likewise, were Groupe Brandt to be considered a newly created firm, the State aid measures would be strictly incompatible with the 2004 Guidelines.

(93) With regard to the criterion of the limitation of the aid to the strict minimum, the interested party notes that the recipient firm belongs to the Cevital group, whose consolidated turnover was EUR 2,4 billion in 2013. Accordingly, it is surprised that France did not provide more information on the possibility for Cevital to address the recipient's difficulties in house.

(94) The 2004 Guidelines spell out that restructuring aid must not be used to keep firms artificially alive. This situation may arise in the context of a sector affected by substantial structural overcapacity where the recipient stays afloat thanks only to a series of State aid measures. The interested party notes that in 2012 FagorBrandt had a low utilisation rate (57 %) in relation to the rest of the market (82 %).

(95) In this context, the recipient's return to viability seems very uncertain because, on the one hand, the market is extremely competitive and, on the other, the Cevital group has no experience of this sector in Europe. The same group's lack of experience in research and development illustrates the difficulty of creating genuine synergies.

(96) The interested party is surprised that France did not submit a restructuring plan with a specific timetable, whereas the 2004 Guidelines state that the restructuring plan must intervene within a reasonable timescale.

([16]) See footnote 11.

(97) Lastly, the interested party highlights the distortion of competition that the measures in question will inevitably produce. The interested party has undertaken a costly restructuring programme financed by its own contribution. This effort would bear greater rewards if the recipient firm did not have significant market share thanks to public support. Larger sales volumes would enable the interested party to increase its utilisation rate and reduce its unit costs to the benefit of consumers. The absence of compensatory measures does not, therefore, seem justified.

6.2. **Observations by France**

6.2.1. *Background*

(98) First, France denies the existence of aid in the form of a debt reduction or authorisation to acquire assets at a price below the market price by Nanterre Commercial Court. It points out here that this allegation by the interested party is not supported by any facts, and that the decision taken by Nanterre Commercial Court does not involve a transfer of State resources.

(99) With regard to the aid received by Brandt Italia, France stresses that the Commission has imposed compensatory measures on FagorBrandt to confirm the compatibility of this aid with the internal market ([17]). The same applies to the restructuring aid received by FagorBrandt, which was approved by the Commission provided that compensatory measures were granted ([17]). Thus, by trying to demonstrate that the measure is along the lines of previous public support, the interested party in fact refers to measures that do not constitute State aid, or which are deemed to be without effect on the internal market because of the compensatory measures.

(100) With regard to intervention by Cevital, France stresses that the business plan was prepared as part of a new industrial and commercial strategy intended to create a structure different from that of FagorBrandt. This strategy includes in particular […]. France takes the view that the credibility of the business plan persuaded a group of private investors, including Natixis and Société Générale, to finance these projects. France adds that […] is a viable solution to the current problem of the low utilisation rate referred to by the interested party.

(101) France points out that Cevital already had an electrical household appliances segment within its industrial activity: the group launched the creation of an industrial site for the production of electrical household appliances in Algeria in 2013. Thus, Cevital was not, as suggested by the interested party, present solely in assembly operations. Moreover, the group also has substantial negotiating power for the purchase of raw materials. According to France, there is therefore a high degree of complementarity between Cevital's activity and the takeover of well-known brands.

6.2.2. *Classification of the measures as aid*

(102) France points out that the social security and tax debts incurred under the court-supervised administration proceedings are the result of a standard mechanism in that type of proceedings. Furthermore, France denies the existence of a timetable for the payment of the social security and tax debts that was favourable to Groupe Brandt.

(103) France reiterates that the EUR 10 million FDES loan was granted at the same time as the bank loan granted by Thémis and that it benchmarked the terms laid down by the bank. Tranche A of the FDES loan was granted *pari passu* with the private loan in terms of pricing, repayment and collateral. According to France, tranche B is also *pari passu* with the same loan in terms of pricing, arrangements for repayment at term in return for additional collateral. France takes the view that the deferral of the repayment of the loan referred to by the interested party is common practice in usual relations between private operators.

([17]) Ibid.

(104) France takes the view that the amount of the EUR 47,5 million loan is not excessively high because the financial situation of Cevital group is healthy (close to a financial rating of AA, rather than CCC, as mentioned by the interested party). France stresses that it is important to place the loan in the context of the totality of the amounts advanced by private investors, including Société Générale and Natixis. It reaffirms the credibility and size of the collateral granted. Lastly, France points out that it serves no purpose to submit an example of an offer by a financial institution since private investors, in this case, actually provided financing.

7. **ASSESSMENT OF THE AID MEASURES**

(105) The Commission has concerns about the classification and the compatibility of three measures: (i) an FDES loan of EUR 10 million, (ii) an FDES loan of EUR 47,5 million and (iii) a write-off of tax and social security debts.

7.1. **Assessment of the existence of aid within the meaning of Article 107(1) TFEU**

(106) The Commission must ascertain whether the measures under investigation could constitute State aid within the meaning of Article 107(1) TFEU.

(107) Article 107(1) TFEU lays down that 'any aid granted by a Member State or through state resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(108) On the basis of this provision, a measure can be classified as State aid if all of the following tests are met: (i) the measure is imputable to the State; (ii) the measure is selective; (iii) the measure confers an economic advantage on the beneficiary; and (iv) the measure distorts or threatens to distort competition and is likely to affect trade between Member States.

7.1.1. *Existence of State resources and imputability*

(109) The FDES loans were granted by Order of the Minister for Economic and Financial Affairs, implementation of which was entrusted to the Director-General of the Treasury. The relevant funds come from a special Treasury account and repayments of principal and interest are also paid into France's national budget. The loans are signed, paid and managed by Natixis on behalf of France, on the basis of an agreement signed between Natixis and France.

(110) By its very nature, a write-off of tax and social security debts would constitute a use of public resources. It would mean France foregoing revenue and would therefore have a direct impact on the country's budget.

(111) Accordingly, the Commission concludes that the measures in question involve State resources and are imputable to France.

7.1.2. *Selectivity*

(112) The Commission notes that the loans under investigation were granted in favour of FagorBrandt and Groupe Brandt, the company which took over FagorBrandt's assets. Although the remit of the FDES is to grant loans for economic and social development under the conditions laid down in the Circular of 26 November 2004 ([18]) on State action in the prevention and resolution of business difficulties, which governs its operation, the granting of loans by the FDES is always subject to a case-by-case examination. The selectivity condition is therefore met.

([18]) Official Journal of the French Republic, 1.12.2004.

(113) On the other hand, the information gathered during the in-depth investigation, including France's response to the opening decision, indicates that the write-off of tax and social security debts took place within the normal framework of the rules applicable to undertakings in administration generating this type of claim. Therefore, in accordance with the rules applicable to undertakings in administration, during the observation period FagorBrandt continued to pay its social security and tax charges, but a part of these charges was not due when the company went into liquidation and was therefore entered as a liability incurred during FagorBrandt's observation period. As part of the liquidation of FagorBrandt, these charges will be paid in accordance with their respective rank pursuant to Article L. 622-17 of the French Commercial Code. It therefore appears that there was no write-off of tax and social security debts in favour of FagorBrandt, but an application in accordance with the general framework applicable to undertakings in administration. Consequently, the Commission concludes that FagorBrandt was not afforded selective treatment by means of a write-off of tax and social security debts.

(114) Consequently, the Commission concludes that the FDES loans were selective measures. In contrast, no selective measures were awarded to FagorBrandt by means of a write-off of tax and social security debts.

7.1.3. *Existence of an economic advantage*

(115) It is settled case-law that, in order to determine whether a State measure constitutes aid within the meaning of Article 107(1) TFEU, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions ([19]).

(116) An economic advantage exists whenever the financial situation of an undertaking is improved as a result of State intervention. However, intervention by a public authority does not necessarily confer an advantage on the beneficiary, and as such does not constitute aid if it is carried out under normal market conditions, in other words, if the public authority acted as a prudent operator in a market economy would have done in similar circumstances. In this regard, the presence of significant investments of the same kind, carried out at the same time as the State intervention by other private operators taking similar risks ('*pari passu*'), may provide an indication that France behaved as a prudent investor.

7.1.3.1. Political background to the granting of the two FDES loans

(117) From the outset, the French Government gave assurances that it would support FagorBrandt whatever the cost, regardless of the amount of private funds eventually loaned to the company ([20]). For example, two days before the court-supervised administration procedure was initiated, on 5 November 2013, the French Government announced that: 'Every effort must be made to preserve the industrial facilities of the household appliances group Fagor, which has a future in France' ([21]). On 6 November 2013, as a central works council met to discuss the future of the group, the Minister for Economic Regeneration explained that 'the government wants to rescue as many industrial sites and jobs as it can at FagorBrandt' ([22]). On 19 December 2013, the Minister for Economic Regeneration, on a visit to one of FagorBrandt's plants, proclaimed: 'Our aim is to manage the takeover, to show that this company is in working order … The government will prevent predators from taking over the group solely for its trademarks and patents'. On 22 January 2014, the French Government stated: 'The currently most competitive offer, in social and industrial terms, made by Cevital … has room for improvement by the time the Commercial Court hearing is held on 13 February' ([23]).

(118) On 11 April 2014, a press release by the Minister for the Economy, Economic Regeneration and the Digital Economy — issued further to the decision of the Commercial Court in San Sebastian (Spain) which opened the way for the sale of FagorBrandt's trademarks to the Cevital group — explained that: 'The government has stood by FagorBrandt since the beginning and will provide financial backing for the takeover bid so as to ensure the sustainability of its industrial facilities and protect jobs'.

([19]) Judgment of the Court of Justice of 29 June 1999, *DMT*, C-256/97, ECLI:EU:C:1999:332, paragraph 22.
([20]) http://www.lefigaro.fr/societes/2013/12/19/20005-20131219ARTFIG00567-arnaud-montebourg-au-chevet-de-fagorbrandt.php: *Le Figaro*, 19.12.2013, '*Arnaud Montebourg comes to FagorBrandt's rescue*'.
([21]) http://fr.reuters.com/article/frEuroRpt/idFRL5N0IQ3HR20131105: Reuters, 5.11.2013, '*Fagor has a future in France, says Montebourg*'.
([22]) http://fr.reuters.com/article/frEuroRpt/idFRL5N0IR2AJ20131106: Reuters, 6.11.2013, '*FagorBrandt — Government aims to save as many jobs as it can*'.
([23]) http://www.planet.fr/revue-du-web-fagorbrandt-loffre-de-reprise-devrait-pouvoir-etre-amelioree-montebourg.538024.1912.html: *La Tribune*, 22.1.2014, '*FagorBrandt: takeover bid 'has room for improvement*'.

(119) On 14 April 2014, a further press release by the Minister for the Economy, Economic Regeneration and the Digital Economy and the Minister for Labour, Employment and Industrial Relations — this time following the ruling of the Nanterre Commercial Court in favour of the takeover of FagorBrandt by the Cevital group — announced: 'The Minister will keep a close eye on the restart of production on each site'.

(120) Accordingly, the Commission notes that, at each stage of the court-supervised administration procedure, France has publicly and repeatedly demonstrated its determination to ensure that FagorBrandt stays in business, for reasons relating to the preservation of business and jobs that a private investor would not be able to rely on and which contradict the supposed prudent nature of the lending transactions. In addition, the Commission notes that the assets of Fagor Electrodomésticos (under a safeguard procedure since October 2013 in Spain), which were previously allocated to FagorBrandt, were acquired by CATA-CAN without public support. CATA-CAN took over the industrial production of household appliances in September 2014.

(121) Finally, Cevital's commitment to purchase FagorBrandt was conditional on the obtainment of financing, including the second FDES loan.

7.1.3.2. The FDES loan of EUR 10 million

(122) As explained in section 2.2, the public loans (FDES) and private loans (Thémis) were granted on the same terms for tranche A (EUR 5 million), but on different terms for tranche B.

(123) During the collective proceedings, two private banks ([24]) refused to grant a loan of EUR 5 million as they deemed the collateral insufficient given the level of risk. Similarly, Thémis refused to lend more than EUR 5 million. It is significant that all private parties involved refused exposure of more than EUR 5 million, or even any exposure at all, despite specialising in supporting firms in difficulty. The delay of one month in the repayment of tranche B confirms the risk analysis carried out by the private lenders ([25]). On the other hand, the FDES incurred exposure of EUR 10 million, then EUR 47,5 million, despite the delay in repaying tranche B.

(124) Moreover, the FDES loan of EUR 10 million bears interest at the same level as the loan for half that amount granted by Thémis (EUR 5 million). The Commission also notes that France did not contest this point in its reply to the opening decision, even though this was one of the main doubts raised by the Commission in the decision.

(125) In granting tranche B of the FDES loan, France conferred an economic advantage that a prudent lender would not have granted, or at least not on the same terms.

(126) Tranche B has collateral which, though not weak (part of it is first-rank), cannot be considered strong, given that tranche B competes in this respect with tranche A of the FDES and Thémis loans (for the first-ranked guarantees) and benefits from a lower rank with regard to the pledge on immovable property. The collateral can therefore be considered normal within the meaning of the 2008 Communication.

(127) Given its financial situation when the loan was granted, FagorBrandt must be considered a CCC-rated undertaking within the meaning of the 2008 Communication.

(128) In the absence of any evidence that would call into question the interest rates set out in the 2008 Communication, the Commission takes the view that the market rate can be calculated in accordance with it, giving a rate of 7,03 % (0,53 %, the reference rate for France at the time the loan was granted + 650 basis points).

(129) Following its previous practice, the Commission considers that the amount of the aid is equal to the difference between the interest rate calculated with reference to the 2008 Communication (7,03 %) applied to the loan principal, i.e. EUR 10 million, and the interest rate ([5-10] %) applied by France to the loan principal, i.e. EUR 10 million, calculated for the period during which the amount was made available to FagorBrandt ([26]).

([24]) […] and […].
([25]) Tranche B was repaid at the end of April 2014 instead of at the end of March. The late payment penalties stipulated in the contract with the FDES were paid accordingly.
([26]) Economic advantage = 0,0703 × 10 000 000 – [0,05-0,10] × 10 000 000.

7.1.3.3. The FDES loan of EUR 47,5 million

(130) The FDES loan of EUR 47,5 million is divided into three tranches: tranche A (EUR 11,2 million), tranche B (EUR 23,8 million) and tranche C (EUR 12,5 million). The loans from Société Générale and Natixis are both for EUR 7,5 million and each one is divided into two tranches: tranche A (EUR 2,4 million) and tranche B (EUR 5,1 million).

(131) *Collateral*. In the light of the information provided by France following the opening decision, it would appear that the value of the property collateral recently underwent an independent appraisal, which estimated it at EUR [30-50] million. Moreover, Groupe Brandt purchased the trademarks held by Fagor Ireland for EUR [20-30] million. The other collateral was not the subject of independent appraisals allowing the Commission to evaluate its quality. Accordingly, the Commission estimates that the collateral can be considered normal within the meaning of the 2008 Communication.

(132) *Interest rates*. In response to the opening decision, France claims that the Commission was wrong to give Groupe Brandt a CCC rating because the company is part of the Cevital group, which is rated BB or even B. This argument is surprising to say the least. Cevital is neither the borrower nor the guarantor of the FDES loan. The fact that the Cevital group is in such good financial health that it has a BB or even a B rating may reassure financial institutions thinking of lending to a subsidiary of the Cevital group, but in no way guarantees against the risk represented by Groupe Brandt's CCC rating. On that basis, if France's argument that Groupe Brandt's borrowing capacity should be measured against that of Cevital is accepted, it is surprising to say the least that no private investor felt inclined to lend to Groupe Brandt. Moreover, as described in section 7.1.3.1, the statements of France's various representatives show that the sole purpose of the support measures was to come to the rescue of FagorBrandt and Groupe Brandt. This was what was stated publicly to the creditors. This argument cannot therefore be upheld.

(133) In addition, given the difficulties encountered by Groupe Brandt's predecessor, Groupe Brandt cannot be considered to be an undertaking with no credit history within the meaning of the 2008 Communication. This is illustrated firstly by the fact that no private lender wished to take the risk of supplying cash to the company and secondly by the fact that Groupe Brandt should be considered to be FagorBrandt's economic successor, as demonstrated in section 8.2.

(134) Moreover, France asserts that the private lenders lent the money for each tranche at the same rate as the FDES. Although the A tranches of the FDES and private loans benefit from the same terms (EURIBOR + [300-600] basis points) and the same collateral, the amount of tranche A of the FDES loan is almost five times higher than that of the A tranches of the private loans. Similarly, the B tranches of the FDES and private loans are subject to the same terms (EURIBOR + [300-600] basis points), even though, again, the amount of tranche B of the FDES loan is almost five times higher.

(135) As regards tranche C, the Commission notes that the remuneration rate is higher than that of tranches A ([0-5] %) and B ([0-5] %), while its maturity is shorter than that of the other tranches. Although the loans are divided into different tranches, the public and private loans should be analysed in their entirety.

(136) Examining the FDES loan and the loans from Société Générale and Natixis as a whole clearly reveals the asymmetry between each creditor's exposure: France lent six times more than each of the banks, which — unlike France — are precisely in the business of providing companies with cash. This occurred even though Société Générale and Natixis have long conducted business deals with FagorBrandt, of which Group Brandt may be considered the successor ([27]), and even though they belong to a pool of financiers set up to support the company ([28]). France, which does not appear to have any interest in the continuation of FagorBrandt, first lent EUR 10 million to the company and then, despite the late repayment of tranche B of this loan, granted a further loan more than four times the size of the first. No prudent lender would have done such a thing; witness the fact the Thémis did not grant any loans other than the loan of EUR 5 million. Moreover, although it was six times the

([27]) Société Générale and Natixis are leading bankers to the former FagorBrandt group: these two banks each hold EUR 3 million in unsecured debt, which became so after the pledge on stocks was lifted in FagorBrandt's observation period.
([28]) Société Générale, Natixis, CACIB, Arkea and BBVA.

size of the loans from Société Générale and Natixis, the FDES loan benefited from the same collateral as the latter. In addition, given the public statements made by representatives of France, Société Générale and Natixis, the two banks could not have been unaware of France's wish to lend financial support to Groupe Brandt. Their decision to grant their respective loans would therefore inevitably have been influenced by the near-certainty that France would support the continuation of the business taken over by Groupe Brandt, which would reduce their risk. Furthermore, Natixis acts on behalf of France in the management of FDES loans, which is liable to influence its decision. Apart from the intrinsic merits of the loan granted to Groupe Brandt, the acceptance of the transaction wished for by the public authorities enabled Natixis to continue its activity of managing other FDES loans in the future, which means that its position is not comparable to that of France. In addition, by supporting FagorBrandt, then Groupe Brandt, the FDES used nearly 20 % of its EUR 300 million budget allocated by the Finance Act for 2014, while the private lenders, given their respective lending capacities, took far lower risks.

(137) The unconditional, public backing shown by France's representatives could therefore only be justified on other grounds: it appears from their successive statements that France's goal was to safeguard jobs and keep FagorBrandt's production in France — reasons far removed from the considerations of a private creditor.

(138) France did not therefore behave like a prudent private lender and the rates applied to the three tranches of the EUR 47,5 million FDES loan are not in line with market conditions.

(139) In the absence of any evidence calling into question the interest rates set out in the 2008 Communication, the Commission considers that the market rate can be calculated in accordance with it. Since the collateral can be deemed normal within the meaning of the 2008 Communication and given that Groupe Brandt can be considered either a new company or the economic successor to FagorBrandt, 650 basis points must be applied to the reference rate for France (0,53 %) at the time the loan was granted.

(140) In the light of its previous practice, the Commission considers that the amount of aid is equal to the difference between 7,03 % (reference rate for France of 0,53 % + 650 basis points) applied to the principal of each tranche of the loan, i.e. EUR 11,2 million, EUR 23,8 million and EUR 12,5 million respectively, and the rates of tranches A, B and C ([0-5] %, [0-5] %, [0-5] %) applied to the principals of tranches A, B and C, i.e. EUR 11,2 million, EUR 23,8 million and EUR 12,5 million respectively, calculated for the period during which the amount was made available to Groupe Brandt ([29]).

7.1.4. *Effect on competition and trade between Member States*

(141) The measures favour FagorBrandt and Groupe Brandt by providing them with additional resources and avoiding a cessation of business activity. They have allowed them to maintain a stronger competitive position than they would have had unaided. They therefore threaten to distort competition between manufacturers of large electrical household appliances.

(142) Moreover, in the market for large electrical household appliances there is extensive trade between Member States.

(143) Therefore, the Commission concludes that the advantage conferred by the measures in question on an undertaking operating in a market that is open to competition distorts or threatens to distort competition and is likely to affect trade between Member States.

7.1.5. *Conclusion with regard to the existence of State aid within the meaning of Article 107(1) TFEU*

(144) The Commission considers that the loans granted to FagorBrandt and Groupe Brandt by France constitute State aid within the meaning of Article 107(1) TFEU.

([29]) Economic advantage = (0,0703 × 11 200 000 – [0,00-0,05] × 11 200 000) + (0,0703 × 23 800 000 – [0,00-0,05] × 23 800 000) + (0,0703 × 12 500 000 – [0,00-0,05] × 12 500 000).

(145) On the other hand, the Commission finds that the write-off of tax and social security debts granted by France to FagorBrandt does not constitute State aid within the meaning of Article 107(1) TFEU.

7.2. **Assessment of the compatibility of the measures with the applicable State aid rules**

(146) The prohibition of State aid laid down in Article 107(1) TFEU is neither absolute nor unconditional. In particular, paragraphs 2 and 3 of Article 107 TFEU constitute legal bases allowing some aid measures to be considered compatible with the internal market.

(147) In this case, the Commission considers that the aid was granted with the aim of restoring the long-term viability of firms in difficulty. It is therefore necessary to analyse whether the measures in question could be considered compatible under Article 107(3) TFEU.

7.2.1. *Applicable legal basis*

(148) Point 137 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([30]) provides that 'The Commission will examine the compatibility with the internal market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 108(3) of the Treaty on the basis of these guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union*'. Point 138 then states that: 'In all other cases it will conduct the examination on the basis of the guidelines which applied at the time the aid was granted'.

(149) Since the measures in question were granted in November 2013 and April 2014 respectively, their compatibility must be assessed in the light of the 2004 Guidelines.

(150) France has not submitted any observations concerning the compatibility of the measures. Since the loans granted to FagorBrandt and Groupe Brandt do not constitute State aid within the meaning of Article 107(1) TFEU, France does not consider it necessary to check their compliance with the principles set out in the 2004 Guidelines.

(151) To reiterate the Court of Justice's position on this matter, in judgment C-364/90, *Italy* v *Commission*, it declared: 'As regards the first argument, it should be observed that a Member State which seeks to be allowed to grant aid by way of derogation from the Treaty rules has a duty to collaborate with the Commission. In pursuance of that duty, it must in particular provide all the information to enable the Commission to verify that the conditions for the derogation sought are fulfilled' ([31]).

7.2.2. *The FDES loan of EUR 10 million to FagorBrandt*

(152) One of the fundamental principles governing rescue or restructuring aid is the 'one time, last time' principle, set out in point 72 of the 2004 Guidelines: 'In accordance with the same [one time, last time] principle, in order to prevent firms from being unfairly assisted when they can only survive thanks to repeated State support, restructuring aid should be granted once only'. Point 73 adds: 'When planned rescue or restructuring aid is notified to the Commission, the Member State must specify whether the firm concerned has already received rescue or restructuring aid in the past, including any such aid granted before the date of application of these Guidelines and any unnotified aid. If so, and where less than 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), the Commission will not allow further rescue or restructuring aid'.

([30]) OJ C 249, 31.7.2014, p. 1.
([31]) Judgment of the Court of Justice of 28 April 1993, *Italy* v *Commission*, C-364/90, ECLI:EU:C:1993:157, paragraph 20.

(153) In this case, FagorBrandt benefited from restructuring aid in 2008 which the Commission declared compatible. In addition, none of the exceptions referred to in point 73 of the 2004 Guidelines apply. Further restructuring aid less than six years after the previous aid can therefore under no circumstances be compatible with the applicable rules on State aid.

(154) The Commission therefore concludes that the State aid awarded to FagorBrandt through the FDES loan of 25 November 2013 is incompatible with the internal market under the rules applying Article 107(3)(c) TFEU, provided for in the 2004 Guidelines.

7.2.3. *The FDES loan of EUR 47,5 million to Groupe Brandt*

(155) As demonstrated in section 8.2, Groupe Brandt must be considered the economic successor to FagorBrandt. As such, Groupe Brandt could not receive restructuring aid, in accordance with the one time, last time principle provided for in points 72 and 73 of the 2004 Guidelines.

(156) Moreover, even if Groupe Brandt were to be considered a newly created firm, contrary to the conclusions set out in section 8.2, the aid could not be declared compatible because of point 12 of the 2004 Guidelines, which states: 'For the purposes of these Guidelines, a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets'. In this case, Groupe Brandt was created on 15 January 2014 following FagorBrandt's liquidation. In any event, Groupe Brandt could not have received State aid in the form of restructuring aid.

(157) The Commission therefore concludes that the State aid awarded to Groupe Brandt through the FDES loan of 24 April 2014 is incompatible with the internal market under the rules applying Article 107(3)(c) TFEU, provided for in the 2004 Guidelines.

8. **RECOVERY AND ECONOMIC CONTINUITY**

8.1. **Framework for analysis**

(158) In accordance with the TFEU and the settled case-law of the Court of Justice, the Commission has the power to decide that the Member State concerned must abolish or alter aid when it finds it to be incompatible with the internal market ([32]). The Court has also ruled on a number of occasions that the obligation to abolish aid incompatible with the internal market which a Commission decision imposes on a Member State has as its purpose to re-establish the previously existing situation ([33]).

(159) In this context, the Court of Justice has established that this aim is achieved once the beneficiary has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid has been restored ([34]).

(160) In line with case-law, Article 14(1) of Council Regulation (EC) No 659/1999 ([35]) lays down that: 'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary…'.

([32]) Judgment of the Court of Justice of 12 July 1973, *Commission* v *Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.
([33]) Judgment of 14 September 1994, *Spain* v *Commission*, C-278/92, C-279/92 and C-280/92, ECLI:EU:C:1994:325, paragraph 75.
([34]) Judgment of the Court of Justice of 17 June 1999, *Belgium* v *Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.
([35]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

(161) Consequently, since the measures in question were implemented in breach of Article 108 TFEU and are to be considered unlawful and incompatible aid, they must be recovered in order to re-establish the situation that existed on the market before the aid was granted. As such, recovery must cover the period during which an advantage was conferred on the beneficiary, that is to say from the time the aid was made available to the beneficiary until it was actually recovered. The sums to be recovered should therefore include interest due until recovery takes place. In accordance with case-law, the recovery interest accrues from the date on which the aid was actually made available ([36]).

(162) France should therefore recover from FagorBrandt the incompatible aid consisting in the FDES loan of 25 November 2013 and from Groupe Brandt the incompatible aid consisting in the FDES loan of 24 April 2014.

8.2. **Recovery of the incompatible aid from FagorBrandt — Economic continuity**

(163) According to case-law, the recovery obligation may be extended to a new company to which the beneficiary has transferred part of its assets, where that transfer permits the conclusion that there is an economic continuity between the two companies ([37]). The recovery obligation can be extended to another company, provided that it is established that the other company is effectively benefiting from the aid in question due to an economic continuity between the two entities. In such a case, those taking over the beneficiaries' activities would therefore also have to repay the aid considered incompatible with the internal market.

(164) The FDES loan of EUR 10 million was granted to FagorBrandt. However, FagorBrandt has been liquidated and its assets transferred by judgment of Nanterre Commercial Court of 15 April 2014. It is therefore necessary to examine whether the companies taking over FagorBrandt's activities, namely Variance Technologies, Pierre Jullien and Groupe Brandt, can be regarded as FagorBrandt's economic successors, and hence as liable for reimbursing the aid incompatible with the internal market from which FagorBrandt benefited.

(165) In the light of the ruling of the Court of Justice in *Italy and SIM2 Multimedia* v *Commission* ([38]), on which the Commission based its decisions concerning *Olympic Airlines*, *Alitalia* and *Sernam* ([39]), an analysis of whether there is economic continuity between operators must draw on a body of evidence. The following are some of the factors that may be considered, as established by case-law: (i) the scale of the assets transferred, (ii) the price at which the assets were transferred, (iii) the identity of the buyers, (iv) the timing of the transfer and (v) the economic justification for the takeover. This set of factors was confirmed by the Court of Justice in its judgment of 28 March 2012 in *Ryanair* v *Commission* ([40]), which endorsed the Commission's decision in the *Alitalia* case.

(166) In the present case, given the extremely limited scope of the assets taken over by Variance Technologies (Aizenay site) and Pierre Jullien (Roche-sur-Yon production site), these two buyers cannot be considered FagorBrandt's economic successors.

(167) On the other hand, Groupe Brandt, via its parent company Cevital, took over all tangible and intangible assets belonging wholly to FagorBrandt, together with all inventory. Finally, Groupe Brandt also took over FagorBrandt's trademarks and patents and almost 90 % of its employment contracts following its liquidation.

(168) Moreover, the price at which the assets were acquired by Groupe Brandt was set by Nanterre Commercial Court as part of the collective proceedings concerning FagorBrandt and not as part of a market transaction. This is illustrated by the fact that Groupe Brandt acquired FagorBrandt's assets at the price of EUR [0-5 million], even though the company's turnover was EUR [600-800 million] in 2012. It should also be noted that no other

([36]) Judgment of the General Court of 30 January 2002, *Keller and Keller Meccanica* v *Commission*, T-35/99, ECLI:EU:T:2002:19, paragraphs 106 to 109.
([37]) Judgment of the General Court of 28 March 2012, *Ryanair* v *Commission*, T-123/09, ECLI:EU:T:2012:164, paragraph 155.
([38]) Judgment of the Court of Justice of 8 May 2003, *Italy and SIM 2 Multimedia* v *Commission*, C-328/99 and C-399/00, ECLI:EU:C:2003:252.
([39]) Commission Decision of 17 September 2008, State Aid N 321/08, N 322/08 and N 323/08 — Greece — *Sale of certain assets of Olympic Airlines/Olympic Airways Services*; Commission Decision of 12 November 2008, State Aid N 510/08 — Italy — *Sale of assets of Alitalia*; Commission Decision of 4 April 2012, SA.34547 — France — *Takeover of SERNAM Group assets under the court-supervised administration procedure*.
([40]) Judgment of the General Court of 28 March 2012, *Ryanair Ltd* v *Commission*, T-565/09, ECLI:EU:T:2012:164.

companies aside from Groupe Brandt were interested in acquiring assets of FagorBrandt. Therefore, the price at which the assets were transferred was not the result of a comparison of several competing bids. The price at which Groupe Brandt acquired FagorBrandt's assets cannot therefore be considered the result of a market transaction.

(169) Moreover, Groupe Brandt intended to pursue the same production activities as FagorBrandt, with the same trademarks. In this regard, it should be noted that Groupe Brandt took over all of FagorBrandt's stock ([41]), together with all supplier and customer commitments relating to the transferred activities. Furthermore, Cevital clearly and publicly ([42]) indicated that it intended to incorporate FagorBrandt's assets into its own commercial strategy, as electrical household appliances already account for 10 % of the Cevital group's turnover. Finally, and revealingly, Groupe Brandt inherited the right to use the company's trademarks that are most well-known in France, namely Brandt, De Dietrich, Vedette, Sauter and Easycook,

(170) Consequently, in the light of the scale of the assets transferred, the price at which the assets were transferred and the economic justification for the takeover, the Commission concludes that there is economic continuity between FagorBrandt and Groupe Brandt.

(171) By e-mail dated 1 March 2016, France informed the Commission that, as FagorBrandt's economic successor, Groupe Brandt had repaid the aid element as defined in section 7.1.3.2 of this Decision, and paid the recovery interest up to 29 February 2016. On 29 February 2016, Groupe Brandt repaid to France the amount of the aid and interest, i.e. EUR [0-100 000].

(172) Generally, the repayment of aid is intended to eliminate the distortion of competition brought about by a certain competitive advantage (in this case, the aid element contained in the FDES loan of EUR 10 million) and thus to re-establish the status quo before the aid was granted ([43]).

(173) Consequently, it is no longer necessary to pursue Groupe Brandt for the recovery of the incompatible State aid which was granted to FagorBrandt.

8.3. **Recovery of the incompatible aid from Groupe Brandt**

(174) As regards the FDES loan of EUR 47,5 million granted to Groupe Brandt, only Groupe Brandt is liable for the improperly received aid. The loan was granted specifically to Groupe Brandt by name, and the company is still operating as of the date on which this Decision is adopted. The question of economic continuity between Cevital and Exagon on the one hand and Groupe Brandt on the other is therefore not relevant.

(175) Moreover, given that the aid measures were granted in the form of loans, the Commission considers that the aid materialised and continues in principle to materialise at the time of payment of each repayment instalment.

(176) By e-mail dated 1 March 2016, France informed the Commission that, with regard to the due dates elapsed up to 29 February 2016, Groupe Brandt had repaid the aid element contained in the FDES loan of EUR 47,5 million awarded to Groupe Brandt as defined in section 7.1.3.3 of this Decision, and paid the recovery interest up to the same date of 29 February 2016. On 29 February 2016, Groupe Brandt repaid to France the amount of the aid and interest, i.e. EUR [0-5 million].

(177) Moreover, as regards all future due dates from 1 March 2016, the interest rate of the FDES loan was increased and set at 7,03 %. This was proven by an amendment to the loan agreement, sent to the Commission by France on 1 March 2016.

([41]) With the exception of those linked to the La Roche-sur-Yon site.
([42]) http://www.usinenouvelle.com/article/la-strategie-de-l-algerien-cevital-avec-brandt.N268498.
([43]) Judgment of the Court of Justice of 11 September 2009, *Commission* v *MTU Friedrichshafen*, C-520/07 P, ECLI:EU:C:2009:557, paragraph 57 and case-law cited, namely judgments *Italy and SIM 2 Multimedia* v *Commission* C-328/99 and C-399/00 ECLI:EU:C:2003:252, paragraph 66 and *Germany* v *Commission* C-277/00 ECLI:EU:C:2004:238, paragraphs 74 to 76.

(178) In the light of the above, the Commission considers that the aid element contained in the FDES loan of EUR 47,5 million has been eliminated and the status quo before the incompatible aid was granted has been re-established, in accordance with the relevant case-law ([44]). In addition, no aid will materialise in the future.

(179) Consequently, it is not necessary to pursue Groupe Brandt for the recovery of incompatible aid.

9. **CONCLUSION**

(180) The Commission finds that, by granting FDES loans to FagorBrandt and Groupe Brandt, France has unlawfully implemented State aid in breach of Article 108(3) TFEU. However, the repayment of the loans and the adjustment of the loan agreement to market conditions has re-established the status quo before this unlawful State aid was granted, to the extent that it is no longer necessary to order recovery and the abolition of the measures in question,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid resulting from the loans from the Economic and Social Development Fund (FDES) granted to FagorBrandt on 28 November 2013, in so far as the interest rate applied is below the rate calculated in this Decision on the basis of the Communication from the Commission on the revision of the method for setting the reference and discount rates ('the 2008 Communication'), i.e. 7,03 %, unlawfully granted by France to FagorBrandt, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

2. The State aid resulting from the FDES loan granted to Groupe Brandt on 24 April 2014, in so far as the interest rates applied are below the rate calculated in this Decision on the basis of the 2008 Communication, i.e. 7,03 %, unlawfully granted by France to Groupe Brandt, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

Article 2

In consequence of its having been found that Groupe Brandt has repaid the aid referred to in Article 1, the formal investigation procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union has become devoid of purpose.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 15 March 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission

([44]) See footnote 43.