II

*(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)*

# DECISIONS

# COMMISSION

## COMMISSION DECISION

**of 10 July 2007**

**on State aid C 20/06 (ex NN 30/06) implemented by Slovenia for Novoles Lesna Industrija Straža d.d.**

*(notified under document number C(2007) 3223)*

**(Only the Slovenian version is authentic)**

**(Text with EEA relevance)**

(2008/90/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

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

Whereas:

### I. **PROCEDURE**

(1) On 1 December 2004 the Commission received a complaint concerning alleged aid to the Slovenian wood-processing firm Novoles Lesna Industrija Straža d.d. (hereinafter Novoles Straža).

(2) The complaint concerned financial measures allocated to Novoles Straža on 27 May 2004 by decision of the Slovenian Government pursuant to Article 21 of the Slovenian Act Governing Rescue and Restructuring Aid for Companies in Difficulty. This measure was not notified to the Commission on the grounds that it had been approved by the Slovenian State Aid Monitoring Commission on 23 April 2004, i.e. prior to accession. However, since the relevant criterion for determining when aid is granted is the legally binding act by which the competent national authority undertakes to grant state aid, the Commission considered that the measure in question constituted new aid, which should thus have been notified on the basis of Article 88 and assessed under Article 87 of the EC Treaty [2].

(3) By letter dated 16 May 2006 the Commission informed Slovenia that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the aid/measure.

(5) The Commission received no comments from interested parties.

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[1] OJ C 194, 18.8.2006, p. 22.

[2] Details of the procedure were described in the decision to open the procedure (see footnote 1) and remain relevant for the purpose of the present decision.

[3] Cf. footnote 1.

(6) Slovenia submitted observations by letter dated 17 July 2006. Additional information was requested by letters dated 11 October 2006 and 23 February 2007 and submitted on 30 November 2006 and 23 April 2007. In addition, a meeting was held between Commission services and the Slovenian authorities on 28 June 2006.

## II. DETAILED DESCRIPTION OF THE AID

### 1. The beneficiary

(7) Novoles Straža manufactures semi-finished wood products and furniture. It is located in Straža, Slovenia, which is an assisted area within the meaning of Article 87(3)(a) of the EC Treaty. In 2003 it had about 800 employees and it is one of the bigger employers in the wood and furniture sector in Slovenia.

(8) The company has holdings in two companies, Novoles-Primara, d.o.o. (100 %) and Pohištvo Brežice, d.d. (93,7 %). Slovenia submitted that both those companies were also in poor financial condition. While the former generated a very small profit in 2003, the latter made a loss.

(9) The company is owned by a number of natural and legal persons. However, ownership is so widely spread that none of them is able to exercise control over the company to the extent that it could be considered as part of a larger group. In fact the biggest shareholders are employees and former employees, who are not linked by any kind of share agreement and who hold 22,3 %. Besides that, a number of 'PIDs' hold a total of 33,4 %. However, the Commission understands that these PID investment funds are merely administrative bodies managing the shares of private shareholders. These shareholdings are the result of the privatisation of 'social capital' in Slovenia, i.e. the concept that companies belonged to everybody. Ownership of this social capital was transformed by issuing ownership certificates to citizens, who could exchange them for shares. PIDs were formed to enable citizens to participate in this transformation of ownership by exchanging the certificates into shares. The Slovenian authorities confirmed that the PIDs have no resources available to help the company overcome its difficulties.

### 2. Financial situation of the beneficiary

(10) The company's poor financial situation stems from the fact that it lost a significant amount of its registered capital of SIT 1,262 billion (about EUR 5,3 million [4]), which had fallen to SIT 0,75 billion in April 2004. The main financial and operating indicators taken from its balance sheet, income statement and cash flow statement are indicated in the following table:

*Table 1*

**Financial indicators for Novoles Straža**

| Indicator | 1999 | 2000 | 2001 | 2002 | 2003 |
|---|---|---|---|---|---|
| Net sales revenue | 6 341 790 | 6 507 932 | 6 602 106 | 8 093 436 | 6 014 466 |
| Inventories | 880 544 | 936 471 | 1 113 218 | 955 305 | 1 279 940 |
| Claims | 930 585 | 1 053 433 | 1 218 067 | 1 676 595 | 1 133 643 |
| Profit (Loss) | 78 809 | 109 884 | 128 843 | 110 215 | (511 149) |
| Debt ratio | 42,1 | 44,7 | 47,2 | 50,2 | 57,6 |

(11) The Slovenian authorities explained that the company's losses stem mainly from the failure to meet its sales plan while on the other hand its financial costs increase. This is evidenced by the fact that the company's debt ratio was constantly increasing and by the increase in average inventories.

(12) In response to the opening of the procedure, the Slovenian authorities explained that the volume of sales had also decreased from 2000 to 2001 and from 2002 to 2003, while the increase in 2002 was due to extraordinary events, i.e. construction work in Croatia (equipping large hotel complexes), the introduction of a new furniture range and the inclusion of revenues from two subsidiaries, which were integrated into Novoles on 1 January 2003.

(13) Furthermore, the Slovenian authorities furnished the Commission with documentary evidence that the company was unable to obtain a sufficient amount of fresh capital from the capital markets. In particular, banks rejected Novoles Straža's application for new funds because it had a poor credit worthiness and insufficient security to make up for such a poor standing. Even a State guarantee covering 65 % of the amount requested was considered insufficient.

[4] At the beginning of 2006, EUR 1 = Slovenian Tolar (SIT) 240.

### 3. **Restructuring programme**

(14) In order to overcome its difficulties, in April 2004 Novoles Straža presented the Ministry of Economy with a restructuring plan from March 2004 concerning a restructuring period from 2004 to 2008.

(15) The plan cites as the reason for the current situation the decline of economic growth in its main export markets (in particular Germany and USA), where it sold 60 % of its products. Moreover, demand for intermediate products had fallen. The fall in revenues in 2003 culminated in the company's inability to settle liabilities from its own resources and hence in an increase in debts and financial charges. Moreover, the company's organisational structure did not enable it to tailor production to demand.

(16) In order to overcome its difficulties, a financial restructuring operation was envisaged — and has since taken place — aiming at transformation of mortgage-backed short-term loans of SIT 1 669 940 776 into long-term liabilities with the help of a State guarantee of SIT 1,1 billion for some loans which were 65 % mortgage-backed, while the remaining refinancing of SIT 569 940 776 was financed without state aid but with a mortgage ratio of more than 100 % of nominal value.

(17) Moreover, Novoles Straža aims to redirect its activities as follows:

— A change in its marketing strategy, consisting of a partial switch from the EU and North American markets towards the markets of Eastern Europe and Russia. The Slovenian authorities have provided evidence of several sales projects commencing inter alia in Russia, Slovakia and Serbia. Sales to foreign markets will increase to 77 % in 2008 compared with 70 % in 2004, with sales to Eastern European markets accounting for 8 % (compared with 0 %).

— A reduction in the proportion of intermediate products in favour of final products. Finished products will account for 33 % in 2008 (compared with 26 % in 2003) and own brand products will account for 26 % in 2008 (compared with 20 % in 2003) while intermediate products will decline from 41 % to 31 % in 2008. Intermediate products will, nevertheless, remain an important part of production, but will not consist solely of plywood, thereby increasing the value added. The company's advantage here lies in its production of smaller quantities for a known producer.

(18) In addition, the redirection is accompanied by technological restructuring aimed at more cost-efficient production and the adaptation of technological equipment to demand-driven production which also meets ecological standards. Investments amounting to SIT 1 455 million (EUR 6,06 million) are envisaged, focusing in particular on measures to increase productivity, improve working conditions, improve the use of materials, save energy and meet ecological standards. The Slovenian authorities have provided the Commission with a table of investments, which comprise measures such as modernising the plywood profit centre, introducing a computer-controlled drying process, modernising production at the new product range profit centre, overhauling the energy system and introducing a new information system. The Slovenian authorities have indicated some delays in the implementation of some of the key investments, such as production at the new product range profit centre or the overhaul of the energy system, due to lack of funds (these investments were mainly to be financed by own resources).

(19) Finally, personnel restructuring will aim at reducing the workforce by 96 employees and providing special and general training for the remaining employees. The costs of SIT 537 million will be covered partly by a subsidy of SIT 283 million (EUR 1,2 million).

(20) Slovenia presented five-year business projections indicating that the restructuring plan would enable Novoles Straža to restore viability.

(21) The Slovenian authorities have provided the Commission with data in support of the sales forecasts. First, the projections took into account growth from 2005 to 2007 of around 10 % in the Western European markets and around 20 % in the Eastern European markets ([5]). Second, they factored in the shift of production from intermediate products to finished products (59 % finished products rather than 46 %).

([5]) This information is based on assessments by Euromonitor, 2003.

(22) On the basis of these assumptions, together with sales executives' forecasts based on information obtained at trade fairs, through agents and directly from buyers, Novoles Straža has produced a sales plan for the period 2004 to 2008.

(23) On the basis of realistic forecasts, it is projected that, over the period 2003-08, annual growth will be between 3,6 % and 5,7 % in domestic sales and 6,5 % to 8,4 % in foreign sales. Consequently, the restructuring will result in an operating margin of 11,7 % in 2008. The operating profit in relation to equity capital will increase to 12,6 % in 2008.

## 4. **Costs and financing of restructuring**

(24) The table below gives an overview of the financing of the restructuring costs:

*Table 2*

**Costs and financing of restructuring**

| Financing required (in SIT 000) | Own funds | Subsidies | Guarantee | Total |
|---|---|---|---|---|
| Financial restructuring | 369 000 (*) | | 1 100 000 | 1 469 000 |
| Marketing and development restructuring | 675 000 | | | 675 000 |
| Technological restructuring | 1 456 000 | | 200 000 | 1 656 000 |
| Personnel restructuring | 253 988 | 282 771 | | 536 759 |
| Total | 2 384 988 | 282 771 | 1 300 000 | 4 337 699 |

(*) Figure introduced by the Commission.

(25) The company received state aid totalling SIT 1 583 million (EUR 6,6 million), however apparently only at the end of 2004 and not as planned in mid-2004.

(26) The main support consists of a State guarantee for four loans totalling SIT 1,3 billion, which enable Novoles Straža to reschedule its existing debt. The deadline for repayment is seven years, including a two year moratorium. Thereafter the interest rate is 4,5 %, including a lumpsum payment amounting to 0,1 % for concluding and managing the credit transaction. The guarantee will cover 100 % of the loans and will be additionally secured by a mortgage of at least 65 %.

(27) Slovenia submits that SIT 2 385 million of the restructuring costs is financed from the company's own funds. However, the Commission considers it appropriate to add another SIT 569 million from the private financing of the loans (amounting to 8,5 %). Some of the own funds were to be generated by disinvestments (SIT 1 323 million, i.e. 30,5 %) and by amortisation and depreciation (29,76 %). The Slovenian authorities have provided the Commission with a detailed list of the disinvestments. While around SIT 300 million was already disinvested in 2005, further divestments were planned (and have been partly realised) for 2006 (around SIT 600 million) and for 2007 and 2008 (SIT 450 million).

## 5. **Market situation and compensatory measures**

(28) Novoles Straža produces the following products, for which its market shares in the EU-25 are as follows:

*Table 3*

**Market shares**

| Product | 2003 market share | 2005 market share |
|---|---|---|
| Plywood (*) | 0,14 % | 0,13 % |
| Chairs and parts (**) | 0,07 % | 0,04 % |
| Furniture and parts (***) | 0,08 % | 0,05 % |
| Average | 0,09 % | 0,06 % |

(*) US Harmonised system codes 4412 14 00, 4412 19 00, 4412 93 00.
(**) US Harmonised system codes 9401 61 00, 9401 69 00, 9401 90 30.
(***) US Harmonised system codes 9403 60 10, 9403 60 90, 9403 90 30.

### 6. **Other aid**

(29) Correcting the figures quoted in the decision opening the procedure, the Slovenian authorities stated that Novoles Straža did indeed benefit from favourable loans in 2004, but that these loans, granted from public and private sources for environmental purposes, amounted to only SIT 115,2 million (EUR 0,48 million) and had a net grant equivalent of SIT 14,9 million (EUR 62 000). This aid was given under the 'Environmental Investment Cofinancing' scheme and approved in February 2004.

(30) Slovenia also reported that the aid received in 1999 consisted only of SIT 18,1 million (EUR 75 000) in interest rate subsidies, SIT 11,5 million (EUR 48 000) in employment aid, SIT 3,6 million (EUR 15 000) in aid for research and development and SIT 1,1 million (EUR 4 600) in export aid.

(31) The first aid mentioned in the previous paragraph, which was originally assumed to be restructuring aid, was merely an interest rate subsidy granted because interest rates in Slovenia were relatively high compared to foreign interest rates. In fact, one of the conditions for benefiting from the programme was that the companies had to have an A, B, C or D credit rating and were not allowed to be in bankruptcy proceedings. The company furnished proof that it had an A/B rating at that time.

## III. **REASONS FOR OPENING THE PROCEDURE UNDER ARTICLE 88(2) OF THE EC TREATY**

(32) In its letter of 16 May 2006, the Commission held that the measures in question constituted new aid and should thus be notified on the basis of Article 88 EC and assessed under Article 87 EC. To this end, the Commission reiterated that the relevant criterion is the legally binding act by which the competent national authority undertakes to grant state aid, which was adopted in May 2004.

(33) In addition, the Commission expressed doubts on the compatibility of the measure with the common market, and in particular with the 1999 Community Guidelines on aid for rescuing and restructuring firms in difficulty [6], on the following grounds:

— It was not sure whether the company showed the usual signs of a company in difficulty, given that its sales increased in 2003 and inventories decreased in 2002. Moreover, it was not clear whether the company was part of a larger group.

— It was not clear how the company was to restore its long-term viability, in particular as data underlying the financial projections for the future was missing.

— It was unclear whether the company was providing a significant own contribution to the restructuring for want of a clear explanation as to how the own funds mentioned were to be sourced.

— No market analysis was provided to justify the non-existence of compensatory measures.

— Compliance with the 'one time, last time' principle was doubtful, given that the company had already received restructuring aid in 1999.

## IV. **COMMENTS FROM SLOVENIA**

(34) Slovenia insisted that the state aid for Novoles Straža was allocated before Slovenia's accession to the European Union, since the state's economic exposure was known before accession.

(35) Second, Slovenia sought to allay the European Commission's doubts regarding whether or not Novoles Straža belongs to a larger business group by explaining the particularities of the ownership structure in Slovenia, as presented above, and by correcting the percentages of the participating interests of the shareholders.

(36) Third, Slovenia put forward evidence that Novoles Straža is a 'company in difficulties', explaining more fully the overall trend of financial difficulties the company has been facing since 1999 (as evidenced by growing inventories and debt and a decrease in sales, with certain extraordinary events causing the increase in 2002), culminating in its inability to obtain external financing in 2004.

(37) Fourth, the Slovenian authorities provided information indicating that Novoles Straža's strategy is based on market research and forecasts confirming relatively high furniture sales.

(38) Fifth, as regards compensatory measures, Slovenia submitted a market study showing that Novoles Straža's market share in the relevant product market in the EU-25 is very small. The Slovenian authorities also pointed out that Novoles Straža is located in an assisted area within the meaning of Article 87(3)(a) EC.

[6] Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(39) Finally, as regards state aid received in the past, Slovenia corrected some clerical errors regarding the sums received and, above all, stated that the aid originally identified as restructuring aid was not allocated for rescue and restructuring as defined in the Guidelines.

## V. ASSESSMENT OF THE AID

### 1. Existence of state aid

(40) According to Article 87 EC, 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, insofar as it affects trade between Member States, constitutes incompatible state aid unless it can be justified under Article 87(2) or (3) EC.

(41) The Commission notes that the aid is granted through State resources to an individual company. This clearly applies to a direct grant, but also to a guarantee, in particular where a company is in difficulty and 100 % security for the loan is provided [7]. Indeed, the guarantee allowed the company to secure a larger loan than it would have been able to obtain without the guarantee.

(42) As there is trade in wood products between Slovenia and other Member States, the measure is liable to improve the position of the recipient in relation to its competitors in Slovenia and the EU. The aid therefore distorts competition and affects trade between Member States. Consequently, the Commission considers that the present measures in favour of Novoles Straža constitute state aid pursuant to Article 87(1) EC.

### 2. Existence of new state aid

(43) The Slovenian authorities first questioned whether the Commission was empowered to assess the aid under Articles 87 and 88 EC, arguing that it was granted before accession. In the decision opening the procedure the Commission clarified that, in order to determine whether aid has been put into effect before or after accession, the relevant criterion is the legally binding act by which the competent national authorities undertake to grant the aid [8]. In the absence of such a decision before accession, the measure constitutes new aid, even if the exposure of the State was known beforehand.

(44) The Commission maintains its initial conclusion that the binding act by which the competent national authorities undertook to grant aid did not come into effect before accession. The relevant Slovenian provisions state that the aid is to be awarded by a decision of the government on the basis of a proposal from the Ministry responsible. While prior decisions of the interdepartmental expert commission and the Ministry responsible are indeed necessary for the award, they are not sufficient to grant the aid. The final decision lies with the Government. In the present case, the Government's decision was issued on 27 May 2004 and Slovenia joined the European Union on 1 May 2004. Therefore, the measures constitute new aid and have to be notified on the basis of Article 88 EC and assessed under Article 87 EC.

### 3. Compatibility of the aid

(45) Given that the aid in question is restructuring aid, it is compatible with the common market if it complies with the criteria under the Community Guidelines on aid for rescuing and restructuring of firms in difficulty (hereinafter the Guidelines) [9].

(46) In view of Slovenia's comments and the information gathered in the course of its investigation, the Commission has reached the following conclusions on the points which caused it to open the formal procedure.

#### 3.1. *Eligibility*

(47) In view of the information submitted by Slovenia, the Commission takes the view that the company's performance, as described in paragraphs (24) to (27) above, shows that it was indeed a company in difficulty at the time the state aid in issue was granted. The Commission notes in particular that the problems were part of a trend for the years 2000-04 and not simply an exceptional occurrence in 2003. Moreover, the Slovenian authorities provided sufficient evidence that in 2004 the company would not have been able to refinance its short-term debts on its own. This is not contradicted by the fact that the company succeeded in obtaining some refinancing without aid, as this was achieved using a high level of security which the company could not have provided for the entire amount to be refinanced.

[7] See points 2.1.2. and 4.2 of Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 71, 11.3.2000, p. 14).

[8] See the Decision to open the procedure (cf. footnote 1), point 20 et seq.

[9] As the aid was granted in May 2004, the aid has to be assessed on the basis of the 1999 Guidelines, i.e. the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(48) The Commission also notes Slovenia's explanations concerning the nature of Novoles Straža's ownership. In view of the passive nature and poor capital resources of Novoles Straža's institutional owners and the fragmentation of its remaining ownership, the Commission accepts that the company could not obtain the necessary funds from its shareholders. For the same reasons, and taking into account the fact that no single owner holds more than 22 % of Novoles Straža's share capital, the Commission also takes the view that Novoles Straža does not belong to a larger business group.

(49) The Commission accordingly accepts that Novoles Straža was eligible for restructuring aid.

3.2. *Return to viability*

(50) The Commission indicated in the decision opening the procedure that it was unclear how the restructuring plan would enable Novoles Straža to restore long-term viability. This related mainly to the five-year financial projections indicating how the company was likely to evolve as a result of the restructuring measures. The Commission remarked that Slovenia had not submitted the information required by the Commission to assess the assumptions on Novoles Straža's likely performance under the restructuring plan.

(51) In the course of the proceedings, Slovenia has submitted the complementary information mentioned in paragraphs (21) and (22) above. This information adequately explains the basis for the assumptions. The Commission notes that the sales forecasts for Novoles Straža might appear today rather optimistic given that in 2005 and 2006 the sector was facing fierce competition from Far East which resulted in excess supply and pressure to reduce prices. However, it is not clear that this information was already known at the beginning of 2004. Moreover, the Commission itself observed in 2006 that: 'plywood production and consumption have seen significant increase in the past few years, with a strong export market developing for certain grades' ([10]). Since the Commission has been provided with no contradictory information which might call into question the company's or its own assumptions, it has no grounds to dispute them. The Commission therefore considers that the projections do not appear implausible, and its doubts on this point have been allayed.

(52) In the decision opening the procedure the Commission also found that the restructuring plan contained several internal measures which, if implemented, were likely to contribute to a turnaround of the company. In the course of the investigation the Commission obtained information that the company has not yet implemented all the planned restructuring measures. According to the Slovenian authorities, the reasons for this were among other things the delayed receipt of the state aid and worse-than-expected operating results. In this context the Commission observes that, under the restructuring plan, the technical restructuring was to be financed mainly from own resources. However, such a weakness was not apparent beforehand and can even be justified by the fact that the state aid did indeed have to be the minimum necessary, in particular for a Member State committing itself to such a plan ([11]) on the eve of accession. So in this special case the Commission will not view that weakness as sufficient to call into question the existence of a viable restructuring plan. However, the Commission would recall that approval of the aid is conditional upon full implementation of the restructuring plan (point 43) and will be monitored (point 46).

(53) The Commission therefore expects Slovenia, pursuant to point 46 of the Guidelines, to submit at least two monitoring reports, one concerning 2007 by the end of January 2008 and one concerning 2008 by the end of January 2009, containing detailed information on the company's financial performance and the investments made. The Commission would point out that, even if the company restores its viability without making all the investments, it might be liable to pay back some state aid if the planned investments are not fully implemented ([12]).

3.3. *Aid limited to the minimum*

(54) The aid is also limited to the minimum. In particular, the Commission's doubts as regards the provision of a significant own contribution have been allayed. According to point 40 of the Guidelines, the aid must be limited to the strict minimum needed for restoring viability, whereas aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources.

(55) The explanations by the Slovenian authorities regarding the own contribution, as indicated in paragraph (27), are detailed enough to allow the Commission to verify that the company has made or will make a significant number of disinvestments between 2005 and 2008 amounting to 30,5 % of the restructuring costs. Moreover, the Commission noted that Novoles Straža has obtained external financing free of aid amounting to 8,5 %.

([10]) http://ec.europa.eu/enterprise/forest_based/tradeflows_en.html

([11]) See point 32 of the Guidelines. The commitment to the plan was indeed before accession, only the aid was granted later.

([12]) See Commission Decision of 13 September 2006, Case N 350a/2006 MSO (OJ C 280, 18.11.2006, p. 4).

(56) On the other hand, the Commission reiterates that it cannot accept depreciation as an own contribution because it does not provide resources available to the company and also depends on future operations which are the result of the state aid provided [13].

(57) Therefore, the Commission can in sum identify an own contribution of 39 %, which can be seen as significant under the 1999 Guidelines [14].

(58) Moreover, the aid is also limited to the strict minimum for restoring viability given that the aid essentially covers the imminent refinancing needs for mature short-term loans and thus does not equip the company with any surplus liquidity.

3.4. *Compensatory measures*

(59) According to points 35 and 36 of the Guidelines, measures must be taken to mitigate as far as possible any adverse impact of the state aid on competitors. However, according to point 36 of the Guidelines, such compensatory measures are not required where the beneficiary's share of the relevant market is negligible. In these cases, compensatory measures are thus not a condition for finding the aid compatible with the common market.

(60) The Commission does not dispute the claims of the Slovenian authorities that Novoles Straža is active in several product markets, which it defines as plywood, chairs and other furniture. As regards plywood the Commission notes that in a merger case a 'market investigation has largely confirmed that the different type of wood-based boards such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry belong to separate product markets [15].'

(61) For the definition of the relevant market, Slovenia has provided the Commission with a market study which indicates the market shares for the relevant product market in the EU-25. In this respect, the Commission has little reason to depart from the presumption in footnote 20 of the Guidelines that the relevant market is the EEA. It recalls that it has previously conducted some market investigations in the European wood-based products industry (including in particular wood particleboard) in a merger case [16], and concluded that the relevant market was wider than the national market, and at least cross-border regional. This was borne out by large cross-border trade flows. That similar trade flows also exist in the case of plywood is confirmed by figures provided by the Commission's internal experts (also, Novoles Straža's intra-Community export sales account for the majority of its turnover – 60 %). Moreover, a cross-border regional market was found to relate to a distance of about 1 000 km, with the distance varying according to the value added of the products, i.e. the distance was even longer for coated products compared to non-coated products. As plywood is already a higher-quality product and exports concern mainly veneered plywood, transportation cost are lower than for plywood than for particleboard (and even lower for chairs and other furniture made out of plywood). In view of the above, the Commission takes the view that the relevant market for the products manufactured by Novoles Straža should be, if not the entire EEA or the EU-25, at least a good part of the EU-25.

(62) Given that Novoles Straža's market share in the EU-25 is in any event not above 0,13 %, and that it should in principle no more than double if the geographical market were reduced by half, the Commission considers that the market share is still well below 1 % which, in connection with the fact that the market comprises a large number of small and medium-sized producers, can be considered negligible [17]. Consequently, no compensatory measures are necessary to ensure that the state aid is compatible with the common market.

3.5. *Other aid*

(63) Finally, Slovenia has furnished the Commission with sufficient information on all other aid received by the company in order to allow a proper assessment of the 'one time, last time' principle. According to this principle, laid down in points 48 et seq. of the Guidelines, the Commission cannot approve restructuring aid to a company which has previously received restructuring aid. The Commission considers that this principle requires it to take into account any restructuring aid granted within the 10 years preceding the aid under consideration, irrespective of whether the first state aid was granted before the granting Member State's accession to the EU.

(13) This was confirmed in the Commission Decision of 22 February 2006 in Case N464/05 *AB Kauno*, point 17 and, as regards cash flow under the 1999 Guidelines, in the Commission Decisions in Case C-19/2000 *TGI*, OJ L 62, 5.3.2002, p. 30, point 106 and Case C-30/1998 *Wildauer Kurbelwelle*, OJ L 287, 14.11.2000, p. 51, point 52.

(14) See also the Commission Decisions in Case C 39/2000 *Doppstadt*, OJ L 108, 30.4.2003, p. 8, point 74 and Case C 33/1998 *Babcock Wilcox* (OJ L 67, 9.3.2002, p. 50).

(15) Commission Decision of 28.6.2006, Case No COMM/M.4165 — *Sonae Industria/Hornitex*, point 11.

(16) Commission Decision of 28.6.2006, Case No COMM/M.4165 — *Sonae Industria/Hornitex*, point 13.

(17) At least in the light of other examples under the 1999 guidelines, see Commission Decision in Case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 et seq.

(64) The Commission notes first that the company has not received any restructuring aid in the past. In particular, as regards the aid amounting to SIT 18,1 million (EUR 75 000) granted in 1999 as an interest rate subsidy, the Commission's doubts that this might have constituted restructuring aid have been allayed, since at that time the company had an A/B rating and could not therefore be considered as being in difficulty and the aid cannot be considered as restructuring aid liable to trigger an infringement of the 'one time, last time' condition.

(65) Moreover, the Commission notes the correction of the clerical error by the Slovenian authorities in an earlier submission, which it had reproduced in the decision opening the procedure, which means that all aid measures mentioned in that decision are as such *de minimis* [18]. Moreover, the Slovenian authorities have clarified that all that aid was granted before accession for purposes other than restructuring aid. As the assessment of the aid thus falls outside Commission's competence and even the fact that the company was in difficulty does not make that aid restructuring aid under the 1999 Guidelines [19], the 'one time, last time' condition is not triggered by any of these previously granted aid measures.

## VI. **CONCLUSION**

(66) In view of the above, the Commission finds that the aid in question is restructuring aid which complies with the conditions of the applicable guidelines, i.e. the 1999 restructuring guidelines. It therefore concludes that, although Slovenia has unlawfully implemented the restructuring aid to Novoles Straža in breach of Article 88(3) EC of the Treaty, the state aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

### *Article 1*

The State aid which Slovenia has implemented for Novoles Straža is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and the Community Guidelines on state aid for rescuing and restructuring firms in difficulty adopted in 1999.

### *Article 2*

1. The restructuring plan shall be implemented in full. All necessary measures shall be taken to ensure that the plan is implemented.

2. Implementation of the plan shall be monitored on the basis of annual reports communicated by Slovenia to the Commission. A report concerning the 2007 activities shall be submitted by the end of January 2008 and a report concerning the 2008 activities shall be submitted by the end of January 2009. The reports shall contain detailed information on the financial performance of the company and the investments made.

### *Article 3*

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 10 July 2007.

*For the Commission*

Neelie KROES

*Member of the Commission*

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(18) See Commission Regulation No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ L 10, 13.1.2001, p. 30).

(19) This might be different under point 20 of the 2004 guidelines.