



European
Commission

QUESTIONNAIRE REGARDING INABILITY TO PAY

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Competition

QUESTIONNAIRE REGARDING INABILITY TO PAY

Case [Number] – [Name]

DEADLINE FOR REPLY: [Date]

Please provide any updates/changes to the information requested below pertaining to new developments after the due date for the replies to this questionnaire as well as any new information relevant for the analysis of your ITP request.

With a view to examining the claim of inability to pay presented by your undertaking in the sense of point 35 of the Fines Guidelines 2006, please provide the following information:

1. Please provide the **financial statements** (consisting in (a) a balance sheet, (b) an income statement, (c) a statement of changes in equity, (d) a cash-flow statement and (e) notes¹) of each of the ITP applicant(s) for the following business years:
 - a) for business Years N-5 until N-1: audited financial statements. If the financial statements for business Year N-1 have not yet been audited, please provide them in a non-audited form and indicate when you expect to be able to provide the audited version. The latter indication should emanate from or be confirmed by the auditor.
 - b) for business Year N: *interim* financial statements up to the latest closed quarter, along with comparable figures for the corresponding part of the preceding business Year N-1.
 - c) for business Years N until N+3: the latest *forecasted* financial statements (consisting in (a) a balance sheet, (b) an income statement and (c) a cash-flow statement) and specify when they were established.
2. If (one of) the ITP applicant(s) has shareholdings in subsidiaries, please provide the **consolidated financial statements** (consisting in (a) a balance sheet, (b) an income statement, (c) a statement of changes in equity, (d) a cash-flow statement and (e) notes¹) of the group consolidated under the ITP applicant for the following business years:

¹ Cf. Commission Regulation 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation 1606/2002 of the European Parliament and the Council, OJ 2008, L 320/1 at pp. 5-6, point 8; for the cash flow statement, see p. 27. The cash flow statement should preferably use the direct method to report cash flows from operating activities (OJ 2008, L 320, p. 30, point 19).

- a) for business Years N-5 until N-1: audited financial statements. If the financial statements for business Year N-1 have not yet been audited, please provide them in a non-audited form and indicate when you expect to be able to provide the audited version. The latter indication should emanate from or be confirmed by the auditor.
 - b) for business Year N: *interim* financial statements up to the latest closed quarter, along with comparable figures for the corresponding part of the preceding business Year N-1.
 - c) for business Years N until N+3: the latest *forecasted* financial statements (consisting in (a) a balance sheet, (b) an income statement and (c) a cash-flow statement) and specify when they were established.
3. Please provide the **consolidated financial statements** (consisting in (a) a balance sheet, (b) an income statement, (c) a statement of changes in equity, (d) a cash-flow statement and (e) notes¹) of the group to which the ITP applicant(s) belong(s) for the following business years:
- a) for business Years N-5 until N-1: audited financial statements. If the financial statements for business Year N-1 have not yet been audited, please provide them in a non-audited form and indicate when you expect to be able to provide the audited version. The latter indication should emanate from or be confirmed by the auditor.
 - b) for business Year N: *interim* financial statements up to the latest closed quarter, along with comparable figures for the corresponding part of the preceding business Year N-1.
 - c) for business Years N until N+3: the latest *forecasted* financial statements (consisting in (a) a balance sheet, (b) an income statement, (c) a cash-flow statement), and specify when they were established.

Replies to point c) of the preceding three questions should take into account that the provided forecasts should (a) be approved by the Management and (b) be accompanied by a document (such as the business plan) identifying the main assumptions underlying the preparation of these forecasts namely in respect to the future evolution shown for those key financial indicators/accounts represented in Table 1 (See question 4 below).

4. Please fill in **Table 1 on the key financial figures** for each of the ITP applicant(s) and for the consolidated group to which the applicant(s) belong(s), for the period [business Years N-5 until N+3]:
- for business Years N-5 until N-1: If the financial statements for business Year N-1 have not yet been audited, please provide the non-audited figures for that year.
 - for business Year N: provide *interim* figures up to the latest closed quarter, along with comparable figures for the corresponding part of the preceding business Year N-1.
 - for business Years N until N+3: provide the latest *forecasted* figures.

Please note that an external auditor should certify the key figures in the table relating to the past business Years N-5 to N-1.

5. Please provide:
- a description of the internal cash and bank account management within the group to which the ITP applicant(s) belong(s);
 - a description of the external cash and bank account management (i.e. relations with banks and other financing institutions) of the group to which the ITP applicant(s) belong(s) indicating also which of the group's companies are parties to the respective agreements;
 - a description of the ITP applicant's (group's) current relationship with their banks and the outlook for the future (*standstill etc.*);
 - a summary of any financing arrangements that each company of the group to which the ITP applicant(s) belong(s) has(ve) with their banks by filling in **Table 2**;
 - the copies of the above financing arrangements;
 - a list of any other invoice-based financing instruments (e.g. factoring, securitisation, letters of credit arrangements, etc.).

Please make sure that the copies of the financing agreements are cross-referenced to **Tables 2 and 3** (both on the first page of each agreement and through the name of the electronic file).

6. Please fill in **Table 3 on the utilisation of current-account bank facilities** for each company of the group to which the ITP applicant(s) belong(s).
7. Please fill in **Table 4 on fixed assets** with detailed information of the **fixed assets** (such as type, location, date of acquisition, acquisition price, book value, market value, mortgage, etc.) owned by each company of the group to which the ITP applicant(s) belong(s). Table 4 should identify all fixed assets such as land, buildings and plants and all other fixed assets' items with acquisition price equal or above 50.000 €.
8. Please also indicate the following **ratio** and specify each of its components for the last day of business Years N-4, N-3 and N-2 for each of the ITP applicants and for the consolidated group to which they belong. For business Year N-1 and any past quarter of business Year N, provide the ratio for the last day of each quarter. For the remaining part of business Year N and for business Years N+1 and N+2, provide projections for the last day of each quarter:

Cash + Cash equivalent + expected incoming payments in the upcoming 3 weeks
Payments due immediately + payments due in the upcoming 3 weeks

9. Please quantify (a) any **provisions** made for payment of an anticipated EU antitrust/cartel fine, (b) any provisions made for payment of any other antitrust/cartel fine and (c) the other provisions made. For the provisions mentioned under (a) and (b), please indicate also (d) when and by which company(ies) they were made originally, and (e) when and by how much they were subsequently modified.
10. Please quantify for the last closed business year and for the current business year any **loans, current accounts, advances or any similar financial links** other than shareholding (a) from: or (b) to: shareholders and/or undertakings with which there are any other shareholding links and indicate (c) under which headings of the balance sheet(s) they appear and (d) when these financial links were originated.
11. Please indicate whether there have been in the last closed business year and/or in the current business year **transactions other than payment of dividends** between the ITP applicant(s) or any of their subsidiaries on the one hand, and any of their shareholders and/or undertakings with which there are any other shareholding links on the other hand. If yes, please describe these transactions in detail.
12. Please provide **investor reports** of rating agencies or any other reports assessing the undertaking's/group's financial situation.

13. Please indicate the elements which make it likely that the imposition of a fine would irretrievably jeopardise the **economic viability** of the ITP applicant(s) and of the group to which the ITP applicant(s) belong(s) and **cause its/their assets to lose all their value** (cf. point 35 of the Fines Guidelines 2006).
14. Please indicate the elements which in your perception constitute a **specific economic context** in which the ITP applicant(s) and the group to which the ITP applicant(s) belong(s) find(s) itself/themselves (cf. point 35 of the Fines Guidelines 2006).
15. Please indicate the elements which in your perception constitute a **specific social context** in which the ITP applicant(s) and the group to which the ITP applicant(s) belong(s) find(s) itself/themselves (cf. point 35 of the Fines Guidelines 2006).

Replies to the preceding three questions should include information on (a) the evolution of employment for the period covered by this questionnaire (Years N-5 to N+3), (b) all subsidies received in the same period and (c) all major investments and divestments (including plant closures) that occurred or are planned for this period.

16. Please provide information on the stock exchange listing the ITP applicant or of the group to which the ITP applicant(s) belong(s). Where is it listed and since when?
17. Please provide an organisational chart showing the current structure (up to the ultimate shareholders) of the group to which the ITP applicant(s) belong(s), including the percentages for each shareholding link.
18. Please indicate:
 - a) the exact denomination of any natural or legal person holding at least **10% of shares** in the ITP applicant(s), directly or indirectly; and
 - b) the percentage of participation of each such owner.

Guidance

The terms used in the Table 1 are consistent with the International Financial Reporting Standards (IFRS) as adopted by the European Union². Please indicate and explain clearly any deviations from or refinements of these definitions. Additional guidance is provided below with the sole purpose of helping filling in the table. In no way does such guidance alter the substance of the applicable legal framework.

Total Assets is the sum of all assets – current and non-current – composing the balance-sheet, and should therefore also be equal to the sum of Total Equity and Total Liabilities.

Current Assets³ excludes current portion of deferred tax assets⁴.

Inventories are assets held for sale in the ordinary course of business, in the process of production for such sale, or in the form of materials or supplies to be consumed in the production process or in the rendering of services.

Total Liabilities includes provisions, deferred tax liabilities and minorities, and corresponds to the difference between the balance sheet total and equity.

Current Liabilities⁵ are those liabilities that must be paid within one year after the balance sheet date. This includes short-term notes payable, accounts payable, current maturities of long-term debt, current portion of capital leases, accrued expenses, income taxes, and other current liabilities.

Total Debt is the total financial liabilities, both current and long-term. It therefore excludes trade payables or provisions.

Subordinated debt is debt which ranks after other debts should a company fall into receivership or be closed.

Equity (book value) represents the shareholders' ownership interest in the company. It includes preferred stock, net common stock, capital surplus, retained earnings minus treasury stock and other liabilities. Minority interests should be excluded.

Equity (market value): In the case of a publicly traded company, please also indicate the market value of the equity (stock value multiplied by number of stock outstanding) on the last day of the period concerned.

² Cf. Commission Regulation 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation 1606/2002 of the European Parliament and the Council, OJ 2008, L 320/1

³ Cf. OJ 2008, L 320, p. 11, point 57 and OJ 2008, L 320, p. 22, point 6

⁴ Cf. OJ 2008, L 320, p. 13, point 70

⁵ Cf. OJ 2008, L 320, p. 12, point 60

Retained Earnings are accounting earnings that are not paid out as dividends but are retained by the firm for reinvestment in its operations. It excludes legal reserves. The figures indicated in the table should be the retained earnings accumulated during the lifetime of the company. Any adjustment for currency translation should be included.

EBITDA is earnings before interest, taxes, depreciation and amortization on tangible and intangible fixed assets. It excludes any extraordinary items.

EBIT is earnings before interest and taxes. It excludes any extraordinary items.

Net income is the profit/loss after income taxes.

Please provide any updates/changes to the information requested above pertaining to new developments after the due date for the replies to this questionnaire as well as any new information relevant for the analysis of your ITP request.

THANK YOU FOR YOUR COOPERATION

EXCEL TABLES:

Table 1: Excel table on key financial figures

Table 2: Excel table on loans/credit lines

Table 3: Excel table on current account bank facilities

Table 4: Excel table on fixed assets overview