COMMISSION

COMMISSION DECISION

of 27 May 2003

on the State aid implemented by Spain for Minas de Rio Tinto SA

(notified under document number C(2003) 1663)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2004/300/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) By letter dated 9 August 1999, the Spanish authorities notified the Commission of their intention to grant rescue aid, in the form of a State guarantee, to Minas de Rio Tinto SAL (MRT) in respect of loans made by various banks to the company worth EUR 9 015 182.

(2) By letter dated 16 February 2000, the Commission informed Spain of its decision to consider the aid compatible with the common market [2].

(3) By letter dated 27 October 2000, Spain submitted the restructuring plan for MRT for the period 2000 to 2005, dated August 2000, which included the continuation of the guarantee mentioned in recital 1, as well as a loan from the Instituto de Crédito Oficial (ICO) for the amount of EUR 6 010 121.

(4) By letter dated 4 December 2000, the Commission requested Spain, pursuant to the Community guidelines on State aid for rescuing and restructuring firms in difficulty [3] (rescue and restructuring guidelines), to notify the aid included in the plan.

(5) By letter dated 9 January 2001, registered the following day, the Spanish authorities notified the aid that Spain planned to implement in favour of MRT for restructuring purposes.

(6) By letter dated 2 February 2001, the Commission requested additional information.

(7) By letter dated 15 February 2001, the Spanish authorities informed the Commission that the abovementioned State guarantee approved by the Commission (see recital 2) would be in force until 31 December 2003.

(8) By letter dated 17 April 2001, registered on 25 April 2001, the Spanish authorities provided additional information in reply to the Commission's request dated 2 February 2001.

(9) By letter dated 20 June 2001, the Commission informed Spain that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

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

[1] OJ C 367, 21.12.2001, p. 19.
[2] OJ C 94, 1.4.2000, p. 8.
[3] OJ C 288, 9.10.1999, p. 2.
[4] See footnote 1.

(11) The Commission received comments from interested parties. It forwarded them to Spain, which was given the opportunity to react; its comments were received by letters dated 30 July 2001, 8 March 2002, 3 July 2002 and 7 March 2003.

II. THE FACTS

A. The company

(12) Minas de Rio Tinto SAL was founded in 1995 by former workers from Rio Tinto Minera (now Atlantic Copper SA) with the aim of taking over Rio Tinto Minera's mining activities ([1]). Until September 2001, the company operated as a workers' cooperative (*sociedad anónima laboral*), where the shares are distributed among all the workers.

(13) The company was mainly active in the extraction of copper, gold and silver. Its copper production amounted to approximately 30 000 tonnes per year.

(14) Besides its mining activities, MRT provides additional services, such as supplying potable water to the whole mining area, and control and maintenance of mining dams in order to avoid any environmental damage.

(15) Because of falling copper prices on the world market, MRT ceased copper extraction in September 1998. Following the approval by the Commission of rescue aid in February 2000, MRT restarted its copper operations. In November 2000, however, the company had to cease production again due to a lack of funds and the trend in copper prices. The only activities carried out by the company since then have been maintenance, the preparation of further reserves and, for a short period, gold mining.

(16) According to its published accounts, MRT's main financial indicators in the years 1997 to 2000 are the following:

(EUR million)

	1997	1998	1999	2000
Turnover	52,8	33,1	16,7	29,8
Operating losses	10,0	19,1	14,4	19,8
Long-term debts	10,6	14,5	10,7	24,7
Short-term debts	33,9	42,8	53,0	30,29
Own resources (capital + reserves – losses)	20,4	13,1	9,4	– 16,37

(17) On 26 November 1998 the company applied for temporary receivership. Nevertheless, it continued its gold and silver activities, which represented around 15 % of its total turnover, under judicial review. On 12 January 2001, the judge approved, after having obtained the agreement of the majority of the creditors, the plan for the reduction and rescheduling of MRT's ordinary debts.

(18) In September 2001 a private investor, Promociones Barty Cros, bought 54 % of the shares and the company was transformed into a public limited company.

B. The market

(19) Copper is extracted from various ores or recovered from waste and scrap. Mined copper ore is processed into a fine, gray powder called concentrate; this contains up to 45 % copper and is shipped to the smelter. The copper concentrate is further treated and refined and cast into ingots, which are sent to the rolling mills for rolling, extruding or forging.

(20) In the EU, there are still four countries operating copper mines, which produced the following quantities in 1999: Portugal 100 500 tonnes, Sweden 71 300 tonnes, Finland 10 500 tonnes and Spain 3 900 tonnes (this figure does not take into account MRT's production which would normally be around 30 000 tonnes). The large majority of the EU's consumption comes from third countries. Imports of copper concentrates into the EU in 1999 were some 2 million tonnes.

(21) Intra-Community trade is rather limited compared with imports from third countries. Meaningful imports from other Member States were realised only by Germany (212 580 tonnes), Spain (98 455 tonnes) and Finland (153 255 tonnes).

(22) Copper has been internationally traded on the London Metal Exchange (LME) since 1877. Copper metal prices, as those of other metals, fluctuate sharply. In 1995, copper prices averaged nearly USD 3 000/tonne. In 1996, 1997, 1998, 1999, 2000, 2001 and 2003 (first quarter), copper prices were on average respectively 2 294, 2 276, 1 653, 1 574, 1 814, 1 578, 1 557 and 1 662 USD/tonne.

C. The aid

(23) The aid consists in:

(a) a loan granted on 28 March 2001 by the Instituto de Crédito Oficial (ICO), the State financial agency attached to the Ministry of Economic Affairs, of EUR 6 010 121 for five years at Euribor six months + 1 %, and

(b) the extension until 31 December 2003 of the guarantee granted by the Government of Andalusia on loans of up to EUR 9 015 181 made by private banks to MRT.

([1]) This sale was transacted at a symbolic price. Moreover, Atlantic Copper provided funds amounting to ESP 4 450 million and assumed MRT's existing debts towards the State (social security and taxes) amounting to ESP 2 210 million.

(24) The loan was completely disbursed before the end of 2001.

D. **The restructuring plan**

(25) From the industrial point of view, the aim of the plan is to:

— resume mining the higher-grade copper reserves,

— continue operating the gold/silver plant for at least 18 months (until the end of 2001),

— complete the exploration of the southern part of Cerro Salomón, which will make it possible to extract 3 million tonnes of ore a year,

— continue removing the overburden from Cerro Salomón,

— supplement production from Cerro Salomón with that from Cerro Colorado, to reach 30 kt per year in the first years and 40 kt per year at the end of the period,

— consolidate cost reductions, mainly in energy, supplies and external contractors.

(26) The investments proposed in the plan for the period from the second half of 2000 to 2005 amount to EUR 13,81 million. The bulk of these (72 %) would be carried out in the first two and a half years.

(27) From the financial viewpoint, the plan is based on the following features:

— termination of the insolvency proceedings through the acceptance by creditors of a reduction in their credits,

— obtaining the investment aid granted in 1998 but not yet disbursed (ESP 364 million) ([1]),

— using the credit of EUR 9 015 181 guaranteed by the Government of Andalusia and approved as rescue aid,

— using a credit of EUR 6 101 121 granted by the ICO.

(28) According to the information provided on 17 April 2001, the workforce would be reduced from 623 (1 September 2000) to 543 ([2]) (31 December 2005), i.e. by 12,8 %, as a result of ceasing to mine gold and silver.

(29) The key factor for the restructuring plan is the recovery in the price of copper. The plan assumes that copper prices will be USD 1 850/t in 2000, USD 2 137/t in 2001 and USD 2 250/t in the period 2002 to 2005. These figures have been obtained by extrapolating the historical trends. As for the ESP/USD exchange rate, it has been assumed that it will be 179 ESP/USD in the second semester of 2000, 169 ESP/USD in 2001 and 167 ESP/USD in the period 2002 to 2005.

(30) According to the plan, the company will only be profitable if copper prices stay over USD 1 750 per tonne.

(31) If copper prices are lower than the minimum assumed in the plan, the only measure proposed is to halt production (MRT has already done so twice since it was created in 1995). The plan acknowledges that other companies can do this either because they belong to integrated copper groups or because they are supported by the State.

(32) In its decision to initiate proceedings, the Commission expressed its doubts as to the viability of the company, since the assumptions of the plan as to the price of copper, at least in the short term, were not generally acknowledged. The Commission noted that if the prices of copper did not reach USD 1 750 per tonne, the only solution for the company was to stop production. As a consequence, since copper extraction would be MRT's only source of revenues, to stop production would only aggravate its already deteriorated financial situation. In such circumstances, MRT would not be able to generate resources to pay its debts or its suppliers and to carry out the necessary investments. For this reason alone, the Commission considered that the restructuring plan did not appear to enable MRT to attain viability.

(33) Moreover, the Commission noted that the plan's assumptions regarding MRT's costs were over-optimistic and that no sensitivity study had been provided.

(34) Lastly, the Commission noted that the beneficiary was not making any significant contribution to the financing of the restructuring plan through its own resources.

III. **COMMENTS FROM INTERESTED PARTIES**

(35) MRT is the only interested party that has sent comments. After severely criticising the management of the company between June 1998 and September 2001, and in view of its critical financial situation, it has presented the basis for a new restructuring plan. This plan includes, as a starting point, the write-off of 50 % of the outstanding debts and the conversion into subordinate loans and subordinate equity loans of the remaining 50 %; it also provides for a contribution from the majority shareholder of EUR 2 million in new capital as well as EUR 5 million in medium/long-term loans (provided the plan is approved by the national authorities and the Commission).

([1]) Aid to MRT approved by Spain in 1997 and 1998 under regional investment aid schemes authorised by the Commission amounted to ESP 1 243 million.

([2]) The figures provided in the letter of 17 April 2001 differ from those included in the plan (595).

IV. COMMENTS FROM SPAIN

(36) The Spanish authorities maintain that:

— the plan's assumptions regarding the copper prices were in line with experts' forecasts,

— it would make no sense to provide a sensitivity study: if copper prices do not reach the minimum level, the company would stop production,

— the impact on competition would not be appreciable and the company is an important employer located in an area with high unemployment,

— the company contributes to the financing of the plan through the ICO loan, which is granted on market terms.

(37) By letter dated 7 March 2003 the Spanish authorities have confirmed that the only plan approved by them is the one presented in 2001.

V. ASSESSMENT OF THE AID

(38) According to Article 87(1) of the EC Treaty, 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 common market.

(39) As to the claim by the Spanish authorities that the loan by the ICO was granted on market terms, the Commission notes, first of all, that Spain notified it as restructuring aid; secondly, that, given the financial situation of the company at the time it was granted, it is evident that no private investor would have granted such a loan. Moreover, even MRT's 1999 management report gives an indication on the non-commercial nature of the loan ([1]).

(40) The Commission considers that both the State guarantee on the loan of EUR 9 015 181 and the loan from the ICO for EUR 6 101 121 confer an advantage on MRT which is financed through state resources ([2]). They are part of the restructuring plan presented by the Spanish authorities, they are intended to restore MRT's long-term viability and therefore tend to distort competition. Since copper is traded throughout the Community, they affect trade between Member States and therefore they fall within the scope of Article 87(1) of the EC Treaty.

(41) The Commission assesses aid for restructuring purposes for firms in difficulty according to the rescue and restructuring guidelines. Under these, the aid must fulfil certain conditions in order to be compatible with the common market.

(42) As for the eligibility of the firm, although MRT's insolvency proceedings were terminated in January 2001, the company's own resources had decreased by one third between 1999 and 2000 and by 69 % since 1997; similarly, the company's level of indebtedness remained extremely high (debts represented almost nine times MRT's own resources). MRT's financial situation as of September 2001 was described by the new owners as close to bankruptcy and the company has not resumed production. MRT is therefore to be regarded as 'a firm in difficulty' within the meaning of the rescue and restructuring guidelines and would not be able to recover without State aid.

(43) As for the restoration of viability, the rescue and restructuring guidelines require that the restructuring plan 'must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. […] The improvement in viability must derive mainly from internal measures contained in the restructuring plan and may be based on external factors such as variations in prices and demand over which the company has no great influence if the market assumptions made are generally acknowledged' (section 3.2.2, point 32). The Commission notes that in the present case the main factor on which viability was based is the price of copper.

(44) In its decision to initiate proceedings, the Commission noted that, at least in the short term, the plan's assumptions as to copper prices were not generally accepted. The Commission also noted that if the prices of copper did not reach the minimum expected value, the only solution for the company was to stop production. Although this is a step already taken by the copper producers which, like MRT, have the highest production costs ([3]), in MRT's case, since copper extraction would be its only source of revenues, the stop in production would only aggravate its already deteriorated financial situation. In such circumstances MRT would not be able to generate resources to pay its debts or its suppliers and to carry out the necessary investments. The Commission considered that on this ground, the restructuring plan did not appear to enable MRT to attain viability.

([1]) The chapter on the facts subsequent to the closing of the financial year states 'There is a political commitment by the Popular Party to activate the granting of the credit of ESP 1 000 million by the ICO'.

([2]) The ICO is the State financial agency attached to the Ministry of Economic Affairs that serves to implement certain economic policy measures in accordance with the guidelines laid down by the Government, subject to the rules and decisions adopted by its General Board. The latter is composed of representatives of various ministries.

([3]) Pinto Valley, Sierrita, Chino y Tohono, San Manuel and Robertson in the United States; Ojos del Salado in Chili; Highland Valley in Canada. (Source: MRT 1999 Annual Report).

(45) The Spanish authorities have not provided any element that could contradict the Commission's preliminary assessment on this point. Furthermore, the Commission's doubts have been confirmed by the comments submitted by MRT: the debts accumulated by the company since the stop of production have placed it on the verge of bankruptcy.

(46) The Spanish authorities have not provided any information that could allay the Commission's doubts as to the assumptions of production costs included in the plan: in 2000, copper prices were over the minimum value contemplated in the plan and yet MRT made huge losses and had to stop production again. The comments submitted by MRT have, on the contrary, confirmed the Commission's doubts: the continuation of labour costs at the level of the original plan (number of workers, pay levels) would make the company unviable.

(47) In view of the foregoing, the Commission considers that the restructuring plan will not enable the firm to progress towards a new structure that offers the prospect of long-term viability and enables it to stand on its own feet as the rescue and restructuring guidelines require.

(48) As regards the fact that MRT is located in an area eligible for regional aid pursuant to Article 87(3)(a) of the EC Treaty, the Commission would take this into account for the purposes of the capacity reduction requirement in accordance with point 54 of the rescue and restructuring guidelines. However, in the present case, given that the company is not viable, the question does not arise.

(49) As to the condition that the aid should be limited to the minimum necessary, the rescue and restructuring guidelines expect beneficiaries of the aid to make a significant contribution to the restructuring plan through their own resources. The Commission cannot accept the Spanish authorities' argument that the loan granted by the ICO constitutes a significant contribution by the company since, as pointed out in recitals 39 and 40, the loan constitutes State aid. The Commission considers, therefore, that this condition is not fulfilled.

VI. **CONCLUSION**

(50) The Commission finds that Spain has unlawfully granted the loan of EUR 6 101 121 in breach of Article 88(3) of the Treaty. For the reasons stated above, the loan constitutes State aid that is incompatible with the common market.

(51) According to Article 14(1) of Council Regulation (EC) No 659/1999 [1], 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.

(52) As for the State guarantee, the Commission notes that it considered it compatible with the common market until it adopted a position on the restructuring plan. Since, for the reasons stated above, this position is negative, the Commission considers that the continuation of the abovementioned guarantee is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain has implemented for Minas de Rio Tinto in the form of a loan amounting to EUR 6 010 121 is incompatible with the common market.

Article 2

The continuation of the guarantee granted by Spain in favour of Minas de Rio Tinto on loans worth EUR 9 015 181 granted by private banks constitutes State aid which is incompatible with the common market. Spain shall forthwith take any measures necessary to suspend the guarantee.

Article 3

1. Spain shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 4

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

[1] OJ L 83, 27.3.1999, p. 1.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 27 May 2003.

For the Commission

Mario MONTI

Member of the Commission