COMMISSION

COMMISSION DECISION
of 19 September 2001
on the State aid granted by Italy to Enichem SpA

(notified under document number C(2001) 2902)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/224/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 16 March 1994, the Commission decided to open the Article 93(2) (now Article 88(2)) procedure [2] in respect of two capital contributions made by ENI SpA (hereinafter 'ENI') to its subsidiary Enichem SpA (hereinafter 'Enichem') in October 1992 and December 1993 of ITL 1 000 billion and ITL 794 billion respectively (hereinafter 'the first two injections'). By letter of 16 March 1994, the Commission informed the Italian Government of this and requested it to submit its observations and to furnish all such information as might help to assess the capital contributions in question.

(2) By letter of 18 May 1994, the Italian Government submitted its observations and at the same time notified a restructuring plan to be implemented by Enichem over the period 1994 to 1997. In the context of this plan, the Italian authorities informed the Commission of a new capital contribution to be made by ENI to Enichem of ITL 3 000 billion. The capital contribution was approved by Enichem's shareholders on 29 June 1994 and was to be paid within three months of the Commission decision (hereinafter 'the third injection')

(3) In further submissions and meetings, representatives of the Italian authorities and Enichem provided the Commission with further details of the 1994 to 1997 restructuring plan, as well as a description of the restructuring actions undertaken by Enichem during the period 1991 to 1993.

(4) On 27 July 1994 the Commission adopted a final decision (hereinafter 'decision of 27 July 1994') closing the procedure initiated on 16 March 1994. The decision declared the first two injections to be State aid compatible with the common market and, at the same time, concluded the examination of the third injection by finding that it did not constitute State aid.

(5) The Commission decision to close the procedure was published in the *Official Journal of the European Communities* [3].

(6) By application lodged in January 1995, BP Chemicals Ltd (hereinafter 'BP') brought proceedings before the Court of First Instance of the European Communities (hereinafter 'CFI') for annulment of the Commission decision of 27 July 1994.

[1] OJ C 245, 28.8.1999, p. 15.
[2] OJ C 151, 2.6.1994, p. 3.
[3] OJ C 330, 26.11.1994, p. 7.

(7) By judgment of 15 September 1998 in Case T-11/95 [4], the CFI annulled the decision of 27 July 1994 insofar as it closed the preliminary examination of the third capital contribution of ITL 3 000 billion. In particular, the CFI concluded that 'the Commission, in closing its initial examination of the third capital injection pursuant to Article 93(3) of the Treaty, despite its inability to surmount the difficulties regarding the question whether that injection constituted State aid, and without examining whether the injection was compatible with the common market, infringed the rights of the applicant as a party concerned within the meaning of Article 93(2) of the Treaty' [5].

(8) The Court, on the other hand, rejected BP's application against the decision of 27 July 1994 insofar as it found that the first two capital injections were State aid compatible with the common market pursuant to Article 87(3)(c).

(9) As a result of the judgment, the Commission decided, on 23 June 1999, to initiate proceedings under Article 88(2) in respect of the third capital contribution. This decision was communicated to Italy by letter of 19 July 1999. The Commission invited interested parties to submit their comments on the aid in question.

(10) The Commission received comments from third parties. It forwarded them to Italy, which was given the opportunity to react.

(11) The Italian authorities submitted their observations by letter of 18 August 1999 and provided information during a meeting on 18 February 2000.

II. DESCRIPTION OF THE MEASURES

(12) Enichem is ENI's operational subholding company for the chemical sector. Enichem, at the time of the measures, produced and marketed a wide range of chemical products. ENI, in 1994, was a holding company created in July 1992 when Ente Nazionale Idrocarburi, an Italian public entity, was transformed into a joint stock company. At the time when the third capital contribution was decided, the Italian Government controlled the entire share capital of ENI through the Treasury Ministry and appointed the company's Board of Directors [6].

(13) Enichem's economic and financial situation deteriorated rapidly at the end of the 1980s during the downturn of the chemicals' market in that period. As shown in Table 1, the drastic reduction in the company's turnover, mainly due to the reduction in prices of the products, resulted in a negative net operating margin in 1992 and, as a consequence, increased Enichem's net losses.

Table 1: Enichem's economic and financial results 1990 to 1992

(ITL billion)

	1990	1991	1992
Turnover	15 060	13 424	11 155
Net operating margin	743	77	(308)
Net profit (loss)	(68)	(722)	(1 542)
Net equity	5 179	4 496	3 935
Net financial debts	8 375	7 908	8 083

(14) Enichem responded to these market difficulties by putting in place a large restructuring plan, aimed at redefining its industrial position in the chemicals market after the adverse trend experienced during the preceding years, in order to restore a sound financial and industrial situation.

(15) As part of the restructuring measures, ENI decided on 1 October 1992 to provide Enichem with fresh capital. A first capital contribution of ITL 1 000 billion was granted to Enichem immediately, while a second of ITL 794 billion was granted in December 1993 (the first two injections). These two injections, which were not notified to the Commission, were the reason for the Commission decision of 16 March 1994 to open the formal investigation procedure.

(16) As the Commission stated in its decision of 27 July 1994, the restructuring measures included a significant number of plant closures and capacity reductions. The closures are listed in Table 2 below.

[4] [1998] ECR II-3235.
[5] Paragraph 200 of the judgment.
[6] The Italian State currently holds less than 50 % of ENI's capital.

Table 2: Enichem's plant closures 1991 to 1993

Location	Plant	Capacity (kt/year)
Porto Marghera	— PVC compound — Soda concentration — Trichloroethylene — Sodium tripolyphosphate	33 100 80 82
Ravenna	— Acetylene/VCM — Styrene	30/60 43
Mantova	— Chlorine caustic soda/EDC — Maleic anhydride — Styrene — SAN — PST compound	130/200 11 55 24 60
Assemini	— Polyethylene — PVC suspension — VCM/DCE Oxy	27 80 88
Cesano Maderno	Acrylic fibres	35
Crotone	Phosphorus and derivatives	14
Villacidro	Acrylic fibres	48
Priolo	Ethylene	100
Gela	— Chlorine caustic soda — EDC	110 143
Cengio	Dyestuffs intermediates	n.a.
Porto Torres	Butadiene	50
Ivrea	Downstream acrylic fibres	17
Hythe (UK)	Latex vinylpyridine	5

(17) These closures, together with other internal restructuring measures, reduced Enichem's workforce by some 7 000 during the 1991 to 1993 period.

(18) Enichem planned to divest its non-core activities through sale or liquidation with a view to withdrawing from loss-making production and obtaining divestiture revenues (basically from the disposal of some big profit-making subsidiaries, mainly in the fibres and detergent sectors) to part-finance the restructuring plan.

(19) Despite the restructuring, the company faced increasing market difficulties due to the downturn in the petrochemical business in the period 1992 to 1993. In 1992, the large majority of petrochemical companies experienced a significant deterioration in their industrial results. As a consequence of the falling prices, most of the major players posted operating losses in 1992 and 1993.

(20) As the market situation in the petrochemical business worsened compared to the forecasts in its plans, Enichem developed, in line with the restructuring measures already undertaken, an additional industrial plan for the period 1994 to 1997, including more radical cost-cutting actions to restore sound viability and a healthy financial situation.

(21) The Italian authorities, as part of the proceedings, presented Enichem's additional industrial plan to the Commission and informed it by letter of 6 June 1994 of the financial details of the plan. These included an ITL 3 000 billion capital contribution (the third injection).

(22) The new plan focused on three main objectives: to re-balance the financial structure, to concentrate on pure 'core' activities and to improve the cost structure of its operations.

(23) Enichem decided to concentrate its business on base chemicals, polymers and elastomers, all of them strategically linked to the energy business of ENI, and drastically improve its cost structure by optimising production and logistics, reducing surplus capacity and rationalising organisational and commercial structures.

(24) In the context of the additional plan, Enichem planned additional divestments amounting to some ITL 2 500 over the period 1994 to 1995, a reduction in working capital of ITL 1 142 billion, a reduction in investments of some ITL 170 billion a year (or about 30 % less than 1993) and in R&D expenditure of some ITL 76 billion a year. Additional rationalisations and shutdowns were intended to reduce the company's fixed costs by ITL 1 384 billion by the end of 1997. At the same time, Enichem's workforce was eventually to be cut by around 16 000 units to further reduce its costs.

(25) As regards its core activities, Enichem would concentrate predominantly on base chemicals, polymers and elastomers. Divestments were to include polyethylene and other plastic downstream activities, PET, fine chemicals, some minor elastomer activities (mainly nitrile and polychloroprene), fibres (acrylic, polyester and thermo-bonded) and detergents.

(26) These new measures were intended to reduce Enichem's fixed costs and working capital levels, their respective ratio going from 32,6 % and 25,2 % in 1994 to 22,9 % and 16,8 % in 1997. As a result, Enichem was expected to show a profit as of 1997 and then reach levels of indebtedness, financial charges and profitability similar to those of its main competitors.

(27) These further divestments and plant shutdowns were intended to provide for an additional and significant reduction in Enichem's production capacity, in that all the plants listed in Table 3 were to be sold or closed down.

Table 3: Enichem restructuring divestments 1997 to 1997

Location	Plant	Capacity (kt/year)
Porto Marghera	— Hydrocyanic acid — Acetonecyanhydrine	30 70
Ravenna	— Additives — Elastomers	n.a. 80
Carling	LDPE	200
Pedrengo	Intermediate products	n.a.
Villadossola	Fine chemicals	n.a.

Location	Plant	Capacity (kt/year)
Pisticci	Terbond	n.a.
Pisticci	PET	102
Ottana, Acerra, P. Marghera	Fibres (all business)	447
Pieve Vergonte, Trissino, Madone, Assemini, etc.	Fine chemicals (all business)	n.a.
Augusta, Sarroch, etc.	Detergents (all business)	962
Various	PVC (all business)	50 % joint venture
Various	Downstream polymers (all business)	192

(28) Overall, the planned restructuring measures linked to the additional plan were to provide an estimated additional reduction in capacity of at least 2 083 kt/year [7], compared to the 1 152 kt obtained over the period 1991 to 1993 (Table 2). As regards the identified 'core business' the plan referred to the need to establish forms of collaboration with other producers in order to fill the technological gap that Enichem was experiencing in some sectors. Eventually Enichem sold 50 % of its polymers' business to Union Carbide, developing a joint venture with the latter, in order to reposition this business on the market.

(29) These measures enabled Enichem to restructure in order to restore sound profitability, starting from 1997, and to achieve a positive operational cash flow already in 1995, according to the estimates reported in Table 4.

Table 4: Enichem's forecast economic results 1994 to 1997

(ITL billion)

	1994	1995	1996	1997
Turnover	9 917	8 504	7 550	8 043
Operating result	723	818	912	1 095
Net profit (loss)	(1 700)	(912)	(219)	7
Operational cash flow	(47)	355	586	780

III. **COMMENTS FROM THIRD PARTIES**

(30) BP, in its observations, argued that the Commission did not have valid reasons for separating the third capital injection from the first two and that therefore the three measures must be considered as a whole. In particular, it argued that the third operation was necessary to make the company attractive to private operators and that it was too close to the first two injections to be possibly considered as a separate operation. Once the three injections are taken together, the return on the total investment would not be sufficient for a private investor and the three injections as a whole would therefore have to be regarded as State aid.

[7] This figure does not include reduced capacity in additives (Ravenna), intermediate products (Pedrengo), fine chemicals (Villadossola), Terbond (Pisticci) and the 50 % of the PVC joint venture.

(31) Moreover, BP argues that, even if the third operation were to be considered a stand-alone transaction, the return on the investment was not sufficient to make it profitable. BP challenged some of the assumptions and calculations used by the Commission, both in its decision of 27 July 1994 and in its submissions to the Court. First, BP questioned the claim that the method of discounting profits (hereinafter 'DNP') is a generally accepted one. Second, it challenged some of the assumptions used by the Commission in its calculation of the return, as regards both the DNP and the discounted cash flow (hereinafter 'DCF') methodologies.

(32) In particular, BP argues that: (i) the Commission wrongly calculated the effects of debt repayment, in that it considered the cash flow for repaying Enichem's debts also as a return; (ii) the Commission included in the calculation of the return the initial book value of Enichem, which would be inconsistent with the DCF method used and, finally (iii) the residual value attributed to Enichem is excessive.

(33) BP then argued that, if the third capital injection is regarded as State aid, it should be assessed under the guidelines for restructuring aid with particular regard to the reduction of capacity, which should be in proportion to the amount of aid.

(34) The United Kingdom Government, in its comments, argued that: (i) the third capital injection could not be separated from the first two injections, as it was put in place soon after the first two, the three together forming part of a single ongoing restructuring since Enichem could not survive without the third injection. Moreover, the United Kingdom argued that (ii) even if the third injection were regarded as a stand-alone, this would not satisfy the market economy investor test.

(35) According to the United Kingdom authorities, Enichem's financial situation at the time of the third injection was not sound, as demonstrated by the fact that the only alternative to the injection was the company's bankruptcy. In addition, the injection was not linked solely to the firm's new investment needs but was needed to meet the restructuring costs incurred by Enichem.

(36) The United Kingdom Government therefore supported BP's view that the third injection should be regarded as State aid — like the first two injections — and should be assessed under the relevant guidelines.

IV. **COMMENT FROM ITALY**

(37) The Italian Government, in its reply, argued that, as regards the third injection: (i) the funds provided by ENI to Enichem should not be considered State resources as they were funds generated by the company's activities and not granted by the State, (ii) the funds were granted in circumstances that would have been acceptable to a private investor operating under normal market conditions, (iii) in any event, should the funds be regarded as State aid, such aid would be compatible with the common market under Article 87(3)(c).

(38) As far as point (i) is concerned, according to the Italian authorities the funds granted by ENI to Enichem are not State resources. The authorities stated that ENI received the last capital contribution from the State in 1985. No capital increase has been granted to ENI by the State since then.

(39) ENI granted the capital contribution to Enichem using the resources generated by its profitable activities, e.g. oil production and distribution. The contested funds do not therefore constitute State resources on that account under Article 87.

(40) As regards point (ii), the Italian authorities claimed that ENI, in granting the third injection, acted as a normal private investor would have acted in similar circumstances. In fact, according to the Italian authorities, the projected operation was designed to provide a sufficient return on the investment. The Italian authorities also noted that the projections proved conservative, on analysing the results actually obtained by Enichem in the period covered by the plan.

(41) Moreover, the Italian authorities argued that ENI provided the funds to Enichem in order to safeguard the value of its stake in its subsidiary and to maximise the value of the company prior to the first step of its privatisation (which took place in November 1995).

(42) As regards (iii), the Italian authorities argued that, should the Commission regard these measures as State aid, they should qualify for exemption under Article 87(3)(c) as they were aimed at restructuring a firm in difficulty.

(43) According to the Italian authorities, the restructuring plan presented to the Commission fulfilled the conditions required for the aid to be compatible with the common market. In particular, it was evident that the plan guaranteed Enichem's return to profitability on the basis of conservative market assumptions, that it was based on internal restructuring measures and that it was proportionate to the aims pursued. The Italian authorities also noted that the financial and economic projections in the plan were largely exceeded by the actual results, which proved much better than expected.

V. **ASSESSMENT OF THE MEASURES AS STATE AID**

(44) In order to ascertain whether a State measure constitutes aid within the meaning of Article 87(1), the Commission determines whether it:

— is granted by the State or through State resources,

— distorts or threatens to distort competition by favouring certain undertakings,

— affects trade between Member States.

Presence of public resources

(45) The Commission considers that the argument of the Italian authorities that the funds granted to Enichem were not State funds as they were provided by ENI from its own resources must be rejected.

(46) The Commission notes that the capital contribution under examination was granted by ENI, an undertaking which, at the time of the measure, was wholly owned by the Treasury. The Government had appointed ENI's Board of Directors, which in turn appointed the management of Enichem.

(47) According to the case-law of the Court of Justice, 'in order to determine whether aid may be regarded as State aid within the meaning of Article 92(1) (now Article 87(1)) of the Treaty, no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State' ([8]).

(48) Furthermore, a lower return on ENI's investments in Enichem would have meant a lower return on the State's investment in ENI. As a result, even though the funds granted by ENI to Enichem did not derive directly from the State budget, the public nature of the funds can be assumed as the State would forego income or value if it accepted that one of its controlled undertakings, ENI, failed to secure a proper return on its investment in a subsidiary, Enichem.

(49) The Commission therefore considers that the funds referred to in this Decision constitute State aid within the meaning of Article 87(1) of the Treaty.

Favouring certain undertakings

(50) The Commission considers that any financial measure granted by the State to an undertaking which, in various forms, reduces the charges normally borne by the undertaking, must be considered State aid within the meaning of Article 87.

([8]) Case C-305/89, [1991] ECR I-1603.

(51) In the case of capital contributions, the Commission must ascertain whether the State is providing the funds in accordance with the behaviour of a private investor under market economy conditions. If they were granted under conditions other than those under which a private investor operating in a market economy would grant them, they would provide an economic advantage to the recipient. The recipient may, in fact, use these resources to finance its expenditure and investments without the need to get loans from financial institutions or to remunerate adequately the resources received.

(52) Capital increases are normal events during the life of a company, as they can be used to finance the growth and the investments of the company itself. Therefore, to assume that any capital increase in a public undertaking involves State aid would put public undertakings in a less favourable competitive position vis-à-vis private ones. This would be contrary to Article 295 of the Treaty.

(53) However, the principle of equal treatment for public and private undertakings might be infringed in cases where public undertakings receive capital provisions on more favourable terms compared to private ones. For this reason, the Commission has developed the principle of the private investor operating in a market economy which allows it to determine whether the State provides financial resources to undertakings under conditions which would not be acceptable to a private investor ([9]). That assessment has to be made on the basis of the information available to the Commission at the moment when the transaction takes place.

(54) Before carrying out this assessment it must be stressed that in its judgment of 15 September 1998 the CFI concluded that 'there were serious grounds for believing that the three injections in question … had to be considered as, in reality, a series of related capital contributions, granted as part of a continuing restructuring process begun in 1992' (paragraph 179). Moreover the Commission was unable to produce the calculations that it made with a view to concluding that the third capital injection complied with the market economy investor principle (paragraphs 191 to 193). As a consequence 'the Commission was not in a position at the end of the initial examination … to overcome all the difficulties raised by the question whether the third injection constituted' State aid (paragraph 197).

(55) In the present case there is no doubt as to the aid nature of the first two injections, whose compatibility with the common market was assessed in the decision of 27 July 1994. The return on the investment for these two outlays was not sufficient to satisfy the market economy investor test. However, in the decision, the Commission held those measures to be aid compatible with the common market in the light of the restructuring measures carried out in the period 1991 to 1993. The Court did not annul this part of the decision and thus the Commission need not and must not review that assessment.

(56) In the particular circumstances of the present case the Commission, in line with what the Court has said, may assume that the third injection was granted as part of a continuing restructuring process. According to this line of reasoning the Commission has to appraise the third capital contribution in the light of the same criteria applied to the assessment of the first two injections. This means that the Commission must verify whether the restructuring measures, which were not taken into account in the examination of the first two injections, are such that Article 87(3)(c) is applicable to the third injection.

Effect on Community trade

(57) There is considerable trade between Member States in chemical products. At the time of the third injection, in 1994, Enichem was the largest Italian chemical producer. It ranked among the 10 major European chemical producers and led the west European market in several chemical products. In 1992 its consolidated figures show that 43,1 % of total output, worth ITL 4 300 billion, was exported to other European countries.

([9]) Communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, OJ C 307, 13.11.1993.

(58) Given the size of the company and the extent of the trade in chemical products between Member States, it can be concluded that the measure affects trade between Member States ([10]).

VI. **COMPATIBILITY WITH THE COMMON MARKET**

(59) In order to assess the third capital contribution under Article 87(3)(c), as part of a general restructuring programme aimed at restoring Enichem's viability, the Commission has to make reference to the criteria on restructuring aid which were in force at the time of the notification of the third capital contribution, i.e. in 1994 ([11]). The criteria are those contained in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([12]). According to the guidelines, if the Commission is to approve measures to restructure a firm in difficulty, the following conditions must be satisfied:

(i) the measures must restore the long-term viability of the firm;

(ii) they must avoid undue distortion of competition;

(iii) they must be proportional to the costs and benefits of restructuring; they must be limited to the strict minimum needed;

(iv) the restructuring plan should be fully implemented;

(v) the implementation of the restructuring plan should be monitored by the Commission.

(60) Only if all of these conditions are fulfilled can the Commission take the view that the aid is not contrary to the Community interest and approve it under Article 87(3)(c). In particular, the United Kingdom Government and BP, in their comments, argued that the assessment of condition (ii) should be particularly stringent as regards the question of counterparts.

(61) As regards condition (i), the 1994 additional plan was clearly capable of restoring the long-term economic and financial viability of Enichem within a reasonable time. The 1994 restructuring plan was based on a thorough assessment of the position of Enichem on the market and in the ENI group as well as a careful consideration of Enichem's strengths and weaknesses in different productive sectors. As stated above, the improvement in viability was mainly to be the result of internal restructuring measures, namely: drastic scaling down of Enichem production capacity (through plant closures, disposal of controlled undertakings, concentration exclusively on profitable core activities), strong reduction in variable and fixed costs (following drastic workforce cuts, reduction in the number of production sites, simplification of the internal organisational structure, etc.) and re-balancing the financial structure of the company. Moreover, as already noted in the opening decision ([13]), the Commission has checked the estimates on which Enichem's 1994 restructuring plan was based against the market development forecasts at the time and has concluded that they were conservative, realistic, and reasonable. Assumptions concerning external factors influencing the restructuring were generally acknowledged and within the average market expectations.

([10]) See the Decision of 16 March 1994 initiating the procedure under former Article 93(2) (see footnote 2).
([11]) See paragraph 100 of Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2. In paragraph 15 of the decision opening proceedings (see footnote 1), the Commission referred to restructuring guidelines in general, citing those published in 1997 (which do not change the policy set out in the 1994 guidelines save for the agricultural sector) and those of 1999. However, according to paragraph 100 of the guidelines published in 1999, there is no doubt that the only relevant text in the present case is that for 1994.
([12]) OJ C 368, 23.12.1994, p. 12.
([13]) See footnote 1.

(62) The restructuring, based on particularly prudent assumptions, was aimed at restoring sound profitability as from 1997, while maintaining a sound economic and financial situation from then onwards. By 1997 Enichem was to have shown profits for the first time. The operating result was to increase from ITL 500 billion at the end of 1993 to some 1 100 billion at the end of 1997. Fixed costs were to decrease from ITL 3 229 billion at the end of 1993 to some ITL 1 845 billion at the end of 1997. Operational cash flow and cash flow were to increase from minus ITL 836 billion and minus ITL 1 636 billion respectively at the end of 1993 to ITL 780 billion and ITL 404 billion in 1997. The net financial debt and the debt/equity ratio were to fall from ITL 8 578 billion and 2,9 at the end of 1993 to ITL 3 492 billion and 1,3 respectively in 1997. It is important to note that the planned results were to be achieved as part of a reduction in Enichem's turnover. This confirms that the restructuring was predominantly based on internal measures and did not provide Enichem with artificial means for conducting an aggressive expansionist policy. Lastly, reasonably favourable forecasting submitted to the Commission showed that Enichem would return to economic and financial viability in the years following 1997.

(63) As stated above, the economic forecasts underlying the estimates were generally accepted and even more conservative. This was confirmed by the fact that when the market conditions improved in 1995 the restructuring turned out to be more effective than expected, Enichem having achieved better results than forecast by the plan. Although these elements were not known at the time of the planned restructuring and should not be used to assess whether the plan would have been capable of restoring the viability of Enichem, they nevertheless confirm that the plan was based on reasonable market assumptions and that the restructuring was substantially and effectively carried out by Enichem. On the other hand, in the light of the restructuring actions undertaken by Enichem and its economic results following those actions, it could not be said that the restructuring of Enichem was not intended to restore its long term economic and financial viability.

(64) Neither the United Kingdom Government nor BP, which presented observations in the course of these proceedings, have substantially disputed that the restructuring process was designed to restore Enichem's long-term financial and economic viability but have stressed that the process should be linked to a reduction in capacity.

(65) It can thus be concluded that the restructuring measures and the capital injections could reasonably have been expected to restore Enichem's economic and financial viability and that this in fact occurred. Accordingly, condition (i) of the Commission guidelines is fulfilled.

(66) Condition (ii) requires the avoidance of undue distortion of competition. In principle, any aid granted by a State to a firm causes undue distortion of free competition since it puts that firm in a more favourable economic situation compared with its competitors. In this connection it is of particular relevance if the granting of the aid is counterbalanced by reduction in capacity.

(67) Both the United Kingdom Government and BP argue that, if the third capital injection constitutes State aid, the capacity reductions on which the Commission based the decision of 27 July 1994 would no longer satisfy the (ii) test. As suggested by BP, as the third injection was almost twice as large as the first two, the benefits of the restructuring should also be almost doubled. In fact, in the decision of 27 July 1994 the Commission based its assessment on the hypothesis that only the first two injections constituted aid and considered that the capacity reductions were proportionate to the amount of aid contained in the injections. If the third injection was also deemed to be aid, the closures indicated by Enichem in its restructuring plan would no longer be sufficient to satisfy the test.

(68) In the present case, as explained in the decision, the first two injections were to be used to remove capacity and close down the plant identified in the original restructuring plan, as stated in the decision and listed in Table 2 of this Decision.

(69) The Commission considered the capacity reduction resulting from the closures as in proportion to the aid granted to Enichem in the form of two capital injections. The Commission considered that an overall capacity reduction of some 1 152 kt/year, as indicated in Table 2, together with workforce cuts totalling some 7 000 units (of which 2 100 directly related to planned plant closures) was sufficient for the first two injections to fulfil test (ii) of the guidelines. It should also be noted that the proportionality of the capacity reduction with the amount of the aid granted through the first two injections was not contested by any of the parties concerned.

(70) The Commission noted that the third capital injection was linked to comparable restructuring action to be taken by Enichem in terms of capacity reduction and cost-cutting measures. This is evident if one compares the capacity reduction and closures linked to the restructuring measures to be carried out between 1991 and 1993 in connection with the first two capital injections (Table 2) with the reduction in capacity and plant closures in the period 1994 to 1997 in connection with the third capital injection (Table 3). Indeed in the first case, against an overall injection of ITL 1 794 billion, Enichem was to reduce its capacity by some 1 152 kt/year. In the second case, against an injection of ITL 3 000 billion (less than twice the amount of the first two injections), Enichem was to achieve a capacity reduction which was likely to be more than twice the reduction planned for the first two injections.

(71) As stated above, the 1994 to 1997 plan was aimed at divesting its PET and fine chemicals business, some minor elastomer activities (mainly nitrile and polychloroprene), fibres (acrylic, polyester and thermo-bonded) and detergents from the polyethylene downstream activities. Overall, the divestments were to provide a reduction in Enichem capacity of at least 2 083 kt/year, that is to say, slightly less than twice the reduction linked to the first two injections. However, this figure does not include the plants to be closed for which the production capacity was not known to the Commission (Table 3). If the closure of these plants is taken into account it is most likely that the total capacity reduction would be considerably more than twice the one in the first plan.

(72) The same applies to the measures to be taken to reduce fixed costs, especially labour costs. These measures can also be regarded as proportionate to the amount of the new recapitalisation. The first two injections were to be accompanied by a reduction in the Enichem workforce of about 7 000 units. The third injection was linked to a reduction of about 16 000 units, notwithstanding the fact that the third injection was less than twice the total amount of the first two taken together.

(73) Taking this into account the Commission concludes that the restructuring of Enichem did not produce undue distortions of competition and therefore satisfies condition (ii) of the guidelines for restructuring aid.

(74) Condition (iii) requires that aid be in proportion to costs and benefits: if State aid is to be declared compatible, it must be limited to the strict minimum needed to finance the return to viability and must not be used to expand production, except to the extent necessary to restore the firm's profitability.

(75) According to the restructuring plan submitted, the third capital increase was intended to improve the financial situation of Enichem and to reduce its debt/equity ratio. If the amount of capital provided was excessive, Enichem would have been in the position to finance aggressive commercial policies, thanks to excess resources received from its shareholder. It is pointed out, however, that, according to the plan, Enichem's financial debts would not be reduced to nil over the period covered by the plan, which would have been excessive. Instead, the plan provided for Enichem's indebtedness to be cut from ITL 8 600 billion in 1993 to ITL 3 500 billion at the end of 1997, with a debt/equity ratio of 0,57.

(76) The debt reduction was to be achieved through the capital increase and also through the divestiture revenues, already amounting to some ITL 2 500 billion at the end of 1995, and internally generated cash flow. All these resources together were intended to bring Enichem's debt/equity ratio to 0,57, which can be considered a normal and safe ratio for the sector in which the company operates. This level cannot be regarded as too low, as it has left Enichem with an important amount of financial charges to pay.

(77) The Commission takes the view, therefore, that the aid granted did not bring Enichem any excess liquidity which was unrelated to the process of restructuring and might have helped to finance aggressive commercial or investment operations not necessary to the restructuring. On the contrary, the plan provided for a reduction in turnover, production capacity, investment and R&D expenditure. This conclusion is also implicit in BP's observation that all cash flow generated by Enichem over the period 1994 to 1998 was to be used to reduce debt and not to finance other investments. From this observation it is clear that, according to the economic analysis it carried out, BP must have been aware that the capital injection could not have given Enichem the financial means to engage in expansionist commercial policies.

(78) As regards BP's claim that, soon after the aid was approved, Enichem set up a joint venture with Union Carbide, thus contravening the condition in paragraph (iii), the Commission notes that the joint venture concerned the polymers business, which was precisely one of Enichem's core activities identified in the restructuring plan. The joint venture should therefore be regarded as an intrinsic part of the restructuring plan itself and not as a means of increasing capacity. As Enichem regards polymers as core business, it selected an appropriate strategy to increase its efficiency by forming the joint venture with a partner able to provide significant technological benefits, without thereby increasing its overall capacity and yet consolidating its viability.

(79) The setting-up of the joint venture is not therefore contrary to condition (iii).

(80) Condition (iii) also requires the recipient to make a significant contribution to the financing of the restructuring operation. As stated in Part II, the restructuring plan tied to the third injection involved significant plant closures and divestments amounting to some ITL 2 500 billion in the period 1994 to 1995, i.e. over 80 % of the amount of the capital injection itself. Moreover, Enichem would also have financed its restructuring from its operational cash flow which, as shown above, was expected to be significant. In the light of the foregoing the Commission takes the view that Enichem's restructuring plan included a significant contribution from the company to the costs of its own restructuring, in line with the relevant Community guidelines.

(81) The Commission concludes that Enichem's restructuring plan included a contribution from the company to the costs of its own restructuring, in accordance with condition (iii) of the Community guidelines on restructuring aid.

(82) As far as conditions (iv) and (v) are concerned, they are not decisive in the present case since the Commission analysis takes place at a time when the restructuring operations are already completed. It is then sufficient for the Commission to check that the restructuring plan has been effectively implemented. From the information at its disposal the Commission concludes that the 1994 restructuring plan was substantially implemented within the times specified, as Enichem's actual results and its current economic situation show.

(83) The Commission therefore considers that, since all the conditions set out in the restructuring guidelines are fulfilled, the State aid elements of the Enichem restructuring are compatible with the common market pursuant to Article 87(3)(c).

VII. **CONCLUSION**

(84) The Commission, on the basis of the foregoing assessment, concludes that the capital of ITL 3 000 billion injected by ENI into Enichem is compatible with the common market under Article 87(3)(c),

HAS ADOPTED THIS DECISION:

Article 1

The State aid contained in the capital of ITL 3 000 billion injected in 1994 by ENI into Enichem SpA is compatible with the common market under Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 19 September 2001.

For the Commission

Mario MONTI

Member of the Commission