

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 21 February 2007

on State aid — C 36/2004 (ex N 220/2004) — Portugal — Foreign direct investment aid for CORDEX, Companhia Industrial Têxtil S.A.

(notified under document number C(2007) 474)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(2007/414/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 those provisions⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 5 May 2004 (registered as received on 19 May), Portugal notified the Commission of its intention to provide aid to CORDEX, Companhia Industrial Têxtil S.A. (hereinafter CORDEX) in order to help finance an investment by the company in Brazil. At the Commission's request, Portugal provided further information by letters of 31 August 2004 (registered as received on 6 September) and 13 September 2004 (registered as received on 16 September).

(2) By letter of 19 November 2004, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) By letter of 7 January 2005 (registered as received on 11 January), the Portuguese authorities presented their comments in the context of the abovementioned procedure.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*⁽²⁾. The Commission called on interested parties to submit their comments.

(5) The Commission received comments from interested parties. It forwarded them to Portugal, which was given the opportunity to react; its comments were received by letter of 20 May 2005 (registered as received on 25 May).

(6) The Commission requested further information from Portugal by letter of 26 September 2005, to which Portugal replied by letter of 9 November 2005 (registered as received on 10 November). The Portuguese authorities provided the final additional information by letter of 22 December 2005 (registered as received on 23 December).

⁽¹⁾ OJ C 35, 10.2.2005, p. 2.

⁽²⁾ See footnote 1.

II. DETAILED DESCRIPTION OF THE AID

The recipient

- (7) CORDEX is a producer of ropes located in Ovar, a region falling under Article 87(3)(a) of the Treaty. It was set up in 1969 and specialises in the production of synthetic fibre ropes (polypropylene and polyethylene) as well as *binder* and *baler twine* and other sisal products. At the time the aid was notified, CORDEX had 259 employees. Its turnover in the same year (2004) was some EUR 25 million. CORDEX is affiliated to two other companies located in the same region: FLEX 2000, set up in 2001, and CORDENET, set up in 2003. Together, the three companies have 415 employees ⁽³⁾.

The project

- (8) The project consists in the establishment of a new company in Brazil — *Cordebrás Lda.* — that will be engaged exclusively in producing *baler twine*, which is used mainly in agriculture. With this investment, CORDEX expects to step up its production of sisal products and to take advantage of the lower costs and availability of the raw material and labour in Brazil, which is considered to be the world's leading producer of the raw material (sisal fibre) and labour costs there are about 1/3 of those in Portugal.
- (9) With this project, CORDEX is also planning to gain a foothold on new markets, in particular in the United States, Canada and the Mercosur countries. In addition, some of the sisal produced in Brazil will be imported into Portugal either as a finished or semi-finished product ⁽⁴⁾. In the latter case, the product will be subject to oil-based processing as well as to rewinding and packaging before being sold on the market.
- (10) The eligible costs of this investment amount to EUR 2 678 630, which is equivalent to the nominal capital of the new company, *Cordebrás Lda.* The project was completed in 2002 and is now operational.

The aid

- (11) CORDEX applied for aid from the Portuguese authorities under a Portuguese scheme that aims to promote the internationalisation of Portuguese companies ⁽⁵⁾. Under the scheme, aid to large companies must be notified to the Commission. Although CORDEX requested the aid in 2000 before initiating the project, internal delays meant

that Portugal notified the aid to the Commission only in January 2004.

- (12) The notified measure consists of a tax incentive of EUR 401 795, representing 15 % of eligible investment costs.

III. GROUNDS FOR INITIATING THE PROCEDURE

- (13) The Commission, in its decision to initiate the procedure in the present case, stated that it would examine the measure in the light of Article 87(3)(c) of the Treaty in order to determine whether the aid would facilitate the development of an economic activity without adversely affecting trading conditions to an extent contrary to the common interest.
- (14) The Commission also considered the following criteria, which have been applied in previous cases of aid to large companies to finance foreign direct investment projects ⁽⁶⁾: whether the aid contains disguised export elements; any effects on employment in the country of origin and in the host country; the risk of relocation; the impact of the measure on the region where the aid recipient is located; the necessity of the aid, including the envisaged aid intensity, given the international competitiveness of the EU industry and/or in view of the risks associated with investment projects in certain third countries.
- (15) The Commission concluded in this connection that the aid was granted for initial productive investment and did not contain disguised export elements. Nor would it lead to the relocation of jobs from Portugal to Brazil in so far as CORDEX intended to maintain employment levels in Portugal. The fact that the new company in Brazil was equipped with new production plant and that labour was recruited locally further limited the risk of relocation.
- (16) The Commission also noted the arguments of the Portuguese authorities that this is the first internationalisation experience of CORDEX, which is not familiar with the Brazilian market and that investing in an unknown market may entail high risks. It can be reasonably assumed that, if the project failed, this would have a significant financial impact on the company, given that the investment costs accounted for some 12 % of its turnover. Moreover, the company applied for aid before initiating the project, and this would seem to indicate that the measure fulfils the 'incentive criteria' as normally required by the Guidelines on national regional aid ⁽⁷⁾.

⁽³⁾ Figure for 2005.

⁽⁴⁾ Portugal explained that the *baler twine* produced in Brazil can be used either as a finished or semi-finished product for further processing into other products such as carpets or decorative objects or in the traditional packaging sector.

⁽⁵⁾ N 96/99 (OJ C 375, 24.12.1999, p. 4).

⁽⁶⁾ See Case C 77/97, Austrian LiftGmbH — Doppelmayr, Austria, (OJ L 142, 5.6.1999, p. 32) and Case C 47/02, Vila Galé-Cintra (OJ L 61, 27.2.2004, p. 76).

⁽⁷⁾ See point 4.2 of the Guidelines in force at the time the measure was notified: 'an application for aid must be submitted before work is started on the projects'; OJ C 74, 10.3.1998, p. 13.

(17) However, the Commission expressed doubts regarding the impact of the aid on the overall competitiveness of the EU industry concerned. It noted that some of the products produced in Brazil would be likely to compete with products on the EU market and that it had no information on the relative size of the recipient or the market. Nor did it have any information on the impact of the measure in the region where CORDEX is located. Therefore, it could not conclude at that stage that the aid was in conformity with the exception under Article 87(3)(c) of the Treaty.

Comments from interested parties

(18) One French company, BIHR, claimed that the investment by CORDEX in Brazil followed that of other Portuguese producers and that these companies, together with other Brazilian and American competitors, were threatening BIHR's production of sisal in Europe. It was also concerned that the aid would strengthen the position of CORDEX in the synthetic fibres sector.

(19) Similar concerns were expressed by Saint Germaine, another French producer, which claims to produce synthetic products in Europe and to have transferred its sisal activities to Brazil. Saint Germaine stated that Portuguese companies had advantages when investing in Brazil because they could subsequently import the product in Europe at lower rates of duty.

(20) Another company that wished to remain anonymous made similar comments as to the competitive advantage that the aid would confer on CORDEX in the rope sector.

Comments from Portugal

(21) Portugal noted that the investment in Brazil is part of a strategy on the part of CORDEX for maintaining a wide range of activities in Portugal, while at the same time maintaining its current levels of employment. CORDEX will continue to produce sisal products in Portugal with raw material imported from Brazil, while also importing from *Cordebrás Lda* either finished or semi-finished products that it will process into sisal products with higher value added. These activities also include adapting the packaging of the imported *baler twine* to customers demands (for example, with regard to size and labelling) and will thus also contribute to employment in the packaging industry in the region where CORDEX is located.

(22) Following the investment in Brazil, CORDEX has created two new companies in Ovar (FLEX and CORDENET,

which produce foam-based products and nets respectively). This has led to some shifts of personnel between these companies and to a slight increase in the overall employment levels of the three companies in Ovar: from 358 employees in 2000 to 415 in 2005. The newly established Brazilian company, *Cordebrás Lda.*, has about 145 employees.

(23) According to the Portuguese authorities, the diversification strategy of CORDEX, including the investment in Brazil, is thus conducive to maintaining employment in a region (Ovar) that already suffers from unemployment levels well above the national average. It also contributes to creating employment in the State of Bahia (Brazil), where *Cordebrás Lda* is located.

(24) Concerning the comments made by interested parties, the Portuguese authorities noted that CORDEX is subject to the same conditions and the same import duties as any other EU producer when importing sisal products from Brazil and that the small amount of aid which it is planning to grant CORDEX is unlikely to have any significant impact on the Community market. From the viewpoint of the Portuguese authorities, the investment by CORDEX in Brazil was necessary in order to counter the effects of increasing exports from countries with advantages in the form of lower costs (countries in Africa and Brazil) ⁽⁸⁾.

(25) Finally, Portugal stated that the fact that the investment went ahead without public financing cannot be imputed to the company, which carried out this investment with bank loans and own capital in the expectation of obtaining the state aid it applied for under the relevant national scheme ⁽⁹⁾.

IV. ASSESSMENT

Presence of aid within the meaning of Article 87(1) of the EC Treaty

(26) Under 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 is, in so far as it affects trade between Member States, incompatible with the common market.

In its decision to initiate the procedure in the present case, the Commission concluded that the aid measure fell within the scope of Article 87(1) of the EC Treaty for the following reasons:

⁽⁸⁾ According to the Portuguese authorities, sales of Portuguese sisal in the EU decreased by 12,3 % between 1999 and 2004 mainly because of an increase in imports.

⁽⁹⁾ See footnote 5.

- By providing assistance for the setting-up of a new production unit in the context of the internationalisation initiative of a Portuguese company in Brazil, the notified measure favours a certain undertaking or the production of certain goods. The Commission considers that aid granted to undertakings in the European Union in support of foreign direct investment is comparable to aid for undertakings that export almost all their production outside the Community. In such cases, given the interdependence between the markets on which Community undertakings operate, it is possible that aid might distort competition within the Community ⁽¹⁰⁾.
- Portugal stated that the investment is intended also to benefit the activities of the recipient in Portugal (as well as in the country where the investment is carried out,) thereby potentially affecting intra-Community trade.
- The aid is financed through state resources. These conclusions have not been contested by Portugal and are hereby confirmed.

Compatibility of the aid with the EC Treaty

- (27) Given the fact that the aid could not be found compatible under any existing guidelines or frameworks, the Commission indicated that it would assess whether the aid could be found compatible with the EC Treaty on the basis of the exception under Article 87(3)(c) of the Treaty, which allows for aid to facilitate the development of an economic activity if it does not adversely affect trading conditions to an extent contrary to the common interest. The Commission must, therefore, assess whether the aid will contribute to the development of sisal production and/or other economic activities in the European Union without adversely affecting trading conditions between Member States.
- (28) In the decision to initiate the procedure, the Commission also noted that it would take into account certain criteria which it used in previous cases of aid to large companies in respect of foreign direct investment projects (see paragraph 14) designed to strike a balance between the benefits of the aid in terms of contributing to the international competitiveness of the EU industry concerned (e.g. whether the aid is necessary, taking into account the risks involved with the project in the third country) and its possible negative effects on the EU market.
- (29) In this respect, the Commission had doubts as to the impact of the measure on the common market and on the overall competitiveness of the EU industry concerned; nor did it have any information on the importance of the recipient vis-à-vis EU competitors or on the impact of

the measure in the region where CORDEX is located (see paragraph 17).

Necessity of the aid

- (30) State aid legislation lays down as a general principle that, in order for the aid to be compatible with the common market, it must be demonstrated that it leads to an additional activity by the recipient which would not be carried out without the aid. Otherwise, the aid is simply creating a distortion without having any positive counter-effect. The Commission noted that, since the company applied for aid before initiating the project, there appeared to be some indication that the measure fulfilled the 'incentive criteria' as normally required by the regional state aid rules ⁽¹¹⁾. However, this does not fully show whether the aid was really necessary in view of the international competitiveness of the EU industry and/or in view of the risks involved for investment projects in certain third countries.
- (31) The Commission, in its decision of 19 November 2004, noted the argument of the Portuguese authorities that, for CORDEX, an investment in Brazil may involve higher risks than an investment in the European Union owing to the unpredictability of the Brazilian currency, especially since this is the first internationalisation experience of CORDEX and the company had no experience of the Brazilian market ⁽¹²⁾.
- (32) However, the information submitted to the Commission following the initiation of the procedure indicates that other producers who are competitors of CORDEX had invested in Brazil (despite the apparent unpredictability of the Brazilian currency). In particular, Quintas & Quintas S.A., a Portuguese company competing with CORDEX, had, according to the information provided by the Portuguese authorities, installed a production unit in Brazil (Brascorda) without requesting any aid from the Portuguese authorities. There is thus no evidence of any general market deficiency associated with this type of project that would prevent CORDEX or its competitors from investing in Brazil without state support.
- (33) Although this was the first internationalisation experience of CORDEX, the Portuguese authorities were also unable to demonstrate any particular difficulties faced by CORDEX in carrying out the investment concerned. For example, despite the relative small size of CORDEX in terms of turnover (below the SME threshold), there was no indication from the Portuguese authorities of any deficiencies with regard to the possibility of CORDEX obtaining financing from commercial banks; on the contrary, it appears that the company was able to finance the investment out of own resources and by recourse to commercial loans.

⁽¹⁰⁾ Case C-142/87 *Tubermeuse* [1990] ECR I-959, at 35.

⁽¹¹⁾ See footnote 7.

⁽¹²⁾ See in this connection case C 47/02, *Vila Galé Cintra*.

(34) The Commission therefore considers on the basis of the above information that Portugal has not managed to demonstrate that, without the aid, CORDEX would not have carried out the investment concerned in Brazil and that the aid was necessary in view of the risks involved with its project in Brazil. The Commission notes that the fact that CORDEX has so far conducted all these activities without receiving state aid appears to show that the aid was not necessary.

The impact of the aid on the Community market

(35) According to the information available, there are about a dozen EU producers of sisal on the Community market. Five of them are located in Portugal and account for some 81 % of EU production⁽¹³⁾. All these companies produce synthetic products and sisal ropes and twine. The synthetic fibre production appears to be the core business for most of them. This is also the case with CORDEX (sisal accounts for only about 20 % of its capacity). Sisal and synthetic fibres have a certain degree of substitutability for uses in agriculture.

(36) In 2003 the market share of CORDEX for sisal products in the EU was about 6,6 %. However, if sales of products from *Cordebrás Lda* are also taken into account, the market share of CORDEX in the EU rises to 17,7 %⁽¹⁴⁾. The Portuguese authorities indicated in this connection that about 47 % of *Cordebrás* exports (some 2 210 tonnes in 2003) were directed to the EU market.

(37) Given the significant percentage of sisal produced by *Codebras Lda* and imported (via CORDEX) into the EU, the Commission concludes that the aid appears to have a significant impact on competition in the EU market. In addition, the aid also appears to strengthen the overall position of CORDEX in the EU, thereby potentially affecting other market segments where CORDEX and its competitors operate. This finding is corroborated by the comments submitted by competitors, pointing to serious distortions of competition created by the aid on the markets for sisal ropes and twine as well as for synthetic fibre.

(38) When assessing the compatibility of the aid, the Commission must assess carefully the balance between the negative and positive effects of the measure inside the EU and determine whether its beneficial effects for the Community outweigh its negative effects on competition and trade on the Community market. On the basis of the

above information, the Commission concludes that there is no evidence to suggest that the granting of aid to CORDEX in respect of its investment in Brazil may help to improve the competitiveness of the European industry concerned. The aid would probably strengthen the position of the recipient but to the detriment of its competitors not receiving state aid. It is thus not demonstrated that the aid has any positive effects for the Community that would outweigh its negative impact on competition and trade in the Community market.

Conclusion

(39) Accordingly, the Commission concludes that there is no evidence that the aid is necessary for CORDEX to carry out the investment concerned in Brazil. The aid is also likely to have a significant distorting effect on competition in the Community market. The Commission thus concludes that the planned state aid for CORDEX in connection with its foreign direct investment in Brazil does not contribute to the development of certain economic activities within the meaning of Article 87(3)(c) without adversely affecting trading conditions to an extent contrary to the common interest and is therefore incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The notified tax incentive of EUR 401 795 that Portugal is preparing to grant to CORDEX, *Companhia Industrial Têxtil S.A.*, for the purpose of financing its foreign direct investment in Brazil is incompatible with the common market since it does not fulfil the criteria laid down in Article 87(3)(c) of the EC Treaty.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 21 February 2007.

For the Commission

Neelie KROES

Member of the Commission

⁽¹³⁾ Figures for 2003.

⁽¹⁴⁾ Figures provided by Portugal and based on apparent consumption in the EU 15 in 2003.