STATE AID

C 46/98 (ex N 791/97)

Italy

(98/C 269/04)

(Text with EEA relevance)

(Article 6(5) of Decision No 2496/96/ECSC of 18 December 1996)

Commission notice pursuant to Article 6(5) of Decision No 2496/96/ECSC of 18 December 1996 to other Member States and other interested parties concerning aid granted by the Italian Government to Acciaierie di Bolzano

By the letter reproduced below, the Commission informed the Italian Government of its decision to initiate the procedure provided for in Article 6(5).

'By the letter received on 25 November 1997, the Italian Government notified the Commission that the Autonomous Province of Bolzano planned to grant Acciaierie di Bolzano ("AB"):

(a) environmental aid totalling ITL 10,8 billion for investments of ITL 49,5 billion;

(b) research and development aid totalling ITL 1,6 billion for investments of ITL 7,8 billion.

The R & D investments are essentially aimed at the development of an innovative system for the production of a new range of "clean steel" stainless products for specific market niches. The industrial problems to be resolved concern the critical aspects of the processes and operations at the production plants, as regards the melting, working and refining of the molten metal. It should be noted that the aid recipient has undertaken to desseminate the new technologies for the production and characterisation of the stainless steels.

As regards the environmental aid, it should first be pointed out that, following the agreement concluded on 31 July 1995 between the Province of Bolzano and AB, a number of environmental conditions were imposed on the latter, compelling it to take a number of measures, including:

(a) a new plant for the extraction and filtering of primary and secondary fumes and for the reduction of noise from the melting shop by enclosing the melting furnace in the dog house;

(b) new plant for carrying and charging ferro-alloys and dust reduction equipment;

(c) construction of a new protected bay for reconstructing the ladles to avoid all discharge of powdered silicates;

(d) removal of asbestos cladding from buildings;

(e) construction of new plant to control post-combustion fumes to remove highly polluting sulphur dioxide emissions from the air, reducing to a minimum the presence of CO and NOX from stack emissions;

(f) new plant to filter and reduce oxide fumes and dusts from the ingot blooming line;

(g) new waste water treatment plant;

(h) new slag processing plant;

(i) new ecological pickling plant for steel coil with recovery of waste water that is too toxic to reprocess owing to the presence of acids;

As the measures referred to above will produce higher levels of environmental protection than required by the rules in force, the Italian authorities plan to grant aid amounting to a maximum of 30 % gross of admissible costs, in accordance with point 3.2.3.B of the Community guidelines on State aid for environmental protection [1], referred to in Article 3 of Commission Decision 2496/96/ECSC [2] (hereinafter referred to as the steel aid code).

(1) OJ C 72, 10.3.1994.

(2) OJ L 338, 28.12.1996.

Assessment

As AB is an undertaking which manufactures special steel products listed in Annex I to the ECSC Treaty, it is covered by the rules of that Treaty, Article 4(c) of which provides that subsidies or aids granted by States, in any form whatsoever, are recognised as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited with the Community. The only possible exceptions to the general ban on aid are specifically and exhaustively listed in the steel aid code, in Articles 2 (aid for research and development), 3 (aid for environmental protection) and 4 (aid for closures).

Aid for research and development

Article 2 of the code provides that aid granted to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development ([3]).

The framework includes the following provisions, insofar as they are relevant to this Decision:

— as regards the intensity of the aid: as a general rule the Commission considers that the level of aid for industrial research should not exceed 50 % of the eligible costs of the project. To the extent that the aided activity is close to the market or constitutes a precompetitive development activity, the Commission will require a lower intensity of less than 25 % of the gross costs of the project. These levels may be increased by 15 percentage points where the project is in accordance with the objectives of a Community R & D programme,

— industrial research must involve the acquisition of new knowledge, the objective being the development of new products, processes of services,

— precompetitive R & D projects are eligible provided they cannot be converted to or used for industrial applications or easily exploited from a commercial point of view,

— R & D aid should serve as an incentive for firms to undertake new research in addition to their normal day-to-day operations. To that end the Commission will analyse changes in R & D spending, the number of people assigned to R & D activities and R & D spending as a proportion of total turnover.

In view of the foregoing, it would seem at this stage of the procedure that AB essentially intends to spread its range of products into new and more profitable markets, although its production process is undoubtedly innovative. In addition, the products already exist and are already in production; lastly, it would seem that a significant proportion of the investments will in fact be in the modernisation of the plant intended for the new products. Thus, rather than consisting in the development of new products in special steels, the project is aimed at the modernisation of AB's products and the plant required to manufacture them.

However, the production process described by AB, known as the "triplex" process, which allows methane to be injected at high pressure in order to cut argon consumption, is totally innovative and has not been used industrially by any other European firm in the industry. If it is viable, the new process will eventually produce savings in energy and decarburisation costs of some 20 % compared with conventional technologies.

Furthermore, the Commission does not have any serious doubts as to the incentive effect of the aid on the R & D aspect of the new production process. The aid appears to have been decisive in the firm's decision to undertake new engineering research in addition to its day-to-day research work on the triplex process. To that end, the Commission has analysed the difference between the firm's past and present research expenditure, set to rise from 0,5 % to a forecast 1,5 % in 1998. At the same time, its full-time staff will rise from 9 to 16.

Lastly, the amount earmarked for R & D in 1998 in connection with the notified project is appreciably higher than the average for the sector which ranges from 0,9 % to 1,1 %.

([3]) OJ C 45, 17.2.1996.

Thus the variation in the amount allocated to R & D (which doubles from 0,5 % to 1 % of turnover), the number of persons assigned to the research programme (which almost doubles from 9 to 16) and, finally, the investments in R & D compared with turnover (1,5 % of turnover against an industry average of some 1 %) appear to indicate that the condition that aid must serve as an incentive has been satisfied.

A large proportion of the investments in question do not therefore appear to be covered by the Community framework for State aid for R & D as they are not aimed at the acquisition of new knowledge of use in developing new products and/or production processes and can also be converted or used for industrial applications or commercial exploitation; however, the investments in the triplex process may be regarded as compatible with the common market. It is for the Italian authorities to present new figures on investments and aid in the light of the provisional conclusions reached by the Commission.

The Commission must conlcude, at this stage of the procedure, that the costs set out in point 3.1 of the notification concerning plant, machinery and equipment do not appear to be eligible because they were decided by the firm independently, as part of the reconversion of the Bolzano plant: thus the aid in question has not apparently served as an incentive for the investments.

Aid for the protection of the environment

The compatibility of the environmental aid must be assessed under Article 3 of the steel aid code which provides that aid for environmental protection may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection, in conformity with the criteria outlined in the code.

The guidelines on environmental aid provide that aid that allows significantly higher levels of environmental protection to be attained than those required by mandatory standards may be authorised up to a maximum of 30 % gross of the eligible costs. Furthermore, the Annex to the steel code provides *inter alia* that any advantage in regard to lower production costs as a result of the investment will be deducted from the environmental aid. The Annex also states that the higher aid level resulting from a significant improvement in environmental protection will apply only to the part of the investment aimed at the additional environmental protection.

In view of the foregoing, it is concluded that, with the exception of the investments in new cladding for the buildings and that referred to in point 2(i) (new ecological plant for chemical pickling of steel coil and recovery of the liquid waste which cannot be recycled owing to the presence of toxic acids), which could be related to the steelmaking process, the other measures appear to be concerned solely with the protection of the environment. As a result, it is not necessary to deduct any production costs. It is also clear from information in the Commission's possession that the proposed ecological investments will enable AB to achieve a far higher level of environmental protection than the statutory minimum.

To that end, the independent experts' reports forwarded by the Italian authorities indicate that AB will reduce concentration of primary and secondary dusts in the scrubbed fumes to 1 mg/Nm^3, the statutory threshold in Italy being 10 mg/Nm^3 (Presidential Decree No 203/88 and the Ministerial Decree of 12 July 1990). Nor will the fumes contain any CO or bezofurans (PCDD + PCDF), although Italian law does not impose any standards. The measures will also help to reduce noise levels to below 50 dBA, compared with a legal threshold of 70 dBA. Dioxides, with a statutory limit of 1 700 mg/m^3, will be completely eliminated as a result of the investments by means of a non-polluting methane heating system. Lastly, the reduction and filtering of fumes and dust, for which the statutory limit is 150 mg/m^3, will be cut to just under 25 mg/m^3, and will be totally eliminated from the workplace.

The Commission thus has grounds for concluding that AB is making a significant contribution to environmental protection in relation to its obligations under the legislation in force.

Furthermore, it is clear from the notification that the increase in aid for the abovementioned ecological investments is not calculated on the basis of total investments but solely according to the additional investment aimed at achieved a higher standard of protection.

As regards the replacement of the cladding at the "Sede" and "Erre" establishments, for which the investments are to total some ITL 6,5 billion, it must be concluded from the experts' reports that the state of dilapidation is such that the investment is essential. It seems likely, therefore, that the work would have had to be carried out in any event in view of the urgency and the state of disrepair of the cladding. In accordance with the steel aid code, the Commission concludes that if the ecological investments concern projects which cannot in any case be delayed, they cannot be regarded as eligible for environmental aid.

Lastly, it seems that the new ecological chemical pickling plant will have an effect on the production process; accordingly, the Commission informed the Italian authorities of its reservations concerning the admissibility of the measures, as they should have been confined to environmental protection. In reply, the Italian authorities submitted new figures on the admissible investments and the relevant aid and outlined the economic benefits derived by AD as a result of the new plant.

Therefore, with the exception of the investments in new cladding at the Sede and Erre establishments, the only ones to be included in the present initiation of proceedings, the Commission's preliminary assessment of all the other plans to grant environmental aid is favourable.

With regard to the environmental aid in question, in respect of which the Commission at this stage does not have any reservations, this Decision simply constitutes a formal request for consultation to the Member States in accordance with the Annex to the steel aid code.

In view of the foregoing, it is difficult at this stage for the Commission to determine whether the aid for R & D and the environmental aid for renewal of the cladding at the Sede and Erre establishments are compatible with the common market. It is therefore necessary to initiate the procedure under Article 6(5) of Decision 2496/96/ECSC.

As part of that procedure, the Commission hereby requests the Italian Government to present its observations within one month of receipt of this letter.

The Commission would draw the attention of your Government to the fact that any aid granted unlawfully, i.e. without awaiting the Commission's final decision, may have to be recovered from the recipient. The Commission hereby informs the Italian authorities that it will publish this letter in the *Official Journal of the European Communities*, giving the other Member States and interested parties notice to submit their comments.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of the publication of this notice to:

European Commission
Directorate-General for Competition (DG IV)
State Aid Directorate II
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 98 17.

The comments will be communicated to the Italian Government.