COMMISSION DECISION

of 14 March 1995

concerning investment aid granted by Spain to the company Piezas y Rodajes SA, a steel foundry located in Teruel province (Aragon), Spain

(Only the Spanish text is authentic)

(Text with EEA relevance)

(95/438/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having, in accordance with Article 93, given notice to interested parties to submit their comments, and having regard to those comments,

Whereas :

I

On 24 April 1991, the Commission adopted Decision NN 12/91 not to raise any objections to the aid for investment in a new firm granted to the Spanish company Piezas y Rodajes SA (Pyrsa) by certain Spanish public authorities at regional and local level.

Pyrsa was established in September 1988 and operates in the steel foundry sector, producing sprockets and GET parts.

On 30 July 1991, the British company Cook, which operates in the same sector as Pyrsa, brought an action to annul the above Commission Decision before the Court of Justice of the European Communities.

In its Judgment [1] of 19 May 1993, the Court of Justice annulled Commission decision NN 12/91 'to raise no objections' to several State aids granted to Pyrsa in so far as it related to aids other than the subsidy of Pta 975 905 000 granted by the Spanish Government under a regional aid scheme approved by the Commission.

The main reason for the Court's annulment of Decision NN 12/91 was that, since the Commission had sought to rely on the absence of overcapacity in the sprockets and GET parts sub-sector but was not able to demonstrate that such was the case, it should have initiated the procedure under Article 93 (2) of the Treaty in order to ascertain, after obtaining all the requisite opinions, whether its assessment was correct.

II

In accordance with the Court's judgment, on 28 July 1993 the Commission decided to initiate the procedure laid down in Article 93 (2) of the Treaty in respect of the following aid granted to Pyrsa :

1. a non-refundable grant of Pta 182 million,
2. a guarantee to cover a loan of Pta 490 million for 11 years (both granted by the Autonomous Community of Aragon),
3. an interest subsidy of seven percentage points for five years on the above loan (granted by the Provincial Government of Teruel),
4. a donation of land worth Pta 2,3 million (granted by the municipality of Monreal del Campo).

The decision to initiate the procedure was notified to the Spanish authorities by letter dated 6 August 1993. The letter was published in the *Official Journal of the European Communities* [2] in order to inform the other Member States and interested parties. In the letter the Commission stresses that, in the absence of detailed verification of the sectoral impact, the aid in question could not be eligible for any of the exemptions provided for in Article 92 (3) and, in such circumstances, would not be compatible with the common market. Accordingly, the Commission gave the Spanish Government notice to submit its comments and, more particularly, to provide all the information necessary for the sectoral analysis in question.

The time taken for this final Decision on the aid in question is the result of the complexity of the case and of the considerable volume of information that had to be processed. After analysing all the relevant information

[1] Case C-198/91, *William Cook plc v. Commission*, [1993] ECR I-2487.

[2] OJ No C 281, 19. 10. 1993, p. 8.

available to it under the Article 93 (2) procedure, the Commission concluded that it was necessary to engage an independent expert to carry out a market study to assist in determining the relevant sector.

III

Under the procedure, the Commission received comments direct from four firms located in France, Italy, Germany and Spain (the firm receiving the aid) and two letters sent by a firm of lawyers, one on behalf of a company located in Spain, the other containing comments by fourteen companies (located in France, Germany and the United Kingdom), together with a table of data from the Committee of European Foundry Associations (CAEF) concerning steel foundry capacity in different European countries.

With the exception of Pyrsa, all the firms that replied state that there is no clearly identifiable sub-sector for sprockets and GET parts, because steel foundry technology is the same everywhere and foundries specialize only in accordance with their experience and technical know-how. Accordingly, the sector analysed is the steel foundry sector in general. On the other hand, all the firms argue that in 1990 there was excess capacity in the sector and that since then the excess capacity has risen and forecasts up to the year 2000 show a further deterioration.

The data provided refer to capacity and production, volume of turnover and profits for foundry products in general and, in some cases, for GET parts and/or sprockets. The data cover 1990, 1991, 1992 and 1993.

With regard to 1990 and the steel foundry sector in general, of the eighteen firms that replied (not including the firm in receipt of aid), three submitted figures that did not demonstrate excess capacity clearly enough to be taken into account, eight clearly had indices of excess capacity (1) (between 26,6 % and 194 %) and the remaining seven had indices that could arise from normal activity (between 3,1 % and 17,6 %). All the seven firms that provided separate data for sprockets and/or GET parts showed a situation for those products that was worse than the sector in general, with much higher excess capacity indices (apart from one, with an index of 30 %, the rest above 100 %).

(1) Excess capacity is defined as the relationship between capacity and production.

Again for 1990 and the steel foundry sector in general, the table for European producer countries supplied by the CAEF shows, country by country, excess capacity indices that vary between a normal index of 11,5 % in Germany and a substantial excess capacity index of 42,9 % in Spain. The average index of the five leading producer countries in the Community (Germany, Spain, France, Italy and the United Kingdom) is 22,1 %.

With regard to the years following 1990, all firms indicate a serious worsening of their situation since they all have very high excess capacity indices. In 1991 only three reported excess capacity indices below 25 % and, in 1992, only two. One of those firms ceased trading in 1992. The simple average of the indices notified by firms that replied rose from 36,9 % in 1990 to 59,1 % in 1991 and 82,3 % in 1992. The CAEF table also forecasts a serious deterioration in the sector, at least until 1995.

IV

The Spanish authorities did not submit their own comments or the data requested, but they did submit comments on the replies given by interested parties. These comments may be summarized as follows:

— the firms that replied are not representative of the sector since they accounted for only 4 % of European production in 1990,

— the firms that replied provided information concerning 1990, 1991, 1992 and 1993, which are not the reference years because the aid was approved by the Spanish authorities in May 1988. When the decision was taken, demand and production forecasts for 1987 to 1990 were favourable,

— sprockets and GET parts constituted the relevant sector. Sub-sectors in the steel foundry sector were defined in relation to the size and type of plant. Pyrsa would have to carry out substantial investment (Pta 400 million) if it were to move from its current production specialization to another,

— the firms that replied stated that there was excess capacity in the steel foundry sector but did not specify that such was the case in the sprockets and GET parts sub-sector, which is the relevant sector,

— the firms that replied indicated that the market had deteriorated even further with the presence of new, cheap imports from India, China and the countries of Eastern Europe. However, Pyrsa was ready to compete with these imports because of its high level of specialization in production (not because of the advantage it derived from the aid granted),

— one of the aid measures to which the procedure relates, namely the guarantee granted by the Autonomous Community of Aragon, was not quantifiable, at least until it was activated,

— the Spanish authorities concluded their comments by stating once more that, above all, account had to be taken of the fact that the overall intensity of the aid granted to Pyrsa was still far below the maximum limit of 75 % set for the region in which the firm is located.

At the time Decision NN 12/91 was taken, the Commission did not have any accurate data on capacity utilization in the sub-sector for sprockets and GET parts. Accordingly, it took the decision to base its opinion on available production data as a substitute indicator in order to assess the situation in the sector. However, the Court of Justice held that 'The figures set out in those statistics are only partial. (...) They do not make it possible to ascertain production capacity and to compare it with production and demand on the market.'. In the circumstances, the Court of Justice took the view that the Commission should have initiated the procedure under Article 93 (2) in order to ascertain, after obtaining all the requisite opinions, whether or not there was excess capacity in the sector.

V

The Commission cannot accept the Spanish authorities' contention that the sample of firms that replied is not representative of the sector. The seventeen firms are located in the five Member States that are the leading producers of steel castings in the Community. In addition, the information provided by CAEF covers all countries and corroborates the data provided by the individual firms on the question of excess capacity in the sector.

The information received during the procedure seems to contradict the Commission's position that the products manufactured by Pyrsa form part of a specific sub-sector. All the firms that replied take the view that it is unrealistic to divide the sector into sub-sectors and that the relevant sector is the steel foundry sector as a whole.

The Commission also questions the figure of 4 % given by the Spanish authorities as the share of production in 1990 of the firms that replied. The Commission roughly estimates these firms' share of production of steel castings in the Community in 1990 to be above 15 %.

Nor can this argument be accepted with regard to the adverse effects of the aid on trade in the sector, since, even were the aid to damage only one other firm, to the extent that it distorts competition in the Community market, the adverse effects are sufficient for the aid to be regarded as incompatible with the common market.

With few exceptions, steel foundry capacities are completely flexible with regard to the type of components they produce. The only limitations preventing certain foundries from supplying their products to specific markets are those arising from experience and technical know-how or their own production capacity, and not from existing technology. Steel foundries producing GET parts and sprockets offer a wide range of products. When a foundry moves from manufacturing one component to another, the costs incurred relate solely to the moulds needed to produce the new components, which are not normally re-used and which account for some 20 % of the total production cost of one kilogram of product. Since large investments are not needed to carry out this change, certain foundries have exploited this flexibility of production to survive in recent years.

The figures supplied by the different firms refer to 1990 and subsequent years. The Spanish authorities take the view that those figures should not be taken into account since the aid was approved by the Spanish authorities in May 1988. However, this contradicts previous information, supplied by the same authorities by letter dated 13 May 1993. In that letter they stated that the aid referred to in the procedure was approved in 1989 and 1990. The guarantee to cover a loan of Pta 490 million was approved in April 1990. The grant of Pta 182 million was approved in June 1990 and was paid between 1990 and 1992. Furthermore, the data used in Decision NN 12/91 and in the subsequent proceedings before the Court of Justice related to 1990.

With a view to obtaining an independent opinion, the Commission asked an external expert to verify which was the relevant sector and to determine whether or not there was excess capacity. The expert concluded that there is no sub-sector for sprockets and GET parts and that steel foundries had capacity utilization indices of 69,3 % in 1991, 62 % in 1992 and 58 % in 1993, despite recording capacity reductions of 965 million tonnes in 1991, 910 million tonnes in 1992 and 862 million tonnes in 1993.

In the light of this new information, and contrary to the position it adopted previously, the Commission takes the view that the steel foundry sector as a whole is the relevant sector in this case for the purposes of assessing the effect of the aid on trading conditions. However, it would point out that when separate figures are produced for sprockets and GET parts, or for both products, the rate of excess capacity for firms that replied is even greater than that of the whole range of steel castings produced by those firms.

According to the information which certain firms and the CAEF communicated to the Commission under the procedure, as analysed in Section III, the Commission takes the view that as early as 1990 there was a situation of excess capacity in the steel foundry sector as a whole, without considering GET parts and sprockets separately.

The firms that replied did not provide any additional data for 1988 and 1989, which could also be relevant in this case. However, if one assumes that capacity during those years was equivalent to that in 1990, the production figures in those years supplied by the CAEF show excess capacity rates even greater than those in 1990 in the five leading producer countries in the Community.

The fact that Pyrsa is better placed than other steel foundries to cope with cheap imports proves nothing in relation to the compatibility of the aid, since this could be due to the advantage conferred on Pyrsa by the aid and not to its degree of specialization.

There can be no question that the guarantee is to be regarded as aid. In Decision NN 12/91, the Commission took the view that it was equivalent to an interest subsidy of 3 % on the loan of Pta 490 million, on the basis that this rate was the market premium for such guarantees. A guarantee has value from the date it is granted and not merely if it is activated at some time in the future.

As is indicated in the communication on the opening of proceedings, the aid in question has to be assessed in accordance with its sectoral impact. In its communication on the method for the application of Article 92 (3) (a) and (c) to regional aid [1], the Commission stated that, in order to qualify for the exemption under Article 92 (3) (a), the aid must not give rise to a sectoral overcapacity at the Community level such that the resulting Community sectoral problem produced is more serious than the original regional problem. Given that the aid in question is *ad hoc* aid, this assessment must be carried out in relation to the specific aid ; the fact that the overall aid intensity is less than the maximum approved for that region does not prejudge the findings of the analysis.

VI

The measures in question were identified clearly as State aid in Decision NN 12/91 and in the judgment of the Court of Justice. The aid consists of a non-refundable grant of Pta 182 million, the donation of land valued at Pta 2,3 million, the amount corresponding to the annual premium of 3 % (commercial premium applied at that time by banks to similar loans) on the State guarantee for the Pta 490 million loan and the amount corresponding to the interest subsidy of seven percentage points on the loan. In these circumstances, and having regard to the fact that foundry products are the subject of many intra-Community transactions, the Commission concludes that the aid granted affects trading conditions and distorts competition. Accordingly, the aid is caught by Article 92 (1), which provides that any aid fitting the definition given therein is, in principle, incompatible with the common market.

Given the nature and objectives of the aid in question, the exceptions to this principle established in Article 92 (2) are not applicable here. In any event, the Spanish Government has not requested that the exception be applied.

Article 92 (3) specifies that certain types of aid may be considered compatible with the common market. The compatibility of aid with the Treaty must be assessed in the Community context as a whole and not in the context of a single Member State. With the aim of guaranteeing the smooth functioning of the common market and compliance with Article 3 (g), the exceptions to the principle laid down in Article 92 (1) and set out in Article 92 (3) must be interpreted strictly when analysing any proposed aid scheme or any specific aid granted.

In particular, the exceptions apply only if the Commission can demonstrate that, if the aid were not granted, market forces alone would not prompt the potential recipient to act in such a way as to contribute to achievement of one of the objectives referred to above.

Permitting exceptions in favour of aid that does not contribute in any way to the achievement of such objectives or that is not necessary for that purpose would be tantamount to granting an unfair advantage to industries or firms in certain Member States, since it would improve their financial position and could have adverse effects on trade between Member States and distort competition to a degree contrary to the common interest.

[1] OJ No C 212, 12. 8. 1988, p. 2.

With regard to the exception laid down in Article 92 (3) (a), although the aid in question was approved for a firm located in a region which is eligible for such aid, it is not automatically authorized since it was not granted under a general regional aid scheme approved by the Commission. When such a scheme is authorized, it is understood that the benefits produced by aid granted under such a scheme will compensate for the possible distortion of competition caused by it. In a specific case, these effects must be considered for the aid in question. This view has been confirmed by the Court of Justice in its *Hytasa.* Judgment of 14 September 1994 [1] in which it clearly accepted that aid granted on the basis of an *ad hoc* decision may be regarded as regional aid compatible with Article 92 (3) (a) if it does contribute to the long-term development of the region without adversely affecting the common interest and competitive conditions in the Community.

As shown in Sections III and V, the information received by the Commission under the Article 93 (2) procedure demonstrates that the recipient firm operates in a sector with a problem of excess capacity at Community level. Given that the aid for investment in a new firm was granted to a firm that brought into service new production capacity of 5 000 tonnes per annum, the aid contributes to a further worsening in the excess capacity on the market.

Consequently, the conclusion must be that the conditions for the exemption under Article 92 (3) (a) are not fulfilled.

With regard to the exception laid down in Article 92 (3) (b), it is clear that the aid was not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Spanish economy.

Lastly, with regard to the exception in Article 92 (3) (c) for aid to facilitate the development of certain economic activities or of certain economic areas, aid may be deemed compatible if it does not adversely affect trading conditions to an extent contrary to the common interest. As has already been pointed out in relation to the exception laid down in Article 92 (3) (a), the aid contributes to the further worsening of a situation of excess capacity at Community level in the sector in which the firm operates. Consequently, the conclusion must be that the aid in question affects trading conditions to an extent contrary to the common interest. Accordingly, the aid cannot be said to comply with Article 92 (3) (c).

The aid in question cannot qualify for any of the exceptions laid down by the Treaty. The Commission therefore concludes that the aid is incompatible with the common market.

VII

The specific aid granted to Pyrsa and described in Section II is unlawful since it was granted in breach of Article 93 (3), which requires planned aid to be notified to the Commission.

Since the aid is unlawful and incompatible with the common market, it will have to be repaid. Furthermore, its economic consequences will have to be eliminated in order to restore the *status quo.* Accordingly, the total amount of aid paid must be increased by interest calculated from the date on which the aid was paid. Repayment must be made in accordance with the procedures and provisions of Spanish law, in particular the provisions concerning interest due for late payment of amounts owing to the government, which must be calculated from the date on which the aid was paid until the date on which it is actually reimbursed (letter from the Commission to the Member States SG(91) D/4571 of 4 March 1991),

HAS ADOPTED THIS DECISION :

Article 1

The aid set out below, granted by Spain to the company Piezas y Rodajes SA (Pyrsa), is unlawful since it was granted in breach of Article 93 (3) of the EC Treaty. Furthermore, it is incompatible with the common market under Article 92 of the EC Treaty :

1. a non-refundable grant of Pta 182 million (granted by the Autonomous Community of Aragon),

2. a guarantee to cover a loan of Pta 490 million for eleven years. The aid represented by this guarantee is equivalent to 3 % of the above loan (granted by the Autonomous Community of Aragon),

3. an interest subsidy of seven percentage points for five years, up to a maximum of Pta 150 million, for the above loan of Pta 490 million (granted by the Provincial Government of Teruel),

[1] Joined Cases C-278/92, C-279/92 and C-280/92, *Spain v. Commission,* [1994] ECR I-4103.

4. a donation of land valued at Pta 2,3 million (granted by the municipality of Monreal del Campo).

Article 2

Spain shall cease forthwith the aid that it currently grants to Piezas y Rodajes SA (Pyrsa), by applying normal market conditions to the guarantee premium on the loan of Pta 490 million and by discontinuing all payments of the interest subsidy on the above loan.

Article 3

The aid granted and consisting of:

1. the non-refundable grant of Pta 182 million,
2. the amount represented by the annual premium of 3 % inherent in the government guarantee to cover the loan of Pta 490 million, applied since April 1990 until the date on which the aid referred to in Article 2 ceases,
3. the amount already paid of the Pta 150 million, corresponding to the interest subsidy of seven percentage points on the above loan,
4. the donation of land valued at Pta 2,3 million;

shall be recovered in accordance with the procedures and provisions of Spanish law, in particular the provisions concerning interest due for late payment of amounts owing to the State, which shall be calculated from the date on which the aid was paid until the date on which it is actually reimbursed.

Article 4

Spain shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 14 March 1995.

For the Commission

Karel VAN MIERT

Member of the Commission