II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1998

concerning State aid granted by the region of Friuli-Venezia Giulia and the Italian Government to Seleco

(notified under document number C(1998) 4035)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/398/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 regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having, in accordance with the abovementioned Article, given interested parties notice to submit their comments [1],

Whereas:

I

(1) Seleco, a company located in Pordenone, Friuli-Venezia Giulia (Italy), employed 1 500 persons in its consumer electronics business, more specifically in three sectors: colour televisions, decoders for encrypted programmes (pay-TV sector) and professional television equipment (video projectors and monitors). Like other firms in this industry in Italy, Seleco has regularly received aid over the last 10 years [2] through the public financing institution Ristrutturazione Elettronica (hereinafter referred to as 'REL' [3].

(2) In 1993 Selecto incurred losses of ITL 77,5 billion (ECU 41 million), an amount exceeding its own resources (ITL 60,6 billion in capital and reserves). To cover the losses, the different shareholders concluded a cover and recapitalisation agreement at the beginning of 1994 which provided for a partial write-off (ITL 16 billion) of the amount owed to REL (ITL 82 billion) by Seleco, a capital injection of ITL 13 billion by the public financial institution Friulia SpA and an undertaking given by the public-sector banks to underwrite, together with several private-sector banks, an ITL 9 billion recapitalisation, in proportion to their respective claims. The contribution from the public banks amounted to ITL 3,5 billion.

(3) The Italian authorities notified only the contribution from Friulia SpA, but the aid was granted

[1] OJ C 373, 29.12.1994, p. 5; OJ C 155, 20.5.1998, p. 24.

[2] In Decision C 20/91 (OJ C 166, 3.7.1992, p. 6), the Commission approved aid granted by REL to a dozen firms in the consumer electronics industry, the largest of which was Seleco.

[3] Public body for the reconstruction of the consumer electronics industry in Italy, whose activities were the subject of the decisions of 17 January 1984 and 17 September 1985.

before the Commission could take a decision. That aid and the unnotified aid granted by REL and the public-sector banks led the Commission to initiate proceedings under Article 93(2) on 27 September 1994.

(4) By letters dated 26 October 1994, 30 January 1995, 19 April 1995, 7 July 1995, 25 August 1995 and 19 November 1996, the Commission asked the Italian authorities to provide more detailed information on the abovementioned transactions.

(5) The Italian authorities replied by letters received on 14 October 1994, 10 November 1994, 31 March 1995, 27 June 1995, 19 December 1995, 22 January 1996, 5 December 1996 and 11 February 1997. Further details were provided at a meeting held on 22 November 1995 between representatives of the Commission and the Italian Government.

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(6) At the beginning of 1996, whilst it was preparing to close the proceedings initiated in 1994 with a partly negative decision, the Commission learned from press reports that other transactions may have taken place involving public companies which may have considerably altered the structure of the Seleco group. The transactions consisted in particular in: (a) the hiving-off from the parent company of Seleco's professional and pay-TV businesses and their grouping together within Seleco Multimedia, a firm which, apparently, had a capital of ITL 30 billion held equally by Seleco, Italtel (50 % private, 50 % public) and Friulia SpA (public sector); (b) a debenture loan of ITL 12 billion launched by Seleco and subscribed to by a pool of public and private banks; (c) a convertible loan of ITL 12 billion granted to Seleco by Friulia SpA; (d) the repurchase by Seleco of its ITL 66 billion debt from REL for ITL 20 billion; (e) a commitment by Italtel to repurchase the abovementioned convertible loan granted by Friulia SpA.

(7) By letter of 19 November 1996, the Commission asked the Italian authorities for further information on the transactions. Replies were received on 5 December 1996 and 11 February 1997.

In their letters, the Italian authorities claim that the Italtel and Friulia SpA investments in the capital of Seleco Multimedia reflected normal business policy acceptable to a private investor since, in acquiring Seleco Multimedia, the firm also acquired know-how. As regards the debenture loan of ITL 12 billion granted to Seleco by a consortium of banks and that granted by Friulia SpA, the Italian authorities claim that the loan was in line with market conditions. As regards the repurchase by Seleco of its outstanding debt to REL of ITL 66 billion for the price of ITL 20 billion, the Italian authorities claimed that the discount rate applied to the debt was justified by the risks caused by major difficulties on the consumer electronics market in Italy. Lastly, the Italian authorities stated that Italtel was not committed to repurchasing the loan from Friulia to Seleco.

(8) By decision notified to the Italian Government by letter dated 18 February 1998 [1], the Commission extended the Article 93(2) proceedings so as to allow it to examine all the aid measures taken until then and to obtain further details concerning fresh aid granted to Seleco in the meantime.

III

(9) The Italian Government did not respond to the Commission decision or send the information requested, despite a reminder dated 15 July 1998 stating that Italy might otherwise be ordered to reply. It was only by a fax of 21 September 1998 that the Italian authorities officially stated that, on 17 April 1997, an Italian court had declared Seleco bankrupt.

(10) Following that communication, the Commission requested the Italian Government by letter of 29 September 1998 to provide further information concerning (a) the status of the liquidation of Seleco, (b) a list of public-sector and private-sector creditors as well as the amounts owed to them, (c) the possible granting of other aid apart from that covered by the proceedings initiated in 1994 and extended in 1998, and (d) the possible use of the commercial assets of Seleco, in particular to set up other industrial projects. The Commission also asked whether it was possible to include new debts in the bankruptcy proceedings, in particular with a view to the possibility of recovering aid which had in the meantime been declared incompatible with the common market.

[1] Decision of 4 February 1998 (OJ C 155, 20.5.1998, p. 24).

(11) By letter dated 7 October 1998 and sent in reply to the Commission letter of 29 September 1998, the Italian authorities stated that they had become aware of the Commission decision of 18 February 1998 to extend the Article 93(2) proceedings only when they received the reminder of 15 July 1998, This is particularly surprising as the Commission had sent a copy of the decision to the Office of the Italian Permanent Representative on the same date, i.e. 18 February. The Italian authorities also stated that it was impossible to answer the questions asked by the Commission within the time limit of 15 working days.

(12) By letter received by the Commission on 17 November 1998, the Italian authorities replied to the Commission letter of 29 September 1998. However, the present decision remains necessary as the information supplied does not contain a complete list of Seleco's public-sector and private-sector creditors. Furthermore, the information required by the present decision is more extensive and more detailed compared with the request made in the letter of 29 September 1998.

(13) The Commission is unable, on the basis of the information available, to decide whether the aid granted to Seleco is compatible with the Treaty.

IV

(14) In accordance with the case-law of the Court of Justice [1], if the Commission finds that aid has been granted or altered without having been notified, it has the power, after having given the Member State concerned the opportunity to express its views, to require it, by provisional decision, pending the outcome of its assessment of the aid, to provide the Commission within a specified period, with all the documents, information and data required for it to assess the compatibility of the aid with the common market.

(15) Should the Italian Government fail to provide the information requested, the Commission will take a decision on the basis of the information in its possession,

[1] Case C-301/87 Boussac [1990] ECR I-307; Joined Cases C-324 and 342/90 Germany and Pleuger Werthington v. Commission [1994] ECR I-1173.

HAS ADOPTED THIS DECISION:

Article 1

Italy shall provide the Commission, within 15 working days of being notified of this decision, with all the information necessary to allow it to assess the compatibility with the common market of the aid granted to Seleco by the region of Friuli-Venezia Giulia through Friulia SpA and by the Italian State through the financial institution Ristritturazione Elettronica and a number of public banks, as well as by other means.

Article 2

1. Italy shall supply the information requested by letters of 18 February 1998 and 29 September 1998.

2. Italy also hereby requested:

(a) to list any other aid granted to Seleco in addition to that referred to in the decision initiating proceedings under Article 93(2) and in the decision extending the proceedings, notified to the Italian Government by letter of 18 February 1998;

(b) to state the economic and commercial reasons, if any, which prompted Seleco in 1996 to hive off some of its assets and place them in another company, Seleco Multimedia, and to give details of the parent company's balance-sheet position at the time of the hive-off operation. A detailed report should also be submitted on changes in the shareholding structure of Seleco Multimedia from the time it was set up to the present;

(c) to state whether, before the company was declared bankrupt, it was subject to supervision within the meaning of Articles 187 *et seq.* of Decree No 267 of 16 March 1942 (Bankruptcy Law) or whether it pursued its business activities on the basis of a court-approved creditors' agreement within the meaning of Article 160 *et seq.* of the Bankruptcy Law. In either case, a report should be submitted on Seleco's activities, as well as a list of the creditors sitting on the committee set up under the supervision or creditors' arrangements and a copy of the minutes of the meetings of that committee relating to the discussion and acceptance of supervision or participation in the creditors' agreement, with an indication of the amounts owed to the State by Seleco in the form of taxes, social security contributions or public funds for workers;

(d) if the company was not placed under a supervision or creditors' arrangement, to give a description of the circumstances in which bankruptcy was declared in 1997, together with details of any amounts owed to the State by Seleco in the form of taxes, social security contributions or public funds for workers; to specify the applicant and provide a copy of the adjudication of bankruptcy, a list of creditors, the amounts owed to them and their respective ranking. In addition, the current status of the bankruptcy proceedings should be indicated and details concerning any applications for review given;

(e) to submit a detailed report on all commercial and financial activities undertaken by Seleco following the declaration of bankruptcy. If appropriate, Italy should provide, alongside a description of the legal basis invoked and the underlying economic reasons, (i) a list of creditors participating in any committee of creditors and a copy of the opinions given by that committee on the question of starting and continuing such activities, and (ii) the amounts owed by Seleco to the State in the form of taxes, social security contributions or public funds for workers;

(f) to provide a detailed description of the liquidation of Seleco's assets from the date of declaration of bankruptcy until now, as well as the conditions and arrangements for the transfer of its commercial assets;

(g) to describe the conditions and arrangements for the distribution among the creditors of the bankruptcy of revenue from the sale of the assets of Seleco. If the distribution is based on a court-approved arrangement with creditors, the underlying economic reasons should be given, together with a copy of the proposed arrangement, the minutes of the meeting at which the creditors' committee accepted the arrangement, and the decision of the court approving the said arrangement.

Article 3

This decision is addressed to the Italian Government.

Done at Brussels, 2 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission