II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 28 October 1998
on State aid which Spain is planning to implement in favour of AG Tubos Europa SA

(notified under document number C(1998) 3438)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/450/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 establishing 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

By letter dated 29 October 1997, the Spanish Permanent Representation to the European Union notified the Commission of a plan to grant regional investment aid to AG Tubos Europa SA, a new subsidiary of the Spanish group Alfonso Gallardo, to be created in the region of Extremadura. It furnished the Commission with supplementary information by letter dated 22 January 1998.

By letter dated 11 March 1998, the Commission informed Spain of its decision to initiate the procedure laid down in Article 93(2) of the EC Treaty in respect of the aid.

The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on interested parties to submit their comments.

The Commission received comments from the United Kingdom Steel Association, the Wirtschaftsvereinigung Stahlrohre (the German association of steel tube producers) and the German Ministry for Economic Affairs. It forwarded them to Spain, which was given the opportunity to react. Spain's initial comments were received by letter dated 9 April 1998 and its reaction to third parties' comments by letters dated 23 July and 4 August 1998.

II. DETAILED DESCRIPTION OF THE AID

The aid consists of a regional grant of ESP 1 175 million towards an initial investment of ESP 5 596 million, representing an aid intensity of 21 %. The new company is to produce steel tubes, and in particular large and small welded hollow sections. Technically, it will have an annual maximum production capacity of 225 000 tonnes, but its annual production is, however, to be limited initially to 100 000 tonnes. It will produce both large (diameter larger than 406,4 mm) and small tubes, round and shaped. Production of large tubes is expected to represent around 25 % of total production. The plant will employ 60 people.

State aid to the sector of large welded steel tubes is subject to prior notification to the Commission in accordance with point 4.1(a) of the Community framework for certain steel sectors not covered by the ECSC Treaty [3] (hereinafter 'the EC framework for steel'), and it cannot be implemented before it has

[1] OJ C 156, 21.5.1998, p. 11.
[2] See footnote 1.
[3] OJ C 320, 13.12.1988, p. 3.

been agreed to. Although the company will produce tubular products of different sizes, only about 25 % fall under this obligation. However, because it can switch between product sizes according to demand, without any technical adaptation, the Commission has to assess the aid as if all the company's production were of large welded steel tubes.

As stated at the time of opening of the procedure, when assessing aid to a company covered by the EC framework for steel, the Commission assesses the market situation of the sub-sector of the undertaking, in particular whether or not it suffers from structural overcapacity, and the effect the aided investment may have on that situation and on competition in general. The Commission also takes into account the regional dimension of the aided investments: if the company in receipt of the aid is located in an assisted area, the potential benefits that the aided investment brings to the development of the region are to be balanced against any negative effects on competition. Finally, the Commission has to satisfy itself that no aid will be transferred to the ECSC steel sector, inasmuch as aid awarded to subsidiaries of steel groups, for non-ECSC activities could ultimately benefit ECSC activities.

In the steel tubes sector, excess production capacity has existed since the mid-1980s. In 1997, the rate of capacity utilisation in the Community was only 49 % in the sub-sector of large welded steel tubes in general, where the company will be active.

Following a preliminary examination, the Commission concluded that negative effects on competition could not be excluded from the outset and that they might overweigh the potential benefits that the region would receive from the aided investment. Also, the possibility that the aid to be granted to AG Tubos Europa SA might be transferred to the ECSC steel sector was not clearly excluded. It accordingly decided to initiate the procedure laid down in Article 93(2) of the Treaty in respect of this aid.

III. **COMMENTS FROM INTERESTED PARTIES**

All the third parties who intervened in the procedure referred to the existing excess capacity in the sector of steel tubes in general, and of large welded tubes in particular. For that reason, they took the view that the Commission should oppose the aid because, if the aid were to be granted, it would make matters worse and might even jeopardise the future of existing companies that were also located in depressed areas.

The United Kingdom Steel Association argued that the investment could not be justified on grounds of insufficient European supply of the type of hollow section to be marketed by AG Turbos Europa SA. In its view, it was questionable whether there was room in the market for new capacities starting at 100 000 tonnes, given the limited demand for such a product.

IV. **COMMENTS FROM SPAIN**

On the possible transfer of aid to the ECSC activities of the group that controls AG Tubos Europa SA, Spain stated that such a possibility did not exist. The new company would be a legally independent subsidiary and it would not buy its input material from other group companies. There was no transfer of losses/profits between the various subsidiaries and Spain would monitor the correct use of the aid.

On the question of excess capacity in the market, Spain took the view that the company was to produce a new product which, by its technical characteristics and uses, was not in competition with the existing Community production of large welded tubes. That product, structural hollow sections, was a relatively new product being used more and more in non-residential construction. In view of the advantages of that type of material over conventional construction materials. Spain foresaw an expansion in demand for the product. The sector therefore did not suffer from any surplus production capacity in Europe, but on the contrary was a growth market. Moreover, the production process differed from that of conventional steel tubes in such a way that, if AG Tubos Europa SA were to switch its production to that type of product, it would have to make quite substantial investments.

V. **ASSESSMENT OF THE AID**

The key to assessing the compatibility of the aid to AG Tubos Europa SA lies in ascertaining the exact market segment in which the company is to operate. From this, it can then be established whether the new company will, by its production, further increase the current excess production capacity in the large welded steel tubes sector, as feared by the Commission following its preliminary examination and expressed in its decision to initiate formal proceedings.

According to the information submitted by Spain, including technical specifications of the installations to be acquired, AG Tubos Europa SA will produce only structural hollow sections. They will be produced by cold forming and will have a diameter up to 600 mm and above.

Large structural hollow sections, whilst being classified under the heading of 'large welded steel tubes' for different purposes, differ from conventional steel tubes in terms of production process and end use and are subject to different European standards. They constitute what may be considered a subsector under the general heading of 'steel tubes'. The installations for their production cannot be used for the production of tubes without further substantial investment and their destination market is that of non-residential construction, a market not served by normal large welded tubes, which are used mainly for the transport of liquids and gas. Accordingly, large structural hollow sections and conventional large welded steel tubes cannot be classed as substitute products either at production level or at consumption level.

The products of AG Tubos Europa SA will compete with other construction materials such as concrete rather than with other steel tubes. Indeed, this type of product is being used more and more in non-residential construction. Not only is its use in replacing other materials increasing, but construction in Europe is set to continue its positive trend of recent years. It can therefore safely be concluded that there is a new market for large cold welded hollow sections, which is expanding in Europe.

AG Tubos Europa SA will be the first producer of structural hollow sections with a diameter above 406,4 mm. There is therefore no production overcapacity for such products. Indeed, the company will be the first producer of cold formed welded structural hollow sections with a diameter above 200 mm and the first producer of (hot and cold formed) structural hollow sections with a diameter above 406 mm. The current European producers of structural hollow sections only cover the range up to 400 mm and their production process is hot forming, unlike AG Tubos Europa SA, which will produce them by cold forming. Its production in the product range that qualifies as large welded tubes will therefore not affect Community production capacity.

VI. **CONCLUSIONS**

The Commission therefore concludes that, contrary to its initial view and the comments submitted by third parties, the new company's production of large welded steel tubes (diameter above 406,4 mm) will not further increase the existing excess capacity in the sector. The specific product of AG Tubos Europa SA has a specific market, which is expanding, and the company will be the first producer of such a product in Europe.

As regards the possibility of transfer of the aid to ECSC activities of the group which controls the company, the Commission, in view of the information and assurances provided by Spain (legally independent company, no transfer of losses/profits and monitoring of the correct use of the aid) agrees that in the present case the risk of transfer of the aid is minimal or even non-existent.

What is more, the company will be located in a region classified under Article 92(3)(a) of the Treaty with a regional aid ceiling of 60 %. The aid, with an intensity of only 21 %, is well within this ceiling and the aided investment will bring economic and social benefits to the region, with the direct creation of 60 jobs and the potential impact it will have on the local economy through the development of anciallary activities.

In view of the above, the Commission concludes that the aid proposed by Spain to AG Tubos Europa SA fulfils the conditions of the EC framework for steel and is compatible with the common market within the meaning of Article 92(3)(a) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid notified by Spain, which is to be granted to AG Tubos Europa SA, amounting to ESP 1 175 million, is compatible with the common market within the meaning of Article 92(3)(a) of the Treaty.

Implementation of the aid, to the amount of ESP 1 175 million, is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 28 October 1998.

For the Commission

Karel VAN MIERT

Member of the Commission