COMMISSION DECISION

of 4 May 1999

on the state aid which Portugal is planning to grant to Companhia de Têxteis Sintéticos, SA (Cotesi)

(notified under document number C(1999) 1268)

(Only the Portuguese version is authentic)

(Text with EEA relevance)

(1999/598/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 regard to the Code on aid to the synthetic fibres industry [1],

Having called on interested parties to submit their comments pursuant to those provisions [2] and having regard to those comments,

Whereas:

I. **PROCEDURE**

(1) By letter dated 19 March 1998, the Portuguese authorities notified the Commission of a proposal to grant aid in favour of Companhia de Têxteis Sintéticos, SA (hereinafter 'Cotesi'), a manufacturer of rope and nets located in Grijó (Carvalhos). The proposed aid falls within the scope of the control measures under the Code on aid to the synthetic fibres industry.

(2) Following a preliminary analysis, the Commission registered the case under number N 196/98 and requested additional information by letters dated 17 April and 1 July 1998. The Portuguese authorities replied to the first letter by letter dated 2 June and to the second by letter dated 12 August 1998.

(3) By letter dated 29 October 1998, the Commission informed the Portuguese Government of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the above aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission called on interested parties to submit their comments.

(4) The Commission received comments from interested parties in December 1998 and January 1999. It forwarded them to the Portuguese authorities, who were given the opportunity to react; their comments were received by letter dated 11 March 1999, registered by DG IV on 15 March.

II. **THE PROPOSED AID**

(5) The eligible costs for the project total EUR 10 006 095 and the proposed financial support amounts to EUR 2 883 864 (including Community co-financing). Of the latter amount, EUR 318 446 is an outright grant while EUR 2 565 418 is in the form of a subsidy repayable at zero interest over a period of five years, with a grace period of 18 months. The Commission calculates that the total amount of aid (including the grant equivalent of the repayable subsidy) is some EUR 899 696, with an aid intensity of around 9 % (gross).

(6) The proposed aid will be granted under the specific programme for modernising the Portuguese textile and clothing industry (IMIT), as provided for in Council Regulation (EC) No 852/95 [4], which stipulated that the programme would be jointly financed by the Member State and the Community and executed in conformity with the Structural Funds regulations.

III. **THE PROJECT**

(7) The Portuguese authorities stated that the project related to the modernisation of the company's production process, with a view to replacing the tooling, improving the storage areas, altering the layout and strengthening the supply chain. The objective pursued is not to increase the production capacity but rather to achieve higher efficiency and reduce costs. The project would result in the dismantling of a number of extrusion machines and the acquisition of a new extrusion line.

(8) The Portuguese authorities stated that Cotesi employs 1 524 persons, that its turnover in the year preceding the launch of the project was some ECU 46 million and that it had total assets of around ECU 47 million.

[1] OJ C 94, 30.3.1996, p. 11.
[2] OJ C 405, 24.12.1998.
[3] See footnote 2.
[4] OJ L 86, 20.4.1995, p. 50.

(9) They also stated that the company's extrusion capacity for polypropylene (PP) yarn would diminish as a result of the project, while the production capacity for fibres not covered by the Code on aid to the synthetic fibres industry, such as polyethylene (PE), would increase. More specifically, Cotesi would increase the production capacity for high-density polyethylene and would start manufacturing polysteel, a fibre made of 70 % PP and 30 % PE.

(10) According to the information transmitted by the Portuguese authorities by letter of 2 June 1998, the production capacity for PP fell by 2,89 %, from 20 556 tonnes per year (prior to the beginning of the project) to 19 962 tonnes per year (after the completion of the project). The Portuguese authorities also pointed out in their letter dated 12 August 1998 that this capacity reduction took place in the context of a general tendency for the company to cut capacity since 1992. Cotesi had already reduced installed capacity by 2,1 % between 1992 and 1995 and is forecasting a further 2 % capacity cut in the years 1999-2001.

IV. **GROUNDS FOR INITIATING THE PROCEDURE**

(11) The Commission was obliged to open the Article 88(2) procedure since it was not satisfied that, as required by the Code on aid to the synthetic fibres industry, the aid resulted in a significant reduction in the relevant capacity.

V. **COMMENTS FROM INTERESTED PARTIES**

(12) The Commission received comments from the International Rayon and Synthetic Fibres Committee (IRSFC). These comments did not concern the extent to which the aid might or might not lead to a distortion of competition in the polypropylene fibres sector, but rather the criteria by which the Commission assesses the 'significance' of a capacity reduction. As explained below, the additional information transmitted by the Portuguese authorities renders it unnecessary for the Commission to take a definitive view in this case as to whether a 2,89 % capacity reduction may be considered significant.

(13) The Commission also received comments from Ficcorfil (Syndicat des producteurs français de ficelles, cordages et filets) and from three French companies that manufacture net and rope. These interested parties oppose the granting of the aid, arguing:

— that there is a fierce competition in the products concerned in what is a shrinking market,

— that the acquisition of a new extrusion line would make it possible to manufacture products such as fishing nets or synthetic cords for agricultural use, for which there is excess capacity in Europe; one of the consequences of excess capacity is pressure on prices and manufacturers' margins,

— that the cheaper labour costs in Portugal as compared with France already constitute a competitive advantage which should not be further increased through subsidies,

— that the scrapping of capacity is difficult to establish in practice,

— and, in some cases, that they have never received subsidies whereas investments by Portuguese producers have been subsidised to a large extent.

VI. **COMMENTS FROM THE PORTUGUESE AUTHORITIES**

(14) By letter dated 26 January 1999, the Portuguese authorities submitted their comments. The main points were as follows:

— the information transmitted to the Commission prior to the opening of the procedure and concerning the installed extrusion capacities for the fibres covered by the Code was inaccurate. More specifically, the 90 % (PP)/10 % (PE) capacity ratio, which was correct in the three years preceding the project, should not have been taken as the basis for evaluating the change in capacity during the project period,

— during that period, Cotesi increased the capacity to produce high-density polyethylene (HDPE), to the detriment of PP. HDPE can be used in agriculture, with better resistance to UV rays and pesticides than PP. It is also more environmentally friendly and has a longer life than PP. The investment also resulted in the installation of a machine to extrude polysteel, a hybrid fibre made of 70 % PP and 30 % PE. On account of its strength and high resistance to abrasion, polysteel is increasingly used for fishing and for mooring large ships,

— the Portuguese legislation on working time (Law 21/96 of 23 July, which came into force on 1 December 1996) was the cause of an estimated 8 % reduction in viable capacity since, as a consequence of that legislation, the working week was reduced from 44 hours per week in 1995 (pre-project) to 40 in 1999 (post-project). The number of working days in a year also fell from 270 in 1995 to 248 in 1999,

— from 1993 to 1998, 13 extrusion lines for PP were scrapped, while only three new lines were installed (one for PP, one for PE and one for polysteel),

— the tables attached to the letter, which include details of the capacity of all of Cotesi's extrusion machines from 1993 to 1999, show that the 90 % (PP)/10 % (PE) ratio which existed in 1995 (pre-project) had become 79,5 % (PP)/20,5 % (PE) in 1999 (post-project),

— the actual installed capacity for the extrusion of PP (including the 70 % PP capacity of the new machine producing polysteel) diminished from 20 936 tonnes in 1995 to 16 800 tonnes in 1999, a 19,7 % reduction.

(15) By letter dated 11 March 1999, the Portuguese authorities responded to the comments from third parties. They stressed that the latter had been based on inaccurate information with regard to the capacity reduction. In addition, the production of fishing nets would not increase as a result of the project; these were in any case not covered by the Code. Nor did the project envisage investment in the production of agricultural fibres. The Portuguese authorities stressed that physical proof existed of the reduction in capacity. They agreed that increases in production could exacerbate the oversupply situation in the sector and thus gave special attention to projects which would result in a reduction in capacity. However, it was important to ensure that Portuguese companies invested in modern equipment. While Portugal had certain advantages, e.g. relatively cheap labour, it also had disadvantages such as a lack of raw materials and not enough producers of equipment, which had to be imported from other EU countries that thus benefited from investments by Portuguese companies. The Portuguese authorities concluded that the proposed aid satisfied the conditions laid down in the Code.

VII. **ASSESSMENT OF THE AID PLAN**

(16) Article 87(1) of the EC Treaty lays down the principle that, except where otherwise provided, aid 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. Similarly, Article 61(1) of the EEA Agreement states that, except where otherwise provided, such aid is incompatible with the functioning of the EEA Agreement.

(17) The plan to grant aid to Cotesi undoubtedly constitutes aid within the meaning of the Articles mentioned above as it would allow the company to carry out the investment in question without having to bear the full cost. There is significant intra-EEA trade in the products concerned by the investment and placed on the market by the company (CN codes 5607 49 90, 6305 32 81, 5608 11 91 and 6002 43 31); the trade involved amounted to about 30 000 tonnes in 1997. Accordingly, it can be said that the proposed aid would be likely to distort competition and affect trade within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

(18) The exception provided in Article 87(3)(a) of the EC Treaty and Article 61(3)(a) of the EEA Agreement relates to aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. By enabling the company to carry out the investment in question, the proposed aid would promote the economic development of Carvalhos, an Objective 1 area. However, the effects of the aid on the synthetic fibres sector are subject to control, even for the most underdeveloped areas of the Community.

(19) Since 1977 the conditions under which aid may be granted to synthetic fibres producers by way of support for such activities have been prescribed in a code whose terms and scope have been revised from time to time, most recently in 1996 ([5]).

(20) The current Code requires the notification of any proposal to grant aid, in whatever form, irrespective of whether the Commission has authorised the scheme concerned, (except where the aid would satisfy the *de minimis* criterion) to synthetic fibres producers by way of support for any of the following activities:

— extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or

— polymerisation (including polycondensation), where it is integrated with extrusion in terms of the machinery used, or

— any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

(21) In the present case, the proposed aid would be granted to a large extent in support of the production of synthetic fibres which fall within the scope of the Code, namely the installation of new capacity for the extrusion of polypropylene filament yarn. The extrusion of polyethylene, on the other hand, falls outside the scope of the Code.

([5]) See footnote 1.

(22) The Commission regrets that the Portuguese authorities did not notify the project sooner, bearing in mind that the company applied for the aid in 1996, the year in which the project started. Nevertheless, it notes that the proposed aid conforms with the IMIT specific programme, which the Commission authorised on 5 October 1995 and which is carried out within the framework of the PEDIP II programme, which the Commission authorised as being compatible with the common market by virtue of Article 87(3)(a) of the EC Treaty [6].

(23) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states among other things that, in assessing the compatibility of the proposed aid, the fundamental consideration is the effect of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. In all cases and irrespective of the state of the market for the relevant product and the effect of the aid on that market, it provides for the limitation of the intensity of aid. Investment aid will be authorised for companies which are not SMEs, at up to 50 % of the applicable aid ceiling, only on condition that either the aid would result in a significant reduction in the relevant capacity or the market was characterized by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity.

(24) Given that the market does not appear to be characterised by a structural shortage of supply, the Commission must be satisfied that the aided project results in a significant reduction in the relevant capacity, which is the extrusion capacity for polypropylene filament yarn.

(25) Taking into account the new information provided by the Portuguese authorities in the course of the procedure with regard to the capacity reduction resulting from the project, which superseded the information provided during the Commission's preliminary investigation and on which the comments of third parties were based, the Commission can accept that the actual 19,7 % capacity reduction is significant within the meaning of the Code on aid to the synthetic fibres industry. Moreover, the planned aid intensity of approximately 9 % (gross) is well below 50 % of the ceiling of 75 % (gross) allowed under the PEDIP II programme,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which the Portuguese Republic plans to grant to Companhia de Têxteis Sintéticos, SA (Cotesi) in the form of an outright grant of EUR 318 446 and a subsidy of EUR 2 565 418 repayable at zero interest over a period of five years with a grace period of 18 months is compatible with the common market.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 4 May 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

[6] By letter SG(94) D/5991 dated 2 May 1994.