COMMISSION

COMMISSION DECISION
of 15 November 2000
on the State aid which Italy is planning to grant to Solar Tech srl

(notified under document number C(2000) 3565)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/779/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 called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 24 November 1999, Italy notified the Commission of the aid it planned to award Solar Tech srl, which was registered under Action N 736/1999; it transmitted further information by letters dated 20 December 1999, 4 February 2000 and 17 February 2000. Italy also provided other documents relating to the notification by letters dated 20 May 1999, 23 July 1999 and 25 October 1999 and at bilateral meetings with the Commission departments.

(2) By letter of 4 April 2000 the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the Treaty in respect of the aid.

(3) The decision was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from interested parties, which it forwarded to the Italian authorities by letter of 29 June 2000 in order to give them an opportunity to react.

[1] OJ C 142, 20.5.2000, p. 11.
[2] See footnote 1.

2. DETAILED DESCRIPTION OF THE AID

2.1. *THE RECIPIENT COMPANY*

2.1.1. SOLAR TECH SRL

(5) The aid is intended for Solar Tech srl (hereinafter 'Solar Tech'), a newly established company. Solar Tech is to produce amorphous silicon film for the manufacture of photovoltaic solar panels for roofing, curtain walling and cladding elements and noise barriers.

(6) At the date of notification, Solar Tech did not have any employees; its turnover, assets and financial situation were not significant.

(7) Most (76 %) of the shares in Solar Tech belong to three individuals: Messrs Colomban (46 %), Pavan (15 %) and Bonotto (15 %), the remaining 24 % being held by another company, Permasteelisa.

2.1.2. PERMASTEELISA SpA

(8) Permasteelisa SpA is the enterprise heading the Permasteelisa Group, which is specialised in curtain walls and other cladding materials for large civil infrastructure projects.

(9) In 1998 the Permasteelisa Group had a workforce of 1 261 (of whom 520 in the EEA) and a turnover of more than EUR 280 million.

(10) Documents attached to the notification show that Permasteelisa SpA is listed on the Milan stock exchange; 48,7 % of its shares are held by the Luxembourg holding company Bateman & P, 3,6 % by the Luxembourg holding company Holding Bau and the remainder by market investors (except for 6,9 % of the shares held by the company itself).

According to the same documents, the individuals owning shares in Solar Tech (in particular Mr Colomban) control Permasteelisa SpA ([3]) and hold all the management positions in the Group: Mr Colomban is the founder of Permasteelisa SpA and owns 9 % of its shares; Mr Pavan is chairman of the board; and Mr Bonotto is the chairman of PM Design srl, a company belonging to the Permasteelisa Group.

2.2. *THE INVESTMENT PROJECT*

2.2.1. NATURE AND AMOUNT OF THE INVESTMENT

(11) The project involves the construction of a plant for producing amorphous silicon film and integrated solar panels. The plant is to be located in Manfredonia (Foggia). When fully operational (in 2003), Solar Tech is expected to produce panels representing a capacity of around 25 MW and to generate turnover of ITL 106,5 billion (EUR 55 million).

(12) The project will give rise to the following investments:

(in EUR 1 000)

Investments	2000	2001	2002	Total ([1])
Land	195	0	0	195
Buildings	6 314	159	0	6 464
Plant and machinery	20 315	29 855	335	48 884
Intangible investments	0	511	0	484
Total eligible expenditure	26 824	30 525	335	56 027
Non-eligible expenditure	0	0	52	46
Total investment expenditure	26 824	30 525	386	56 073

([1]) Amounts discounted to the year 2000 at the annual rate of 5,61 % (rate applicable at the date of notification).

([3]) Page 2: 'the individuals owning shares in Solar Tech together hold a majority stake (in particular Mr Colomban) in the holding company which owns the Permasteelisa group'.

2.2.2. DIRECT JOB CREATION

(13) When fully operational (in 2003), the project will create 280 direct jobs (one manager, 114 white-collar and 165 blue-collar workers) ([4]).

2.2.3. INDIRECT JOB CREATION

(14) Italy expects that the project will create 204 indirect jobs in the assisted area concerned and the neighbouring assisted areas, broken down as follows:

Suppliers of raw materials (grid cables)	134
Miscellaneous materials	10
Handling/fire protection/waste disposal	31
Cleaning/canteen/sick bay	15
IT/administrative/legal services	6
Miscellaneous transport operations	8

2.3. *THE PLANNED AID*

2.3.1. THE MEASURE

(15) The planned aid, in the form of a non-repayable grant, is to be paid by the Italian State (Cassa Depositi e Prestiti from CIPE funds) under Law No 488/92 and subsequent implementing provisions (in particular Article 2(203)(c) of Law No 662/96 and the Decision by the CIPE of 21 March 1997). Those rules were approved by the Commission ([5]).

(16) The aid was granted pursuant to the Secondo Protocollo Aggiuntivo del Contratto d'Area per l'area di Manfredonia of 19 March 1999.

That document stated that notification to the EU authorities under the multi sectoral framework on regional aid for large investment projects ([6]) (hereinafter 'the multi sectoral framework') was pending and that disbursement of the first instalment of aid was subject to EU approval ([7]).

2.3.2. AMOUNT OF THE AID

(17) The planned aid amounts to EUR 42 788 290, to be paid in two equal instalments of EUR 21 394 150 in 2000 and 2001. This represents a present value of EUR 41 652 000.

(18) According to the Italian authorities, this amount corresponds to the maximum allowable intensity, i.e.:

— 40 % nge (maximum intensity for aid under Article 87(3)(a) of the EC Treaty, zone B) ([8]) plus

— 15 % gge ('bonus' or increase in maximum intensity for SMEs).

(19) Given the characteristics of the project, the intensity of the planned aid is 50,14 % nge.

([4]) Point 4.6.1 of the notification.
([5]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.
([6]) OJ C 107, 7.4.1998, p. 7.
([7]) '(…) notification to the EU pursuant to the "multi sectoral framework on regional aid for large investment projects" is pending (…). Therefore, as far as payments to be made from CIPE funds are concerned (…), payment of the first instalment of the grants is subject to the EU decisions'.
([8]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.

2.4. *INITIATION OF PROCEEDINGS*

(20) On 4 April 2000 the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the Treaty in respect of the aid. The doubts raised by the Commission centred mainly on whether Solar Tech could be classed as a small or medium-sized enterprise in accordance with the Community guidelines on State aid for small and medium-sized enterprises ([9]) (hereafter 'the SME guidelines') and the fact that it did not suffer from the typical handicaps of SMEs.

3. **ASSESSMENT**

3.1. *THE RELEVANT MARKET*

3.1.1. THE PRODUCT

(21) The product market is the market in integrated photovoltaic cladding elements for buildings (including civil infrastructures): roofing, curtain walling and cladding elements and noise barriers for highway and railway use.

3.1.2. GEOGRAPHIC COVERAGE

(22) On the basis of the notification, the market should be analysed at European level. Italy has stated that for the purpose of calculating market shares and in view of the characteristics of the products, the market could be regarded as worldwide.

However, given the market shares (see point 3.1.4), there is no need in the present case to determine whether the market is worldwide or European-wide.

3.1.3. EVOLUTION OF THE MARKET ([10])

(23) It can be observed generally that the European market in photovoltaic systems is small but highly dynamic and rapidly expanding, even though the share of electricity generated by such systems is still fairly modest in the Community. There are two technologies present on the market: crystalline silicon and thin film, with market shares of around 89 % and 11 % respectively ([11]). It should also be stressed that access to the market is hindered by many legislative and technological entry barriers.

(24) Total production in Europe stood at around 13,1 MWp in 1995, rising to between 30 and 35 MWp in 1999 ([12]), an annual growth rate of some 20 %.

This greatly outstripped the growth rate of manufacturing industry, which was less than 3 % over the same period.

As regards future prospects, it is difficult to make reliable forecasts. Nevertheless, since Frost & Sullivan estimated total production at 26,4 MWp for 1999 and 59,3 MWp for 2003, it is reasonable to forecast, today, total production of around 75 to 85 MWp for 2003.

It should also be pointed out that, given the steady decline in the price of photovoltaic modules (EUR 5,36/Wp in 1995; EUR 3,30/Wp in 1999), this strong growth in volume terms is being reflected in a less substantial rise in turnover.

([9]) OJ C 213, 23.7.1996, p. 4.
([10]) Unless otherwise indicated, the market assessment is based on the study 'European Photovoltaic Modules Market' conducted by Frost & Sullivan Inc., in 1997.
([11]) Source: Strategies Unlimited, 2000, Photovoltaic Industry Competition Analysis, Report PC-11, July 2000.
([12]) Sources: abovementioned report by Strategies Unlimited; Systèmes solaires No 136; International Energy Agency, PVPS report, T1, August 2000; information supplied by third parties in the course of the proceedings.

3.1.4. MARKET SHARES

(25) According to the study by Strategies Unlimited, the production figures for the main manufacturers are as follows:

Production in Europe

Manufacturer	1996 production (MWp)	1999 production (MWp)	Share of 1999 production
Photowatt	2,70	8,50	27 %
Isofoton	1,60	4,50	14 %
BP Solarex Spain	2,70	5,00	16 %
ASE GmbH	0,90	3,00	9,5 %
Shell Solar	0,70	2,50	8 %
Helios	1,10	1,90	6 %
Intersolar	1,00	1,60	5 %
Eurosolare	2,20	1,50	5 %
Koncar	0,80	0,80	2,5 %
Free Energy	0,45	0,40	1 %

Source: Strategies Unlimited (see footnote).

(26) Since Solar Tech is a newly created company, its turnover is not yet significant: its market share at the time when the application for aid was submitted was therefore close to zero. Permasteelisa is not at present active on the market in question.

(27) As far as future prospects are concerned, Solar Tech's production forecasts for 2003 (25 MWp) would give it an estimated share of the European market of around 30 to 35 % (shares of the worldwide market are, of course, smaller). Solar Tech will be operating in the subsector with the weaker (thin film) technology. Its most direct competitors (BPSolar and SiemensSolar) have large market shares in that subsector too.

3.2. *DETERMINATION OF THE MAXIMUM ALLOWABLE INTENSITY*

3.2.1. NOTIFICATION OBLIGATION UNDER THE MULTI SECTORAL FRAMEWORK

(28) The aid in question is granted under a regional aid scheme approved by the Commission ([13]). It falls within the scope of the multi sectoral framework because:

— the project has a total cost of over EUR 50 million (its present value is EUR 56 million),

([13]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.

— the combined intensity of the amount of aid, expressed as a percentage of the eligible investment costs, is over 50 % of the regional aid ceiling for large firms in the area in question (over 100 % in this case, since Italy intends to grant 100 % of the ceiling plus the 15 % gge bonus for SMEs), and

— the aid per job created or safeguarded is over EUR 40 000 (the nominal amount of the planned aid is EUR 42 788 290 and the number of (direct) jobs to be created is 280, which gives an amount of aid per job created of over EUR 150 000).

(29) Italy notified the aid to the Commission on 24 November 1999, after it had been granted (19 March 1999). It is not to be classed as unnotified aid, however, since the decision granting it makes payment to the recipient subject to Commission approval.

(30) Under the multi sectoral framework ([14]), the Commission determines the maximum allowable aid intensity for a notified proposal to award aid according to a formula which takes account of a number of factors. It begins by identifying the maximum aid intensity (regional aid ceiling) which a large company could obtain in the assisted area concerned within the context of the authorised regional aid scheme valid at the time of notification. A range of adjustment factors are then applied to that percentage figure, in accordance with three specific assessment factors, in order to calculate the maximum allowable aid intensity for the project in question: the competition factor, the capital-labour factor and the regional impact factor.

3.2.2. DETERMINATION OF THE MAXIMUM THEORETICAL AID INTENSITY (R)

3.2.2.1. ***Maximum aid intensity allowable for large firms***

(31) The maximum allowable aid intensity for large firms in the Manfredonia (Foggia) area under the regional aid scheme was, at the time of notification, 40 % nge.

3.2.2.2. ***Applicability of the bonus for small and medium-sized enterprises***

Introduction

(32) Italy intends to grant Solar Tech, over and above the 40 % nge, the 15 % gge bonus for small and medium-sized enterprises and claims that the company meets the criteria laid down by the SME guidelines because:

— it is a newly created company and therefore does not have any employees or significant turnover,

— it meets the independence requirement since it is not 25 % or more owned (of the capital or voting rights) by one or more enterprises falling outside the definition of an SME: the only enterprise holding shares in Solar Tech is Permasteelisa, which has only a 24 % stake in the company.

([14]) Point 3.1 of the framework (Assessment rules).

The SME guidelines

(33) In order to determine whether the bonus for small and medium-sized enterprises is allowable in this case, reference has to be made to the SME guidelines of 23 July 1996 (which replace the Community guidelines on State aid for small and medium-sized enterprises adopted on 20 May 1992 ([15]) and to the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises ([16]) (hereafter 'the Commission recommendation').

(34) Point 1.2 of the SME guidelines states that SMEs play a decisive role in job creation but suffer from a number of handicaps that can slow down their development. Those handicaps include the difficulty in obtaining capital and credit, the difficulty in gaining access to information, new technology and potential markets, and the costs of complying with new regulatory requirements.

(35) The bonus, or increase in the amount of aid allowable, for SMEs is therefore justified not only by the contribution which they make to objectives in the common interest, but also by the need to compensate for the handicaps they face, given the positive role they play. It is necessary, however, to make sure that the bonus is indeed granted to enterprises suffering from such handicaps. In particular, the SME definition used has to circumscribe the concept of a small or medium-sized enterprise so as to include therein only those enterprises which generate the positive externalities envisaged and suffer from the abovementioned handicaps. It should not therefore extend to the many larger firms which do not necessarily produce the positive external effects or suffer from the handicaps typical of SMEs. Aid granted to such firms is liable to result in further distortion of competition and intra-Community trade.

That principle is set out in the 22nd recital to the Commission recommendation, which reads as follows:

> 'Whereas, therefore, fairly strict criteria must be laid down for defining SMEs if the measures aimed at them are genuinely to benefit the enterprises for which size represents a handicap.'

(36) It is consequently in the light of those principles that the Commission has to determine whether Solar Tech falls within the scope of the definition of SMEs. Solar Tech does not fulfil the necessary conditions to qualify for the bonus for SMEs.

This is because, from an economic standpoint, Solar Tech has to be regarded as belonging to the Permasteelisa Group, a large firm, despite the fact that the latter holds only 24 % of its shares. Thanks to the economic, financial and organisational links between the two companies, Solar Tech does not have to contend to any great extent with the handicaps from which SMEs usually suffer and which constitute a fundamental justification for the increase in the maximum amount of aid allowable for such enterprises.

Solar Tech and the Permasteelisa Group

(37) Solar Tech must be regarded as belonging to the Permasteelisa Group. This is clear from the notification (page 2), which states that the reasons for the investment lie in the fact that the Permasteelisa Group, a world leader in the production and installation of innovative cladding materials for large civil infrastructure works, wishes through this project to extend its range of products to include solar technology ([17]).

([15]) OJ C 213, 19.8.1992, p. 2.
([16]) OJ L 107, 30.4.1996, p. 4.
([17]) '(… the) Permasteelisa Group, a world leader in the production and installation of innovative cladding materials for large civil infrastructure works, which wishes through this project to enrich its products with solar technology'.

(38) It has also been seen in point 2.1.2 that the individuals who are shareholders in and/or executives of Solar Tech are also shareholders in and/or executives of Permasteelisa:

— Mr Colomban is the founder of the Permasteelisa Group and its reference shareholder (this is stated in the notification; he holds 9 % of the capital directly plus an unknown number of shares via Luxembourg holding companies); he acts as the group's chief executive officer. He is at the same time the main shareholder in Solar Tech, with 46 % of the shares, and the sole director of that company,

— Mr Pavan is the chairman of the Permasteelisa Group and also holds 15 % of the shares in Solar Tech,

— Mr Bonotto is a member of the board of directors of Permasteelisa and chairman of one of the companies in the Group. He also holds 15 % of the shares in Solar Tech.

(39) The above is in addition to the fact that Permasteelisa holds 24 % of the shares in Solar Tech.

Handicaps facing SMEs

(40) It is clear from the foregoing that there are extremely close ties between Solar Tech and Permasteelisa. Thanks to those ties, Solar Tech does not suffer from the typical handicaps facing SMEs: the difficulty in obtaining capital and credit, the difficulty in gaining access to information, new technology, etc. SMEs can also face handicaps linked to the cost of administrative procedures, the establishment of distribution networks, the search for new markets, etc.

(41) As regards the difficulty in obtaining capital and credit, Italy stated in the notification that neither the Permasteelisa Group nor its shareholders have assisted or will assist Solar Tech in gaining access to sources of finance.

That claim is, however, at variance with the documents forwarded in the context of the notification, and in particular the documents on which the national authorities based their examination of the application for aid. Those documents state that, as far as capital is concerned, Solar Tech will be able to raise the funds it needs on the basis of Permasteelisa's financial standing ([18]).

(42) Neither does Solar Tech suffer from any of the other typical handicaps of SMEs. Thanks to its economic, financial and organisational ties with Permasteelisa, Solar Tech does not have to overcome the entry barriers (of a technological and distributive nature) to the relevant market:

— Solar Tech has access to partners with the necessary technology (Eurosolare, United Solar Systems Corp. and ENEA) via the three individuals who own shares in it and are also executives of the Permasteelisa Group,

— as regards product distribution, Italy has stated that Solar Tech will sell part of its production (20 % to 30 %) to Permasteelisa and will be able to benefit from the latter's contacts with a number of clients in the property sector. This explains how Solar Tech will be able to supply the worldwide market, whereas most small European operators are active mainly on their own domestic market.

(43) From this standpoint, the situation of Solar Tech differs from that of a company seeking to overcome the typical handicaps of SMEs under a 'tutorship' (technical assistance) arrangement. In the case in point, Solar Tech is relieved of those handicaps from the outset thanks to its pre-existing links with the group (Permasteelisa) or its executives.

([18]) See page 31 of the document drawn up by Europrogetti & Finanza: 'in view of the substantial coincidence between the management of Permasteelisa and its main shareholders and between the latter and the other partners in the project, it appears likely that all the funds to be used in the project will be raised on the basis of Permasteelisa's financial standing'.

3.2.2.3. ***Comments from Italy***

(44) First, Italy states that Solar Tech formally meets the criteria for SMEs laid down by the Commission recommendation and the SME guidelines.

It should be pointed out here that purely formal compliance with the Community rules does not constitute sufficient justification for allowing the bonus for SMEs, which, as stated earlier, should be reserved exclusively for enterprises which suffer from handicaps on account of their size. Thanks to its links with Permasteelisa, Solar Tech does not suffer from such handicaps.

(45) Second, Italy argues that the fact that Solar Tech's shareholders are also executives of or shareholders in Permasteelisa does not detract from Solar Tech's SME status or, in particular, from the handicaps it faces. This is because (i) that coincidence is not necessarily indicative of any link between the two companies, and (ii) taking the contrary view would be tantamount to obstructing the freedom of individuals to set up SMEs.

In response to (i), it is sufficient to note that the persons concerned are at the same time 'influential' shareholders in or senior executives of Solar Tech and Permasteelisa and as such are in a position to enable Solar Tech to benefit from Permasteelisa's size. For example, as stated by the national authority which examined the application for aid, Solar Tech will be able to take advantage, in order to raise its own funds, of Permasteelisa's creditworthiness.

With regard to (ii), what is at stake here is not the freedom of individuals to set up an SME. Permasteelisa's shareholders and executives are free to set up firms of any size whatsoever. Individual freedoms are not in dispute. It is a quite separate issue to determine whether a new company created by Permasteelisa's executives and shareholders, whose sphere of activity is complementary to that of Permasteelisa and which will operate in close cooperation with it, suffers from the same handicaps as an SME undertaking a similar project.

(46) Third, Italy maintains that the relations between Solar Tech and Permasteelisa are of a commercial nature since one is the other's supplier just like any other firm.

This argument cannot be accepted because Solar Tech's links with Permasteelisa mean precisely that the relations between them are of a different nature from the relations that usually exist between separate businesses. It should be borne in mind in this connection that the shareholders and/or executives who are common to the two companies are 'influential' shareholders and/or senior executives who can, either individually or collectively, exercise influence over the two companies. The individuals concerned could decisively influence the behaviour of the two companies, and it is likely that they would do so in a rational and coherent manner. This could result in coordination of strategies and the development of joint activities, as is furthermore anticipated in the case in point.

The fact that the same individuals are playing key roles (as either executives or shareholders) in both companies, whose respective spheres of activity are, at least to some extent, closely linked, will therefore have the same effect on their behaviour as if they formed a single group. Consequently, Solar Tech will not suffer from the handicaps it would have had to face without such special links. For example, Solar Tech will have a captive market, something which SMEs do not usually enjoy.

(47) Fourth, Italy argues that Solar Tech suffers from the same handicaps as all SMEs because the solar panels sector is innovative and therefore a high-risk business: that level of risk gives rise to extra costs typically incurred by SMEs.

This argument is not relevant either. As mentioned in recital 35, the handicaps for which the bonus for SMEs is intended to compensate are those facing firms on account of their size and are not related to their area of activity.

(48) Last, Italy points out that, following the introduction of shares in Permasteelisa on the stock exchange, Solar Tech's shareholders now have only a 20 % stake in the company.

This argument does not hold water because, as shown by the documents submitted in the context of the notification, the shareholders in question control Permasteelisa despite the fact that the company is listed on the Milan stock exchange. This is the result of the group's legal structure (see point 2.1.2 of this Decision).

The possibility that the shareholders may have lost control over Permasteelisa after the notification is a possible new development that is completely irrelevant for the purpose of examining the compatibility of the aid. When determining whether the bonus for SMEs is applicable to the recipient of a notified aid measure, the Commission has to look at the factual situation prevailing at the time when the aid was granted (19 March 1999), as described in the notification.

This is because, given the objectives of aid for SMEs (and particularly the need to overcome the handicaps they face because of their size), the size of the recipients has to be assessed before they carry out the investment. And if this were not so (in other words if it had to take account of future developments), the Commission would, for example, have to take the view that Solar Tech is not an SME as it will generate turnover of more than EUR 50 million (and will therefore automatically put itself outside the scope of the definition of SMEs).

(49) It is also worth noting that Italy has not supplied any evidence demonstrating that Solar Tech has obtained credit from the banks in its own name, i.e. independently of Permasteelisa's creditworthiness.

3.2.2.4. ***Conclusion***

(50) In the light of the foregoing, Solar Tech does not qualify for the bonus for SMEs because, thanks to its economic, financial and organisational links with Permasteelisa, it does not suffer from the typical handicaps of SMEs to which the SME guidelines refer. Consequently, the bonus of 15 % gge for SMEs cannot be applied in the case in point.

3.2.3. COMPETITION FACTOR (T) ([19])

(51) The competition factor involves an analysis of whether the notified project would take place in a sector or subsector suffering from structural overcapacity.

(52) In determining whether structural overcapacity exists in the sector or subsector concerned, the Commission considers, at Community level, the difference between the average capacity utilisation rate for manufacturing industry as a whole and the average capacity utilisation rate of the relevant sector or subsector. In the absence of sufficient data on capacity utilisation, the Commission will consider whether the investment takes place in a declining market. For that purpose, it will compare the evolution of apparent consumption of the product(s) in question with the growth rate of EEA manufacturing industry as a whole.

(53) In the case in point, insufficient data are available either on the capacity utilisation rate or on apparent consumption. Neither does it appear possible to classify the product by means of a specific NACE code (codes 28.11 and 26.12 do not accurately reflect the production concerned).

(54) Nevertheless, as stated in point 3.1, the sector in question appears to be enjoying rapid growth and there are no fears of structural overcapacity at this stage. The Commission further takes the view that the development of competitively priced solar energy-related products should be encouraged, particularly in view of the Kyoto commitments on reducing the greenhouse effect.

(55) Factor T should therefore be assigned a value of 1,00.

([19]) Points 3.2 to 3.6 of the multi sectoral framework.

3.2.4. CAPITAL-LABOUR FACTOR (I)

(56) The present value of the eligible investment is EUR 56 027 000.

Italy has stated that the number of jobs to be created is 280.

(57) The ratio is therefore 200,1 to 1. Since this ratio lies between 200 and 400, factor I should be assigned a value of 0,9.

3.2.5. REGIONAL IMPACT FACTOR (M)

(58) Italy has stated that the number of indirect jobs to be created is 204, which means that the proportion of jobs created indirectly in the region (in relation to direct jobs created) is 73 %.

(59) As regards the 134 jobs to be created among cable suppliers, the Commission takes note of the estimate provided by the Italian authorities. Some 28,5 metres of cable are needed per square metre of solar panel. Solar Tech is to produce 450 000 m^2 of panels; it will therefore use 12,8 million metres of cable. Given the relatively high transport costs (representing 3 % of the value of the product) and the presence in the assisted region of producers deemed capable of supplying the cable of the requisite quality at competitive prices, it is likely that those jobs will be created in the region concerned.

(60) This aspect should be checked as part of the *ex post* monitoring required under point 6 of the multi sectoral framework in the event that (a reduced amount of) aid is granted. The following in particular will have to be checked:

— whether Solar Tech does in fact source from suppliers in the assisted region, and

— whether the productivity of those suppliers actually stands at around 96 000 metres of cable per year per worker.

(61) With regard to the other 70 indirect jobs forecast, the number of jobs actually created could prove to be lower than that given by Italy, but any downward adjustment could not cause the regional impact indicator to fall below the 50 % level. If (a reduced amount of) aid is granted, this aspect will have to be checked only in the event that the *ex post* monitoring were to reveal that the forecast number of 134 jobs created among suppliers is manifestly excessive.

(62) As the regional impact indicator works out at 73 %, factor M should be assigned a value of 1,25.

3.2.6. CONCLUSION

(63) Applying the above factors, the maximum theoretical aid intensity in this case is: R x T x I x M = 0,4 × 1,0 × 0,9 × 1,25 = 45 %.

(64) However, in accordance with point 3.10(3) of the multi sectoral framework, no project can be allowed to receive aid above the regional ceiling. The regional ceiling in this case is 40 %.

The maximum allowable aid intensity in this case is therefore 40 %.

3.3. *COMMENTS FROM INTERESTED PARTIES*

(65) Certain interested parties submitted comments in response to the invitation published in the *Official Journal of the European Communities*. Their comments basically claimed that the amount of aid which Italy planned to grant was excessive because:

— Italy granted little, if any, sectoral aid to the solar energy sector,

— Italy was not pursuing consistent policies in the area,

— the recipient was not currently active on the market,

— Solar Tech's production capacities would create serious distortions of competition since they alone would represent the equivalent of the entire European production in 1999.

(66) The first two arguments are not relevant for the purpose of assessing the aid, which has to be examined in the light of its regional objective.

(67) Neither does the fact that Solar Tech is not currently active on the market constitute a convincing argument in favour of limiting the intensity of the aid. If investment aid were to be reserved for operators already present on the market (or if such operators were to qualify for higher aid intensities than new entrants), its distortive effect would be greater, not lesser. In addition to the 'usual' distortions, the aid would create barriers to entry for new competitors and would protect operators already present on the market. Such a policy would not be in the common interest.

(68) Lastly, fears that Solar Tech's new production capacities will create serious distortions of competition appear unfounded, above all because Solar Tech's production capacity (25 MW) will in any event be lower than that indicated by interested parties (32 MW), and also because both the prospects for growth of the European market and the opportunities on the worldwide market suggest that the additional output will be easily absorbed by demand.

3.4. *COMPATIBILITY OF THE AID*

(69) The net intensity of the grant planned by Italy (50,14 %) is above the maximum aid intensity allowable in this case (40 %).

It should also be noted that:

— the measure notified by Italy does constitute State aid within the meaning of Article 87 of the EC Treaty,

— the aid is liable to distort competition since it confers a financial advantage on an undertaking in a sector in which financial resources play an important role, given the need to adapt to technological progress,

— the aid is liable to affect intra-Community trade, given the globalization of the relevant market.

4. **CONCLUSION**

(70) In view of the foregoing, the Commission comes to the conclusion that the notified aid is incompatible with the common market since it exceeds the maximum intensity allowable in the case in point,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to grant to Solar Tech srl, amounting to EUR 42 788 290, is incompatible with the common market in so far as its intensity exceeds the maximum allowable in the case in point (40 % nge).

The aid may accordingly not be implemented by Italy to the extent that it exceeds an intensity of 40 % nge.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 November 2000.

For the Commission

Mario MONTI

Member of the Commission