COMMISSION DECISION

of 13 November 2002

on the State aid implemented by Italy for Pertusola Sud

(notified under document number C(2002) 4360)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/731/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 those comments,

Whereas:

I. PROCEDURE

(1) By letter dated 18 September 2000, Italy notified a draft contract to the Commission concerning the sale of Pertusola Sud SpA in liquidation to Zincocalabra SpA, a private group of companies headed by Cogefin SpA. The contract was notified in accordance with Article 3(1)(a) of Commission Decision 98/212/EC of 16 April 1997 on the aid granted by Italy to Enirisorse SpA [2] as the contract contained a suspensive clause that requires the Commission's approval in order to be valid.

(2) By letter of 13 February 2001 the Commission notified Italy of its decision to initiate proceedings under Article 88(2).

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

(4) The Commission received comments from the United Kingdom as well as from Union Minière, Metaleurop and Nuova Solmine. The comments were forwarded to Italy for its views and its response was received on 22 October 2001.

II. DESCRIPTION

(5) By Decision 98/212/EC the Commission authorised Italy to grant aid totalling ITL 1 819 billion to Enirisorse SpA for the restructuring of some of its subsidiaries, including Pertusola Sud SpA. The aid for Pertusola Sud SpA amounted to ITL 280 million and covered the period 1992 to 1996. Article 2 of the Decision required Italy to comply with its commitments as set out in the restructuring plan, i.e. to privatise the remaining companies and production sites of Enirisorse SpA by 31 December 1998. One of the two firms in question was Pertusola Sud.

(6) The Decision also required Pertusola Sud to have been shut down and dismantled by the end of 1997, or to be sold to an interested buyer. In any event the firm could no longer produce zinc. The Commission had also taken the view that the 45 % cut in Enirisorse's zinc production capacity resulting from the closure of Pertusola Sud was an adequate counterpart to the aid granted to Pertusola. It had therefore concluded that the aid did not affect competition to an extent contrary to the common interest.

(7) On 24 July 1997 Enirisorse invited offers for Pertusola Sud. On 31 March 1998 Pertusola entered into liquidation, and ceased production in February 1999. It had a capital of ITL 22 billion, wholly owned by Enirisorse.

(8) In August 2000 Enirisorse SpA agreed to sell its entire share capital in Pertusola Sud to Zincocalabra.

(9) Zincocalabra SpA is a new company owned by a private group of firms headed by Cogefin SpA, an Italian group whose companies operate chiefly in the zinc sector. Zincocalabra SpA planned to increase Pertusola's zinc output to 185 000 tonnes a year and carry out an investment programme costing ITL 500 billion, to which it would contribute ITL 250 billion. The remaining 50 % would be granted in the form of regional aid, which would be notified to the Commission under the multisectoral framework. Another clause in the contract provided for the payment by Enirisorse SpA of the cost of making good past environmental damage, up to a maximum of ITL 180 million, a payment to which Enirisorse had already agreed.

[1] OJ C 149, 19.5.2001, p. 13.
[2] OJ L 80, 18.3.1998, p. 32.
[3] See footnote 1.

(10) The Italian authorities also informed the Commission that Pertusola Sud entered into liquidation on 31 March 1998 and that Enirisorse had therefore ceased contributing capital although it was continuing to cover Pertusola's financial requirements to allow its liquidation as a solvent company.

(11) The Commission initiated proceedings for the following reasons:

— possible misuse of the aid approved under the 1997 decision on Pertusola Sud,

— the payments made by Enirisorse to cover Pertusola's financial commitments in order to ensure that it remained solvent even though it was in liquidation could be regarded as State aid and possibly as incompatible with the common market,

— the payment by Enirisorse of the environmental costs borne by Pertusola Sud could be regarded as State aid and possibly as incompatible with the common market.

III. **COMMENTS FROM INTERESTED PARTIES**

(12) The United Kingdom as well as Union Minière, Metaleurop and Nuova Solmine sent comments in support of the Commission's preliminary assessment.

IV. **COMMENTS FROM ITALY**

(13) By letter of 28 March 2001, Italy informed the Commission that the contract concluded with Zincocalabra had been rescinded.

(14) By letters dated 5 April 2001 and 22 October 2001, Italy expressed its disagreement with the preliminary assessment made by the Commission as well as with the comments submitted by the interested parties.

(15) By letter of 1 August 2002, Italy informed the Commission that:

— on 14 December 2001 a contract for the dismantling of Pertusola's plant had been concluded. The dismantling was to be completed within 16 months of the start of work, as provided for in the contract,

— at 31 December 2001 Pertusola was employing 24 persons to carry out the liquidation (dismantling, safety and administration), of whom nine would leave the firm in 2002,

— on 1 February 2002 Pertusola merged with Singea SpA in liquidation (which is the current name of Enirisorse).

V. **CONCLUSIONS**

(16) The Commission concludes that the dismantling of the plant imposed by the 1997 decision, although delayed, will be completed.

(17) The Commission also concludes that, following the cessation of activity and the ensuing dismantling of the plant, there are no longer any potential distortions of competition due to the measures that Italy would have implemented unlawfully for Pertusola Sud in liquidation, in breach of Article 88(3) of the EC Treaty.

The Commission accordingly concludes that the formal investigation procedure initiated under Article 88(2) of the EC Treaty in respect of the measure in question thus no longer serves any purpose, although Italy is still subject to the obligation in Article 3 of Decision 98/212/EC to provide the Commission with six-monthly reports between 1 October and 1 April of each year, until the dismantling of the plant at Pertusola Sud is completed,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure initiated under Article 88(2) of the Treaty on 13 February 2001 against the measures implemented by Italy for Pertusola Sud (State aid C 8/2001) is closed.

Article 2

Italy shall send the Commission the six-monthly reports provided for in Article 3 of Decision 98/212/EC until the dismantling of the Pertusola Sud plant has been completed.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 November 2002.

For the Commission

Mario MONTI

Member of the Commission