II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 December 2007

on State aid C 12/07 (ex N 799/06) planned by the Slovak Republic for Glunz&Jensen s.r.o.

(notified under document number C(2007) 6045)

(Only the Slovak version is authentic)

(Text with EEA relevance)

(2008/551/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 those provisions [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By electronic notification dated 29 November 2006, registered as received by the Commission on 30 November 2006 under reference number A/39718, the Slovak authorities, in accordance with Article 88(3) of the EC Treaty, notified the Commission of their intention to grant regional ad hoc investment aid in favour of the company Glunz&Jensen s.r.o.

(2) A request for information was sent on 26 January 2007 (D/50360). The Slovak authorities replied by letter dated 20 February 2007 (A/31585).

(3) By letter dated 24 April 2007 (hereinafter 'the opening decision') the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

(4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments.

(5) The Commission did not receive any comments from interested parties or from the Slovak Republic.

II. DETAILED DESCRIPTION OF THE MEASURE

II.1. Aim of the measure

(6) The aim of the aid measure is to promote regional development in the Prešov region (eastern Slovakia), which was an assisted area under Article 87(3)(a) of the EC Treaty in accordance with the Slovak regional aid map [3] applicable at the date of the notification, with a regional aid ceiling of 50 % net grant equivalent (NGE).

[1] OJ C 189, 14.8.2007, p. 2.

[2] Idem.

[3] SK 72/2003 — Slovak Republic — 'Regional State aid map of the Slovak Republic'; C(2004) 1757/7, 28.4.2004.

(7) The proposed project constitutes an ad hoc aid measure notified by the Slovak authorities. The aid in question is not being granted under an existing scheme (i.e. its legal basis is not listed in the Accession Treaty as an existing aid scheme, nor was it the subject of the so-called interim mechanism, nor has the Commission approved an aid scheme based on these legal provisions since Slovakia's accession to the EU).

II.2. **The form and nature of the aid**

(8) The notified aid is to be provided in the form of a tax exemption, applied on an annual basis between 2007-2010, of up to 100 % of the corporate tax liability of the aid recipient, Glunz&Jensen s.r.o. The total amount of the tax exemption is limited to SKK 42 million at present value [1] (approx. EUR 1,15 million). The aid cannot be cumulated with aid received from other sources for the same investment project.

II.3. **Legal basis of the ad hoc aid**

(9) The legal basis of the ad hoc aid is State Aid Act No 231/1999, as amended; Income Tax Act No 595/2003, as amended; and Income Tax Act No 366/1999, as amended at 31 December 2003, in particular Section 52(3) of Income Tax Act No 595/2003, as amended, under the conditions laid down in Section 35a of Income Tax Act No 366/1999, as at 31 December 2003 [2].

II.4. **Beneficiaries**

(10) The beneficiary of the aid, Glunz&Jensen s.r.o., is a large enterprise, i.e. not an SME within the meaning of Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [3]. Glunz&Jensen s.r.o. is the Slovak subsidiary of Glunz&Jensen A/S (hereinafter 'Glunz&Jensen') which has its headquarters in Ringsted (Denmark), with other subsidiaries at the time of notification in Virginia (USA) and in Thetford (UK).

(11) Glunz&Jensen is the world's leading manufacturer and distributor of graphic arts pre-press processing equipment for offset printing plates and plateline equipment, with a market share of approximately […] % [4] in Europe.

II.5. **Investment project**

(12) In 2004, Glunz&Jensen s.r.o. started work on an initial investment in Slovakia involving an investment volume of SKK 213 million (approx. EUR 5,8 million). The investment project is being implemented over the period 2004-2009, according to the Slovak authorities, in two phases: 2004-2006 and 2007-2009.

(13) The project aims to relocate the production activities that existed in 2004 in the UK and Denmark to Prešov. As a result of the relocation project, the Thetford plant was closed down at the end of 2006.

(14) The Prešov plant is to be developed into the firm's main production centre. In fact, as indicated by the Slovak authorities, all machinery to be installed in the Slovak plant is being transferred directly from Denmark and the UK. The eligible costs of the project therefore include only the buildings and some minor additional equipment.

(15) The first step of the 2004-2006 investment phase consisted in the purchase of a production hall and a greenfield site for future expansion. The subsequent second step involved renovating the facilities and purchasing equipment (not directly linked to production). The total amount for the first phase of the investment was SKK 128 million (approx. EUR 3,5 million). As stated in declarations annexed to the notification, Glunz&Jensen s.r.o. did not receive any State aid for this part of the project, nor is any application pending.

(16) The second phase of the investment, to be carried out over the period 2007-2009, is the project notified by the Slovak authorities on 29 November 2006. This part covers continuation of the initial project with the construction of further buildings and the purchase of further equipment (IT, trucks and office equipment) for a total of SKK 84 million at present value (approx. EUR 2,3 million).

(17) The production unit in Slovakia opened in April 2005. Since then, production at the factory has increased markedly and productivity has improved considerably [5].

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(18) The Commission, in its decision to initiate the formal investigation procedure in the present case, noted that it had doubts as to the compatibility of the aid with the common market based on Article 87(3)(a) of the EC Treaty and on the Guidelines on National Regional Aid [6] (hereinafter referred to as 'RAG 1998') for the following reasons:

[1] Expressed in terms of the 2007 value and calculated at a reference rate of 5,62 %, the rate applicable at the date of notification.

[2] Zákon č. 231/1999 Z.z. o štátnej pomoci, v znení neskorších predpisov, Zákon č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov a Zákon č. 366/1999 Z.z. o daniach z príjmov, v znení neskorších predpisov, v znení účinnom k 31. decembru 2003, najmä §52 ods.3 zákona č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov, za podmienok uvedených v §35a zákona č. 366/1999 Z.z. o daniach z príjmov, v znení účinnom k 31. decembru 2003.

[3] OJ L 10, 13.1.2001, p. 33.

[4] Confidential information.

[5] Information from the Annual Report 2005-2006, available on Glunz&Jensen's website.

[6] OJ C 74, 10.3.1998, p. 9.

— First, it appeared that the two phases of the investment belong to the same investment project since they constitute part of an overall plan to accommodate the production lines to be relocated gradually from Denmark and the UK. In the submitted notification the Slovak authorities themselves also referred to the two phases as one single investment project. 'The investment project submitted by the company Glunz&Jensen is being implemented over the period 2004-2009 in two phases: 2004-2006, 2007-2009'.

Furthermore, on page 6 of the 'Application for the provision of State aid in the form of tax relief' submitted by the beneficiary to the Slovak authorities, which was annexed to the notification, Glunz&Jensen s.r.o. indicated that the investment period runs from 2004 till 2008 [1], and the total investment costs amount to 'more than SKK 200 million', which is the amount corresponding to the total investment made by Glunz&Jensen s.r.o. in Slovakia.

In light of the above, it appeared that the notified project concerned the second phase of a single comprehensive investment project which had already started in 2004.

Moreover, since the aid application by the beneficiary itself did not distinguish between the two phases of investment, the Commission could not rule out the possibility that the investment period was artificially split into two phases so that the beneficiary would be eligible to apply for the aid in 2006.

— Second, according to the information provided by the Slovak authorities, the application for aid, signed on 29 of June 2006, was not submitted until November 2006, i.e. after the first stage of the investment had started in 2004.

Consequently, the Commission had doubts whether the condition regarding the incentive effect of the aid as laid down in point 4.2 of RAG 1998 was being respected. The Commission underlined that, as a general principle, State aid which distorts or threatens to distort competition and affects trade between Member States can only be approved if these negative effects are more than outweighed by the aid's positive contribution to a Community objective (here: regional development). The Commission considered that an aid applied for at the end of 2006 could not retrospectively trigger an investment decision which led to work starting in 2004 and production activities getting under way in April 2005.

— Third, the idea that the availability of the aid was not a decisive factor for the beneficiary's decision to start work on relocation, seemed to be confirmed by the beneficiary's own statement in its aid application which explained the reasons for relocating its activities to Slovakia: 'The Board (of Glunz&Jensen) decided during the course of 2003 to investigate the possibility of establishing a production unit in a low-cost country. The objective was to lower the production cost, develop sub-suppliers in central and eastern Europe … Glunz&Jensen has conducted a comparative analysis of 11 central and eastern European countries to decide on the optimal location of the subsidiary …. Out of these 11 countries, the Czech Republic, the Slovak Republic and Bulgaria were investigated. The conclusion was that the Slovak Republic was deemed the most appropriate location considering Glunz&Jensen's business and the factor combinations on the assessed markets [2]'.

— Fourth, the Slovak authorities explained why the beneficiary did not apply for aid for the first phase of the investment project. According to their explanation, the company assumed that prior to the Slovak Republic's accession to the EU it was not necessary to seek authorisation for State aid in the form of tax relief. In their understanding, the application for the aid had to be submitted only in the tax declaration for the year in which the company first incurred a tax liability.

According to the Slovak authorities, this means that Glunz&Jensen s.r.o. planned to apply for state aid from the very beginning of the investment project's implementation in 2004.

In the Commission's view, the fact that the beneficiary did not know the proper procedure to be followed cannot be taken into account. It should be stressed that the aid under Section 35a of Slovak Income Tax Act No 366/1999, as amended, was not granted automatically prior to Slovakia's accession, nor is it granted automatically now, since there is no existing aid scheme referring to the above mentioned Section. Consequently, this type of aid was and remains individually notifiable to the Commission as ad hoc aid, as is shown by approximately 40 ad hoc notifications submitted by Slovakia applying this legal base under the so-called interim procedure.

[1] 2008 seems to be a typing error made by the beneficiary in the application for the aid. In all other documents submitted the year 2009 is indicated as the end of the project.

[2] Point 3 of the Application for the provision of State Aid in the form of tax relief.

— Finally, even if the aid had had an incentive effect, substantial doubts would need to be raised: in fact, RAG 1998 (point 2) takes a negative stance towards ad hoc aid unless it can be proved that the regional contribution of the measure outweighs the distortion of competition and the effects on trade. In this context, the Commission noted the following:

— Although the measure provides a significant contribution to regional development (155 direct jobs, some 30 indirect jobs), its negative effects seem to be equally substantial.

— The relevant product market of the beneficiary is graphic arts pre-press processing equipment, in particular computer-to-plate (CtP) processors. The Commission noted that the aid is to be granted to a company which has a market share of approximately […] % on the European market. The closest competitors of Glunz&Jensen in Europe along with their market shares are: Height Design […] %, Agfa (Lastra) Belgium […] %, E-graf, Italy […] %, Haase, Germany […] % and Ovit, Italy […] %. Given the market position of the beneficiary, the Commission was of the opinion that the planned measure could have a major impact on competition in the relevant, very specific market in which the beneficiary is active.

— Furthermore, the project concerns the relocation of production activity and machinery from Denmark and the UK. Because it was solely a production facility, the plant in Thetford in the UK was closed down at the end of 2006, following the transfer of production to Slovakia. According to information found on the company's web site, 77 employees were made redundant in Thetford. The Danish company will focus in future on sales, customer services, R&D and the operation of a pilot plant. The relocation therefore has a significant effect on trade between Member States.

IV. **COMMENTS FROM THE SLOVAK REPUBLIC AND INTERESTED PARTIES**

(19) No comments were received from the Slovak authorities or from third parties to allay the doubts which were raised when the formal investigation was initiated.

V. **ASSESSMENT OF THE MEASURE**

V.1. **Legality of the measure**

(20) By notifying the aid measure with a standstill clause until authorised by the Commission, the Slovak authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty.

V.2. **State aid character of the measure**

(21) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty for the following reasons, already indicated in the opening decision.

V.2.1. *Presence of state resources*

(22) State resources are involved since an exemption from the payment of corporate income tax is planned.

V.2.2. *Economic advantage*

(23) The measure would relieve the beneficiary of the aid from costs which it would have had to bear under normal market conditions. It would therefore provide an advantage to Glunz&Jensen s.r.o. over other companies.

V.2.3. *Presence of selectivity*

(24) The measure is selective since it relates to only one undertaking.

V.2.4. *Distortion of competition and trade*

(25) The measure affects trade between Member States since (i) the beneficiary is active in a sector where strong intra-Community trade exists and (ii) the relocation of activities from Denmark and the UK has a strong effect on sectoral trade flows.

V.3. **Compatibility**

(26) Insofar as the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility must be assessed in the light of the exceptions provided for in Article 87(2) and (3) of the EC Treaty. The exceptions provided for in Article 87(2) of the EC Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case. The measure cannot be considered an important project of common European interest or a measure intended to remedy a serious disturbance in the Slovak economy, as provided for by Article 87(3)(b) of the EC Treaty. Nor does the measure qualify for the exception allowed by Article 87(3)(c) of the EC Treaty, which provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas if the aid does not adversely affect trading conditions to an extent contrary to the common interest. In the same way, it does not have as its objective the promotion of culture and heritage conservation as provided for by Article 87(3)(d) of the EC Treaty.

(27) Article 87(3)(a) of the EC Treaty provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The Prešov region (eastern Slovakia) is an eligible region under that derogation.

(28) In its decision to open the formal investigation procedure, the Commission explained the reasons, summarised in Part III of this Decision, for which it doubted that the measure could qualify for the derogation under Article 87(3)(a) of the EC Treaty. In the absence of any comments from the Slovak Republic or third parties, the Commission can only find that these doubts are confirmed.

VI. **CONCLUSION**

(29) The Commission finds that the measure notified by the Slovak Republic, as set out under paragraphs 6 to 9 above, is not compatible with the common market under any derogation laid down in the EC Treaty and must be prohibited. According to the Slovak authorities, the aid has not been granted, and therefore there is no need for it to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The notified tax exemption constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

The State aid which the Slovak Republic is planning to implement for Glunz&Jensen s.r.o., amounting to SKK 42 million (EUR 1,15 million), is incompatible with the common market.

The aid may therefore not be implemented.

Article 2

The Slovak Republic 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 Slovak Republic.

Done at Brussels, 11 December 2007.

For the Commission

Neelie KROES

Member of the Commission