II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 4 June 2008

on State aid C 57/07 (ex N 843/06) which the Slovak Republic is planning to implement for Alas Slovakia, s.r.o.

(notified under document number C(2008) 2254)

(Only the Slovak version is authentic)

(Text with EEA relevance)

(2008/734/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 letter dated 15 December 2006, registered by the Commission on 18 December 2006 (A/40324), the Slovak authorities, in accordance with Article 88(3) of the EC Treaty, notified their intention to grant regional individual investment aid in the form of a tax concession for investment activities by Alas Slovakia, s.r.o. at nine different locations [2].

(2) Requests for information were sent out on 13 February 2007 (D/50598), 8 May 2007 (D/51936), 25 July 2007 (D/53139) and 12 October 2007 (D/54058) respectively. The Slovak authorities transmitted additional information by letters dated 12 March 2007 (A/32162), 4 June 2007 (A/34580), 13 August 2007 (A/36769) and 31 October 2007 (A/39017).

(3) By letter dated 11 December 2007 (hereafter '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 Decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission called on interested parties to submit their comments.

[1] OJ C 30, 2.2.2008, p. 13.

[2] By letter dated 13 February 2006, the Commission asked the Slovak authorities to submit for evaluation nine different notifications so that it could assess the compatibility of each of the nine projects on the basis of their individual merits. In their reply of 12 March 2007, the Slovak authorities explained to the Commission that Alas Slovakia s.r.o., constituted a single tax entity with several establishments, with a single tax liability. The applicable Slovak legislation does not allow taxpayers to calculate the tax base and the corporate tax for each organisational unit separately. Therefore, the Slovak authorities consider that it is not possible to calculate the amount of aid received by each establishment.

[3] See footnote 1.

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

II. DETAILED DESCRIPTION OF THE MEASURE

2.1. Aim of the measure

(6) The aim of the aid measure is to promote the regional development of the regions of Nitra ([4]), Trnava ([5]) and Trenčín ([6]), all situated in Western Slovakia, which was at the time of notification an assisted area pursuant to Article 87(3)(a) of the EC Treaty; the aid intensity ceiling according to the Slovak regional aid map 2004-2006 ([7]) is 50 % NGE.

(7) The proposed project constitutes an individual aid measure notified by the Slovak authorities, i.e. it is not granted under an existing aid scheme within the meaning of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([8]).

2.2. The form and nature of the aid

(8) The notified measure is to be provided in the form of a tax concession applied on an annual basis between 2007 and 2011. The annual concession is limited to 50 % of the corporate tax liability of Alas Slovakia, s.r.o. The total amount of the tax concession is limited to SKK 100 813 444 at current value ([9]) (approximately EUR 2,89 million). The aid cannot be utilised concurrently with aid from other sources to cover the same eligible costs.

(9) The notified aid follows earlier aid in the form of a tax concession (based on Section 35a of the Income Tax Act) which was approved by the Slovak Office for State Aid before the accession of the Slovak Republic to the EU ([10]).

(10) According to Section 35a of the Income Tax Act, an aid beneficiary is granted a corporate tax credit of 100 % over a period of five consecutive years and afterwards, it has the possibility to apply for a further tax credit of 50 % during the subsequent five years. The submitted notification concerns this second period of five years. The notified aid concerns other eligible expenditure and partially also other establishments than those covered by the pre-accession aid.

2.3. Legal basis of the individual aid

(11) The national legal basis for the aid is Act No 231/1999 Coll. on State aid, as amended, Act No 595/2003 Coll. on income tax, as amended, and Act No 366/1999 Coll. on income taxes, as amended, as in force on 31 December 2003, in particular Section 52(3) of Act No 595/2003 Coll. on income tax, as amended, under the conditions specified in Section 35a of Act No 366/1999 Coll. on income taxes, as amended, as in force on 31 December 2003 ([11]).

2.4. Beneficiaries

(12) The aid beneficiary, Alas Slovakia, s.r.o., is a large enterprise. It took over the activities carried out by the former state enterprises 'Západoslovenské kameňolomy a štrkopiesky' and 'Strmáč Comp.Ltd'. The beneficiary is active in the extraction and processing of non-reserved minerals (gravel, stone) that fall under Division 08, Group 08.1, Classes 08.11 and 08.12 of the NACE statistical classification of economic activities. It is also involved in the production and sale of cement and concrete mixes — Division 23, Group 23.6 of the NACE classification.

(13) According to the information provided on the website of the company, Alas Slovakia, s.r.o. ranks among the leading stoneware producers in the Slovak Republic. Its market share in Slovakia is around 15 %.

(14) The major shareholder (67,45 %) of Alas Slovakia, s.r.o. is Alas International Baustoffproduktions AG (hereafter 'Alas International') based in Ohlsdorf (Austria), which in turn belongs to the ASAMER holding group. Alas International was founded in 1998 as a holding company to carry out international activities in the field of aggregates and concrete.

([4]) In the municipalities of: Nitra, Komjatice, Veľký Cetín, Hontianske Trsťany-Hrondín.
([5]) In the municipalities of: Červeník, Veľký Grob, Okoč.
([6]) In the municipalities of: Kamenec pod Vtáčnikom, Prievidza.
([7]) State aid SK 72/2003 — Slovak Republic — 'Regional State aid map of the Slovak Republic'.
([8]) OJ L 83, 27.3.1999, p. 1.
([9]) Expressed at 2007 value and calculated at a reference rate of 5,62 % applicable on the date of the notification.
([10]) By notification No 1108/2003 of the Slovak Office for State Aid, issued on 25 August 2003, State aid was approved for Alas Slovakia, s.r.o. (2003 to 2012), in accordance with Section 35a of Act No 472/2002, as amended, and Act No 366/1999, for a maximum level of SKK 87 145 485. Under the interim procedure, this State aid (SK 53/03) was considered 'existing aid'.
([11]) Act No 231/1999 Coll. on State aid, as amended, Act No 595/2003 Coll. on income tax, as amended, and Act No 366/1999 Coll. on income taxes, as amended, as in force on 31 December 2003, in particular Section 52(3) of Act No 595/2003 Coll. on income tax, as amended, under the conditions specified in Section 35a of Act No 366/1999 Coll. on income taxes, as amended, as in force on 31 December 2003.

2.5. **The investment project**

(15) According to Slovakia, the aid concerns both the setting-up of three new establishments (Červeník, Okoč and Prievidza) and the modernisation, rationalisation and diversification of six existing production facilities (Veľký Grob, Veľký Cetín, Komjatice, Kamenec pod Vtáčnikom, Hontianske Trsťany — Hrondín and Nitra). The investment project will involve purchasing modern and environmentally friendly technical equipment from third parties and constructing and improving various sites for the extraction of raw materials (stone and gravel, aggregates). It would appear that all these establishments are completely independent from one another since there is no functional connection or any economic link between them.

(16) Through these investment activities the company wishes to improve the quality of its products and services and guarantee the reliability of the supply of the required quantities and varieties for construction investors. The eligible costs of the project are estimated at SKK 345 026 285 (approximately EUR 9,90 million) at current value.

(17) The works on the investment projects were notified to start in 2007. The project implementation should be completed by 2011. Details are given in the table below.

Establishment	Type of initial investment	Investment period	Number of newly created jobs	Amount of investment in nominal value (in SKK 000)
Veľký Grob	Rationalisation Extension of an existing establishment	2007, 2008	—	26 400
Veľký Cetín	Modernisation	2007	—	9 000
Komjatice	Modernisation	2008	—	10 200
Kamenec pod Vtáčnikom	Modernisation Diversification	2007, 2008 2010, 2011	27	151 000
Hontianske Trsťany — Hrondín	Diversification	2008, 2009	20	49 000
Červeník	Setting-up of a new establishment	2007, 2009	16	40 000
Okoč	Setting-up of a new establishment	2007	14	29 000
Nitra	Diversification	2008	—	14 000
Prievidza	Setting-up of a new establishment	2009, 2010	4	51 000
Total			81	379 600

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(18) In its decision to initiate the formal investigation procedure in the present case the Commission, noted that it had doubts on 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 ([12]) (hereinafter referred to as RAG 1998) for the following reasons.

— First, the Commission had doubts as to whether the limitation of regional investment aid to initial investment, as laid down in point 4.4 of the RAG 1998, was respected. According to point 4.4 of RAG 1998, initial investment is defined as an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation). This definition excludes from its scope replacement investment. Aid to replacement investment is to be considered as operating aid, which is allowed only if specific conditions are met (cf. points 4.15, 4.16 and 4.17 of RAG 1998).

— It appeared that in at least three establishments (Veľký Grob, Veľký Cetín and Kamenec pod Vtáčnikom) the beneficiary is purchasing the same type of machinery/equipment as it currently uses and rents. The improved quality of the purchased equipment or the significant increase in the production concerned may be questioned, although the beneficiary claimed that new equipment would be more modern than the one currently leased.

— At its Nitra establishment, the beneficiary will offer its customers only a 'complementary' service in order to 'maintain the company's market share, cash flow and economic results' ([13]). It seemed difficult to justify aid in a situation where no additional activity is to be carried out.

— Second, the measure at issue constitutes individual aid, to be granted to a company active in a specific sector of extraction of raw materials. Consequently, this aid measure is to be considered selective with a greater impact on other companies active in the same sector. According to point 2 of RAG 1998, an individual ad hoc aid made to a single firm, or confined to one area of activity, may have a major impact on competition in the relevant market, and its effects on regional development are likely to be fairly limited. Such aid generally comes within the scope of specific sectoral industrial policies and is not in line with the spirit of regional aid policy as such. The latter must remain neutral towards the allocation of productive resources between the various economic sectors and activities. In conclusion, the RAG 1998 take a negative stance towards individual aid measures unless it can be proved that the regional contribution of the aid outweighs the distortion of competition and the effects on trade. In this case, the Commission had doubts whether the limited contribution to regional development can justify the relatively high amount of aid per job created.

— It transpires from the information submitted that only 81 direct jobs would be newly created, whereas some 57 direct jobs created by the beneficiary in the past would be maintained by the aided investments. The new jobs would concern only five of the nine establishments of the project (see table above). The Commission noted that 34 out of the 81 newly created jobs should be created in the three new establishments envisaged ([14]). Consequently, the Commission had doubts as to whether the relatively high amount of aid per direct job created, in particular in a low wage sector (the aid per direct job created would correspond to around seven annual salaries), was justified.

— Concerning the number of indirect jobs, in their letter dated 17 February 2007 the Slovak authorities initially indicated that 100 indirect jobs would be created. Later on, in their second letter of 4 June 2007 providing additional information, they referred to the statistics of the European Aggregates Association, claiming that indirect jobs would amount to 414-690. According to this study, in the sector in which the company is pursuing its business activities, approximately 3-5 jobs are created in respect of each newly created job. In the information submission dated 13 August 2007, the Slovak authorities referred finally to a survey furnished to Alas by the University of Leoben (Austria), according to which in the sector of processing of raw materials, each new direct job corresponds

([12]) OJ C 74, 10.3.1998, p. 9.

([13]) Letter from the Slovak Ministry of Finance, dated 31 May 2007 (ref. MF/8790/2007-832).

([14]) In this respect, it should be underlined that 16 new jobs out of 81 should be created at the site of Červeník, for which the permit for extraction has not yet been granted.

to 30-40 indirect jobs ([15]). The Commission had doubts as to whether this general statement on mineral extraction was transferable to the situation of building materials.

— Moreover, the aid is granted to activities in the extraction industry whose location is determined not by the granting of aid, but by the availability of minerals; this is less affected by the regional handicaps that normally hamper regional development. Consequently, it can be assumed that it would be possible to exploit the resources even without the aid. In addition, since Alas was already operating in most of the establishments on the basis of long-term licences, the incentive effect of additional regional aid was doubtful.

— Third, the likely limited contribution to regional development has to be balanced against the effect on trade and distortion of competition of the aid measure which, according to the Slovak authorities, is also expected to be small. The selling radius of the products concerned is limited (approximately 50 km by road or 150 km by rail) owing to their relatively small value with regard to the cost of transport. The Slovak authorities indicated that only one establishment (Hontianske Trsťany — Hrondín) would be in a position to export part of its production (up to 50 thousand tonnes of building stone annually worth SKK 9 million) to Hungary. Three other establishments (Veľký Cetín, Okoč and Komjatice) are expected to compete with imports from Hungary. Alas Slovakia, s.r.o. does not expect to compete with other companies mining and processing minerals from Austria or the Czech Republic. However, this seemed to be in contradiction with the information contained in the application for the first part of the aid, submitted to the Slovak authorities on 16 April 2003, where potential competitors from these two countries were mentioned.

Taking into account the location of the establishments concerned, the Commission had doubts about the extent to which trade with other Member States (e.g. Austria or the Czech Republic) would be distorted.

— Finally, as laid down in the Commission notice on the definition of the relevant market for the purposes of Community competition law ([16]), in certain cases, even if the deliveries from a given plant are limited to a certain area around that plant, the distribution of plants may be such that the areas around the different plants overlap significantly. If so, it is possible that the pricing of those products would be affected by a chain substitution effect, leading to impacts on a broader geographic market.

As a result, the Commission had doubts as to whether the expected contribution of the aid to regional development would offset its negative effects on trade.

IV. COMMENTS FROM THE SLOVAK REPUBLIC AND INTERESTED PARTIES

(19) No comments were received from the Slovak authorities or from third parties to dispel the doubts 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 provided for.

V.2.2. Economic advantage

(23) The measure relieves Alas Slovakia, s.r.o. of costs it would have to bear under normal market conditions. It will therefore provide an advantage to Alas Slovakia, s.r.o. over other companies.

([15]) 'Socioeconomic study in the sector of final products made from minerals reveals that the number of jobs created in the sector minerals processing is 30-40 times higher than the number of jobs in the mineral sector' (quoted on page 31 of the study entitled 'Survey of minerals planning politics in Europe' commissioned by DG Enterprise and Industry).

([16]) OJ C 372, 9.12.1997, p. 5.

V.2.3. Presence of selectivity

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

V.2.4. Distortion of competition and trade

(25) Finally, the production covered by the project is subject to trade. Therefore, trade between Member States is affected. In addition, the advantage granted to Alas Slovakia, s.r.o. and its production distorts competition or is liable to distort competition.

V.3. *Compatibility*

(26) In so far 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 to be an important project of common European interest or aid to remedy a serious disturbance in the Slovak economy, as provided for by Article 87(3)(b) of the EC Treaty. The measure does not qualify either for the exception allowed by Article 87(3)(c) of the EC Treaty that provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is 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 regions of Nitra, Trnava and Trenčín (Western Slovakia) are eligible under this derogation.

(28) In its decision to open the formal investigation procedure, the Commission explained the reasons, summarised in Section III of this Decision, for which it doubted that the measure under scrutiny 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 deem these doubts to be confirmed.

VI. **CONCLUSION**

(29) The Commission finds that the measure notified by the Slovak Republic, as set out in paragraphs 6 to 10 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 yet been granted and, therefore, there is no need for its recovery,

HAS ADOPTED THIS DECISION:

Article 1

The notified tax concession 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 Alas Slovakia, s.r.o. for up to SKK 100 813 444 (approximately EUR 2,89 million) is not compatible with the common market.

In view of this, the aid may 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 the Decision.

Article 3

This Decision is addressed to the Slovak Republic.

Done at Brussels, 4 June 2008.

For the Commission

Neelie KROES

Member of the Commission