COMMISSION

COMMISSION DECISION

of 16 July 2008

on the State aid which Italy proposes to grant to the steel company Lucchini Siderurgica SpA (C 25/2000 (ex N 149/99))

(notified under document number C(2008) 3515)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2009/389/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:

1. PROCEDURE

(1) On 21 December 2000, the Commission adopted a negative final decision in case C 25/2000 *Lucchini* (previously numbered N 145/99), which concerned environmental aid that Italy was planning to grant to the steel plant Lucchini SpA (Lucchini) [2].

(2) The recipient challenged the decision before the Court of First Instance. On 19 September 2006 the Court annulled the decision in so far as it found that the sum of ITL 2,7 billion (EUR 1 396 000) in aid towards investments in the coking plant and the sum of ITL 1,38 billion (EUR 713 550) in aid towards investments in the water and sewerage system were incompatible with the common market. It upheld the Commission's decision with respect to the steelworks, the blast furnace and the fume extraction system [3].

(3) On 9 August 2007, the Commission sent Italy a request for information, which was answered by letter dated 5 September 2007. Further information was gathered in an on-site visit to the production plant in Piombino, Tuscany, on 10 September 2007 [4]. A final request for information dated 3 October 2007 was answered by letter of 7 November 2007.

2. DESCRIPTION

2.1. The undertaking and the installations concerned

(4) The Lucchini steel plant is located in Piombino, Tuscany, on the shores of the Mediterranean. It is situated in an urban area, only a couple of hundred metres away from water used for swimming and fishing, and the local population will accept its presence only if proper attention is paid to the scale of the environmental impact.

The coking plant

(5) The coking plant distils coal at temperatures between 1 240 °C and 1 250 °C in order to obtain coke, which is needed for the production of pig iron. A coke oven battery is composed of a series of narrow, high and deep ovens set up next to each other. The ovens are separated by a walled burning chamber in which gas is burnt to heat the ovens. The ovens are filled from the top with coal. To empty a coke oven, doors on both sides are opened and the coke is pushed out of the oven with a pusher machine.

[1] OJ C 248, 23.10.2007, p. 25.
[2] OJ L 163, 20.6.2001, p. 24.
[3] Case T-166/01 *Lucchini* v *Commission* [2006] ECR II-2875.
[4] The on-site visit was carried out by two DG Competition officials and one steel expert from DG Enterprise and Industry.

(6) The coking process has a specific duration of around 24 hours. Any speeding up of the process before or during coke production will not speed up production overall or increase the amount of coke produced in a specific time.

(7) The battery on which the notified investments were carried out was built in 1971. At that time, Lucchini Piombino had three coke oven batteries, one of which had 27 ovens, one 43, and one 45. In November 1992 coke production was stopped pending a management decision on the future of coke production inside the plant. In March 1993, a decision was taken to continue coke production, and the coke oven batteries were reactivated.

(8) During the months of suspension the coke ovens were carefully emptied and slowly cooled to a temperature between 900 °C and 950 °C. Italy has explained that even if the interruption is carefully controlled a certain level of degradation of the assets cannot be avoided.

(9) In 1996, a decision was taken to invest in an upgrading of the coking plant. One battery was of relatively good quality and still in a relatively good state, and it was decided that, with an appropriate upgrading, it could continue to operate for a further 10 years. The investment began in 1998. The other two coking batteries were shut down for dismantling.

The water and sewerage system

(10) This system is a closed circuit in which water is used to cool the various installations in the plant indirectly. The water is in no direct physical contact with the installations and is therefore not altered in its chemical composition.

(11) The water is taken from a source such as sea or ground water, and returned to the same source after use. One important source of cooling water at the Lucchini plant is the Mediterranean Sea. The water is pumped in from the sea, used for cooling, and returned to the sea at a higher temperature. This is a problem for the marine fauna and flora, even if the temperature is below the permitted maximum of 35 °C.

2.2. **The aid measures**

(12) Most of the measures being assessed here relate to stages of production in the coking plant. They are described in more detail in the assessment below. The total amount of the investments was ITL 38,45 billion (roughly EUR 19 200 000).

(13) The investments in the water and sewerage system aimed at replacing part of the water taken from and returned to the sea by water from the local authority water purification plant. Even though the investment was without effect on the increase in the temperature of the water as such, the amount of heated water returned was significantly reduced. The cost of the investments in the water and sewerage system was ITL 19,7 billion (roughly EUR 9 850 000).

3. **THE JUDGMENT OF THE COURT OF FIRST INSTANCE**

(14) The Court of First Instance essentially found that the Commission decision was inadequately reasoned in certain parts, which the Court annulled [1].

(15) The Court confirmed that the specific conditions for environmental aid to the steel industry were set out in the Annex to the sixth Steel Aid Code (the Code) [2] and in the general Community guidelines on State aid for environmental protection (the Guidelines) [3] which were applicable at the time of granting [4]. More precisely, the provisions that were relevant to the present case were paragraphs 3.2.1. and 3.2.3.B of the Guidelines, clarified and adapted for the purposes of the ECSC steel industry by the second part of the Annex to the Code.

(16) Paragraph 3.2.1 of the Guidelines states that 'aid ostensibly intended for environmental protection measures but which is in fact for general investment is not covered by these guidelines'. This reiterates the principle also set out in the Annex to the Code

[1] Judgment, paragraphs 112 et seq.
[2] Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, (OJ L 338, 1996, p. 42).
[3] OJ C 72, 10.3.1994, p. 3.
[4] Judgment, paragraph 59.

according to which 'For all cases of State aid for environmental protection the Commission will, as appropriate, impose strict conditions and safeguards so as to avoid general investment aid for new plants or equipment being granted under cover of environmental protection'. In such cases an assessment begins by establishing that the measure concerned would not in fact have been carried out in any event. The Court of First Instance held that if the Member State succeeded in demonstrating that the measure had an environmental purpose, the aid could not be declared ineligible by reason only of the fact that it might have an impact on production. All that was required was that any advantage in regard to lower production costs be deducted ([1]).

(17) As regards eligibility, the Code states that 'new investment which would have been necessary in any event on economic grounds or due to the age of the existing plant or equipment will not be eligible for aid. The existing plant must have significant useful life left (at least 25 %) for the new investment to be eligible for aid' ([2]). In the case before it the Court held that the Commission had failed to provide an adequate statement of its reasons for not accepting an expert's report submitted by Italy which found that that the useful life left of the equipment in question was indeed higher than 25 % ([3]). On the other hand, the Court accepted that investments that had to be carried out for technical and production reasons would have been carried out 'in any event' ([4]).

(18) Both the Commission and the Court accepted that the Lucchini plant in Piombino complied with the mandatory standards before the investments. Paragraph 3.2.3.B of the Guidelines makes provision for 'Aid to encourage firms to improve on mandatory environmental standards'. The Court found that the investment in the coking plant did 'improve on mandatory environmental standards': the two projects, which had been notified separately, should have been treated as a single project ([5]). The Commission had not properly explained why it did not accept Italy's explanations.

(19) A condition for the application of this provision was that the investor demonstrate 'that a clear decision was taken to opt for higher standards which necessitated additional investment, that is, that a lower-cost solution existed which would meet the new environmental standards' ([6]). In the light of the documents and evidence submitted by Italy, the Court held that the Commission had failed to show that the old environmental equipment was unable to operate ([7]).

([1]) Judgment, paragraph 92.
([2]) Ibid.
([3]) Judgment, paragraph 103.
([4]) For instance, the Court upheld the Commission decision with respect to the investment in the blast furnace. The Commission had found that the modernisation of the furnace had made the original environmental equipment redundant, so that it would have had to be replaced in any event for production reasons.
([5]) Judgment, paragraphs 107 et seq.

4. ASSESSMENT

(20) The grants planned by Italy to support the investments in the steel plant are public funds which provide a selective advantage to Lucchini and threaten to distort competition and affect trade between Member States. They therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(21) The Commission has reassessed the two groups of investments by analysing each measure individually, to establish in particular whether it would have been carried out in any event, either for economic reasons or in view of the age of the plant concerned.

4.1. **The coking plant**

4.1.1. *Environmental concerns regarding the coking plant*

(22) As a guide for the classification of the investments in the coking plant, the Commission referred to the Commission's own Best Available Techniques Reference Document on the Production of Iron and Steel of December 2001 ([8]). That document states that emissions to air are most significant for coke oven plants. Many of them are fugitive emissions from various sources such as leakages from lids, oven doors and leveller doors, ascension pipes and emissions from certain operations like coal charging, coke pushing and coke quenching. In addition, fugitive emissions arise from the coke oven gas treatment plant. The main point source for emissions to air is the waste gas from the underfiring systems. Consequently most of the techniques to consider in the determination of best available techniques refer to the minimisation of emissions to air. Emphasis is placed on smooth and undisturbed operation as well as on maintenance of coke ovens, which appears to be essential. Further, desulphurisation of coke oven gas is a measure of high priority to minimise SO_2 emissions, not only at coke oven plants themselves but also at other plants where the coke oven gas is used as a fuel.

([6]) Second part of the Annex to the Code, point (a): 'In the case of firms which decide to improve significantly on mandatory standards, in addition to complying with the criteria in point (b)(ii) above, the investor will have to demonstrate that a clear decision was taken to opt for higher standards which necessitated additional investment, that is, that a lower-cost solution existed which would meet the new environmental standards. In any event, the higher aid level (30 %, as opposed to the 15 % that could be granted at the time or meeting mandatory standards) will only apply to the additional environmental protection achieved'.
([7]) Judgment, paragraphs 104 et seq.
([8]) http://www.envir.ee/ippc/docs/iron%20and%20steel.doc

4.1.2. *Eligible measures*

(23) As a result of its assessment, the Commission has concluded that Italy has demonstrated that investments totalling ITL 29,93 billion had a genuine environmental protection objective. For these measures, the Commission considers that Italy has shown that a clear decision was taken to opt for higher environmental protection standards. All of the parts of the plant to which these investments are directed have a useful life left of at least 25 %. The submission to that effect made by Italy has been confirmed by the Commission's own assessment. In addition, it is presumed that no lower-cost solution existed, other than the continuation of the old facility, as the investments referred to below constitute exclusively environmental measures.

(24) These investments are further described in the following paragraphs.

Reduction of dust emissions from conveyor belt

(25) Lucchini decided to invest ITL 3 billion (about EUR 1 500 000) in a new conveyor belt. The existing uncovered conveyor belt carrying coal from the harbour to the coking plant area was a significant source of dust emissions. Lucchini therefore determined to replace it by a new ecological conveyor belt, i.e. a belt running in a tubular structure.

(26) As a further measure to reduce dust emissions, Lucchini installed a humidification system on the conveyor belt. The amount of the investment was ITL 269 million (about EUR 135 000).

(27) A consequence of the humidification is that the coal tends to lump together, which can impede the subsequent filling of the oven chambers. To prevent this, blowing devices were installed on the coal storage towers. This investment amounted to ITL 295 million (about EUR 150 000).

(28) The measures have no effect on the operation of the coking facility or the steel plant in general.

Reduction of gas emissions during charging of the oven chambers

(29) Lucchini decided to invest a total of ITL 14,3 billion (about EUR 5 900 000) in measures aimed at reducing emissions occurring during the filling of the oven chambers.

(30) The oven chambers were charged through the battery roof by coal charging cars. The charging car was filled from the coal storage tower, and during this operation was positioned under the tower. The charging car transported the coal mix on a rail track installed on the battery roof, and unloaded it into the oven chamber through special openings on each oven's roof.

(31) Before the investment, the coal was dropped into the oven without further protection, which resulted in significant gas emissions. The purpose of the investment was to achieve a perfect join between the charging hopper and the oven roof, so that the charging process would be emission-free. The investment breaks down into three components: (1) replacing the charging cars, ITL 5 billion (about EUR 2 500 000); (2) replacing the roof openings and levelling the roof (i.e. reconstructing the entire roof), ITL 7,7 billion (about EUR 3 300 000); and (3) replacing the rail system, ITL 1,5 billion (about EUR 750 000).

(32) The Commission checked in particular that the high costs of the first two measures were justified. The replacement of the charging cars proved to be necessary because the new improved hoppers are higher that the simpler ones used originally. Mounted under the existing charging cars, the new hoppers would have made the cars too high to fit under the filling towers. The heavy cost of replacing the roof of the ovens is a result of the special refractory material used.

(33) The measures have no effect on the level of production.

Reduction of gas emissions from oven doors

(34) A series of measures was carried out to minimise emissions from the coke oven doors, at a total cost of ITL 5 billion (about EUR 2 130 000). The old doors did not close hermetically, which allowed gas to escape. Reliable closure was further impeded by tar deposited on the oven doors and door frames during each charge. The existing simple and rigid oven doors could not be improved sufficiently, so that all 54 doors had to be replaced, which cost ITL 2,5 billion (about EUR 1 120 000).

(35) Second, the doors and door frames had to be regularly cleaned to eliminate tar mixed with dangerous substances such as sulphur, phosphorus etc. This was originally done by hand on a weekly basis. The mechanisation of the cleaning process, which cost ITL 2,1 billion (about EUR 1 000 000), enabled Lucchini to carry out the cleaning after each charge, i.e. on a daily basis, instead of only once a week. This further reduced pollution in general, and improved the closure of the oven doors.

(36) Finally, the new doors weighed 1,5 tonnes more that the original doors, and it became too dangerous for the coking plant workers to handle them with the previous chain mechanism. Another mechanism was installed, at a cost of ITL 356 million (about EUR 175 000), which made the operation safer for the workers. The measure itself had no environmental purpose, but since it became necessary only as a result of the installation of the new doors, the Commission takes the view that it is a follow-up investment made necessary by an environmental measure, and thus accepts that the two measures should be considered as a package.

(37) The measures have no impact on the overall production process.

Reduction of emissions during gas extraction and gas treatment

(38) Lucchini invested ITL 1 billion (about EUR 500 000) in the modification of the system for the extraction of gas from the ovens. The new system was aimed at fine-tuning the speed of the gas extraction mechanism. The pressure in the pipes varies, and when it rises too high valves open and release the necessary volume of gas to the air. The investment sought to regularise the stream of gas, and thus to reduce the frequency of valve openings.

(39) In addition, the main collecting pipe, the ascension pipes and the tubes connecting to the aspiration system were fully replaced under an investment plan costing ITL 1,5 billion (about EUR 750 000). The old system worked using steam, there were leaks in the connecting tubes that allowed gas to escape, and the ascension pipes were not fitted with hydraulic valves. The new system was based on cooling with high-pressure ammonia, which together with the cooling reduces pollutants in the gas.

(40) In a further investment, the gas treatment installation was renovated. In essence, the feed lines were replaced, a new facility for the removal of naphthalene was added, and an IT control system was installed for the gas purification system. The investment cost ITL 1,5 billion (about EUR 750 000).

(41) The electrostatic filter system to filter out the volatile components of the gas was entirely overhauled in order to increase its performance in removing tars. The planned cost was ITL 1,5 billion (about EUR 750 000).

(42) Tar emitted during the coke production process is stored at a temperature of 70 °C. The hot tar releases carcinogenic gases. Lucchini decided to invest ITL 1 427 billion (about EUR 700 000) in an installation for collecting and burning these carcinogenic gas emissions. The investment has no effect on the level of production.

(43) As a result of the investments in the gas purification system, there is a slight increase in the amount and value of the chemical substances that are extracted and sold. On the other hand, the constant monitoring needed for the new system generates much higher costs. There is therefore no overall production benefit that might have to be deducted.

Measurement of SO_2 emissions

(44) An SO_2 emission measurement system had to be installed to monitor SO_2 emissions in the air. The investment was undertaken for solely environmental purposes, and cost ITL 138 million (about EUR 70 000). The measure had no effect on production.

4.1.3. *Measures which would have been carried out in any event*

(45) The Commission has concluded that the measures described below would have been carried out in any event, and consequently are not eligible for environmental aid. The investments represent a total of ITL 8,52 billion which cannot be approved as environmental aid since it did not have had any incentive effect.

Sealing or partially or fully replacing the oven chambers

(46) Lucchini decided to invest ITL 4 241 billion (about EUR 2 100 000) in the repair of the oven chambers by resealing them or by partially or fully replacing the bricks. The Commission considers that this investment was carried out for production reasons. In the first place, the Commission would point out that the battery itself is not part of the environmental equipment but is the very core of the installation.

(47) Second, repair by sealing the bricks is part of the ordinary maintenance of a coking battery.

(48) Further, Italy informed the Commission that the interruption of the working of the coking battery in 1992-1993 sped up its degradation. It thus reduced the useful life of the battery. When the company decided in 1999 to renovate the battery, the aim was to ensure that it continued to work for at least another 10 years. If rebricking was found necessary, rather than straightforward sealing, it can be assumed that the deterioration of the walls was already far advanced. If the oven walls were in bad condition, there was a risk, for example, that they might bend inwards, so that the pushers would no longer be able to pass and push the coke out of the oven chamber. The chamber would have become unusable. Such bending would also endanger the stability of the roof.

(49) Italy explained that the rebricking of the oven wall had an environmental aim. Where gas can circulate between the oven chamber and the burning chamber, gas entering the burning chamber alters the burning gas composition, and black smoke is emitted from the chimney.

(50) The Commission accepts Italy's explanation regarding the need for hermetic closure between the two chambers. But the Commission does not believe that this shows that the investor had taken a clear decision to opt for higher standards. For the reasons set out above, the Commission takes the view that the investments would have been carried out in any event. In its letter of 3 October 2007 the Commission gave Italy the opportunity to rebut the Commission's observations, but Italy did not do so. The Commission therefore considers that the rebricking of the oven walls would have been carried out in any event for economic reasons, in order to ensure continued production of coke on the site.

Reserve power generator

(51) It is true that power cuts have a negative impact on the environment, but the Commission considers that the installation of a fall-back generator was undertaken primarily for reasons linked to production. Power cuts have a substantial impact on production, and a reserve generator would have been installed in any event. The investment cost ITL 1,8 billion (about EUR 900 000).

Filters for quenching emissions

(52) Lucchini spent ITL 220 million (about EUR 110 000) on new filters to filter the steam generated by the process of quenching the hot coke after it comes out of the ovens. The Commission considers that the filters would have been replaced in any event, because they had reached the end of their useful life (20 years), as was confirmed by Italy during the on-site visit.

Automation of coal levelling in the oven chambers

(53) Coal levelling in the oven chambers has environmental benefits. But the investment involved here consisted only in the automation of a measure which had previously been carried out manually. Automation has hardly any impact on the emissions. The measure would have been taken in any event, for economic reasons. The notified cost of the investment was ITL 1,5 billion (about EUR 750 000).

New pipework carrying gas to the burning chamber

(54) The gas pipe bringing gas to the chambers in which the gas is burnt to heat the ovens was leaking, allowing gas to escape. It would have had to be replaced in any event, because the gas is highly explosive and the leaks represented a serious danger to the workers. The investment cost ITL 761 million (about EUR 380 000).

4.2. **The water and sewerage system**

(55) Before the investment, the plant's water and sewerage system complied with the mandatory thresholds in force.

(56) The amount of water taken from and returned to the sea was 36 800 000 m^3 before the investment, and 26 000 000 m^3 after the investment. The investment consisted essentially in building a connection to the local authority water purification plant, and changing the piping system so as to reduce the volume of water needed. The Commission considers that the measure had a genuinely environmental aim.

(57) The investment reduced pumping costs by EUR 206 712 annually. On the other hand, water from the local authority purification plant is not free of charge, but costs EUR 0,15 per m^3, which results in additional costs of EUR 226 200 annually. The new system consequently costs Lucchini EUR 19 488 annually more that the old one. Thus there are no production benefits which might have to be deducted.

5. **CONCLUSION**

(58) In view of the above, the Commission has concluded that, for the coking plant, investments amounting to ITL 29,93 billion have a genuine environmental objective (72 % of the total amount invested in the coking plant), and are thus eligible under the Guidelines in force at the time (recital 15 above) [1]. There are no production benefits. Italy notified an aid intensity of 7 %. The corresponding sum in aid, ITL 2,095 billion (equal to EUR 1 081 977,2), can therefore be found compatible.

[1] Irrespective of whether they improve on best available techniques, which is a requirement under the current Community guidelines on State aid for environmental protection (OJ C 82, 1.4.2008, p. 1).

(59) The Commission has concluded that the remaining investments in the coking plant, amounting to ITL 8,52 billion (EUR 4 300 000), would have been carried out in any event, either for economic reasons or for reasons to do with the useful life of the plant. As regional aid to investment is not permitted in the steel industry, the aid corresponding to this investment, amounting to ITL 0,596 billion (EUR 307 808,31), is incompatible.

(60) The entire measure in respect of the water and sewerage system can be considered to have a genuine environmental objective. Since there are no production benefits, the full amount of aid can be approved: at an aid intensity of 7 %, this amounts to ITL 1,379 billion (EUR 712 184,06),

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy plans to grant to the steel undertaking Lucchini Siderurgica SpA consisting of EUR 1 081 977,2 (ITL 2 095 billion) for environmental investments in the coking plant and EUR 712 184,06 (ITL 1 379 billion) for environmental investments in the water and sewerage system is compatible with the common market.

Article 2

The State aid which Italy plans to grant to the steel undertaking Lucchini Siderurgica SpA consisting of EUR 307 808,31 (ITL 0,596 billion) for investments in the coking plant other than those referred to in Article 1 is incompatible with the common market.

Consequently, this aid may not be granted.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 July 2008.

For the Commission

Neelie KROES

Member of the Commission