COMMISSION DECISION

of 24 March 2010

on the State aid C 4/03 (ex NN 102/02) implemented by Italy for WAM SpA

(notified under document C(2010) 1711)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2010/474/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof [1],

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid C 4/03 (ex NN 102/02) [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

I. PROCEDURE

Procedure before the Commission

(1) By letter dated 26 July 1999, the Commission received a complaint against WAM Engineering Ltd. It was alleged in the complaint that WAM SpA had been granted illegal public subsidies by Italy.

(2) Requests for information were addressed to the Italian authorities by letters of 5 August 1999 and 10 September 1999. The complainant submitted additional information by letter of 2 September 1999. By letter dated 13 December 1999, the Commission communicated to the complainant the reply of the Italian authorities submitted by letter of 11 October 1999, and announced that it intended to carry out a formal investigation.

(3) At the same time, a survey on national support schemes for foreign direct investment outside the EU (FDI) was being carried out which was expected to result in a Commission communication on the matter.

(4) By letter dated 18 December 2001, the Commission asked Italy for further information, following renewed action by the complainant (two reminders were addressed to the Commission by letters of 31 March 2000 and of 11 October 2000), given that the FDI survey had been postponed by the Commission.

(5) In the light of the information provided by the letters of 20 February 2002 and of 27 March 2002, further questions were put to the Italian authorities by letter of 12 April 2002.

(6) The Italian authorities replied by letter of 21 May 2002. By letter dated 5 June 2002, the Commission informed the Italian authorities that it considered the information submitted to be incomplete and asked for the missing information and further clarifications to be provided within 20 working days from receipt of the letter.

(7) As no reply was received, and in spite of a request from the Italian authorities by letter of 25 June 2002 for an extension of the deadline until 31 July 2002, an information order within the meaning of Article 10(3) 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 [3] (hereinafter: Regulation (EC) No 659/1999) was adopted by the Commission on 26 September 2002. Meanwhile, the case was transferred into the non-notified aid register and was given the Number NN 102/02.

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate and the reference to the Court of First Instance as a reference to the General Court.

[2] C(2003) 35 final (OJ C 142, 18.6.2003, p. 2).

[3] OJ L 83, 27.3.1999, p. 1.

(8) By letters of 26 June 2002 and 4 October 2002, the complainant was kept informed of the progress of the dossier. By letter of 31 October 2002, it asked to know the outcome of the order.

(9) The Italian authorities submitted the requested information by letter of 16 October 2002 and supplied additional elements by letter of 24 October 2002.

(10) The Commission informed Italy by letter of 24 January 2003 that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty, now Article 108(2) of the TFEU, in respect of the aid in question ([4]).

(11) By letter of 29 January 2003, the complainant was informed accordingly.

(12) Having not yet received the abovementioned letter, the complainant sent the Commission a reminder by letter of 10 February 2003.

(13) Further to the communication to the Italian authorities, concerning the opening of the procedure, WAM SpA immediately sent a letter to the Commission (letter of 10 February 2003).

(14) By letter of 27 February 2003, Italy asked for an extension, until 7 March 2003, of the fifteen-day deadline for presentation of observations on confidentiality, as laid down in the Commission's decision.

(15) By letter of 10 March 2003, Italy asked the Commission not to publish the decision, given the willingness of the beneficiary to repay the aid, as also stated by WAM SpA itself in a letter of 13 March 2003 sent directly to the Commission.

(16) By letter of 18 March 2003, the Commission pointed out that, in order to avoid publication, a final decision closing the case was necessary, which was conditional on proof being submitted that the two tranches of aid, plus interest calculated in a way acceptable to the Commission, had actually been recovered.

(17) As the amount proposed by the Italian Government, by letter of 13 May 2003, was significantly lower than the first estimate of the grant equivalent of the aid calculated by the Commission on the basis of the elements available at the time of the opening of the procedure, the Commission informed Italy, by letter of 22 May 2003 that, since the proposed amount to be repaid was considered not to satisfy its criteria, publication would go ahead shortly.

([4]) See footnote 2.

(18) By letter of 13 June 2003, the complainant asked for information about the publication of the decision. The Commission replied by letter of 18 June 2003. A further communication was sent that same day, via e-mail to the complainant informing it promptly that publication had just taken place.

(19) By letter of 1 July 2003, preceded by a fax of the same date, a request for access to the whole file was submitted by WAM SpA. The request was rejected by the Commission by letter of 14 July 2003.

(20) By letter of 20 June 2003, WAM SpA replied directly to the Commission's communication to Italy to the effect that it had published the decision. The Commission replied by letter of 11 July 2003.

(21) By letter of 27 June 2003, the complainant expressed the intention to claim compensation from WAM SpA in view of the losses it had incurred, if the Commission's final decision was negative. It asked to be informed of the procedure to be followed.

(22) By letter of 4 July 2003, Morton Machine Company Limited announced that it had been summoned to appear in an Italian court by WAM SpA, which in turn was claiming compensation, and asked the Commission whether it could arrange for the summons to be withdrawn.

(23) By letter of 10 July 2003, the Commission replied to the two abovementioned letters from Morton Machine Company.

(24) By letter of 16 July 2003, interested third parties submitted comments and requested that they be kept confidential.

(25) On 23 July 2003 a meeting took place between the Commission departments and the Italian authorities. Ahead of the meeting, the Italian authorities had provided some information by letter of 22 July 2003, registered as received on 25 July 2003. Additional information was sent directly to the Commission by letter of 8 August 2003 from the Prime Minister's Office (Department for Coordination of Community Policies).

(26) By letter of 21 August 2003, Morton Machine Company Limited asked whether a final decision had already been taken and asked to be kept informed of the situation. The Commission replied by letter of 28 August 2003.

(27) By letter of 19 September 2003, Italy submitted to the Commission its observations on the decision to open the formal investigation procedure.

(28) By letter of 3 November 2003, Italy submitted its observations on third-party comments.

(29) Further to the request for compensation submitted by WAM SpA of 30 July 2003, the refusal of access to the documents was confirmed by the Secretariat-General by letter of 16 September 2003.

(30) The information missing from the reply of 19 September 2003 was provided by Italy by letter of 14 January 2004.

(31) On 19 May 2004 the Commission adopted a decision under Article 7(3) and (5) of Regulation (EC) No 659/1999 ([5]).

Procedure before the Court of First Instance and the Court of Justice

(32) Both WAM SpA and Italy appealed against the Commission Decision of 19 May 2004 before the Court of First Instance. The Court of First Instance, having decided to join the cases, handed down its judgment on 6 September 2006 and overturned the Commission Decision on the grounds that it had failed to provide sufficient evidence that the aid was likely to affect trade and competition in the EU market, given the circumstances of the case ([6]).

(33) The Court of First Instance's judgment was appealed against by the Commission. On 30 April 2009 the Court of Justice dismissed the Commission's appeal ([7]).

II. DESCRIPTION OF THE AID

(34) WAM SpA is a company under Italian law with its registered office in Cavezzo, Italy. During the relevant period between 1995 and 2000 it was active in the market for the production and marketing of screw conveyors and feeders, dust collectors and valves for industrial plants. There are numerous EU producers in this market. In the dust collectors market in particular, WAM SpA had a number of larger EU competitors with advanced technology and a well-developed commercial structure ([8]).

(35) As regards WAM SpA's presence in the Italian market, the company's market share in the cement screw conveyor market was 60 % in 1991, 50 % in 2000 and 55 % in 2003. In the dust collector market, the company's market share was 40 % in 1991 and increased to 50 % in 2000 and to 60 % in 2003 ([9]).

(36) From 1997 onward, WAM SpA expanded into other EU markets, in particular West Germany and France. In 2000, it had a market share for cement screw conveyors of 70 % in France and Germany and 60 % in the UK, whilst the corresponding figures for round dust collectors were 50 % in France, 20 % in Germany and 10 % in the UK ([10]).

(37) In 1994 a Japanese subsidiary, WAM Japan, was established. It focused on the marketing of two products which were manufactured in Italy and whose transport costs were relatively low: dust collectors and valves. In 1995 a Chinese subsidiary was established which was run first as a joint venture with a local partner and, from 1998 as a wholly owned subsidiary of WAM SpA ([11]).

(38) In the period in question, WAM SpA also held 84 % of the shares in 'WAM Engineering Ltd', a company under English law with its registered office in Tewkesbury, United Kingdom. The market segment in which WAM Engineering Ltd was active was the design, manufacture and sale of industrial mixing machinery used mainly in the food, chemical, pharmaceutical and environmental industries.

(39) With reference to the pricing policy of WAM Engineering Ltd in the United Kingdom, the complainant argued that WAM was able to offer the same products (industrial mixing machinery) that the complainant's company manufactured and marketed for about one third of the price – a figure which the complainant claimed would barely cover the raw materials needed to manufacture the machines, thanks – in its view – to Italian Government funding, in particular funding under Law No 394/81.

(40) According to the complainant, WAM Engineering Ltd was granted financial support for market penetration programmes in non-EU countries under Law No 394/81. In particular, Law No 394/81 allegedly provided support to Italian companies wishing to establish a subsidiary abroad, in the form of representative offices, sales branches and warehouses.

([5]) OJ L 63, 4.3.2006, p. 11.
([6]) Joined Cases T-304/04 and T-316/04 *Italian Republic and Wam SpA* v *Commission* [2006] ECR II-64.
([7]) Judgment of the Court of Justice of 30 April 2009 in Case C-494/06 P *Commission* v *Italian Republic and Wam SpA*, not yet reported.
([8]) Such as Dce and R-Master (UK), Infa-Stauband Ats (Germany) and Fda (France). See Recent, Centre for economic research (Department of political economy of the University of Modena and Reggio Emilia), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.
([9]) Recent, Centre for economic research (Department of political economy of the University of Modena and Reggio Emilia), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.
([10]) See footnote 9.
([11]) See footnote 9.

(41) The Italian authorities confirmed the granting of aid in the form of subsidised loans amounting to ITL 2 281 450 000 (approx. EUR 1,8 million) to WAM SpA in 1995 for projects in Japan, South Korea and Taiwan. According to the Italian authorities, the beneficiary was actually granted a subsidised loan of ITL 1 358 505 421 (approx. EUR 0,7 million) as the planned projects in Korea and Taiwan were not implemented due to the economic crisis in those countries.

(42) The subsidised loan covered 85 % of the eligible expenditure. The interest-rate subsidy could amount to up to 60 % of the reference rate. The loan was to be repaid in five years, on a straight-line basis and in equal half yearly amounts, with interest payable on the outstanding balance. A grace period of two years was envisaged.

(43) The subsidised interest rate of the specific loan (equal to 4,4 %) was calculated with reference to a market rate of 11 %. In the light of the above and on the basis of the information available at the time of the opening of the procedure, the aid intensity seemed to be equivalent to 16,38 % gross grant equivalent (gge) which would have resulted in aid of ITL 222 523 000 (approx. EUR 0,115 million).

(44) The eligible costs of this aid have been divided into two categories: costs related to permanent structures abroad and trade promotion costs. The following costs, expressed in ITL million, were taken into account:

(million ITL)

ELIGIBLE COSTS	LOANS GRANTED
PERMANENT STRUCTURES	
Rent, insurance, miscellaneous facilities	122,56
Operating costs (in particular personnel, fittings, equipment for permanent structures)	556,94
Display models	38,23
Consultancy services	29,43
Subtotal 1	747,18
TRADE PROMOTION	
Storage of goods	456,28
Market surveys	40,95
Fairs and exhibitions	12,19
Advertising	94,39
Business trips	7,52
Subtotal 2	611,33
Grand total	1 358,51

(45) Moreover, by letter of 21 May 2002, the Italian authorities, in response to a request for information from the Commission, stated that WAM SpA was granted another subsidised loan of ITL 1 940 579 808 (approx. EUR 1 million) under the same scheme on 9 November 2000.

(46) The Commission was not aware, at the time of the opening of the procedure, of any other details concerning this additional aid.

III. GROUNDS FOR INITIATING THE PROCEDURE

Aid granted to WAM SpA in 1995

(47) The Italian authorities maintained in their letter of 21 May 2002 that the aid granted to WAM SpA in 1995 under Law No 394/81 was significantly below the *de minimis* threshold and that no other *de minimis* aid had been granted to the same beneficiary over the same three-year period. Furthermore, they stressed that the aid could not in any way be considered as being directly linked to the quantities exported.

(48) The Commission pointed out that most of the eligible costs taken into account for the specific aid granted to WAM SpA in 1995, such as rent, insurance, miscellaneous facilities and operating costs (in particular for staff, fittings and equipment) in connection with a permanent place of business abroad, could have been considered aid for the establishment and operation of a distribution network.

(49) Likewise, in the Commission's opinion, costs for consultancy services related to permanent structures abroad, advertising and business trips should have been classified as current expenditure relating to export activities.

(50) In the decision to open the formal investigation procedure, the Commission stated that, pursuant to the last paragraph of the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([12]), where, at the time of a decision, guidelines have been replaced by a regulation, the Commission considers that the rules set out in the regulation have to be applied to the extent that they are more favourable than those set out in the guidelines. Accordingly, the Commission noted in the decision to open the formal investigation procedure that as regards *de minimis* aid, the rules of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([13]) (hereinafter: Regulation (EC) No 69/2001) in principle had to be applied.

([12]) OJ C 119, 22.5.2002, p. 22.
([13]) OJ L 10, 13.1.2001, p. 30.

(51) However, Regulation (EC) No 69/2001 did not apply to aid for export-related activities, that is, aid directly linked to the quantities exported as well as to the establishment and operation of a distribution network or to other current expenditure linked to export activities, as provided in Article 1(a).

(52) As regards the compliance of the aid in question with the relevant *de minimis* rules, it must be noted that the Commission stated in the decision to open the formal investigation procedure that the 1992 Community guidelines on State aid for SMEs [14] (hereinafter: the 1992 SME guidelines) did not explicitly exclude export aid but set a lower threshold for *de minimis* aid of ECU 50 000.

(53) In the light of the above, the Commission expressed doubts in the decision to open the formal investigation procedure as to whether the aid granted to WAM SpA in 1995 under Law No 394/81 could be considered to comply with any relevant *de minimis* rule.

(54) Furthermore, in the light of a preliminary examination, the Commission had serious doubts whether the aid to WAM SpA could be declared compatible with the EC Treaty (now the TFEU) on the basis of any provision.

Aid granted to WAM SpA in 2000

(55) At the time the formal investigation procedure was initiated, the Commission was not aware of any specific feature, such as aid intensity or eligible expenditure, of the 'WAM group' aid (as the Italian authorities term it) granted in 2000, again in the form of a subsidised loan, under Law No 394/81. No information concerning it had been submitted by the Italian authorities.

(56) Accordingly, the Commission was not able at that stage of the procedure to assess the specific aid in depth. However, given that it served the same purpose and was granted on the same legal basis as the aid granted in 1995, it doubted whether the aid could be deemed to be in compliance with any of the relevant provisions of the EC Treaty (now the TFEU).

(57) The Italian authorities also pointed out, in their letter of 24 October 2002, that no aid had ever been granted directly to 'WAM Engineering' and that there was no undertaking registered as such in the Italian business register. The Commission however noted, firstly, that 'WAM SpA' held 84 % of 'WAM Engineering Ltd' shares and, secondly, that since their letter of 11 October 1999, the Italian authorities had announced that 'WAM SpA' had been granted a subsidised loan in 1995 under Law No 394/81 and had added, by letter of 21 May 2002, that 'WAM group' had been granted another subsidised loan under the same scheme on 9 November 2000.

IV. **COMMENTS FROM INTERESTED PARTIES**

(58) Comments on the decision to open the formal investigation procedure were received from an interested third party who asked not to be named.

(59) The third party comments supported the Commission's efforts to restore a level playing field for competitors in the sector concerned and complained about the technical skills and jobs being lost on account of WAM SpA's position in the market.

(60) By letter of 3 November 2003, the Italian authorities, who were made aware of the third party's comments by letter of 25 September 2003 from the Commission, stated that in their view these comments added nothing new as they simply confirmed some of the assertions already made in the case, by the complainant among others. In particular, the Italian authorities considered that sufficient proof had been provided to demonstrate that there was no link between the claims made in the abovementioned comments and the funding of WAM SpA under Law No 394/81.

V. **COMMENTS FROM THE ITALIAN AUTHORITIES**

(61) With regard to the 1995 loan, the Italian authorities provided evidence that, at the point at which the application was made for the first aid measure and the loan granted, WAM SpA complied with the definition of a medium-sized enterprise given at point 2.2 of the 1992 SMEs guidelines, as illustrated by the company's 1994 annual accounts, on the grounds that it had 163 employees, an annual turnover of EUR 16,8 million and a balance-sheet total of EUR 20,1 million and was owned by two undertakings, both fulfilling the definition of an SME. But the Italian authorities themselves agreed that WAM SpA was no longer an SME after 1998, or when the second aid was granted (2000).

(62) No other new substantive element concerning the first aid measure was added to the information that the Commission already possessed when the procedure was initiated, except for the fact that the loan was made available to the beneficiary in several instalments for which the grace period could vary from 2 years to zero. Apparently, there was no provision in the original contract for reviewing the interest rate. This loan was scheduled to be repaid in full in April 2004.

[14] OJ C 213, 19.8.1992, p. 2.

(63) As far as the 2000 loan is concerned, the Italian authorities provided clarification, by letter of 25 July 2003, that the actual total amount of the loan was ITL 3 603 574 689 (corresponding to EUR 1 861 091,01), rather than ITL 1 940 579 808 (about EUR 1 million), as previously stated in the letter of 21 May 2002, and indicated in the decision to initiate the formal investigation procedure, since the latter figure referred only to the part of the loan which had already been paid at the point at which the letter was written, not the overall amount of aid granted.

(64) Two more instalments were in fact paid. The last one, amounting to EUR 248 091,01, was paid on 22 January 2003. The conditions under which this loan was granted are the same as those for the 1995 loan since both were granted under Law No 394/81. The granting of the entire amount of the 2000 loan in question was decided on 9 November 2000 and the contract was signed on 20 December 2000.

(65) Below is a schedule of the eligible costs taken into consideration as regards this aid, forwarded by the Italian Government in an annex to the letter of 22 July 2003.

(thousand EUR)

ELIGIBLE COSTS	LOANS GRANTED
PERMANENT STRUCTURES	
Rent and fitting-out of premises, vehicles	331,27
Operating costs (management, goods and personnel)	973,50
Display models	0,87
Training	25,24
Consultancy	30,29
Subtotal 1	1 361,17
TRADE PROMOTION	
Storage of goods	353,39
Fairs and promotions	6,37
Advertising	42,74
Business trips	94,84
Trips by customers to Italy	2,59
Subtotal 2	499,92
Grand total	1 861,09

(66) Furthermore, it is evident from the documents annexed to the letter of 14 January 2004 that the programme in question should have been carried out in China jointly by WAM SpA and 'WAM Bulk Handling Machinery Shangai Co Ltd', a local firm wholly owned by WAM SpA.

(67) Eligible costs were considered to include the rent of premises for offices, storage, showrooms and technical assistance (total surface area of 7 500 m^2), the purchase, renting or leasing of 3 vehicles and staff costs at the parent firm and abroad (specifically: 1 sales manager and 6 technicians).

(68) The interest rate applied to the specific loan was 2,32 %, i.e. 40 % of the reference rate of 5,8 %, in force when the aid was granted. Once again, it seems that no change in the interest rate during the period of the loan was provided for in the contract. The loan was paid to the beneficiary in several instalments, so the grace period varied from 2 years to zero.

(69) As regards repayment, the data supplied by the Italian authorities shows that the grace period of two years, during which only the interest on the loan instalments already disbursed to the beneficiary was paid, elapsed on 20 February 2003. On 20 August 2003, the five-year repayment period started. Repayment was on a straight-line basis and in equal half-yearly instalments, with interest due on the outstanding balance. According to the schedule, repayment should therefore have been completed by 20 February 2008.

(70) Furthermore, as regards the modification of the interest rate during the repayment period, the Italian authorities argued that general rules allowing such reductions did exist within the Italian legal framework.

(71) In addition, with regard to both loans, the Italian authorities claimed that the cost of the compulsory bank guarantee, which was requested prior to the granting of the loans, had to be deducted from the amount of the aid.

(72) As regards WAM SpA's exports inside and outside the EU, the following data were provided:

YEAR	EXPORTS INSIDE EU	EXPORTS OUTSIDE EU	TOTAL EXPORTS
1995	10 237 196	4 477 951	14 715 147
1996	9 338 640	5 592 122	14 930 762
1997	9 974 814	5 813 442	15 788 256
1998	10 780 161	5 346 514	16 126 675
1999	11 885 473	5 276 525	17 161 998

(73) The Italian authorities informed the Commission that the total export figures indicated above represented 52 % to 57,5 % of WAM SpA's total annual turnover in 1995 and 1999 respectively.

(74) Finally, while the Italian authorities acknowledge that the two loans under examination are covered neither by Regulation (EC) No 69/2001 nor by Commission Regulation (EC) No 70/2001 ([15]), they take the view that the incentives for enterprises from the EU designed to support programmes to be implemented outside the EU do not fall under the scope of Article 87(3) of the EC Treaty, now Article 107(3) of the TFEU.

VI. ASSESSMENT OF THE AID

Existence of aid within the meaning of Article 107(1) of the TFEU

(75) Article 107(1) of the TFEU states that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(76) It follows from Article 107(1) of the TFEU that, in order for a measure to qualify as State aid, four conditions must be met. First, there must be an intervention of the State through state resources. Secondly, that intervention must confer a selective advantage on its recipient. Thirdly, it must be liable to affect trade between Member States and, fourthly, it must distort or threaten to distort competition.

State resources and imputability to the State

(77) The concept of State aid applies to any advantage, granted directly or indirectly, financed out of state resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. Court of Justice case law establishes very clearly that there is no difference between aid transferred directly by the State and aid transferred by public or private entities instituted by the State to do so ([16]).

(78) The aid measures under scrutiny were granted by the committee set up pursuant to Article 2 of Law No 394/81 ([17]) for the 1995 loan and by the '*Comitato Agevolazioni*' ([18]) for the 2000 loan.

(79) Mediocredito Centrale SpA ([19]) entered into the 1995 financing contract with WAM SpA in order to implement the decision of the committee set up pursuant to Article 2 of Law No 394/81. SIMESIT SpA ([20]) entered into the 2000 financing contract with WAM SpA in order to implement the decision of the '*Comitato Agevolazioni*'.

(80) In this case the aid was granted from state resources by entities which acted on behalf of the State, with the objective of promoting economic activities according to

([15]) OJ L 10, 13.1.2001, p. 33.

([16]) See Case 78/76 Steinike & Weinlig [1977] ECR 595, paragraph 21; Case 290/83 *Commission* v *France* [1985] ECR 439, paragraph 14; Joined Cases 67/85 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 35 and Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 13.

([17]) According to Article 2 of Law No 394/81 a fund was created at Mediocredito Centrale for granting subsidised loans to companies for market penetration abroad. This fund is administered by a committee which ensures that the support is granted in compliance with the law. The committee is appointed by decree of the Minister of Trade in cooperation with the Minister for the Treasury and the Minister for Industry, Trade and Crafts. The committee, established at the Ministry of Foreign Trade, is made up of:
(a) the Minister for Trade, or, by delegation, the Secretary of State, who chairs it;
(b) a manager from each of the following departments: Treasury, Ministry of Industry, Commerce and Crafts, Ministry of Trade, or similarly qualified replacements appointed by the respective Ministers;
(c) the Director-General of Mediocredito Centrale, or in his absence, a replacement designated by him;
(d) the Director-General of the National Institute for Foreign Trade (Istituto nazionale per il commercio estero), or in his absence, a replacement designated by him.

([18]) Article 1 of the Ministerial Decree of 19 January 1999 stipulates the composition of the committee within the meaning of the Legislative Decree of 31 March 1998, No 143, and in particular, Article 25 paragraph 1, as including two representatives of the Ministry of Trade, one representative of the Treasury, Budget and Economic Planning, one representative of the Ministry of Foreign Affairs, Minister for Industry, Trade and Crafts, one representative appointed by the Conference of presidents of Regions and Autonomous provinces and one representative of the Italian Banking Association.

([19]) At the time in question, a fund within the meaning of Article 2 of Law No 394/81 holding state resources was set up at Mediocredito Centrale and administered by the committee set up under Article 2 of Law No 394/81. By letter of 27 December 1995, the Ministry of Foreign Trade asked Mediocredito Centrale to enter into a contract with WAM SpA (within three months) in order to implement the decision of the committee set up under Article 2 of Law No 394/81 at its session of 24 November 1995.

([20]) According to Legislative decree No 143 of 31 March 1998, and in particular Article 25(1) thereof, as from 1 January 1999 SIMESIT SpA was appointed to manage financial support for promoting trade abroad under Law No 394/81. SIMESIT SpA is a public entity which was established in 1990 (Law No 100 of 24 April 1990) by the Italian Government to promote Italian companies in third countries. The company is controlled by the Italian Government, which holds 76 % of its shares and sets the guidelines for selecting the investments that SIMESIT SpA supports. Furthermore, the management board of SIMESIT ('consiglio d'amministrazione') consists of nine members, five of whom are appointed by the Italian Government.

the guidelines laid down by the State, and is therefore – in accordance with Court of Justice case law – imputable to the State ([21]).

Selective advantage granted to an undertaking

(81) Loans on advantageous terms improve the financial situation of the recipient of the aid, releasing it from costs that it would otherwise have to bear if it were to set up a market penetration programme without state intervention. Therefore the State aid measures under scrutiny confer a selective advantage on WAM SpA over its competitors from the EU.

(82) As it is active in the market for the production and distribution of screw conveyors and feeders, dust collectors and valves for industrial plants, there is no doubt that WAM SpA carries out an economic activity in that market, which fulfils the definition of an undertaking under EU law ([22]).

(83) In conclusion, the aid granted to WAM SpA can be regarded as having conferred a selective advantage on an undertaking.

Effect on trade between Member States and distortion of competition

(84) In its judgment of 30 April 2009 the Court of Justice emphasises ([23]) that 'even in cases where it is apparent from the circumstances under which it was granted that the aid is liable to affect trade between Member States and to distort or threaten to distort competition, the Commission must at least set out those circumstances in the statement of reasons for its decision'. However, the Court also considers that the Commission does not have to demonstrate that the aid has a real effect on trade between Member States but only 'to examine whether that aid is liable to affect such trade and distort competition' ([24]). Furthermore, the Court of Justice has also ruled that 'the Commission was not obliged to carry out an economic analysis of the actual situation of the relevant market or the patterns of the trade in question between Member States or to show the real effect of the aid at issue' in order to demonstrate that the conditions concerning the effects on trade and competition were fulfilled.

(85) WAM SpA is a company operating in the EU and international markets. It has subsidiaries in many Member States and sells its products throughout the EU as well as outside of it. Between 1995 and 1999, two thirds of its turnover, EUR 10 million in absolute figures, came from sales in the EU market and one third from sales outside the EU. In these markets, WAM SpA actually or potentially competes with other EU companies, which are also present internationally. As mentioned above (see recital 34), there were at least three other large EU producers of dust filters from various Member States which were present internationally and which could have been potential competitors of WAM SpA in the export of dust filters to Japan or China ([25]). These companies were, at least potentially, in competition with WAM SpA, because if they decided to export their products to Japan or China, they would be in a worse starting position than WAM SpA, which had received aid in order to penetrate those markets.

(86) Moreover, as explained in recitals 34 and 35, during the relevant period WAM SpA had a large share of both the national and the European markets. As indicated in recital 38, it also had a commercial presence through a subsidiary in another Member State.

(87) As a result of the aid, WAM SpA's overall position in the market strengthened, or could potentially have strengthened, by comparison with undertakings from other Member States which are not only WAM SpA's actual but also potential competitors. According to settled case law 'aid which is intended to relieve an undertaking of the expenses which it would normally have to bear in its day-to-day management or its usual activities in principle distorts competition' ([26]).

(88) In the present case three further arguments support this finding:

(89) Firstly, the export loans granted to WAM SpA were likely to alter the normal competitive market structure, making it easier for WAM SpA than for its actual or potential competitors from the EU to export their products to foreign markets, as the latter would have to finance the export penetration programme from their own funds.

([21]) See Case C-482/99 *French Republic* v *Commission* (Stardust) [2002] ECR I-4397, paragraphs 55 and 56.

([22]) See Case C-41/90 Höfner and Elser [1991] ECR I-01979, paragraph 21.

([23]) Case C-494/06 P *Commission* v *Italian Republic and Wam SpA*, not yet reported, paragraphs 49 et seq.

([24]) See also Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 52 and Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901.

([25]) Recent, Centre for economic research (Department of political economy of the University of Modena), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.

([26]) See Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraphs 48 and 77, Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 43 and Case T-217/02 *TerLembeek* v *Commission* [2006] ECR II-4483, paragraph 177.

(90) Secondly, WAM SpA received aid for setting up the market penetration programme and therefore made certain savings. As WAM SpA invested in the penetration of foreign markets with the aim of exporting its products, these savings could have consequently enabled it to export products manufactured in the EU outside the EU for a lower price or with a higher margin.

(91) Thirdly, as money is fungible, any profits from this activity could have been reinvested within the EU. Another possibility is that, having received aid, WAM SpA was freed from the expense of foreign market penetration and was able use the money saved to strengthen its position in the EU market for other purposes ([27]). Moreover, after the exports have been carried out, any profits from this activity could be reinvested within the EU.

(92) In all these cases, the aid would have a direct impact on the EU market and a distorting effect vis-à-vis WAM's competitors in the EU.

(93) Likewise, it is established case law that 'when aid granted by Member States strengthens the position of an undertaking compared with other undertakings competing in the trade within the EU, the latter must be regarded as affected by that aid' ([28]). As the aid granted to WAM SpA by Italy strengthened its position vis-à-vis its actual or potential EU competitors, as explained above, such aid also affected trade within the EU.

(94) As regards the amount of aid, the Court of Justice held in *Philip Morris* v *Commission* ([29]) and *France* v *Commission* ([30]) that, even if the amount of aid received is relatively low or the undertaking is small, there is still a possibility that trade within the EU may be affected. In the same vein, in *Vlaams Gewest* v *Commission* ([31]) the Court of First Instance stated that 'even a relatively small amount is liable to affect trade between Member States where there is strong competition in the sectors in which undertakings operate'. Moreover, the Court of Justice stated in *Heiser* ([32]) that there is no threshold or percentage below which it might be considered that trade between Member States is not affected.

(95) In the case at hand, therefore, the relatively small amount of the aid does not contradict the finding that there may be an effect on trade within the EU and on competition. Although the amount of aid is quite low, because of the intense nature of existing as well as potential competition in the sector in which WAM SpA operates, there is a great risk that competition would be distorted and that trade within the EU would be affected.

(96) On the basis of the above, it can be concluded that the aid granted to WAM SpA by Italy is very likely to affect trade and distort competition in the internal market.

(97) In conclusion, the public support given to WAM SpA constitutes State aid within in the meaning of Article 107(1) of the TFEU.

Applicable rules

(98) In accordance with the *tempus regis actum* principle, the procedural rules in force when the decision is to be adopted have to be applied to non-notified aid unless explicitly provided otherwise ([33]).

(99) Given that the exemption rules (including the *de minimis* rules) exempt certain aid measures from the notification obligation and replace the centralised system of State aid control with a decentralised system of State aid control, they are considered as being of a procedural nature.

(100) In the case at hand, even if in its decision to open the formal investigation procedure the Commission expressed doubts about the possibility of exempting aid under Commission Regulations (EC) No 69/2001 and (EC) No 70/2001, the corresponding rules in force at the time of the decision must be applied, i.e. Commission Regulation (EC) No 1998/2006 ([34]). Likewise, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ([35]) (hereinafter: the 2008 Block Exemption Regulation) applies to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.

([27]) In Case T-369/06 *Holland Malt* v *Commission*, not yet reported, the Court of First Instance held in paragraph 55 that 'it is therefore clear from the case-law that it is not only the reduction, by virtue of state resources, of the expenses of the day-to-day management or the usual activities of an undertaking which is, in itself, liable to distort competition, but also a subsidy which relieves the recipient of all or part of the costs of an investment'.

([28]) See Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671, paragraph 11, Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21 and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 52.

([29]) See Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671.

([30]) See Case 259/86 *France* v *Commission* [1978] ECR 4393.

([31]) See Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 49.

([32]) See Case C-172/03 Heiser [1998] ECR I-1627, paragraph 32.

([33]) See Joined Cases 212/80 and 217/80 Meridionale Industria Salumi and Others [1981] ECR 2735; Joined Cases *CT Control Rotterdam and JCT Benelux* v *Commission* [1981] ECR I-3873 and Case C-61/98 De Haan Beheer [2000] ECR I-5003.

([34]) OJ L 379, 28.12.2006, p. 11.

([35]) OJ L 214, 9.8.2008, p. 3.

Lawfulness of the aid

(101) The Italian authorities declared, in their letter of 11 October 1999, that the legal basis of the aid granted to WAM SpA, namely Law 394 of 29 July 1981, had been notified to the Commission and to the World Trade Organisation (WTO) pursuant to Article 25 of the Agreement on Subsidies and Countervailing measures (WTO-GATT 1994) ([36]).

(102) The Commission notes that the Italian authorities are trying by this means to qualify as a notification the communication of some very concise data relating to the scheme in a table which has been sent to the Commission either for the purpose of transmission to the WTO Subsidies Committee or for the purpose of the annual report on State aid in the European Union since at least the sixth report (1996). The Commission has also been informed of the existence of the scheme as part of its survey on national support schemes for foreign direct investment (FDI) outside the European Union that exist in the Member States.

(103) These kinds of communications, however, cannot be deemed to be in compliance with Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, which states that 'the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid'.

(104) Since it has not been previously notified to the Commission as regards its compatibility with the State aid rules, the aforementioned aid scheme has been implemented in contravention of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, and is therefore unlawful. As the aid to WAM SpA was granted under that scheme, apart from any block-exempted aid, it must also be considered unlawful.

Aid exempted under the *de minimis* rules and compatibility of the aid with Article 107 of the TFEU

(105) The Commission has to verify whether any of the aid granted to WAM SpA can be exempted on the basis of the *de minimis* rules.

(106) In the same vein, having concluded that the measures under scrutiny constitute State aid within the scope of Article 107(1) of the TFEU, this aid has to be assessed for its compatibility under the relevant State aid rules.

First loan granted to WAM SpA

(107) Evidence has been provided by the Italian Government that at the time the first loan was granted (1995), WAM SpA fulfilled the requirements for it to be considered an SME within the meaning of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([37]). To be more precise, WAM SpA was a medium-sized enterprise as it had 163 employees, an annual turnover of EUR 16,8 million and a balance sheet total of EUR 20,1 million. It was controlled by two finance companies which were themselves SMEs within the meaning of the abovementioned recommendation.

(108) In the case at hand, the Commission is basing its analysis on the actual expenditure taken into consideration in granting the loan (see table in recital 44).

(109) Bearing in mind that the objective of the loan contract was to subsidise a market penetration programme and, in particular, to subsidise export undertakings carrying out market penetration programmes outside the European Union, the aid in question must be classified as export aid, i.e. aid for export-related activities, in the sense that it is directly linked to the establishment and operation of a distribution network or to other current expenditure related to the export activity. Similarly, the ultimate goal of the market penetration programme was to sell WAM SpA's products in Japan. This is another reason why it cannot be regarded as being linked to foreign direct investment (FDI).

(110) Regulation (EC) No 1998/2006 excludes export aid from its scope. Article 1(d) stipulates in fact that this Regulation does not apply to 'aid towards export-related activities towards third countries or Member States, namely directly linked to the quantities exported, to the establishment and operation of the distribution network or to other current expenditure linked to export activity'.

(111) However, Article 5 of Regulation (EC) No 1998/2006 stipulates that aid not meeting the conditions of Article 1 shall be assessed in accordance with the relevant frameworks, guidelines, communications and notices.

([36]) Uruguay Round of Multilateral Trade Negotiations (1986-94) — Annex 1 — Annex 1A — Agreement on Subsidies and Countervailing Measures (WTO-GATT 1994) (OJ L 336, 23.12.1994, p. 156).

([37]) OJ L 107, 30.4.1996, p. 4.

(112) As the aid was granted in 1995 when the 1992 SMEs guidelines were in force, the 1992 SMEs guidelines must be applied ([38]). These guidelines did not explicitly exclude export aid from their scope. However, as in the present case a portion of the aid exceeds the permissible *de minimis* threshold (EUR 50 000), the whole of the aid has to be regarded as not falling under the *de minimis* exemption and for this reason must be considered to constitute State aid ([39]).

(113) Having established that the measure constitutes State aid, it must be decided whether this can be considered compatible with the internal market under the rules on State aid.

(114) Article 44(2) of the 2008 Block Exemption Regulation stipulates that any aid granted before the entry into force of the Regulation which fulfils neither the conditions laid down in it nor the conditions laid down in Commission Regulations (EC) No 68/2001 ([40]), (EC) No 70/2001, (EC) No 2204/2002 ([41]) or (EC) No 1628/2006 ([42]) must be assessed according to the frameworks, guidelines, communications and notices in force at the time it was granted.

(115) In the present case, the 2008 General Block Exemption Regulation is not applicable since it introduces an additional step – verifying the incentive effect of a project or activity before it begins – which was not carried out by Italy. Therefore, by virtue of Article 8(6) of the 2008 General Block Exemption Regulation, the entire aid measure cannot be exempted under that Regulation. Moreover, the expenses mentioned in the table in recital 44 and listed at recital 118 cannot be block-exempted on the basis of Regulations (EC) No 68/2001, (EC) No 70/2001, (EC) No 2204/2002 nor (EC) No 1628/2006 either as the conditions laid down in those Regulations are not fulfilled.

(116) As none of these instruments justifies the compatibility of the aid, it must be assessed on the basis of the 1992 SME guidelines since they contain the substantive rules in force when the aid was granted in 1995 ([43]).

(117) A portion of the aid can be considered compatible with the internal market on the basis of the 1992 SME guidelines. In particular the aid for consultancy services (ITL 29,43 million) and market surveys (ITL 40,95 million) can be considered compatible as it complies with point 4.3 'Aid for consultancy help, training and dissemination of knowledge'. As regards the aid for participation in fairs and exhibitions (ITL 12,19 million), it can be considered compatible with the 1992 SME guidelines on the basis of point 4.5 'Aid for other purposes', as it can be regarded as aid for other means of SME promotion, such as encouraging cooperation. The remainder of the aid (see the table in recital 44) cannot be considered compatible as it is not intended to support any productive investments nor any other admissible aim laid down in the 1992 SME guidelines, i.e. aid for general investments outside or inside national assisted areas, aid for environmental protection investment and aid for research and development.

(118) Accordingly, the Commission is of the opinion that the bulk of the eligible costs for the establishment of permanent structures abroad which were taken into consideration by the Italian Government in granting the first subsidised loan to WAM SpA in 1995 can in no way be regarded as productive investment; on the contrary, aid towards them must be classified as operating aid. The costs considered eligible: rent of premises, insurance and miscellaneous facilities (ITL 122,56 million) and operating costs such as personnel, fittings and equipments for premises (ITL 556,94 million) are costs which the firm should itself have borne; the same applies to display models and spare parts for after-sale service (ITL 38,23 million). Similarly, with respect to the eligible costs in support of trade promotion, the cost of storage of goods (ITL 456,28 million) does not comply with the 1992 SME guidelines, in the Commission's opinion, as it cannot be considered an initial investment; the advertising costs (ITL 94,39 million) and business trips (ITL 7,52 million) do not comply with the guidelines either.

(119) On the basis of the above assessment, the Commission therefore concludes that

(a) the portion of aid relating to the aid for consultancy services (ITL 29,43 million) and market surveys (ITL 40,95 million) as well the aid for participation in fairs and exhibitions (ITL 12,19 million) constitutes State aid compatible with the internal market on the basis of the 1992 SME guidelines; the portion of the aid not mentioned under (a) (see recital 118) constitutes State aid incompatible with the internal market.

Second loan granted to WAM SpA

(120) At the time the second amount of aid was granted in 2000, WAM SpA was, as the Italian authorities themselves admitted, a large undertaking. Furthermore, it was located in a non-assisted area.

([38]) OJ C 119, 22.5.2002, p. 22.
([39]) In line with Commission established practice. See for example: Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ L 227, 11.9.2003, p. 12).
([40]) OJ L 10, 13.1.2001, p. 20.
([41]) OJ L 337, 13.12.2002, p. 3.
([42]) OJ L 302, 1.11.2006, p. 29.
([43]) OJ C 119, 22.5.2002, p. 22.

(121) The 2000 loan can also be regarded as an export aid to WAM SpA as it had the same objective as the 1995 loan and was also intended for the purpose of penetrating and exporting to foreign markets (specifically the Chinese market). It is obvious that aid for technical assistance, workshop premises and staff abroad (1 sales manager, 1 general manager, 4 employees and 6 technicians) was unlikely to have been intended for anything other than commercial activities. As a consequence, the reasoning used for the 1995 loan is also applicable to the 2000 loan.

(122) Moreover, the same wording used to classify the first loan to WAM SpA as an incentive to undertake market penetration programmes was also used in the contract for granting the aid in 2000. It should also be noted that the specific programme was to have been carried out jointly by WAM SpA and the local firm, WAM Bulk Handling Machinery Shangai Co Ltd, a wholly owned subsidiary of WAM SpA. This constitutes evidence of the established presence of WAM SpA in the specific market in question.

(123) As the aid in question is an export aid, Regulation (EC) No 1998/2006, as has been stated above, does not apply.

(124) The compatibility of the aid with the internal market must therefore be assessed. The Commission takes the view that the procedural rule in force at the time the decision was taken, the 2008 General Block Exemption Regulation, does not apply to the case in question. This Regulation introduces an additional step – verifying the incentive effect of a project or activity before it begins – which was not carried out by Italy. Therefore, by virtue of Article 8(6) of that Regulation, the entire aid measure cannot be exempted under the 2008 General Block Exemption Regulation. Thus, in accordance with Article 44(2) of the 2008 general block exemption Regulation, the compatibility of the aid with Regulations (EC) No 68/2001, (EC) No 70/2001, (EC) No 2204/2002 and (EC) No 628/2006 must be assessed.

(125) The Commission takes the view that the training expenses detailed in the letter of 22 July 2003 (EUR 25 240 out of total loan of EUR 1,8 million in 2000) (as shown in the table in recital 65), may be exempted on the basis of Article 4 of Regulation (EC) No 68/2001 and are therefore compatible with the internal market according to Article 87(3) of the EC Treaty, now Article 107(3) of the TFEU, whether the assessment is based on Article 4(2) (specific training) or (3) (general training).

(126) However, the remainder of the aid in question cannot be considered compatible on the basis of Regulations (EC) No 70/2001, (EC) No 2204/2002 or (EC) No 1628/2006 or any other any legal basis, as it does not promote any other horizontal objective of the European Union within the meaning of Article 107(3)(c) of the TFEU, such as research and development, employment, the environment or rescue and restructuring within the meaning of the relevant guidelines, frameworks and regulations.

(127) Therefore, it must be concluded that since export-related activities are excluded from the application of Regulation (EC) No 1998/2006 and they cannot be considered compatible with Article 107(3)(c) of the TFEU on any legal basis, the aid provided by means of the second loan is incompatible with the internal market, with the exception of the compatible portion of training aid as described above.

General observations

(128) As regards the modification of the interest rate during the loan repayment period, the Italian authorities argued that general rules allowing such reductions did exist within the Italian legal framework. However, the Ministerial Decree of 31 March 2000, which is the only legal basis provided for this purpose, applies only to the initiatives funded by Laws Nos 394/81 and 304/1990, and is therefore very restrictive. Moreover, it must be emphasised that no further evidence has been provided that the interest rate in respect of the aid in question was modified ([44]).

(129) With regard to both loans, the Italian authorities argue that the cost of the compulsory bank guarantee which was requested prior to the granting of the loans has to be deducted from the amount of the aid. The Commission observes, first of all, that such a guarantee, or its equivalent, would usually have been requested even by a private credit institution granting loans according to the market economy investor principle. Secondly, the specifications annexed to the contract stipulate that the overlapping of aid for the same programme is not allowed, except for aid related to the guarantee, which consequently is deemed to be itself eligible for aid.

VII. **CLOSING REMARKS**

(130) The Commission notes that the exemptions provided for in Article 107(2)(a) to (c) ([45]) of the TFEU do not apply to the loans in question since they do not pursue any of the objectives listed in that Article, nor has the Italian Government argued that this was the case.

([44]) Such a modification could, in any event, only have been made to the first subsidised loan granted to WAM SpA as it applied to funding which already existed when it came into force, whereas the second loan had not yet been granted to WAM SpA.

([45]) Article 107(2) TFEU stipulates that the following aid is compatible with the common market: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany.

(131) The loans were not intended to promote the economic development of certain areas or promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor were they intended to promote culture or heritage conservation. The Commission therefore considers that Article 107(3)(a) ([46]), (b) ([47]) and (d) ([48]) of the TFEU do not apply to the loans under consideration.

VIII. **CONCLUSION**

(132) Both loans to WAM SpA were granted without being previously notified to the Commission. Indeed, the 1995 loan was granted on 24 November 1995 and the 2000 loan was granted on 9 November 2000. Accordingly, the Commission finds that, with the exception of the block-exempted compatible portion of the aid, in so far as these loans have been implemented in breach of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, they were granted unlawfully to the beneficiary.

First loan granted to WAM SpA

(133) The aid Italy granted to WAM SpA on 24 November 1995 in the form of an interest-rate subsidy constitutes State aid. The portion corresponding to eligible costs for consultancy services, participation in fairs and exhibitions and market surveys constitutes State aid compatible with the internal market.

(134) As regards the overall grant equivalent of the specific aid, consideration has been given to the fact that the loan was made available to the beneficiary in three instalments (on 24 April 1996, 23 July 1997 and 24 April 1998) and that the grace period therefore varied from 2 years to zero. The interest rate stipulated by the loan contract (4,4 %), relative to the reference rate periodically fixed by the Commission ([49]) and in force at the time the loan was granted (11,35 %), has also been taken into consideration. The aid element is calculated as the difference between the interest rate stipulated in the contract and the reference rate at the moment the loan was granted. On the basis of this calculation, the grant equivalent, discounted as of 24 April 1996 (date on which the first instalment of the loan was paid to WAM SpA) is equivalent to EUR 108 165,10.

([46]) Namely, 'aid to promote economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation.'

([47]) Namely, 'aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.'

([48]) Namely, 'aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.'

([49]) Published regularly in the *Official Journal of the European Union*.

(135) However, this aid amount must be adjusted by the compatible portion of the State aid.

(136) As a part of the loan in question has been considered compatible, this amount must be deducted from the State aid component of the 1995 loan (EUR 108 165,10). Given the impossibility of establishing a direct link between a given instalment of the loan and certain specific expenses, the percentage represented by the compatible items in the overall loan (ITL 82,57 million out of ITL 1 358,51 million, i.e. 6 %) has been applied to the overall grant equivalent. As 6 % of EUR 108 165,10 is EUR 6 489,916, this amount is considered to constitute the compatible portion of the aid.

(137) Thus, the grant equivalent of the portion of the State aid incompatible with the internal market is quantified at EUR 101 675,194.

Second loan granted to WAM SpA

(138) The aid granted to WAM SpA in 2000, except for the compatible portion in support of training activities amounting to EUR 25 240 in eligible expenses, is incompatible with the internal market.

(139) In this case the loan was made available to WAM SpA in five instalments (on 12 February 2001, 28 September 2001, 26 April 2002, 27 September 2002 and 22 January 2003); consequently, as with the first loan, the grace period also varied from 2 years to zero. Likewise, the interest rate stipulated in the loan contract (2,32 %) relative to the reference rate, periodically fixed by the Commission and in force at the time the loan in question was granted (5,70 %) has been taken into consideration by the Commission in calculating the grant equivalent. The overall repayment, including principal and interest, was to have been made by 20 February 2008. Accordingly, the grant equivalent of the aid component of the full loan as at 12 February 2001 (date on which the first instalment of the specific loan was made available to WAM SpA) is EUR 182 550,80, providing that the repayments were made according to the repayment schedule.

(140) As regards the compatible portion of the loan, the percentage of the compatible portion of the loan with respect to the full loan (1,35 %) must be deducted from the grant equivalent of the aid. Accordingly, providing that the repayments have been made according to the repayment schedule, the grant equivalent of the second loan has been calculated as EUR 180 086,36 (EUR 182 550,80 - EUR 2 464,44).

(141) It is the Commission's standard practice, in accordance with Article 107 of the TFEU, to recover from the beneficiary aid that has been unlawfully granted under that Article and is incompatible with the internal market, provided that such aid is not covered by the *de minimis* rules. This practice has been confirmed by Article 14 of Regulation (EC) No 659/1999.

(142) In accordance with Article 14(2) of Regulation (EC) No 659/1999, the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest is payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery, for the period for which it was at the company's disposal.

(143) The method of application of the interest rate is set out in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([50]) (hereinafter Regulation (EC) No 794/2004) and in Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([51]) (hereinafter Regulation (EC) No 271/2008).

(144) The Commission wishes to point out that this Decision is without prejudice to the compatibility of the national framework represented by Law No 394/81, which is the legal basis of the State aid granted to WAM SpA, with respect to which the Commission, in line with the case law of the Court of First Instance ([52]), did not find it necessary, in the current case, to initiate proceedings. It nevertheless does not rule out the possibility of doing so at a later stage,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to WAM SpA pursuant to Law No 394/81 falls within the scope of Article 107(1) of the TFEU.

Since this aid was not previously notified to the Commission in breach of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, it constitutes unlawful aid, with the exception of the block-exempted portion of the aid.

([50]) OJ L 140, 30.4.2004, p. 1.
([51]) OJ L 82, 25.3.2008, p. 1.
([52]) See Cases T-92/00 and T-103/00 *Diputación Foral de Álava* v *Commission (Ramondín)* [2002] ECR II-1385.

Article 2

1. The aid of EUR 108 165,10 which Italy granted to WAM SpA on 24 November 1995 in the form of an interest-rate subsidy, constitutes State aid. The aid portion corresponding to eligible costs for consultancy services, participation in fairs and exhibitions and market surveys and amounting to EUR 6 489,906, constitutes State aid compatible with the internal market.

Italy shall take all necessary measures to recover the incompatible aid amount of EUR 101 675,194 from the beneficiary, WAM SpA.

2. The aid amounting to EUR 182 550,80 which Italy granted to WAM SpA on 9 November 2000 in the form of an interest-rate subsidy, constitutes State aid. The aid portion corresponding to eligible costs for training measures and amounting to EUR 2 464,44, constitutes State aid compatible with the internal market.

Italy shall take all necessary measures to recover the incompatible aid amount of EUR 180 086,36 from the beneficiary, WAM SpA.

3. Interest on the amounts to be recovered under this Decision shall be calculated from the date on which the incompatible State aid was put at the disposal of the beneficiary, WAM SpA, until the date of recovery.

4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

Article 3

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within four months following the date of notification to Italy of this Decision.

Article 4

1. Within two months following the notification of this Decision, Italy shall submit the following information to the Commission:

(a) the total amount (principal and interest) to be recovered from the beneficiary, WAM SpA;

(b) a detailed description of the measures already taken or envisaged to comply with this Decision;

(c) documents demonstrating that the beneficiary, WAM SpA, has been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the aid referred to in Article 2 has been recovered. It shall submit without delay, at the request of the Commission, information on the measures envisaged and already taken to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 March 2010.

For the Commission
Joaquín ALMUNIA
Vice-President