

COMMISSION

COMMISSION DECISION

of 16 July 2008

on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE

(notified under document number C(2008) 3528)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2008/848/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 14 July 2006 Italy notified its intention to grant restructuring aid to NGP SpA (NGP). Missing annexes were submitted by letter dated 28 July 2006. The Commission had previously received three complaints claiming that Italy intended to grant aid to NGP which would affect the synthetic fibre market.
- (2) By letter dated 22 August 2006, the Commission requested additional information which Italy submitted by letter dated 14 December 2006. On 12 February 2007 it requested further information which Italy submitted by letter dated 7 March 2007, registered as received on 8 March.

(3) By letter dated 10 May 2007, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) By letter dated 16 July 2007, Italy presented its comments in the context of the above mentioned procedure. The Commission requested further information by letter dated 25 October 2007, to which Italy replied by letter of 23 November 2007. A meeting between the Italian authorities and the Commission departments took place on 13 December 2007. The Commission requested additional clarification by letter dated 8 February 2008, to which Italy replied by letter dated 25 February 2008. Italy submitted additional final comments by e-mail of 22 May 2008.

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

(6) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 21 September 2007.

2. DESCRIPTION

2.1. The beneficiary

(7) According to the notification, the beneficiary of the aid is NGP, a firm located in Acerra, Campania (Italy). NGP was created in February 2003 through the divestment of the production of polyester polymer (polymerisation) from Montefibre, a producer of polyester fibre also located in Acerra. Polyester polymer is an intermediate product used, among other things, in the production of polyester fibre.

⁽¹⁾ OJ C 131, 13.6.2007, p. 22.

⁽²⁾ See footnote 1.

(8) The assets of NGP comprised two production plants as well as a thermoelectric power station, some ancillary facilities and a research centre. The first production plant produced the intermediate product dimethyl-terephthalate (DMT). DMT was the raw material for the second production plant, the polymerisation plant. The second plant produced polymer either in molten state to supply the production plant of Montefibre or in the solid state in the form of chips for the external market.

(9) The polymerisation plant operated with three production lines, (CP1, CP2 and CP3). Of these, CP3 had been created in 2003. Italy had granted regional aid of EUR 13,7 million for the investments in CP3. The aid had been provided under a regional aid scheme approved by the Commission ⁽³⁾.

2.2. The financial difficulties of NGP

(10) NGP quickly ran into difficulties after its creation for several reasons. In 2003 a breakdown of the cooling system halted production. Although the broken equipment was provisionally replaced, the production plant did not return to full operation. The situation was aggravated by strong pressure on prices due to the weakening of the US dollar exchange rate, which made producers outside the euro area more competitive.

(11) Moreover, the costs of production of DMT were to a large extent fixed costs, which are independent of the volumes produced. The reduced volume of chips and molten polymer sold led to reduced production of DMT, which, however, resulted in only a small decrease in total production costs because of the large share of fixed costs. In turn, unit production costs of DMT therefore increased considerably.

(12) NGP recorded losses of EUR 29,68 million in 2003, its last year of full production, and losses of EUR 17,87 million in 2004. In 2005 it nevertheless recorded profits of EUR 5,27 million, which were largely due to extraordinary revenues.

2.3. The restructuring plan

(13) In January 2004 the board of the firm took the decision to suspend production and to draw up a project to convert the existing industrial facilities. The objective

was to change the raw material used for the polymerisation plant, replacing own-production DMT with another raw material, purified terephthalic acid (PTA), in order to create a more flexible cost structure. It was estimated that a further EUR 22 million would be needed for the raw material changeover. Because of insufficient financial means, NGP would not have been able to complete these investments.

(14) In May 2004 a protocol of understanding (*protocollo di intesa*) was concluded between several public authorities, Montefibre, NGP and other companies in which all parties agreed to the need to safeguard the investments already carried out for CP3 and to finalise them.

(15) In July 2005 an agreement (*accordo di programma*) was signed by national and regional authorities, NGP, Montefibre and Edison (another firm located in Acerra) concerning the NGP site as well as other activities at the Acerra site. The main elements of this agreement concerning NGP were as follows:

(16) creation of a new firm, SIMPE SpA, in July 2005, with NGP as the majority shareholder and with Montefibre (19,1 % of the share capital) and a public development agency, Sviluppo Italia (9,8 % of the share capital) as minority shareholders. SIMPE would take over the polymerisation activities of NGP (i.e. production assets plus related liabilities) and part of the workforce. NGP would remain in activity only as a utilities provider ⁽⁴⁾;

(17) closure of the DMT production plant and realisation by the new firm, SIMPE, of the planned investments in line CP3 with a view to replacing the original own-production DMT with a new raw material, purified terephthalic acid (PTA), to be acquired from outside sources ⁽⁵⁾;

(18) granting by Italy of financial support measures totalling EUR 20,87 million to support the investments in the raw material changeover. These measures are described below.

⁽⁴⁾ NGP would become a provider of technological, environmental and energy services and would continue to run the research centre.

⁽⁵⁾ The raw material initially produced and used by NGP (DMT) had high fixed costs which, at times of low demand, generated high unit costs. According to Italy, the new raw material, PTA, makes production costs more flexible and allows for a wider range of industrial applications.

⁽³⁾ N 715/1999 (OJ C 278, 30.9.2000, p. 26).

2.4. Financial support

- (19) The first measure consists of a grant of EUR 10,75 million, of which EUR 5 million to be provided by the Region of Campania and the remainder by the Ministry of Industry. The measure was granted on 18 May 2006.
- (20) The second measure consists of a soft loan of EUR 6,523 million provided by the Ministry of Industry at a reduced interest rate (36 % of the reference rate). The loan was granted on 18 May 2006.
- (21) The third measure consists of a temporary participation of EUR 3,6 million in the risk capital of SIMPE by Sviluppo Italia (9,8 % of the company capital). The injection was made on 5 May 2006. The two other shareholders in SIMPE, NGP and Montefibre, were required to buy the shares from Sviluppo Italia within a period of three to five years at a price equal to the nominal value plus annual interest on the basis of the official reference rate for medium- to long-term operations plus two percentage points.
- (22) All three measures were granted to SIMPE.

2.5. New developments

- (23) In February 2007 the Spanish multinational chemical company, La Seda de Barcelona, acquired the Montefibre shares in SIMPE and invested additional capital of EUR 20,7 million in the firm, thus becoming its major shareholder with 50,1 % of shares. The other shareholders were NGP with 43,6 % and Sviluppo Italia with 6,3 %.
- (24) The acquisition of SIMPE by La Seda de Barcelona also meant changes to the original restructuring plan. Whereas, according to the plan agreed in July 2005 (see above), SIMPE would continue in the same line of business as NGP, i.e. producing mainly polymer for textile applications, SIMPE now planned to concentrate production mostly on polymer for the market in PET (polyethylene terephthalate), a plastic material of which La Seda de Barcelona is one of the EU's largest producers.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

3.1. Restructuring aid

- (25) Italy notified the aid on the basis of the Community guidelines on State aid for rescuing and restructuring

firms in difficulty (hereafter the Community guidelines) ⁽⁶⁾. The Commission, in its decision to initiate the formal investigation procedure under Article 88(2) of the Treaty, stated that it had doubts as to whether the conditions of the Community guidelines were fulfilled.

- (26) The Commission expressed doubts as to the actual beneficiary of the aid and its eligibility. Italy had notified NGP as the beneficiary of the aid. However, all three measures were granted to the new firm SIMPE, which, as a newly created firm, was not eligible for restructuring aid (point 12 of the Community guidelines). The Commission, therefore, questioned whether NGP and SIMPE, as a group, could qualify for the aid: SIMPE had been created by NGP in the context of the restructuring of the polymerisation assets, for which the aid measures in question were granted. On the other hand, NGP was not a newly created firm within the meaning of the Community guidelines and, what is more, appeared to be a firm in difficulty and therefore eligible for restructuring aid.
- (27) However, even if NGP and SIMPE could be considered to form a single group eligible for aid, the Commission had doubts concerning the remaining criteria laid down in the Community guidelines. In particular, Italy had not submitted restructuring plans complying with all the requirements of Section 3.2.2 of the Community guidelines for either SIMPE or NGP. As regards SIMPE, the business plan submitted by Italy did not contain a detailed market survey or an analysis of the firm's specific weaknesses and strengths. Nevertheless, the Commission noted that SIMPE had in the meantime been sold to another firm, the consequences of which the Commission could not assess at that stage. Regarding NGP, Italy had not provided any indication of the costs of the restructuring measures to be implemented and their precise financing. On the basis of the information available, the Commission doubted whether the conditions relating to the restoration of viability were fulfilled.
- (28) Italy had also not indicated any compensatory measures with respect to SIMPE or NGP. The Commission therefore doubted whether the condition of avoidance of undue distortions of competition was respected. Similarly, it had no information concerning total restructuring costs or the beneficiary's contribution, and this would be necessary to determine whether the aid was limited to the minimum in compliance with the Community guidelines.

⁽⁶⁾ OJ C 244, 1.10.2004, p. 2.

(29) Finally, Italy had at the outset notified the capital contribution by Sviluppo Italia as aid but later claimed that it was granted on market terms and was not aid. However, the Commission had doubts about this argument.

3.2. Guidelines on national regional aid

(30) The Commission also assessed whether the aid could be considered compatible on the basis of the guidelines on national regional aid ⁽⁷⁾. SIMPE is located in an area eligible for regional aid pursuant to Article 87(3)(a) of the Treaty, where the regional aid ceiling is 35 % nge (net grant equivalent) of the eligible investments. The measures were intended to enable SIMPE to carry out the investment projects on line CP3. However, the Commission had no information that would allow it to assess whether the costs concerning the investments in line CP3 could be considered eligible for regional investment aid or whether the regional aid ceiling of 35 % had been respected.

4. COMMENTS FROM ITALY

(31) Regarding the aid measures, Italy again stated that the temporary participation by Sviluppo Italia in the capital of SIMPE does not qualify as State aid because it is in line with the market economy investor principle. It maintained that the other two shareholders in SIMPE (NGP and La Seda de Barcelona) are required to buy the shares of Sviluppo Italia within a period of three to five years at a price equal to the nominal value plus annual interest on the basis of the official reference rate for medium- to long-term operations plus two percentage points. In addition, this commitment is backed by guarantees provided by NGP in respect of its assets. According to Italy, any private investor would have invested with such guarantees of a return on capital.

(32) Italy also stated that the other two measures were granted to SIMPE under a national scheme — Italian Law 181/89 — approved by the Commission (N 214/2003) ⁽⁸⁾ and that both the eligible costs and the aid intensity complied with the conditions of that scheme, i.e. maximum regional aid intensity of 35 % nge. Italy argued that, even if it had notified the aid as restructuring aid to NGP, the aid could therefore, in its view, be considered as regional aid to SIMPE under this scheme.

The new restructuring plan

(33) Italy argued that, if the Commission could not agree that the aid falls within scheme N 214/2003, it should, in the alternative, consider that the aid is compatible as restructuring aid.

(34) Italy claimed that the beneficiary of the aid is NGP, which qualifies as a firm in difficulty.

(35) Italy also submitted an amended restructuring plan for both NGP and SIMPE taking into account the new strategy of La Seda de Barcelona.

(36) As explained above, according to this plan, SIMPE will produce mainly polyester polymer from line CP3 for the PET market. Italy submitted a market study showing that the plastic packaging material market is steadily expanding, with an increase in demand of about 7 % a year ⁽⁹⁾. In addition, SIMPE will continue to produce polyester polymer from lines CP1 and CP2 for Fidion, a company to which Montefibre has transferred its polyester fibre production.

(37) NGP will remain in activity as a supplier of utilities and other services, such as research and laboratory services and treatment of waste water for the industrial businesses in Acerra, but will abandon all industrial production activities. Of the original 270 NGP employees, the firm will keep 54, with 76 of them being transferred to SIMPE.

(38) The new restructuring plan includes investments of EUR 8,5 million by NGP for modernising the utilities infrastructure. As regards SIMPE, the firm will undertake investments totalling EUR 40,4 million, of which EUR 22 million will be for changing over to the new raw material (PTA) in line CP3, as proposed in the original plan, and the remainder for developing a new 'post-polymerisation' process necessary to complete the PET production cycle and for adapting lines CP1 and CP2 also to the use of PTA.

(39) Italy supplied a table with details of the restructuring costs and sources of financing for both NGP and SIMPE. According to this table, the total restructuring costs amount to EUR 103,5 million.

⁽⁷⁾ OJ C 74, 10.3.1998, p. 9.

⁽⁸⁾ OJ C 284, 27.11.2003, p. 2.

⁽⁹⁾ 2004 figures.

- (40) The new plan presents a range of scenarios — best case, intermediate and worst case — for NGP and SIMPE respectively. NGP will become profitable — even under the worst case scenario — as early as 2009. As regards SIMPE, the results would not be positive until 2011 under a worst case scenario, by 2010 under the intermediate scenario; and as early as 2009 under the best case scenario.

5. COMMENTS BY THIRD PARTIES

- (41) NGP supported the comments made by Italy. The International Rayon and Synthetic Fibres Committee (CIRFS), one of the original complainants, noted that, if the aid is intended mainly for the PET market, it is of no relevance to synthetic fibre production.

6. ASSESSMENT

6.1. State aid within the meaning of Article 87(1) of the EC Treaty

- (42) Under Article 87(1) of the EC Treaty, 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 is, insofar as it affects trade between Member States, incompatible with the common market. Under the settled case law of the Court, the criterion of trade being affected is met if the beneficiary firm carries out an economic activity involving trade between Member States.
- (43) The grant and the loan were provided to SIMPE by the Ministry of Industry and the Region of Campania, two public authorities. The measures are thus financed through state resources and imputable to the State. The grant confers an advantage on the beneficiary. The loan also confers an advantage as it was granted at an interest rate below the reference rate for healthy businesses and no market economy investor would have granted assistance under these conditions.
- (44) As regards the capital contribution provided to SIMPE by Sviluppo Italia, Italy first notified the measure as State aid but then later claimed that it was not aid as it was in line with the market economy investor principle and did not confer an advantage on the firm.
- (45) However, contrary to the view of the Italian authorities, the Commission considers that the temporary participation by Sviluppo Italia in the capital of SIMPE constitutes aid within the meaning of Article 87(1).

Sviluppo Italia is a public development agency and therefore capital injections by this agency are imputable to the State and constitute state aid, unless it can be established that Sviluppo Italia behaved like a private investor operating under market economy conditions.

- (46) In this respect the Commission notes that the participation by Sviluppo Italia in the capital of SIMPE was part of the restructuring plan of NGP. As NGP was a firm in difficulty and as SIMPE was created only for the purposes of the restructuring of NGP, it can be considered that Sviluppo Italia decided to acquire shares in a firm in difficulty. Moreover, Sviluppo Italia's capital injection was combined, as part of the same operation, with two other measures which qualify as State aid under Article 87(1), namely a direct grant from the Region of Campania and the Ministry of Industry and a soft loan from the Ministry of Industry.
- (47) In previous decisions⁽¹⁰⁾ the Commission has found that the market economy investor principle is respected in the case of public capital injections where the firm in question is a healthy firm. The market economy investor principle can also be fulfilled even if the firm is in difficulty. In this case, however, the State has to provide capital on the same terms as a private investor would do for such a high-risk firm: namely at a much higher interest rate than for healthy firms and with a clear prospect of a return to viability.
- (48) The Italian authorities have not provided evidence that a private investor would be prepared to acquire shares in the same circumstances. In fact, there is no evidence that the return on capital on the terms contracted by Sviluppo Italia (i.e. two percentage points above the reference rate) would be sufficient to trigger the interest of a private investor, bearing in mind that NGP had ceased activity and that there was no certainty (other than the fact that the investment was being supported by state aid) of a return to viability. In this respect, it should also be noted that La Seda de Barcelona acquired the participation in SIMPE only nine months after the capital injection by Sviluppo Italia and after the other forms of aid had been granted.
- (49) The Commission therefore concludes that the capital contribution by Sviluppo Italia conferred an advantage on the firm.

⁽¹⁰⁾ N 132/1999 Parco Navi, N 191/1998 Pomella and N 652/1999 Granarolo.

- (50) NGP and its successor SIMPE produce polyester polymer. As this product is widely traded across the European Union, the measures threaten to distort competition and to affect trade between Member States. The Commission thus concludes that the grant, the loan and the capital injection by Sviluppo Italia constitute State aid within the meaning of Article 87(1) of the EC Treaty and that their compatibility has thus to be assessed accordingly.

6.2. Legal basis

- (51) In its decision to initiate the formal investigation procedure, the Commission questioned whether the aid could be considered compatible under the Community guidelines on state aid for rescuing and restructuring firms in difficulty and under the guidelines on national regional aid.
- (52) Following the comments submitted by Italy, the Commission notes, however, that all the elements concerning a restructuring process seem to be present in this case. At the time the aid was granted, NGP was a firm in difficulty. The aid was granted with the aim of restoring the viability of the firm on the basis of a restructuring plan that the Italian authorities were committed to implement (see the terms of the *accordo di programma* in point 15 above). Further, even if, according to the Italian authorities, the aid was granted to SIMPE (and not NGP), SIMPE was created only for the purposes of the restructuring of NGP and is thus part of this restructuring plan. Finally, both NGP and SIMPE benefit from the aid.
- (53) The Commission also notes that, given the potential for distortion of competition that aid for the restructuring of firms in difficulty entails, the Community guidelines on State aid for rescuing and restructuring firms in difficulty contain specific criteria designed to ensure that the granting of aid is limited to the minimum required to restore a firm's viability, while limiting distortions of competition by the obligation imposed on the beneficiary to adopt compensatory measures. These criteria could be sidestepped should the measures be assessed, instead, under the guidelines on national regional aid, which in any event cannot apply to firms in difficulty⁽¹¹⁾.
- (54) For the reasons explained above, the Commission concludes that the compatibility of the aid is to be assessed under the Community guidelines on state aid for rescuing and restructuring firms in difficulty (the Community guidelines).

6.3. Eligibility of the firm

- (55) According to Section 2.1 of the Community guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditor, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. The usual signs of a firm in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings.
- (56) A newly created firm is not eligible for rescue and restructuring aid even if its financial position is insecure. A firm will normally be considered as newly created for the first three years following the start of operations in the relevant field of activity.
- (57) On the other hand, point 13 of the Community guidelines states that 'where a firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.'
- (58) In the decision to initiate the formal investigation procedure, the Commission doubted whether NGP could be the beneficiary of the aid because it had been granted to SIMPE. In addition, SIMPE, as a newly created firm, was not eligible for restructuring aid pursuant to Section 2.1 referred to above. The Commission, however, looked into whether both firms could be considered together as a group and, as such, be eligible for the aid.
- (59) SIMPE was created by NGP in the context of the restructuring of the polymerisation assets for which the aid measures in question were granted and is therefore an emanation of the former. On the other hand, NGP was created in February 2003 and started operations in March 2003, i.e. more than three years before the granting of the aid measures in May 2006. It is therefore not a new firm within the meaning of the Community guidelines. Moreover, NGP displays the characteristics of a firm in difficulty. It recorded losses of EUR 29,68 million in 2003, its last year of full production, and losses of EUR 17,87 million in 2004. In 2005 it nevertheless recorded profits of EUR 5.27, largely due to extraordinary revenues.

⁽¹¹⁾ See point 4.4 of the guidelines on national regional aid (footnote 7 above).

- (60) Further, NGP was the majority shareholder of SIMPE at the time the aid was granted to this firm. The Commission therefore concludes that both NGP and SIMPE can be considered as a group eligible for aid under the Community guidelines.

6.4. Restoration of viability

- (61) The granting of aid is conditional on the implementation of a restructuring plan the duration of which must be as short as possible. The plan must restore the long-term viability of the firm within a reasonable time scale and on the basis of realistic assumptions as to the future operating conditions. Among other things, the restructuring plan must include a market survey and the improvement in viability must derive mainly from internal measures contained in it (point 35 of the Community guidelines).
- (62) The Commission considers that the amended restructuring plan reflecting the changes imposed by La Seda de Barcelona complies with the requirements of the Community guidelines. Italy provided a market analysis which shows that the market of polymer for PET is in full expansion. Adequate internal measures are taken within the restructuring to overcome problems inherited from the past (i.e. changeover to a new raw material), combined with significant new investments by the new owner La Seda de Barcelona that allow SIMPE to operate in the market of polymer for PET while continuing to supply molten polymer for textile purposes to Fidion. Moreover, Italy presented best case, worst case and intermediate scenarios based on variations in production volume which show that NGP and SIMPE can be expected to return to profitability within a reasonable period. Consequently, the Commission considers that the condition on restoration of viability is fulfilled.

6.5. Aid limited to the minimum: real contribution free of aid

- (63) The amount of aid must be limited to the strict minimum required to enable restructuring to be undertaken in the light of the existing financial resources of the firm and its shareholders. In addition, beneficiaries are expected to make a significant contribution to the restructuring costs from their own resources or external financing at market conditions. In the case of large undertakings, the Commission will normally consider a contribution of at least 50 % to be appropriate.
- (64) On the basis of the information provided by Italy, about 80 % of the costs of restructuring are financed by the group's own resources, thus complying with point 44 of the Community guidelines.

6.6. Avoidance of undue distortions of competition

- (65) In order to ensure that the adverse effects on trading conditions are minimised so that the positive effects pursued outweigh them, compensatory measures must be adopted. Otherwise the aid will be regarded as 'contrary to the common interest' and therefore incompatible with the common market (point 38 of the Community guidelines).
- (66) Italy proposes the following compensatory measures:
- SIMPE will limit the annual production of polyester polymer for PET to 110 000 tonnes from the date of the Commission decision approving the aid until 31 December 2012;
 - by the end of February of the following year Italy will provide the Commission with information on the quantities of polyester polymer produced and sold each year by SIMPE, and this until 31 December 2012;
 - Italy additionally undertakes to refrain from granting any type of state aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012.
- (67) Italy explained that, under the restructuring plan, NGP (or its successor SIMPE) will refrain altogether from operating in the market in polyester polymer in granulated form for textiles as well as in special types of polyester polymer, thereby abandoning 20 % of the market. In turn, SIMPE expects to achieve a 4 % share of the EU market in PET.
- (68) Point 40 of the Community guidelines states that: 'The measures must be in proportion to the distortive effects of the aid and in particular (...) the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position after restructuring.'

(69) The Commission notes in this respect that the core market for SIMPE is polyester for PET. Moreover, La Seda de Barcelona, which is the majority shareholder in SIMPE, is one of the largest EU producers of polyester polymer for PET. Therefore the aid is likely to create a significant distortion of competition in this market. The production cap of 110 000 tonnes therefore represents a significant restraint on market presence when compared with SIMPE's actual production capacity of polyester for PET, which is 160 000 tonnes a year. The fact that this limitation in production will be implemented until 2012 is also of significance considering that PET is a market in expansion. According to the market analysis provided by Italy, the increase in demand for this product in 2004 was 6,9 % and this trend is expected to continue.

(70) As regards the production of polyester polymer in molten state, which will be continued on lines CP1 and CP2, it is noted that the production volumes of this product have already been substantially reduced as part of the restructuring, from 105 000 tonnes a year to 60 000 tonnes a year, and will be intended exclusively for Fidion (formerly Montefibre). A further reduction in capacity in this product area would not be realistic and might jeopardise the firm's viability.

(71) Lastly, the Commission notes that Italy has undertaken to refrain from granting any additional State aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012 in order to ensure that any distortion created by the present aid will not be aggravated by future aid.

(72) Accordingly, the Commission considers that the compensatory measures proposed by Italy are sufficient to mitigate the negative effects of the aid.

(73) The Commission concludes that the notified State aid for NGP and SIMPE in connection with the implementation of the above restructuring plan can be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted which Italy has implemented for the restructuring plan of NGP/SIMPE, amounting to EUR 20,87 million, is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty, subject to the conditions set out in Article 2.

Article 2

Italy shall ensure that the following conditions are fulfilled:

(a) SIMPE will limit the annual production of polyester polymer for PET to 110 000 tonnes from the date of the Commission decision approving the aid until 31 December 2012;

(b) by the end of February of the following year, Italy will provide the Commission with information on the quantities of polyester polymer produced and sold each year by SIMPE, and this until 31 December 2012;

(c) Italy undertakes to refrain from granting any type of State aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012.

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