

COMMISSION DECISION

of 24 May 1989

on aid granted by the Italian Government of Alumina and Comsal, two
State-owned undertakings in the aluminium industry

(Only the Italian text is authentic)

(90/224/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice in accordance with the above Article to interested parties to submit their comments, and having regard to these comments,

Whereas :

I

On 5 December 1984 and 20 November 1985, the Commission decided to initiate the procedure provided for in the first paragraph of Article 93 (2) of the EEC Treaty with respect to a total of Lit 1 445 000 million of aid that the Italian Government had granted or intended to grant for the restructuring of the State-owned aluminium industry in Italy for the period 1983 to 1988. Among the reasons for which the Commission initiated the procedures in question was that the amount of aid in question appeared to exceed significantly the needs of the restructuring plan of the State-owned aluminium industry for the period under examination, and therefore could not be justified in terms of the common interest.

In submitting its comments in connection with the two procedures initiated under Article 93 (2), the Italian Government presented to the Commission a series of amendments to the said restructuring plan. By one of these modifications the Italian Government, taking into consideration the Commission's position that the excessive aid was not compatible with the common market, undertook to reduce the amount of aid it intended to provide by Lit 200 000 million.

On 17 December 1986 the Commission decided to terminate the two procedures concerning aid measures which the Italian Government had already granted or intended to grant to the State-owned aluminium industry in Italy. The reduced aid measures finally approved consisted of Lit 989 000 million in the form of new capital, Lit 400 000 million in the form of a loan bearing an interest relief grant of 10 %, both provided to EFIM (Ente partecipazioni e finanziamenti industrie manifatturiere) for its aluminium activities, grants of Lit 48 100 million and a loan of Lit 7 900 million bearing interest relief to the State-owned aluminium smelter in Bolzano.

One of the conditions on the basis of which the Commission decided to terminate the two procedures in question was that the Italian Government would provide no further aid in whatever form to the State-owned aluminium industry in Italy until the end of 1988.

This conditional Commission decision was communicated to the Italian Government by letter dated 13 January 1987.

On 2 May 1985, EFIM acquired the loss-making aluminium undertaking Comsal (Compagnia sarda alluminio Spa), mainly involved in the production of rolled semi-finished products.

By Article 3 (11) of Law No 910 of 22 December 1986⁽¹⁾, the Italian Government authorized EFIM to issue a debenture loan amounting to Lit 150 000 million. The interest on the loan as well as any other charges were paid by the State. Moreover the loan would gradually be converted into equity capital upon payment of each repayment instalment.

By decision of CIPE of 18 September 1987⁽²⁾, the Italian authorities instructed EFIM to use Lit 100 000 million of the debenture loan in question to finance investments in Alumina and Comsal, two State-owned aluminium undertakings.

The Italian Government's authorization to EFIM was not notified to the Commission in accordance with Article 93 (3) of the EEC Treaty.

II

The Commission, having learned of the Italian Government's decision to provide funds for investments in the State-owned aluminium industry under very favourable terms, requested the notification of this measure under Article 93 (3) of the EEC Treaty by letter dated 27 October 1987.

The Italian Government replied by letter dated 29 March 1988, in which it expressed the opinion that an increase in EFIM's endowment fund, financed by means of a debenture loan at the expense of the State did not constitute State aid in any manner and need not therefore be

⁽¹⁾ *Gazzetta Ufficiale della Repubblica Italiana* No 301, 30. 12. 1986, supplemento ordinario n. 1.

⁽²⁾ *Gazzetta Ufficiale della Repubblica Italiana* No 245 of 20. 10. 1987, p. 35.

notified on the basis of Article 93 (3). By that same letter the Italian Government informed the Commission that of the debenture loan issued by EFIM, Lit 70 000 million were intended to finance investments for the modernization of Alumina's Portovesme plant and Lit 30 000 million to finance investments for the modernization, expansion and diversification of production of Comsal's Portovesme plant. The loan included a four-year period of grace, and was to be reimbursed between the years 1991 and 1994.

A variable interest rate was to be charged, changing every half year. For the first six months (1 December 1987 to 31 May 1988) the interest rate was fixed at 6,3 %. The whole of the interest as well as the repayments of the principal sum would be paid by the public authorities, the loan being gradually converted into equity capital for EFIM at the end of each period.

On the basis of the information thus obtained from the Italian Government and from public sources, the Commission took the view that the provision of Lit 100 billion of funds under very favourable terms in order to finance modernization and expansion investments in the Portovesme plants of the State-owned aluminium undertakings Alumina and Comsal, contained aid elements falling under Article 92 (1) of the EEC Treaty.

The Commission's view was based on the fact that the provision of funds amounting to Lit 100 000 million to Alumina and Comsal for their investment programmes constituted aid measures falling under Article 92 (1), as the two undertakings would not pay any interest or repayment instalments for the amounts received. Furthermore as the two undertakings had been suffering losses for several years and as the restructuring plan of the State-owned aluminium industry had so far failed to enable the undertakings to return to viability, the conversion of Lit 100 000 million into equity capital could not be considered as the provision of risk capital according to standard company practice in a market economy, and therefore constituted aid within the meaning of Article 92 (1) of the EEC Treaty. Furthermore, according to the Commission's decision of 17 December 1986 on aid to the State-owned aluminium industry in Italy, communicated to the Italian authorities on 13 January 1987, the Italian Government was subject to the obligation not to grant any further aid to that industry until the end of 1988. Consequently, the granting of Lit 100 000 million in the form of interest-free loans to Alumina and Comsal, later to be converted into equity capital, constituted new aids granted in breach of the Commission's decision of 17 December 1986.

The Commission therefore decided to initiate the procedure provided for in Article 93 (2) and, by letter dated 28

September 1988, gave notice to the Italian Government to submit its comments.

III

The Italian Government submitted its comments in connection with the procedure by letters dated 31 January and 7 March 1989. In these letters the Italian authorities provided information on the finance, in the form of capital contributions, loans and grants, granted to public-sector aluminium companies for the period 16 January 1986 to 28 June 1988, described how the restructuring plan for the State-owned aluminium sector was carried out, and explained the reasons which, according to the Italian authorities, prevented the restructuring plan objectives from being fully attained.

Furthermore the Italian Government informed the Commission that for the first time in 1988 the State-owned aluminium industry, excluding Comsal, was expected to make a profit of Lit 3 000 million, while the expected result for Comsal for the same year was a loss of Lit 4 600 million.

Regarding Comsal, the Italian authorities informed the Commission that the company was transferred to EFIM group by order of the Government to improve the efficiency of the State-owned aluminium undertakings and that the company, despite the losses it had suffered, totalling Lit 33 700 million in the period 1985 to 1987, appeared to be on the way to recovery, provided it was able to increase its production levels sufficiently.

Concerning the debenture loan of Lit 100 000 million issued by EFIM, the Italian Government stated that Lit 70 000 million were earmarked for investments in Alumina and Lit 30 000 million for investments in Comsal. The investment in Alumina would be completed by 1991 and the total cost would amount to Lit 84 000 million.

In its letters submitting its comments the Italian Government provided no evidence that the interest-free and State-guaranteed loans of Lit 70 000 million to Alumina and Lit 30 000 million to Comsal were not paid to the undertakings.

Finally, the Commission noted that in the covering note to their letter of 31 January 1989, the Italian authorities did not contest the aid character of the measures under consideration but explained that their letter contained the observations of the Italian Government concerning the compatibility with the common market of the aid in question.

In the context of the consultation of other parties concerned within the framework of the procedure provided for by Article 93 (2), the Governments of three other Member States submitted their comments.

IV

The effect of the Italian Government's authorization to EFIM to issue a debenture loan of Lit 100 000 million to finance investments in Alumina and Comsal was that these companies received aid in the form of a loan with no interest payable by the two companies. Furthermore this loan was later to be replaced by a capital injection of an equal amount.

The payment of all interest by the State constitutes a clear case of State aid as it allows the two companies to obtain the finance needed without bearing any of its associated costs. In this particular case the interest carried by the State for the first six months of the loan period is Lit 4 400 million for Alumina's loan of Lit 70 000 million and Lit 1 900 million for Comsal's loan of Lit 30 000 million.

The conversion of the two loans of Lit 70 000 million and Lit 30 000 million into equity capital constitutes provision of public funds to companies in the form of subscriptions of capital and may involve elements of State aid. In order to verify whether such a provision of public funds is an aid in the case where the undertaking is owned by the public authorities, it would be appropriate, ignoring any social elements or regional or sectoral policy, to consider whether under similar circumstances a private shareholder would proceed with such an injection of capital in the same conditions on the basis of expected profitability.

The financial performance of the two undertakings in question in the recent years was as follows:

Alumina suffered losses of Lit 77 800 million in 1985, Lit 57 500 million in 1986 and Lit 98 300 million in 1987. For the same years the company's total debt amounted to Lit 943 300 million or 155 % of turnover in 1985, Lit 989 300 million or 153 % of turnover in 1986 and Lit 1 189 800 million or 133 % of turnover in 1987.

Cosmal suffered losses of Lit 14 200 million in 1985, Lit 10 200 million in 1986 and Lit 9 400 million in 1987. The company's total debt amounted to Lit 53 100 million or 125 % turnover in 1985, Lit 68 200 million or 156 % of turnover in 1986 and Lit 72 800 million or 142 % of turnover in 1987.

In view of the financial performance of the two undertakings in the last three years and particularly of the losses suffered and the large amounts of debt accumulated, it is the Commission's opinion that the provision of additional capital out of public funds to a company in such circumstances is likely to involve elements of State aid, as follows from the reflections set out in the Commission's commu-

nication to the Member States of 17 September 1984⁽¹⁾ concerning the application of Articles 92 and 93 of the EEC Treaty to public holdings in company capital.

Whereas Alumina produces primary aluminium, Comsal is mainly involved in the production of rolled semi-finished aluminium products and to a lesser extent in the production of primary aluminium.

Both primary aluminium (Nimexe code 76.01-11) and rolled semi-finished aluminium products (Nimexe code 76.02-12) are traded between Member States. In 1985 Italy exported 13 178 tonnes of unwrought aluminium and 2 789 tonnes of rolled semi-finished aluminium products to the nine other Member States, together with Spain and Portugal. In 1986 Italy exported 9 194 tonnes of unwrought aluminium and 3 964 tonnes of rolled semi-finished products to the 11 other Member States and in 1987 Italy's exports to the other Member States were 6 480 tonnes of unwrought aluminium and 4 902 tonnes of rolled semi-finished products. Italy's imports from the other Member States, together with Spain and Portugal, were 214 718 tonnes of unwrought aluminium and 6 998 tonnes of rolled aluminium products in 1985. In 1986 183 655 tonnes of unwrought aluminium and 8 323 tonnes of rolled aluminium products and in 1987 211 595 tonnes of unwrought aluminium and 7 372 tonnes of rolled aluminium products were imported into Italy from the other Member States.

There is competition between producers in both the primary aluminium and the rolled semi-finished aluminium products subsectors. In the case of primary aluminium there are 16 main producers in seven Member States, with an installed capacity of approximately 2 300 000 tonnes. At the end of 1988 Alumina was the largest primary aluminium producer in Italy and, in terms of installed capacity, the third largest in the Community.

In the rolled semi-finished aluminium subsector there are 42 undertakings in the Community, which produced between 2 million and 2 200 000 tonnes of rolled aluminium in 1987. Of these producers, seven are situated in Italy and their production for 1987 amounted to 275 000 tonnes.

Where financial assistance from the State strengthens the position of certain enterprises compared with that of others competing with them in the Community, it must be deemed to affect those other enterprises.

Consequently, the aid which the Italian Government has decided to grant Alumina and Comsal will affect trade between Member States and distort or threaten to distort competition within the meaning of Article 92 (1).

The aid measures under consideration are incompatible with the common market because they were granted in breach not only of the general prohibition to grant an aid without prior notification to and prior authorization of the Commission provided for by Article 93 (3) of the EEC

⁽¹⁾ Bull EC 9, 1984, 3.5.1.

but also of the specific prohibition for the Italian Government to grant any further aid in whatever form to the State-owned aluminium industry until the end of 1988, as stated in the Commission's decision of 17 December 1986. By this decision the Commission authorized only Lit 1 445 000 million of aid to the State-owned aluminium industry in Italy on the basis that until the end of 1988 any further aid, over and above the amount authorized by the Commission, would not be justified and consequently would be incompatible with the common market.

This Commission decision was never challenged by the Italian Government. Consequently, the decision has become definitive and the prohibition on granting aid until 1988 must be fully respected by the Italian Government.

In view of the above considerations the Italian Government should abolish the aid elements included in the interest-free loans granted to Alumina and Comsal. For the same reasons these loans may not be converted into equity capital.

HAS ADOPTED THIS DECISION :

Article 1

The two aids in the form of interest-free loans to be converted into equity capital amounting to Lit 70 000 million and Lit 30 000 million, granted by the Italian

Government to the undertakings Alumina and Comsal, are incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty given that these aids have been granted in breach of the provisions of Article 93 (3) of that Treaty and of the conditions laid down in the Commission's decision of 17 December 1986.

The said aids shall therefore be abolished by the Italian Government and recovered from the recipient undertakings.

The Italian Government may not convert the two loans of Lit 70 000 million and Lit 30 000 million into equity capital.

Article 2

The Italian Government shall inform the Commission within two months of the date of notification of this decision of the measures it has taken to comply therewith.

Article 3

This decision is addressed to the Italian Republic.

Done at Brussels, 24 May 1989.

For the Commission

Leon BRITTAN

Vice-President
