

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 10 December 2008

on State aid C 60/07 granted by Italy to Fluorite di Silius SpA

(notified under document number C(2008) 7805)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2009/239/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:

I. PROCEDURE

(1) On 11 December 2007 the Commission informed Italy that it had decided to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty in respect of aid granted to Fluorite di Silius SpA. The Commission's Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission asked interested parties to submit their comments.

(2) On 17 January 2008 the Commission received observations from Italy on the opening of the formal investigation. On 20 February 2008 the Commission forwarded the opening decision to the three companies which had commented on the initiation of a formal investigation in the related case C 16/06 *Nuova Mineraria Silius* ⁽³⁾. The Commission received comments from three companies, respectively on 3 March 2008, 4 March 2008 and 5 March 2008. On 28 April 2008 the third parties' observations were sent to Italy for comment.

(3) On 18 March 2008, a meeting was held between the Commission and the Italian authorities. On 15 May 2008, Italy was sent a request for information; Italy replied in a letter recorded as incoming mail on 10 June 2008.

II. DESCRIPTION

(4) On 8 February 2007 the Commission received a complaint alleging that the Region of Sardinia was planning: (i) to issue an invitation to tender for a mining concession in respect of the Genna Tres Montis mine, which had been given up by Nuova Mineraria Silius on 25 July 2006; (ii) to set up a new company, Fluorite di Silius SpA, which would take part in the tender; and (iii) to transfer all the former employees of Nuova Mineraria Silius to Fluorite di Silius.

⁽¹⁾ OJ C 30, 2.2.2008, p. 28.

⁽²⁾ OJ C 30, 2.2.2008, p. 28.

⁽³⁾ OJ L 185, 17.7.2007, p. 18.

- (5) In June 2006 the Region of Sardinia drew up a business plan (*Programma di intervento e gestione*) for the continuation of mining at Genna Tres Montis. In September 2006 a feasibility study was carried out by Banca CIS, which concluded that the plan was economically viable. On the basis of this study, the Region decided on 4 October 2006 to set up a company which would bid for the mining concession in the tendering procedure⁽¹⁾. Fluorite di Silius was set up thereafter; it was wholly owned by the Region of Sardinia.
- (6) The core business of the new company, like the core business of Nuova Mineraria Silius, was the production and marketing of fluorite⁽²⁾ and galena⁽³⁾. The business plan for Fluorite di Silius was based on the extraction of some 2,23 million tonnes of ore, which according to current estimates would exhaust the existing reserves of the mine⁽⁴⁾. As had been the case with Nuova Mineraria Silius, most of the output would be sold to Fluorsid SpA, a supplier of hydrofluoric acid, in which the Region of Sardinia had a 40 % holding.
- (7) The tender for the mining concession was published on 9 March 2007. On 23 May 2007 the awarding committee awarded the mining concession to the only bidder, Fluorite di Silius.
- (8) The Commission decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the abovementioned measures on three grounds.
- (9) Firstly, the call for tenders made it a condition that all the workers employed by Nuova Mineraria Silius before it was put into liquidation, including staff covered by the laid-off workers' mobility scheme, were to be hired for at least five years, and their ranking and wages maintained. The Commission takes the view that tenders that include non-market conditions of that kind do not comply with the market economy investor test. In particular, such conditions are likely to confer an advantage at least on the activity being sold, since that activity is relieved from competitive pressure, and is financed through revenue forgone by the State⁽⁵⁾.
- (10) Secondly, the Commission doubted that the Region had acted as a market economy investor when it set up Fluorite di Silius, in order to have it bid for the mining concession, on the basis of a business plan with an internal rate of return of 3,5 %⁽⁶⁾, which was clearly below the average for the industry⁽⁷⁾, and below the opportunity cost to the investor measured by reference to State bonds⁽⁸⁾.
- (11) Thirdly, the Mines Department submitted a report (*istruttoria*) on the case to the Region on 6 June 2007 in which it stressed that the time span of the project, at nine years, would not allow full depreciation and recovery of the investment projected in the Fluorite di Silius business plan (about EUR 36,76 million). The investment not recovered would be substantial, at some EUR 13,5 million, or 36 % of the total⁽⁹⁾. More rapid depreciation of the assets would be contrary to the Italian accounting rules, and would in any event be an additional burden on the company's profits. The Commission therefore doubted whether the main points in the business plan would be acceptable to a market economy investor.
- (12) On 18 March 2008, a meeting took place between the Italian authorities and the Commission, at which the Commission further explained the concerns it had stated in the decision to initiate the formal investigation procedure. By letter received on 16 April 2008, recorded as incoming mail on 17 April 2008, the Italian authorities informed the Commission that the tender for the mining concession had been cancelled. By letter dated 10 June 2008, recorded as incoming mail the same day, the Italian authorities provided a copy of the formal step cancelling the tender, which was dated 8 April 2008⁽¹⁰⁾. In the same letter the Italian authorities stated that the Fluorite di Silius business plan, whose feasibility had been questioned in the opening decision, had now been abandoned.
- (13) By letter dated 16 April 2008, recorded as incoming mail on 17 April 2008, the Italian authorities informed the Commission that they intended to make a fresh call for tenders, without the condition that all former employees of Nuova Mineraria Silius should be taken on (see recital 9). The Italian authorities also submitted to the
- (1) Resolution (*delibera*) of the Region of Sardinia, No 42/17. That resolution led to the passing of Regional Act No 16 of 2 November 2008, published in the official gazette *Bollettino ufficiale della Regione Sardegna*, No 36, 4 November 2006.
- (2) Fluorite (also called fluorspar) is used mainly for the production of hydrofluoric acid (which in turn is used largely to make aluminium fluoride, for the production of aluminium by electrolysis).
- (3) Lead sulphide.
- (4) Reserves calculated on 31 May 2006.
- (5) See for example the Commission Decision of 27 February 2008 on State aid C 46/07 (ex NN 59/07) implemented by Romania for Automobile Craiova (formerly Daewoo Romania) (OJ L 239, 6.9.2008, p. 12).
- (6) The awarding committee referred to an internal rate of return of 9,4 %. But the Region's Mines Department (*Servizio Attività Estrattive*) has stated that that figure does not take account of the initial capital provided by the Region (EUR 2 million), taxes, the negative cash flow at the end of the project arising out of the closure of the mine (safety and environmental restoration), and a few other additional payments. The internal rate of return calculated by the Mines Department is 4,16 %.
- (7) Which was 8 %, according to the September 2006 version of the Banca CIS report.
- (8) Which was 5-6 %, according to the awarding committee (minutes of 21 May 2007).
- (9) The same report found that the activity would have to be extended by a further 3,2 years in order to amortise those assets. But it could not be ascertained whether the mine contained the 800 000 additional tonnes that would permit this extension of activity (and, in any event, the duration of the concession was limited to 10 years).
- (10) A decision of the Mines Department, No 4336/146 of 8 April 2008.

Commission a copy of the call for tenders, which did not contain any condition regarding the employment of former staff.

- (14) By letter dated 10 June 2008, recorded as incoming mail the same day, the Italian authorities stated that if the company were to decide to take part in the tender recently announced a new business plan would be presented. The Italian authorities undertook to inform the Commission of the outcome of the new tender and of the award, if any, of the concession that had been given up by Nuova Mineraria Silius. The Italian authorities also undertook to provide the Commission, at its request, with the business plan of the winning bidder⁽¹⁾.
- (15) The Commission would point out that if Fluorite di Silius, which is wholly owned by the Region of Sardinia, were to decide to take part in the new tender, its business plan would have to be in line with the market economy investor principles.
- (16) The tender that included the condition regarding the employment of former staff has been cancelled, so that the State aid element it might have comprised is no longer a possibility, and Fluorite di Silius can no longer be considered a potential aid recipient. The business plan presented in connection with the tender has now been abandoned. It may be concluded that the formal investigation procedure no longer serves any purpose and should be closed.

III. CONCLUSION

- (17) The formal investigation procedure was initiated in respect of the invitation to tender, subject to conditions, for the award of the Genna Tres Montis mining concession; the invitation to tender has now been cancelled, and the investigation no longer serves any purpose.
- (18) Consequently, the formal investigation procedure initiated under Article 88(2) of the EC Treaty initiated on 11 December 2007 in respect of aid granted to Fluorite di Silius should be closed,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure concerning Fluorite di Silius SpA which was initiated under Article 88(2) of the EC Treaty on 11 December 2007 is hereby closed.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 December 2008.

For the Commission
Neelie KROES
Member of the Commission

⁽¹⁾ Subject to the parties' rights of confidentiality.