Aid in favour of Trinecké Zelezárny, a.s. a steel producer in the Czech Republic

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On 14 December 2004 the Commission decided to launch a formal investigation on possible State aid in favour of Trinecké Zelezárny, a.s. (TZ), a steel producer in the Czech Republic. The Commission has reasons to believe that certain transactions between the Czech Government and TZ executed in April 2004 could constitute a disguised restructuring aid to a steel producer.

Facts

Restructuring State aid may be granted to the Czech steel industry only under the National Restructuring Programme accepted by the EU in Protocol No 2 of the Treaty of Accession (1) and only to companies included therein. Trinecké Zelezárny is not one of these companies and thus it is not eligible for restructuring aid. TZ was privatised in the mid 1990s, has been fully restructured without state support and has been making profit since 1997.

On 12 November 2003 the Czech Government adopted a resolution concerning the finalisation of the restructuring of the steel sector and proposing a solution for TZ. In the resolution, the Czech Government gave its consent to the following transactions:

- An acquisition by the Czech Government of shares in ISPAT Nova Hut (steel company) from TZ. The price for these shares was to be determined by the Ministry of Finance in an agreement with the Ministry of Industry and Trade.
- A transfer of 10,000 bonds, issued by TZ and currently held by CCA, back to their issuer — TZ, for only 10% of their nominal value. The difference between the nominal value of the bonds and the price to be paid by TZ should represent the value of the State aid to be provided to TZ for a number of projects concerning R&D, environment, training and closure.

The Commission was assured by the Czech authorities, that the proposed State aid measures would only be implemented upon a positive decision of the Czech Office for the Protection of Competition (OPC) issued after consultation with the Commission. On 22 and 30 April 2004 the Czech Competition Office authorised both above-mentioned transactions, although the technical consultation with DG Competition had not been finished and despite the fact that the Czech authorities were fully aware of all concerns raised by the Commission in respect of these measures.

Assessment

Protocol No 2 of the Treaty of Accession on the restructuring of the Czech steel industry allows the granting of restructuring State aid to the Czech steel industry in connection with its restructuring in the period between 1997 and 2003 of up to a maximum of CZK 14.147 million (€ 453 million). The Protocol combines the granting of State aid with several conditions, inter alia with re-establishing viability and the commitment to reduce capacity.

Point 1 of Protocol No 2 provides that 'notwithstanding Articles 87 and 88 of the EC Treaty, State aid granted by the Czech Republic for restructuring purposes to specified parts of the Czech steel industry shall be deemed to be compatible with the common market' if, inter alia, the conditions set out in the Protocol are met.

Point 3 of the Protocol provides that 'only companies listed in Annex 1 shall be eligible for State aid in the framework of the Czech steel restructuring programme.' Trinecké Zelezárny is not mentioned under Annex 1.

The last sentence of point 6 provides that 'no further State aid shall be granted by the Czech Republic for restructuring purposes to the Czech steel industry'.

Point 20 provides that 'the Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Protocol' in case the monitoring of the restructuring shows non-compliance by way of granting 'additional incompatible State aid to the steel industry'. This provision enables the Commission to open a

formal investigation, as in the absence of specific provisions in Protocol No 2 normal rules and principles should apply (1).

The Protocol aims at ensuring a transition between the arrangements concerning State aid for the restructuring of the Czech steel industry under the Europe Agreement and the end of the extended restructuring period (31 December 2006). In order to achieve this objective, it covers a time-frame extending before and after accession. More precisely, it authorises certain aid measures granted or to be granted until the end of 2003 and forbids any further State aid for restructuring purposes to the Czech steel industry until the end of 2006, i.e. the end of the restructuring period. In this respect, it clearly differs from other provisions of the Treaty of Accession such as the interim mechanism set out in Annex IV of the Treaty of Accession (the ‘existing aid procedure’), which only concerns State aid granted before accession insofar as it is ‘still applicable after’ the date of accession. Protocol No 2 can therefore be regarded as lex specialis which, for the matters that it covers, supersedes any other provisions of the Treaty of Accession. Consequently, although Articles 87 and 88 of the EC Treaty would not normally apply to aid granted before accession and not applicable after accession, the provisions of the Protocol extend State aid control under the EC Treaty to any aid granted for the restructuring of the Czech steel industry between 1997 and 2006.

The Protocol does not apply to other State aid measures granted to the Czech steel industry for specific purposes that can be declared compatible on other grounds, such as research and development aid, environmental protection aid, training aid, closure aid, etc. These aid measures do not fall under the scope of Articles 87 and 88 if they are granted before accession and are not applicable after accession. In any event, the Protocol does not limit the possibility to grant other kinds of aid to Czech steel companies in accordance with the Community acquis. Of course, it does not rule out the possibility to adopt measures that do not qualify as aid, e.g. capital injections in accordance with the market economy private investor test. On the other hand, a measure concerning Czech steel companies that constitutes State aid and cannot be held to be compatible with the common market under other rules shall be considered as restructuring aid — given the residual character of this qualification — or, in any event, as aid related to the restructuring of the Czech steel sector and will therefore be subject to Protocol No 2.

The Commission can thus open the formal investigation procedure provided for in Article 88(2) of the EC Treaty in case it suspects that the Czech authorities have granted aid to steel companies that is not compatible with the common market on grounds other than restructuring and, as a result the Czech Republic does not comply with to Protocol No 2. Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (2) is also applicable here.

Before opening a formal procedure the Commission analysed information submitted by the Czech Government and considered that the aid granted for environmental and R&D projects is compatible with the relevant EC State aid rules. However, it raised doubts as to the compatibility of the aid granted for closure and training projects.

The Commission has assessed the closure aid according to the Communication from the Commission on Rescue and restructuring aid and closure aid for the steel sector (3)

In its decision of 30 April 2004 the Czech Competition Office stated that the aid is in line with the above-mentioned Communication and covers measures involving the shutdown of a part of the furnace. In the Commission's opinion this assessment is not correct because a shutdown of a part of the furnace cannot be treated as a total or partial closure of a steel plant. A furnace is a single piece of equipment and partial closure is not possible. Moreover, the Commission has doubts that all the redundant workers are working for the part of the furnace which is planned to be closed. The Commission has also doubts about the calculation of the redundancy costs.

The Commission has assessed the training aid according to Commission Regulation (EC) No 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (4).

The vague and contradictory information provided in the decisions of the Czech Competition Office does not allow the Commission to verify that the definitions of general and specific training are respected. In addition, the incentive effect of the aid is not demonstrated.
As regards the purchase of shares from TZ, the Commission will investigate whether the price paid by the Czech Government for the shares (CZK1250) was a market price. This price was based on two experts' valuations. However, other information suggests that these two valuations might have overestimated the price. Should this be the case, this transaction would involve State aid, which could not be found compatible.

**Final comments**

Trinecké Zelezárny a.s. is neither covered by Protocol No 2 nor by the ‘Updated National Programme of the Czech Steel Industry Restructuring’ submitted to the Commission in December 2002. None of the documents which the Commission formally adopted even mention TZ in the context of the restructuring.

At the same time, documents submitted to the Commission in 2004 give the impression that the measures concern restructuring aid to Trinecké Zelezárny a.s. or, in any event, aid granted to that company and linked to the restructuring of the Czech steel sector. Also the title of the Resolution of the Government of the Czech Republic No. 1126 adopted on 12 November 2003 states that this resolution ‘concerns the finalisation of the restructuring of the steel sector — proposal to Trinecké Zelezárny a.s.’