Restructuring aid in favour of Chemische Werke Piesteritz GmbH

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On 2 March 2005 the European Commission terminated a three year long investigation into aid measures granted to Chemische Werke Piesteritz (CWP), an eastern German producer of phosphoric acid and phosphates. The Commission concluded that an amount of €6.7 million provided in 1997 and 1998 constituted incompatible State aid and ordered its recovery. In total, the Commission examined aid measures of EUR 19.2 million granted to CWP at the time of privatisation in 1994 and for its restructuring in 1997 and 1998.

The Commission decision is a follow-up of a judgement of the Court of First Instance of 2001 by which the Court annulled the initial Commission decision of 1997 to approve the aid. The Court procedure was launched by a competitor of CWP, Prayon-Rupel. The Court annulled the decision mainly because Prayon-Rupel could prove that the restructuring plan of CWP was not feasible. The Commission had initiated the formal investigation procedure directly after the judgement.

CWP is located in the region of Sachsen-Anhalt in eastern Germany. The company was created in 1994 for the purpose of acquiring, as part of a privatisation, the phosphorus-based products division of the State-owned Stickstoffwerke AG Wittenberg Piesteritz.

In the context of the privatisation in 1994 CWP received aid measures amounting to EUR 4.4 million. These measures were provided on the basis of an aid scheme approved by the Commission, the so-called Treuhandregime. The Treuhandregime lays down conditions for the granting of State aid in the context of the privatisation of the state-owned companies in eastern Germany in the 1990ies following reunification. The Commission concluded that the aid measures of 1994 were granted in line with the approved aid scheme. They thus constituted existing aid which needed not to be reassessed by the Commission.

Although a first restructuring effort had already been undertaken upon privatisation in 1994, this effort failed and in 1996 CWP was faced with severe difficulties caused by insufficient equity, interruption in the supplies of raw materials and lack of liquidity. Therefore a new restructuring plan was set up. The restructuring was to take place over the period 1997 to 2000 and mainly entailed investments in a new process for the production of phosphoric acid (the 'wet process') and a reorientation of the company's phosphate division to higher-quality phosphates.

To help the company with its restructuring the BvS and the Land Sachsen-Anhalt granted several aid measures amounting to a total of EUR 14.8 million in 1997 and 1998. The aid consisted in the waiver of the purchase price agreed in the privatisation, State guarantees as well as investment grants and investment tax refunds.

The Commission found that EUR 8.1 million of the EUR 14.8 million was covered by aid schemes approved by the Commission. These measures thus constituted existing aid which needed not be reassessed by the Commission. The remainder EUR 6.7 million was not covered by any approved legal basis and thus had to be assessed by the Commission. As CWP was in difficulties at the time of the granting of the aid the Commission evaluated these measures under the Community Guidelines for rescuing and restructuring firms in difficulty.

Aid for restructuring purposes raises particular competition concerns as it can unfairly shift the burden of structural adjustment on to other, more efficient, producers who are managing without aid. Restructuring aid is therefore allowed only in circumstances in which it can be demonstrated that the approval of restructuring aid is in the Community interest, and in particular, that a sound restructuring plan exists which should allow the company to restore its viability and competitiveness after the restructuring period.

On re-evaluating the restructuring plan for CWP, the Commission found that the restructuring plan was not sound. The plan was not carefully planned, steps were missing and costs were understated. It could thus not lead to the restoration of the company's long-term viability.

The decision was further reinforced by the fact that the plan, which originally was to run until 2000, had still not yet been fully implemented. The original restructuring plan had been modified significantly on several occasions since 1997. The technical concept for the construction of the installations for the wet process had to be changed.
and expanded. This increased costs and implied a delay in the implementation of the plan which in turn further increased costs. The construction of the installations for the wet process, a core element of the restructuring plan, was interrupted in 2001 and not taken up again since then.

In addition to the condition of a sound restructuring plan the Commission found that a further condition of the Community Guidelines, i.e. the condition of a substantial private contribution to the restructuring, was not met.

The Commission thus concluded that the criteria of the Community Guidelines on rescuing and restructuring firms in difficulty were not fulfilled and declared the aid amounting to EUR 6.7 million incompatible with the common market. CWP must now repay the aid including interests.