State aid: Commission orders reimbursement of loans for 17 R&D projects in the aeronautical sector in Italy

Almorò RUBIN DE CERVIN (1)

The Commission took on 11 March 2008 a first conditional decision (2) on aid to the aeronautical sector in Italy. The decision formally requests Italy, under EC Treaty state aid rules, to ensure that loans granted under Law 808/85 in favour of R&D activities in the aeronautical sector are fully reimbursed. These loans, worth more than €450 million and granted to 17 individual research and development (R&D) projects, are not in line with the applicable EU rules on state aid to research and development and need to be modified. The conditions imposed by the Commission and accepted by Italy will ensure that most of the loans are fully reimbursed within two months of the decision date. The main beneficiaries of the loans are the Finmeccanica group and the Italian company Avio.

The investigation

In 2003, following a complaint, the Commission opened a formal investigation into six Italian R&D projects in the aeronautical sector because of doubts as to their compatibility with the applicable EU rules on state aid for research and development (R&D). In particular, the Commission had concerns about the nature of the activities and the incentive effect of the aid. In December 2004, the Commission issued an information injunction to receive the full text of the granting decisions. Subsequently, in June 2005, the Commission extended (3) the scope of the investigation to the entire application of Law 808/85 to individual projects of significant size. The June 2005 decision covered three aspects: the existence of individual projects which Italy allegedly failed to notify, the instrument used to grant the aid and the nature of two helicopters, considered by Italy as important for national security.

Projects involved

The projects covered by the decision concern:

— Helicopters: A109DEF, A109X and A119 Koala, beneficiary Agusta;

— Airframes: DO328, DO328 Panels and DO328 EC, beneficiary Aermacchi; ATR72, ATR42-500, MD11 (2 projects), MD 95, Pressurised cabins and Falcon 2000, beneficiary Alenia; and Falcon 2000, beneficiary PiaggioAero;

— Engines: GE90B, GE90 Growth and LPTPW308, beneficiary Avio.

During the entire procedure, a third party, who requested to remain anonymous, submitted information and comments. Moreover, after the 2003 decision, France intervened in the proceedings. It is unusual for a Member State to intervene in a case against another Member State. Finally, among the beneficiaries, only Finmeccanica submitted observations after the 2003 decision.

Scope of the decision

Law 808/85 is an Italian scheme to promote R&D in the aeronautical sector. It had been approved in 1987 by the Commission under the condition that support for projects of a certain size would be individually notified to the Commission to verify their conformity with the applicable R&D rules (depending on the date of granting of the aid, the 1986 or 1996 R&D Frameworks apply to the projects). These rules allow fixed percentages of aid for certain research and development activities where and inasmuch as such aid is necessary to undertake a project.

The Commission’s investigation established that under Law 808/85, Italy had granted a total of more than €450 million to 17 individual R&D projects, none of which had been notified. The investigation also established that the aid instrument used by Italy was soft loans with a zero interest rate and a fixed reimbursement schedule, the aid element being the price of such a loan on the financial markets. In line with normal practice in the aeronautical sector, the loans have a very long duration, on average almost twenty years.
Conditions imposed

For the six projects on which the Commission raised doubts in its 2003 decision (A109X, A109DEF, MD11, MD95, DO328 Panels and DO328 EC), the information submitted by Italy alleviated the Commission's initial concerns about the nature of the activity and the incentive effect of the aid.

In cooperation with the Italian authorities, the Commission devised a methodology to measure the aid with regard to the applicable EU R&D Framework. The Commission concluded that in ten cases, in order to respect the maximum allowable aid intensity, Italy had to ensure immediate reimbursement of the entire outstanding amount of the loans (more than €170 million) plus compound interest (more than €100 million).

Six other projects are still within the allowed aid intensities and the loans will be reimbursed according to a fixed schedule, with full reimbursement by 2010 in most cases and by 2018 for the last. One loan was found to meet all the conditions of the Framework and had already been paid back by the beneficiary.

The decision of 11 March 2008 closes the investigation as regards the 17 R&D projects listed above and is conditional on observance of the above conditions. The Commission will monitor closely all reimbursements until the loans have been completely repaid (4).

Investigation continues

The Commission’s investigation will continue for the two helicopter projects A139 and BA609 (beneficiary Agusta) on which the Commission in its 2005 decision raised doubts as to their military nature. These projects raise the issue of the application of Article 296 of the EC Treaty (concerning the arms industry).

Finally, the March 2008 decision does not cover a recent decree approved by the Italian Parliament involving ENEA and Finmeccanica. The Commission will examine these transactions separately.

(4) In May 2008, Italy has provided to the Commission proofs that the loans have been reimbursed by the beneficiaries, including interests when necessary, within the sixty days prescribed by the decision, for a total amount over €350 million.