COMMISSION DECISION

of 4 May 1976

on aid from the Belgian Government to the Société nationale des chemins de fer belges (SNCB) for through international railway tariffs for coal and steel

(Only the French and Dutch texts are authentic)

(76/649/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 thereof,

Having regard to the observations presented by the parties concerned,

Whereas since 1971 the Belgian Government has been granting aid, estimated at Bfrs 525 million in 1975, to the Société nationale des chemins de fer belges (SNCB) as compensation for financial burdens which, according to that Government, result from applying to ECSC products through international tariffs established in accordance with the Agreement of 21 March 1955 [1], signed by the Member States pursuant to Article 70 of the ECSC Treaty, and Article 10 of the Convention on the transitional provisions;

Whereas the Belgian Government originally justified the granting of this aid on the basis of Article 2 (5) of Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway [2];

Whereas, as a result of objections raised on this subject by the Commission departments, the Belgian Government changed its initial position by justifying the aid on the basis of Article 3 (2) of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway [3];

Whereas on 8 October 1975 the Commission ruled that the aid granted to SNCB by the Belgian Government to compensate it for losses sustained as a result of applying international railway tariffs to the carriage of ECSC products is subject to Articles 92 and 93 of the EEC Treaty; whereas the measure in question cannot be justified on the basis either of Article 92 (2) and (3) of the Treaty or of Article 3 of Council Regulation (EEC) No 1107/70; whereas the Commission therefore called upon the Belgian Government and the Governments of the other Member States to present their observations;

Whereas, in a letter dated 14 November 1975, the Belgian Government stated that the aid in question does not affect trade between Member States and cannot distort competition by favouring certain undertakings or certain products since it does not alter the level of the transport tariffs and so is not passed on to SNCB's clients; whereas the Commission cannot share this view, since granting the aid in question enables SNCB to keep its tariffs lower than they should be and to charge its users a more favourable tariff; whereas aid granted to a single undertaking or to a single mode of transport with the purpose of reducing the rates applied for international traffic automatically affects trade between Member States in that it distorts or threatens to distort competition by favouring certain undertakings or certain products;

Whereas the Commission cannot accept the Belgian Government's view that what is involved here is compensation for a tariff obligation pursuant to Article 3 (2) of the abovementioned Regulation (EEC) No 1107/70, i.e. a tariff obligation not falling within the definition given in Article 2 (5) of Regulation (EEC) No 1191/69; whereas Article 3 (2) relates only to aid as reimbursement for the discharge of obligations inherent in the concept of a public service; whereas by virtue of the rules laid down in the Agreement of 21 March 1955 on the establishment of through international railway tariffs that Agreement does not constitute a public service

[1] OJ No 9, 19. 4. 1955, p. 701.
[2] OJ No L 156, 28. 6. 1969, p. 1.
[3] OJ No L 130, 15. 6. 1970, p. 1.

obligation pursuant to Article 3 (2) but a means of enforcing the rules on non-discrimination of Article 4 (b) and the first and second paragraphs of Article 70 of the ECSC Treaty which reflect one of the principles of the common market in coal and steel; whereas when concluding the Agreement of 21 March 1955, the Member States expressly stated in Article 18 thereof that by it they had undertaken 'only those obligations which are within the scope of the Treaty and of the Convention and which have as their purpose the implementation of those instruments';

Whereas the abovementioned rules, which are intended to implement a fundamental principle of the common market in ECSC products, apply to all parties involved in this market and also determine the commercial behaviour of transport undertakings as regards the carriage of coal and steel, irrespective of their status and their policy regarding the compilation of transport rates;

Whereas the fact that Article 10 of the Convention on the transitional provisions, which provided for the establishment for carriage within the Community of through international tariffs incorporating a degressive factor taking account of total distance, has so far been enforced only in respect of the railways is not due to any desire to class the transport services in question as a public service but is solely the result of the structure of these undertakings, each of which serves a domestic network and applies domestic tariffs, which makes it necessary, for transport between Member States, to establish international tariffs in accordance with the rules of the abovementioned provision which were defined more precisely in the 1955 Agreement so as to comply with the principle of non-discrimination enshrined in the Treaty;

Whereas the Commission cannot share the Belgian Government's view that by prescribing the application of through international tariffs in accordance with an imposed method whereby reductions are granted on the tariffs normally applying to domestic transport over the same route, the 1955 Agreement entails losses of revenue for SNCB from the international carriage of ECSC products; whereas, in the absence of an imposed structure for ECSC international tariffs, SNCB could have raised them; whereas, in the present circumstances, international transport rates are lower than the tariffs normally applying for domestic traffic in every case, irrespective of the level of the tariffs;

Whereas the Belgian Government has failed to appreciate the character and the purpose of these measures which, as long as the general tariff situation is maintained, represent the most appropriate means of ensuring compliance with the principle embodied in the ECSC Treaty which requires transport undertakings, like coal and steel producers, to offer their clients comparable rates for comparable services on all ECSC markets within the Community; whereas the 1955 Agreement merely establishes a structure so that railway tariffs for international traffic are compiled in such a way as to guarantee the comparability of the resulting rates with domestic transport rates; whereas the Agreement does not affect the freedom of railway undertakings as regards the level of these tariffs and the differentiation of their tariff systems, in particular as a result of the state of the markets concerned; whereas SNCB has made use of this possibility by granting special tariffs for domestic traffic which are lower than the general tariffs; whereas it is at present applying 39 special tariffs, the rates of which are in many cases lower than would result under the 1955 Agreement, for international traffic with the other Community networks;

Whereas, concerning the ruling of the French Council of State in 1961 on a dispute between the French Railways (SNCF) and the French Government concerning ECSC tariffs, it should be noticed that this ruling, given on different legal grounds in a period when Regulation (EEC) No 1107/70 was not in force, cannot be treated as a precedent for the interpretation of Community instruments and moreover this ruling concerned a situation fundamentally different from the subject matter of this Decision since the SNCF was not authorized to raise its tariffs;

Whereas these considerations do not prevent the Belgian Government from granting the aid in question under Article 4 of Regulation (EEC) No 1107/70; whereas this formal distinction is an important one of principle as regards action for the progressive improvement of the situation of the railways undertaken as part of the common transport policy,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the Belgian State to the Société nationale des chemins de fer belges (SNCB) for

through international railway tariffs for coal and steel on the basis of Article 3 (2) of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway, as amended by Regulation (EEC) No 1473/75 of 20 May 1975 is not compatible with the common market to the extent that it should be granted under Article 4 of the said Regulation.

The Kingdom of Belgium shall take the necessary action, as soon as possible and at the most within three months, either to terminate the aid in question or to modify its legal base in order that this aid may be granted under the provisions of Article 4 of Regulation (EEC) No 1107/70.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 May 1976.

For the Commission

The President

François-Xavier ORTOLI