COMMISSION DECISION

of 2 May 1979

on the United Kingdom scheme of assistance in the form of interest relief grants in favour of the offshore supplies industry (offshore supplies interest relief grant, OSIRG)

(Only the English text is authentic)

(79/496/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice to the parties concerned to submit their comments,

Whereas :

I

1. By *note verbale* dated 18 July 1973, the United Kingdom Government informed the Commission that it intended to introduce, pursuant to Section 8 of the Industry Act 1972, a scheme to assist the offshore supplies industry by making interest relief grants.

2. The United Kingdom Government, by making interest relief grants allowing credit to be offered on terms comparable to those in other countries, intended that this scheme of assistance should enable an offshore supplies industry to be established in the United Kingdom which would be able to compete with its counterparts in other countries.

3. Assistance is provided in the form of a 3 % interest relief grant on loans for the supply of fixed platforms and related equipment, submarine pipelines and mooring installations (hereafter referred to as 'offshore supplies'). Aid may be granted in respect of up to 80 % of the contract price, but only expenditure incurred during the first three years of construction may be taken into consideration. The interest relief grant can be given for up to eight years, the last five years constituting the repayment period.

4. In theory both purchasers and suppliers of offshore supplies are eligible for assistance, but in practice the scheme operates in favour of the offshore supplies industry in the United Kingdom, and almost all applications for aid come from United Kingdom manufacturers. Even if application is made by a buyer, he will gain no real benefit, since the only result of such assistance is to allow United Kingdom manufacturers to offer credit terms comparable to those of their competitors.

5. Components and subcontracts which would normally be eligible for assistance are excluded if they are imported from or placed in other Member States.

II

1. The Commission saw no reason initially to object to the introduction of the scheme, since it was for an industry which was then still not very developed in the Community. This position was possible since the scheme was designed to develop a new technology in the Community for the rapid exploitation of oil and gas resources in a field in which there was at that time little or no intra-Community trade. However, since the introduction of this aid scheme in 1973, sales on the United Kingdom market increased from about £ 650 million to £ 1 300 million in 1974. The market has developed in such a way, then, that these aids now distort or threaten to distort competition.

2. In 1976, in the course of its constant review, provided for in Article 93 (1) of the EEC Treaty, of existing aid schemes, the Commission came to the conclusion that the Community offshore supplies industry had expanded considerably since the initial assessment of the United Kingdom scheme had been made and that the scheme was no longer acceptable, at least in its original form.

3. Acting on information supplied by the United Kingdom Government, the Commission sought and obtained a commitment from the other Member States that they would cease to grant any assistance having the effect of reducing interest rates in respect of the supply by their undertakings of offshore supplies for use on the United Kingdom continental shelf.

4. By letter dated 14 January 1976, the Commission proposed to the United Kingdom Government that it should adopt appropriate measures within the meaning of Article 93 (1) of the EEC Treaty to extend the scheme to products manufactured in other Member States.

5. By letter dated 13 February 1976, the United Kingdom Government disputed the Commission's view concerning the effects of this aid scheme on the conditions of competition.

6. The Commission could not accept this viewpoint in the light of the information at its disposal relating to the development of the offshore supplies market in the United Kingdom and the distortions of competition produced by the OSIRG scheme to the detriment of manufacturers in other Member States.

7. On 23 December 1976, the Commission decided to initiate the procedure provided for in Article 93 (2) of the EEC Treaty with regard to the aid scheme in question and informed the United Kingdom Government accordingly by letter dated 4 January 1977 (SG(77) D/25).

8. The Commission stated in its assessment the view that assistance was being granted for the manufacture of offshore supplies without any conditions being imposed, that consequently the aid was not linked to objectives relating to the qualitative adaptation of the industry, that that aid was liable to affect trade within the Community, and that this view was shared by certain industrial circles in the Community which had made a complaint to the Commission to that effect; this complaint, together with the comments made to the Commission by those concerned, helped lead to the conclusion that the assistance affected trading conditions to an extent contrary to the common interest.

III

1. By letter dated 4 February 1977, the United Kingdom Government disputed the Commission's viewpoint, arguing that its scheme of assistance had had no apparent effect on competition between the Member States and stressing the importance of maintaining this aid in its present form for the development of the offshore supplies industry and for maintaining employment.

2. The United Kingdom Government argued that sales by manufacturers from other Member States on the United Kingdom market had remained at a virtually stable proportion of the United Kingdom market as a whole. This cannot be regarded, however, as demonstrating that competition has not been affected since, without the aid, the market share of manufacturers in other Member States could have been greater than it currently is. Following a period of expansion in which the volume of this United Kingdom market has grown considerably, it is now suffering a contraction, thereby making competition very keen for new construction contracts.

3. The Commission considers that United Kingdom manufacturers, in enjoying ready access to deep water and to one of the principal markets for offshore supplies, start off with a considerable advantage over other Community producers, and that assistance in the form of interest relief grants is likely to increase that advantage still further.

4. The Commission's concern about this scheme is shared by several Member States. One Member State considers that the United Kingdom aid has the effect of reducing the market shares of the other Member States; another feels that the discriminatory effect has increased since 1976; and two others confirm that competition has been distorted by this scheme as a result of excluding supplies from other Member States.

5. Trade organizations in the offshore supplies industry in several Member States have expressed serious misgivings as to the effect on trade resulting from the OSIRG scheme of assistance.

IV

Following initiation of the procedure, the United Kingdom Government, by letter dated 27 April 1978, put forward proposals to amend the OSIRG scheme of assistance so that such assistance would be granted only where a United Kingdom tender was in competition with one or more tenders from yards in non-member countries or where, despite tenders having been received from yards in other Member States, the order would be placed with a yard in a non-member country. Furthermore, assistance would be granted subject to the condition that the UK content of the contract was a minimum of 50 %.

V

1. The OSIRG aid scheme must first be examined as a whole and then as regards the problem of its non-applicability to imports from other Member States.

The OSIRG scheme as a whole

2. The market for offshore supplies is at present the focus of very keen competition both from undertakings is non-member countries and between under-

takings in the Member States, with approximately 20 % of the offshore supplies used on the United Kingdom continental shelf being supplied by other Member States. Aids granted under the OSIRG scheme using State resources reduce the cost to the purchaser of offshore supplies manufactured in the United Kingdom. In view of the international nature of this market, such aids affect trade and distort competition within the Community by favouring the industry in the United Kingdom compared with its competitors in the Community. This scheme thus constitutes an aid within the meaning of Article 92 (1) of the EEC Treaty.

3. The scheme cannot fall within the scope of the derogation in Article 92 (3) (a) of the EEC Treaty, since it was found in the course of the difficulties which the industry has been undergoing that these aids were not such as to maintain stable employment in development areas. During the period of its operation about half the production sites have been closed, while other yards are without orders or are completing existing orders.

4. Nor can the OSIRG scheme fall within the scope of the derogation in Article 92 (3) (c) of the EEC Treaty, since it is an operating aid which cannot be regarded as promoting the development of the industry in the United Kingdom by helping to make it competitive and able to operate without aid. Yet despite the fact that it has not had the result of keeping all the platform construction yards active, such assistance created distortions of competition, at the expense of yards in other Member States, in a market which has shrunk considerably in size. This aid is such as to hamper structural adaptation.

Exclusion of imported products

5. Although the practice of assessing the amount of aid on the basis of the overall price of the installation, including components and subcontracts, may be considered compatible with the common market, it is nevertheless unacceptable that products imported from other Member States should be excluded from this basis ; this measure cannot be considered as being compatible with the common market, whether it is regarded as part of the scheme of assistance for the offshore industry as a whole, or as an element of aid for the benefit of producers of components and subcontractors.

6. While it has been argued that the exclusion from the aid of components imported from other Member States is necessary for the attainment of the objective of the aid scheme for the benefit of the offshore industry, such an argument nonetheless contains an inherent contradiction. The effect of this exclusion is to reduce the supply of components and curtail price competition. This exclusion therefore runs counter to the aims of the assistance for the development of the industry producing platforms and other fixed offshore installations.

7. Furthermore, the fact of this exclusion means that secondary aid within the meaning of Article 92 (1) is being granted to a large number of undertakings for which offshore operations account for only a small proportion of sales. This aid is an operating aid in favour of a number of undertakings which do not represent an economic activity within the meaning of Article 92 (3) (c) and cannot therefore fall within the scope of the derogations laid down in that Article.

8. Moreover, if the intention was to assist these undertakings, there would be no reason to take into consideration only the proportion of their production falling within the offshore sector.

9. Furthermore, the exclusion of components imported from the other Member States from application of the aid scheme constitutes a measure having an effect equivalent to quantitative restrictions, in contravention of Article 30 of the EEC Treaty, a provision which is directly applicable in national legal systems.

10. This aspect provides a further ground for concluding that the aid considered in this Decision are incompatible with the common market ; there is therefore no need to take action against this element of the scheme in isolation.

VI

1. It must now be examined whether the changes to the OSIRG scheme proposed by the United Kingdom Government are such as to allay the Commission's concern.

2. The effect of these changes would be to make the OSIRG scheme applicable only if no tender from a manufacturer in another Member State could be accepted without aid. Where aid similar to the OSIRG scheme was applied by another Member State, the United Kingdom aid would be granted only if the United Kingdom tender could win the order with a lower level of assistance.

3. However, even in the above situation, the criteria for the application of Article 92 (1) of the EEC Treaty must be considered to be met. Such a revised scheme would be likely to help strengthen the competitive position of the industry in the United Kingdom in relation to its competitors in other Member States. In view of the existence of an enlarged market for United Kingdom products and the opportunity available of maintaining greater capacity, and since the finances of the undertakings concerned are fully available for the purposes of the company without distinction as to origin, United Kingdom undertakings are likely to be better equipped both technically and financially to face competition, particularly within the Community.

4. The very existence of such a revised scheme would be such as to dissuade producers in other Member States submitting tenders in this sector in the United Kingdom.

5. Moreover, the proposal to make the OSIRG scheme applicable where the UK content of the contract was a minimum of 50 % is not such as to make this measure compatible with the common market; no limitation of this type can be considered acceptable.

6. If the Commission allowed one Member State to grant such aids without applying Community rules, the result would be that all the other Member States could also claim the right to operate such aids, which would lead to an escalation of aids in that industry which might jeopardize the whole body of rules laid down by the EEC Treaty for controlling State aids.

VII

For these reasons, assistance granted under the OSIRG scheme cannot fall within the scope of the derogations in Article 92 (3) (a) or (c) of the EEC Treaty either in its present form or in the revised form envisaged by the United Kingdom Government. It cannot therefore be declared compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

Two months from the date of this Decision, the United Kingdom shall cease making interest relief grants pursuant to Section 8 of the Industry Act 1972 in respect of any new contracts for offshore supplies.

Article 2

The United Kingdom shall inform the Commission within two months from the date of this Decision of the measures, whether by law, regulation, or administrative action, taken in order to comply therewith.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 2 May 1979.

For the Commission

Raymond VOUEL

Member of the Commission