COMMISSION DECISION

of 10 July 1981

on a scheme of aid by the Belgian Government in respect of certain investments carried out by a Belgian undertaking to modernize its butyl rubber production plant

(Only the Dutch and French texts are authentic)

(81/626/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 as provided for in Article 93, and having regard to those comments,

Whereas:

I

The Belgian law of 17 July 1959, implemented by the Royal Order of 17 August 1959 [1] introduced general measures to aid the Belgian economy, and in particular interest rate rebates on loans contracted to pay for investments, state guarantees covering loans contracted by undertakings with banks where certain interest rebates are given, and exemption for five years from tax on income from immovable property.

When examining the Belgian law, pursuant to the procedure defined in Article 93 (1) and (2) of the EEC Treaty, the Commission pointed out that, since it contained no industrial or regional objectives and permitted aid to be given for investment by any undertaking in any area or industry, it constituted a general aid system which, as such, could not qualify for exemption under Article 92 (3) (a) or (c). In the absence of specific information the Commission could not assess the scheme's effects on trade between Member States or on competition and was, therefore, unable to form an opinion as to its compatibility with the common market.

It is now the well-established policy of the Commission to accept such general aid schemes subject to one of two conditions, namely that the Member State concerned informs the Commission of either a regional or sectoral plan of application, or where this is felt not to be possible, that it notifies significant individual cases of application.

Commission Decision 75/397/EEC [2], required the Government of the Kingdom of Belgium to notify the Commission in advance and in sufficient time of significant cases of application of the Belgian Law of 17 July 1959, introducing measures to promote economic expansion and the creation of new industries so as to enable the Commission to decide on the compatibility of the proposed aids with the common market.

II

By telex dated 13 December 1978 the Belgian Government informed the Commission of its intention to grant assistance under the abovementioned law for investment by a chemical undertaking at Zwijndrecht in the Antwerp district.

The undertaking concerned is the subsidiary of a group that specializes in the production of butyl rubber. The Belgian undertaking has 421 employees and in 1978 had a turnover of Bfrs 2 800 million.

The assistance contemplated by the Belgian Government is towards an investment project involving the replacement of a plant producing chlorobutyl-type halogenated butyl rubber by a plant producing 90 000 tonnes per year of bromobutyl-type halogenated butyl rubber. The investment would create 51 new jobs.

The undertaking concerned intends to maintain its position on the halogenated butyl rubber market by

[1] Moniteur Belge of 29 August 1959.

[2] OJ No L 177, 8. 7. 1975, p. 13.

converting production to a product which will meet the growing demand created especially by the introduction of tubeless tyres for trucks.

The undertaking concerned is the only producer of butyl rubber in Belgium and its output represents approximately 50 % of Community output.

The assistance contemplated by the Belgian Government would take the form of a six year 4 % interest relief grant on a loan representing two thirds of the investment (Bfrs 689 million), equivalent, according to the Belgian authorities, to a grant of 12 % of the investment.

The undertaking concerned exports 46 % of its output to other Member States. Demand in the Community is estimated to be 111 000 tonnes per year, the bulk of which is met by three undertakings.

III

The Belgian Government considers that the investment is a normal development of the undertaking's plant in Antwerp, and in its view the assistance is mainly intended to enable the undertaking to maintain its position on the market in question by introducing a manufacturing process which is better suited to meeting demand.

The Belgian Government also takes the view that the effects on trade of introducing the new technique are mitigated by the fact that output will serve mainly to replace goods currently being imported from a non-member country.

IV

During consultations with the parties concerned, the government of one Member State stressed that the assistance contemplated by the Belgian Government did not appear to be justifiable for reasons connected with the butyl rubber market. The government of another Member State was not opposed in principle to the assistance but felt it might be seen as a precedent by other butyl rubber manufacturers.

V

The aid proposed by the Belgian Government is therefore likely to affect trade between Member States and distort or threaten to distort competition by favouring the undertaking in question or the production of its goods within the meaning of Article 92 (1) of the EEC Treaty.

The terms of the Treaty provide that aids fulfilling the criteria set out in Article 92 (1) of the Treaty shall be incompatible with the common market. The exemptions from this incompatibility set out in Article 92 (3) of the EEC Treaty specify objectives to be pursued in the Community interest and not that of the individual beneficiary. These exemptions must be strictly construed in the examination both of regional or sectoral aid schemes and of individual cases of application of general aid systems. In particular they may be granted only when the Commission can establish that this will contribute to the attainment of the objectives specified in the exemptions, which the recipient undertakings would not attain by their own actions under normal market conditions alone.

To grant an exemption where there is no compensatory justification would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any benefit in terms of the interest of the Community, while at the same time accepting that undue advantages accrue to some Member States.

When applying the principles set out above in its examination of individual cases of application of general aid systems, the Commission must be satisfied that there exists on the part of the particular beneficiary a specific compensatory justification in that the grant of aid is required to promote the attainment of one of the objectives set out in Article 92 (3). Where such evidence cannot be provided and especially where the aided investment would nevertheless take place, it is clear that the aid does not contribute to the attainment of the objectives specified in the exemptions but serves to increase the financial power of the undertaking in question.

In the case in question there does not appear to be such a compensatory justification on the part of the undertaking benefiting from the aid.

The Belgian Government has not been able to provide, nor has the Commission found, any evidence which establishes that the proposed aid meets the conditions

justifying one of the exemptions provided for in Article 92 (3) of the EEC Treaty.

Furthermore, notwithstanding the fact that Belgium is experiencing a high rate of unemployment, with the result that the Commission has granted an exemption to a scheme of aids to employment on the grounds that a serious disturbance exists in the Belgian economy, it does not follow that every other aid of whatever nature proposed by the Belgian Government may automatically benefit from one of the exemptions specified in Article 92 (3), since each aid notified must be considered on its own merits in the light of the specific criteria laid down.

As regards the exemptions set out in Article 92 (3) (a) and (c) are concerned in respect of aids designed to promote or facilitate the development of certain areas, it is the case that the Antwerp area continues to enjoy a better socio-economic situation than that of other regions in Belgium; to the extent to which the general problem of unemployment also exists in Antwerp, it is already provided for under the general scheme to promote employment and there is, therefore, no reason to grant a further exemption in respect of this aid on the grounds that it will promote or facilitate the development of that area, a purpose moreover, for which this aid was not intended.

As regards the exemptions provided for in Article 92 (3) (b), there is nothing peculiar to the investment in question to qualify it as a 'project of common European interest' or as one designed 'to remedy a serious disturbance in the economy of a Member State' which merits exemption under these provisions from the rules on the incompatibility of aids laid down in Article 92 (1).

Finally, as regards the exemption under Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', examination of the situation on the butyl rubber market indicates that the operation of market forces should in itself be sufficient, without public assistance, to ensure the normal development of that activity. Approximately 46 % of the undertaking's total output of butyl rubber will be exported to other Member States. There is a risk therefore that the aid would affect trade to an extent contrary to the common interest.

In view of the foregoing, the Belgian Government's aid proposal does not meet the conditions necessary to benefit from any of the derogations set out in Article 92 (3) of the EEC Treaty.

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium shall not put into effect its proposal, notified to the Commission on 13 December 1978, to grant assistance provided for under the Law of 17 July 1959 'for the promotion of economic expansion and the creation of new industries' in respect of certain investments carried out by a chemical undertaking located at Zwijndrecht in the Antwerp district in order to modernize its butyl rubber production plant.

Article 2

The Kingdom of Belgium shall inform the Commission within two months from the date of this Decision of the measures it has taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 10 July 1981.

For the Commission

F. H. J. J. ANDRIESSEN

Member of the Commission