COMMISSION

COMMISSION DECISION

of 22 July 1982

on aid granted by the Netherlands Government to a paperboard-processing firm

(Only the Dutch text is authentic)

(82/653/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 these comments,

Whereas :

The Netherlands Government has decided to assist a paperboard-processing firm located in Leeuwarden. The aid is in the form of the acquisition of a Fl 4 000 000 holding in the firm's capital by a public regional holding company, the Noordelijke Ontwikkelingsmaatschappij (NOM).

By telex dated 20 October 1980 the Commission reminded the Netherlands Government of its obligations under Article 93 (3), which requires prior notification of aid measures.

The Netherlands Government replied to the Commission on 5 December 1980, supplying some information concerning the measure in question, and emphasizing that in its view the measure did not constitute State aid within the meaning of Article 92 (1).

The Commission did not agree, and on 22 July 1981 it decided to initiate the procedure provided for in Article 93 (2) in respect of the aid. It gave the Netherlands Government notice to submit its comments by 11 September 1981. This deadline was subsequently extended for two weeks, to 25 September 1981. The Netherlands Government sent the Commission its comments on 26 October, after the deadline had expired.

In the course of the consultation of the parties concerned the Governments of two Member States told the Commission that they shared its concern over the effect of the aids on competition within the Community.

Two trade associations in the paperboard-processing industry, one Belgian and the other Netherlands, have filed complaints with the Commission. Those complaints reveal distortions of competition resulting from the measure taken by the Netherlands Government.

The assistance in this case is such as to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the undertaking concerned or the production of its goods.

The prohibition on State aids laid down in Article 92 (1) applies to injections of capital both by the central Government itself and by regional or local authorities or other public agencies under the central Government's authority.

The financial structure of the firm, which urgently needed to carry out replacement investments, and the overcapacity in the paperboard-processing industry, constituted handicaps indicating that the firm would probably have been unable to raise on the private capital markets the funds essential to its survival.

The situation on the market in question provides no reasonable grounds for hope that a firm urgently needing large-scale restructuring could generate sufficient cash flow to finance the replacement investment necessary, even if it received the proposed assistance.

Article 92 (1) states that aids fulfilling the criteria set out therein are incompatible with the common

market. Exemptions from this incompatibility are permitted by Article 92 (3), which specifies objectives to be pursued in the Community interest, and not that of the individual recipient. The exemption clauses must be strictly construed in the examination both of regional or industry schemes and of individual cases of application of general aid systems; in particular, exemptions may be granted only when the Commission can establish that this will contribute to the attainment of one of the objectives specified, which the recipients would not secure by their own actions under normal market conditions alone.

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

When applying the principles set out above in its examination of cases of aid, the Commission must be satisfied that there is a specific compensatory justification forthcoming from the particular recipient: the grant of aid must be required to promote the attainment of one of the objectives set out in Article 92 (3). Where this cannot be shown it is clear that the aid does not contribute to the attainment of the objectives specified in the exemption clauses but serves to increase the financial strength of the undertaking in question.

In the present case there is no such compensatory justification forthcoming from the undertaking receiving the aid.

The Netherlands Government has not been able to show, nor has the Commission found any evidence to establish that the proposed aid satisfies one of the tests for exemption in Article 92 (3).

As regards the exemptions permitted by Article 92 (3) (a) and (c), for aid to promote or facilitate the development of certain areas, the Leeuwarden area is not one 'where the standard of living is abnormally low or where there is serious underemployment' within the meaning of subparagraph (a); the rate of unemployment in the Leeuwarden area is roughly equal to the Community average. As regards the exemption permitted by subparagraph (c), the aid would not 'facilitate the development of ... certain economic areas' within the meaning of that provision.

As regards the exemptions permitted by Article 92 (3) (b), there is nothing in the measure 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', the furtherance of which justifies exemption under Article 92 (3) (b) from the prohibition of aids laid down by Article 92 (1). The Netherlands belong to the central regions of the Community, whose social and economic problems are not the most serious in the Community, yet where the danger of an escalation of State aids is most immediate and where any State aid is most likely to affect trade between Member States. Available social and economic data on the Netherlands do not suggest that there is a serious disturbance in the economy of the kind referred to by the Treaty. The measure was not intended to remedy such a disturbance.

Lastly, as regards the exemptions permitted by Article 92 (3) (c), for 'aid to facilitate the development of certain economic activities', developments in the paperboard-processing industry show that to maintain production capacity through the grant of State aid would not be in the common interest. Furthermore, the paperboard-processing industry's future prospects rule out the conclusion that the aid envisaged would not adversely affect trading conditions to an extent contrary to the common interest.

The Netherlands Government aid described does not therefore qualify for any of the exemptions permitted by Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the Netherlands Government to a paperboard-processing firm, which was notified to the Commission by telex dated 5 December 1980, is

incompatible with the common market under Article 92 of the EEC Treaty.

Article 2

The Kingdom of the Netherlands shall inform the Commission within three months of the date of notification of this Decision of the measures it has taken to ensure that the aid granted does not continue to distort competition in future, notably competition with undertakings in other Member States.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 22 July 1982.

For the Commission

Frans ANDRIESSEN

Member of the Commission