COMMISSION DECISION

of 22 July 1982

on aid granted by the Belgian Government to a paper-manufacturing undertaking

(Only the Dutch and French texts are authentic)

(82/670/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 Belgian Government has granted a paper-manufacturing undertaking assistance taking the form of a low-interest loan of Bfrs 1 076 million, to finance an investment programme of Bfrs 1 314 million, and two repayable advances totalling Bfrs 510 million.

The assistance is linked to restructuring measures, comprising the closure of two factories out of the group's total of five, and the ending of bulk production, with conversion to special papers.

Further assistance has been granted in the form of a holding of Bfrs 2 350 million acquired by the Walloon Regional Executive ; the main effect of this measure was to rescue the undertaking from a very difficult financial situation.

On 23 July 1980 the Commission reminded the Belgian Government of its obligations under Article 93 (3), which requires prior notification of aid measures.

By letter dated 6 February 1981 the Government replied, notifying the Commission of assistance in favour of the undertaking in question decided by the Walloon Regional Executive on 17 July 1980.

On 10 March 1981 the Commission decided to initiate the procedure laid down in Article 93 (2) in respect of this assistance, giving the Belgian Government until 10 April 1981 to submit its comments.

Only after the Commission had sent a reminder, on 22 June 1981, did the Belgian Government submit its comments, on 24 August 1981. The deadline set had thus not been observed.

In the course of the consultation of the parties concerned the Governments of three Member States indicated that they shared the Commission's concern over the Belgian aid, and took the view that it was liable to distort competition and adversely affect trading conditions to an extent contrary to the common interest.

Two trade associations and another paper-manufacturing firm opposed the grant of State aid in an industry suffering from overcapacity.

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.

When the Belgian Government intervened, the recipient undertaking was in a very difficult financial situation, which appeared to rule out any recourse to the unsubsidized capital market. The undertaking had consistently suffered losses since 1975, averaging Bfrs 350 million a year. This was equivalent to a loss of Bfrs 30 million a month, including about Bfrs 25 million in debt-servicing costs.

By acquiring a holding of Bfrs 2 350 million in an undertaking whose capital and reserves amounted to Bfrs 1 250 million, the Belgian Government in fact injected finance into an undertaking which could not have obtained it elsewhere. The crucial problem of the burden of debt-servicing costs was thus largely resolved, and the firm was enabled to escape from a dangerous financial situation.

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.

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.

As regards the exemptions permitted by Article 92 (3) (a) and (c), for aid to promote or facilitate the development of certain areas, the areas in which the recipient undertakings' factories are located are not 'areas where the standard of living is abnormally low or where there is serious underemployment' within the meaning of Article 92 (3) (a).

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). Belgium belongs 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 Belgium do not suggest that there is a serious disturbance in its economy of the kind referred to by the Treaty. The measure was not intended to remedy such a disturbance.

As regards the exemption permitted by Article 92 (3) (c), for 'aid to facilitate the development of certain economic activities', the Community's paper industry has in the past had to face strong competition from manufacturers in non-Community countries producing under particularly favourable natural conditions. This competition treatens to grow in the near future, when the Community has to let in more paper products from some of these countries with the establishment of full free trade on 1 January 1984.

It is in the Community interest that the paper industry should adapt to the new situation in particular by reducing the share of bulk-production paper in its output and converting to special papers.

It cannot be accepted that every time the Community makes changes in its external tariff the industries which suffer thereby should expect sympathetic consideration to be given to the grant of State aid. The situation is different, however, if the industry involved is in need of fundamental restructuring which is not merely aimed at countering increased competition. In the present case it is indeed in the interest of the Community that the paper industry should convert to high value-added products in which raw materials account for a smaller proportion of costs than in bulk production. Special papers have a further advantage in that their markets are near.

In the present case, the aid granted in the form of low-interest loans and repayable advances is linked to an investment programme which would expand special paper production, boosting capacity from 82 000 to 100 000 tonnes in 1983. The expansion of special paper production woiuld allow bulk production, now 42 000 tonnes, to be abandoned completely, with the closure of two factories out of five.

This restructuring operation is in the Community interest for the paper industry as defined above so that there is a compensatory justification for the aid granted by the Belgian Government to make this operation possible.

Furthermore, the assistance towards the restructuring of the recipient undertaking is not liable adversely to affect trading conditions to an extent contrary to the common interest.

Thus the aid in the form of low-interest loans and repayable advances granted by the Belgian Government qualifies for exemption under these provisions.

The aid which the Belgian Government granted by acquiring a holding in the capital of the recipient undertaking, on the other hand, is not directly linked to the restructuring operation. It constitutes rescue aid intended to allow the undertaking to meet its financial commitments.

Aid of this kind, aimed at keeping production capacity in operation, threatens to do serious damage to the conditions of competition, as the free interplay of market forces would normally call for the closure of the undertaking, allowing more competitive fims to develop.

The Belgian Government has not been able to show, nor has the Commission found, that there is in the conduct of the undertaking any compensatory factor in the Community interest such as to justify the aid granted by the Belgian Government.

The aid granted by the Belgian Government in the form of a holding acquired in the undertaking 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 in the form of a low-interest loan and repayable advances granted by the Belgian Government to a paper-manufacturing undertaking is hereby considered compatible with the common market.

However, the aid in the form of the acquisition by the Belgian Government of a holding in the same undertaking is incompatible with the common market under Article 92 of the EEC Treaty.

Article 2

The Kingdom of Belgium 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 referred to in the second paragraph of Article 1 does not continue to distort competition in the future.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 22 July 1982.

For the Commission

Frans ANDRIESSEN

Member of the Commission