COMMISSION

COMMISSION DECISION

of 22 July 1982

on a Belgian Government aid scheme concerning the setting-up of a new factory by a soft drinks manufacturer

(Only the Dutch and French texts are authentic)

(82/774/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments as provided for in the said Article 93, and having regard to those comments,

I

Whereas :

The Belgian Law of 17 July 1959, implemented by the Royal Decree of 17 August 1959 [1], introduced aid to the Belgian economy designed in particular to facilitate investment by the recipients of such aid ; the aid in question consists of certain interest rebates, State guarantees and exemption for up to five years from the tax on real property.

Examining the Belgian Law pursuant to the procedure laid down in Article 93 (1) and (2) of the EEC Treaty, the Commission found that it constitutes a general aid scheme having no sectoral or regional objectives ; the aid for which it provides is applicable to investments by any undertaking in any area or industry ; therefore, the aids could not qualify for exemption under Article 92 (3) (a) and (c) of the EEC Treaty ; in the absence of such specific sectoral or regional references, the Commission could not assess the effects of the general aids 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 Belgian Government to notify the Commission in advance and in sufficient time of significant cases of application of the Belgian Law of 17 July 1959 so as to enable the Commission to decide on the compatibility of the proposed aids with the common market.

II

By letter dated 13 April 1981, the Belgian Government informed the Commission of its intention to grant aid under the abovementioned Law for investment by a soft drinks manufacturer.

It was the intention of the recipient undertaking, a company whose head office is in the State of Delaware in the United States of America and which manufactures and distributes soft drinks in many countries, to set up a new factory in the province of Brabant with a view to manufacturing, bottling and distributing its products.

Before setting up this new plant, the undertaking in question distributed part of its products through a Belgian undertaking firmly established in this sector.

The aid contemplated would take the form of a five-year 3 % interest rebate on an amount of Bfrs 428 million and exemption for three years from the tax on real property, and would amount to about 4.6 % net grant equivalent of the total investment.

[1] Moniteur belge, 29 August 1959.

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

The investment would create 184 jobs.

Competition is very strong in this sector both between manufacturers of aerated soft drinks and between distributors and retailers of such products. The European market is dominated by three multinationals with a worldwide reputation; with their aerated beverages they account for a large part of the soft drinks market.

In the soft drinks sector in general, there is a very powerful local competitor on the Belgian market.

At the European level, there is a potential market both for the range of products already marketed and for similar new products.

There is a healthy trade in soft drinks between the various European countries. In Belgium, in particular, the quantity of soft drinks coming from Member States increased by 41·35 % between 1974 and 1980 and, during the same period the quantity exported to Member States increased by 296 %.

Both production and consumption in this sector have increased sharply in the past 10 years, in Belgium by 34·83 % and 24·19 % respectively.

III

The undertaking which is to receive the aid in question ranks second on the world market in soft drinks. Its turnover more than doubled between 1975 and 1979 and during the same period its net profits almost tripled. In Belgium the undertaking manufactures three varieties of soft drink: an aerated beverage containing cola extracts, an aerated beverage with various flavours and a lemonade. The new factory is to supply the whole Belgian market. The decision to set up this unit was taken in order to satisfy constantly increasing demand.

Since the factory was built the undertaking's sales network has expanded rapidly and sales have increased sevenfold. Moreover, the number of distributors marketing the aerated beverage containing cola extracts produced by the undertaking has doubled.

Before it opened its new plant in Belgium, the undertaking held less than 5 % of the Belgian market in beverages containing cola extracts. A few months after its factory started production, however, it claimed that it already held 15 % of the market and hoped that this figure would shortly reach between 25 and 30 %.

After analyzing these facts and taking into account the additional information supplied by the Belgian authorities, the Commission decided on 22 July 1981 to initiate the procedure provided for in Article 93 (2) of the EEC Treaty in respect of this aid scheme on the ground, in particular, that it had not been established that the recipient undertaking would not have carried out the investment without the proposed aid.

In the course of the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty, a Member State and a trade organization have stated that they share the view expressed by the Commission.

IV

The aid which the Belgian Government intends to grant to an undertaking manufacturing soft drinks is likely to affect trade between Member States and distort or threaten to distort competition by favouring the undertaking in question within the meaning of Article 92 (1) of the EEC Treaty.

Article 92 (1) of the Treaty provides that aid answering the criteria it contains is in principle incompatible with the common market; the derogations provided for 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 derogations must be strictly construed in the examination of any aid scheme and, in particular, they may be granted only when the Commission can establish that this will contribute to the attainment of the aims specified in the derogations, which the recipient firms would not attain by their own actions under normal market conditions alone.

To grant an exemption where no such aim can be served would be tantamount to allowing trade between Member States to be affected and competition to be distorted, or to be subject to the threat of being distorted, without any justification in terms of the interest of the Community, and to permit this would involve granting undue advantages to certain undertakings and certain 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 beneficiary undertaking 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) of the EEC Treaty; if this were not the case, the aid would in essence serve to increase the financial power of the undertaking in question.

In the case in question there does not appear to be any such compensatory justification.

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 derogations provided for in Article 92 (3) of the EEC Treaty.

As regards the derogations set out in Article 92 (3) (a) and (c) of the EEC Treaty in respect of aid designed to promote or facilitate the development of certain regions, the area in which the investment in question is to be carried out is not included among the regions where the socio-economic situation justifies the grant of regional aid in Belgium ; therefore, it cannot be argued in favour of the aid in question that it will promote or facilitate the development of that area, nor is that the primary purpose of this aid.

As regards the derogations provided for in Article 92 (3) (b), the investment in question is clearly not a project of common European interest nor one designed to remedy a serious disturbance in the Belgian economy.

As regards the derogation under Article 92 (3) (c) for aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the aid in question does not appear to be essential for the development of the industry or the undertaking in question, whilst it is likely to affect adversely trading conditions to an extent contrary to the common interest.

Given the foreseeable profitability of the investment in question, it is in the undertaking's own interest to bring about the proposed expansion of capacity, if only to keep up with likely demand.

The financial situation of the undertaking in question is not fundamentally different from that of other undertakings in the same industry, which do not enjoy similar aid.

In view of the above, the aid proposal of the Belgian Government does not meet the conditions necessary for 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 April 1981, to grant certain of the aids provided for under the Law of 17 July 1959 on economic expansion and the creation of new industries to an undertaking manufacturing soft drinks, located in the province of Brabant.

Article 2

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

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