COMMISSION DECISION

of 22 July 1982

on a Belgian Government aid scheme concerning the expansion of the production capacity of an undertaking manufacturing mineral water and soft drinks

(Only the Dutch and French texts are authentic)

(82/775/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 aid 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 letters dated 13 April and 30 June 1981, the Belgian Government informed the Commission of its intention to grant aid under the abovementioned Law for investment by an undertaking producing mineral water and soft drinks.

The investments eligible for the abovementioned aid amount to Bfrs 806 million ; such investments essentially consist of the expansion of production capacity and of storage and dispatching facilities, which will enable the recipient undertaking to increase its turnover appreciably in the future ; this increase will enable the undertaking to create 10 new jobs.

The aid would take the form of an interest rebate and tax relief and would amount to approximately 7·5 % net grant equivalent of the total investment.

The manufacturer in question markets its products both in Belgium and in other Member States.

III

The mineral water and soft drinks industry in the European Community has, in the last 10 years, enjoyed a constant increase in the quantities produced ; consumption of such beverages has risen steadily, albeit subject to seasonal variations ; the prospects for the future in the two industries are good, although there is some excess production capacity in the soft drinks industry.

The trend in the production and sale of these products in Belgium during the same reference period has been similar to that in the rest of the Community ; in particular, there has been a 53 % increase in the Belgian production of mineral water in the last five years ; exports to other Member States more than doubled during the same period and, in particular, imports of mineral water from other Member States fell.

[1] Moniteur belge, 29 August 1959.
[2] OJ No L 177, 8. 7. 1975, p. 13.

The undertaking which is to receive the aid provided for under the Belgium Law of 17 July 1959 produces approximately 50 % of all mineral water in Belgium and accounts for a substantial share of production of soft drinks; approximately 40 % of its turnover is achieved by exporting to the other Member States; it has managed to increase its total turnover by approximately 75 % in the last five years, and to increase its production capacity by over 50 % during the same period; it appears from information published in the press that the undertaking concerned intends to seek new markets in other Member States, in particular following the planned expansion of production capacity.

After analyzing the above facts and taking into account the additional information provided 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 the proposed aid, since it considered, in particular, that it had not been established that the recipient undertaking would not have carried out the investment in question without the proposed aid; in the course of this procedure, the Belgian authorities pointed out *inter alia* that the investment project concerned constituted the second of two stages in a long-term general investment programme, that the Commission had not objected to aid granted by the Belgian Government for the first stage in 1979, and that the undertaking provided one of the major sources of industrial redoployment in the region where it had its headquarters, by contributing to the exploitation of the natural resources of that region.

In the course of the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty, one Member State and one 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 mineral water and soft drinks is likely to affect trade between Member States and distorts or threatens 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 aims 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.

Whilst the Commission did not object to the aid granted to the same undertaking in 1979 when it undertook another increase in its production capacity, this does not imply that the Commission is bound automatically to authorize a new aid to the same undertaking; in the meantime the Commission has informed Member States that it would apply the derogations from the ban on aids of Article 92 (1) more rigorously in the future; the Commission, notably in the decision it took on an aid that the Netherlands Government proposed to give towards an investment designed to increase the capacity of a cigarette producer [1], had made known the attitude it would take with respect to such aids; this decision has been confirmed by the Court of Justice in its judgment of 17 September 1980 [2]; since then the Commission has constantly adopted a similar attitude; this attitude is primarily based on the economic situation prevailing at the moment in the Community.

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 mineral water and soft drinks located in the province of Liège.

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

[1] OJ No L 217, 25. 8. 1979, p. 17.
[2] Case 730/79 'Reports of cases before the Court, 1980-7, page 2671'.