COMMISSION

COMMISSION DECISION

of 27 October 1982

on a proposed aid by the Belgian Government in respect of certain investments carried out by an oil company at its Antwerp refinery

(Only the Dutch and French texts are authentic)

(82/829/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 Decree 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 certain taxes on real 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 firm 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 such specific references, 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 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 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 aid with the common market.

II

In accordance with this procedure, the Belgian Government informed the Commission by letter dated 3 February 1982 of its intention to apply the aid provided for under the abovementioned law in favour of investments to be carried out at a refinery in Antwerp.

The company to be aided is the Belgian joint venture of one of the world's major oil groups and a national oil company.

The project for which aid is proposed concerns investments to adapt a distillation column to operate as a conversion unit, leading to an estimated increase of 827 000 tonnes per year of the production of light products, and the construction of a new unit which will produce annually 100 000 tonnes of 'methyl-tertiary butyl ether'. This product is a new additive for

[1] Moniteur Belge, 29. 8. 1959.

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

high-grade motor spirits to replace lead-based additives. The new additive will make the exhaust gas of motor spirit driven automobiles less poisonous than it is now.

This latter investment will produce 30 000 tonnes per year of motor gasoline as a by-product. It is estimated that as a result of the conversion the overall production capacity of the refinery will be reduced from the present 17 million tonnes to 15 million tonnes per year.

The current capacity utilization is 78 %. Of the actual production of 13·3 million tonnes 5·4 million tonnes are exported. Of those exports 3·5 million tonnes go to other EEC countries. It is estimated both that after the conversion the capacity used will be increased by 2 to 3 % annually, and that the refinery's export to other Member States will increase from the present 3 522 000 tonnes to 3 900 000 tonnes per annum.

The investment costs of Bfrs 4 093 million are being financed entirely out of the company's own resources. The aid takes the form of a capital premium equivalent to an interest rate subsidy of 3 % for five years on a theoretical loan of Bfrs 2 046·5 million. The aid therefore amounts to Bfrs 306 750 000 which represent a net subsidy equivalent (after-tax value) of 3·43 % of the total investment.

III

On 23 March 1982 the Commission initiated the procedure under Article 93 (2) of the EEC Treaty in respect of the Belgian proposal. In the framework of this procedure the Commission has received supplementary information and comments both from the Belgian Government, from EN (the Italian National Agency for Hydrocarbons), expressing the point of view that the proposed aid should be granted, and from the governments of the Federal Republic of Germany, the Kingdom of Denmark and the United Kingdom expressing the view that the proposed aid should not be granted.

IV

In a series of communications to the Council in recent years, the Commission has drawn attention to the difficulties facing the oil refining industry in the Community as a result of a large surplus of primary distillation capacity on the one hand and insufficient conversion plant to meet future demand for the various products on the other.

The demand for heavy products has declined more than that for the lighter fractions. At the same time as reducing primary capacity, the industry has consequently been obliged to invest in plant to raise the relative yield of the lighter products. However, the price differential between light distillates and residual fuel oil has in recent years generally provided a sufficient incentive to companies to carry out the necessary investment.

The Belgian Government has on two previous occasions proposed aid to other oil refineries in Antwerp for the same and related purposes. On the grounds that these aids were incompatible with the common market, particularly in view of the situation in the refinery sector, both proposals were subject of negative decisions (1).

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 produciton of its goods within the meaning of Article 92 (1) of the EEC Treaty.

The terms of the Treaty provide that aid 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 firms 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

(1) OJ No L 343, 18. 12. 1980, p. 38 and OJ No L 361, 16. 12. 1981, p. 24.

where the aided investment would take place in the absence of aid, 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 aid 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 regard the exemptions set out in Article 92 (3) (a) and (c) 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), since the market for the production of light distillates does not show the over-capacity characteristic of the rest of the refining sector, this investment would be brought about in any event by normal market forces. 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 Article 92 (3) (b) from the provision laid down in Article 92 (1) on the incompatibility of aids. Finally, as regards the exemption specified in Article 92 (3) (c) of the EEC Treaty in favour of 'aid to facilitate the development of certain economic activities', examination of the refinery investment it is proposed to aid shows that the investments can be carried out by the firm using its own resources. In the light of this fact and the general state of the refining industry for light products, it is clear that the aid is not necessary to promote the development of the economic activity in question. Furthermore, having regard to the fact that the planned modernization of the refinery's plants is expected to increase the refinery's export to other Member States by 378 000 tonnes annually, the grant of this aid would be likely to affect trading conditions to an extent contrary to the common interest.

In view of the above the aid proposal of the Belgian Government does not meet the conditions necessary to qualify for any of the exemptions set out in Article 92 (3) of the EEC Treaty.

HAS ADOPTED THIS DECISION :

Article 1

Belgium shall not put into effect its proposal, notified to the Commission on 3 February 1982, to grant aid in respect of certain investments to be carried out in an Antwerp refinery under the Law of 17 July 1959 on the promotion of economic expansion and the creation of new industries.

Article 2

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, 27 October 1982.

For the Commission

Frans ANDRIESSEN

Member of the Commission