COMMISSION DECISION

of 27 July 1983

concerning the aid that the United Kingdom Government proposes to grant for investment to expand production capacity for polyester film

(Only the English text is authentic)

(83/487/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, in accordance with the above-mentioned provision, to the parties concerned to submit their comments and having regard to those comments,

Whereas :

On 1 February 1983 the United Kingdom Government notified the Commission of a proposal to award a grant of £ 7 200 000 under section 8 of the Industrial Development Act 1982 to an investment project, costing an estimated £ 35 million, at Dumfries, Scotland, involving expansion of production capacity for polyester film.

The investment would modernize the existing production unit with a capacity of 17 000 tonnes of thin polyester film a year and raise its capacity to 26 000 tonnes a year.

On 16 March 1983 the Commission decided to open the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the proposal, as it believed the aid was liable to affect trade between the Member States to an extent contrary to the common interest and did not appear necessary to cause the firm concerned to adopt a course of action that would allow the Commission to apply one of the exceptions to the principle of the incompatibility of State aids with the common market.

The United Kingdom Government replied to the opening of the procedure on 3 May and 7 June 1983. In its replies it argued that the aid was necessary since the investment project would not be implemented without it, owing to the firm's shortage of finance ; that it was in the Community's interest for the project to go ahead since it would strengthen the position of its industry in the sector concerned, against competition from outside the EEC ; that the planned expansion of capacity would not distort competition as far as other Community producers of polyester film were concerned ; and that the project would create 95 new jobs in the Dumfries area.

Two Member State Governments, one trade association representing firms in the industry and one individual competitor of the prospective recipient have said they share the Commission's concern about the possibility of distortions of competition arising from the planned award.

The proposed United Kingdom aid is liable to affect trade between Member States and threatens to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the firm in question and production of polyester film.

Article 92 (1) lays down the principle that aid having the features there described is incompatible with the common market. The exceptions from this principle defined in Article 92 (3) specify objectives in the Community interest transcending the interests of the aid recipient. These exceptions must be construed narrowly when any regional or industry aid scheme or any individual award under a general aid scheme is scrutinized. In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not involving such a compensating benefit would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

In applying these principles in its scrutiny of individual aid awards, the Commission must satisfy itself that the recipient is contibuting a compensating benefit justifying the aid, in the sense that the aid is necessary in order to help achieve one of the objectives set out in Article 92 (3). Where this cannot be demonstrated, it is clear that the aid does not contribute to attainment of the objectives specified in the exceptions but merely serves to bolster the financial position of the recipient firm.

The recipient in the present case cannot be said to be contributing a compensating benefit in return for the aid.

The United Kingdom Government has been unable to give, or the Commission to discover, any justification for a finding that the planned aid falls within one of the categories of exceptions in Article 92 (3), the only ones potentially applicable to this case.

With regard to the exceptions provided for by points (a) and (c) of Article 92 (3) for aids that promote or facilitate the development of certain areas, the Dumfries area is not one where the standard of living is abnormally low or where there is serious underemployment within the meaning of point (a) and the award does not appear likely to facilitate the development of certain economic areas within the meaning of point (c).

As far as the exceptions in point (b) of Article 92 (3) are concerned, the investment project does not have the features of a project of common European interest or of a project likely to remedy a serious disturbance in the economy of a Member State, whose promotion justifies application of the exception of Article 92 (3) (b) to the prohibition of aids set out in Article 92 (1).

First, the Dumfries area belongs to the 'central regions' of the Community, that is, those which by Community standards do not suffer from the most serious social and economic problems but in which there is the greatest danger of a competitive bidding up of aid between Member States and where any aid is most likely to affect trade between Member States. Secondly, there is no evidence from the information available on the economic and social situation in the United Kingdom that its economy is suffering from a serious disturbance of the kind referred to in the Treaty. The planned aid award is not intended to deal with such a situation.

Finally, as for the exception in point (c) of Article 92 (3) for aid to facilitate the development of certain economic activities, the situation of the polyester-film sector would suggest that the modernization and expansion of its production capacity by means of State aid are actually against the common interest, bearing in mind the distortions of competition liable to result from such aid for other Community producers of thin polyester film. This conclusion stands even if the new plant to be installed will bring about a certain improvement in production techniques.

For the above reasons, the United Kingdom Government's aid proposal does not fulfil the conditions necessary for application of one of the exceptions provided for in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom Government shall not proceed with the proposed aid to an undertaking in the chemical industry for the modernization and expansion of a production unit for polyester film, notified to the Commission on 1 February 1983.

Article 2

The United Kingdom Government shall inform the Commission within one month of the notification of this Decision of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 27 July 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission