II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1983

on the proposal of the Belgian Government to grant aid to a synthetic fibre producer

(Only the Dutch and French texts are authentic)

(84/111/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 the said Article 93, and having regard to those comments,

Whereas :

I

By letter dated 20 July 1983 and registered by the Commission on 25 July 1983, the Belgian Government notified the Commission of its intention to grant aid to an insolvent synthetic fibre producer located in Zwijnaarde. The aid would amount to Bfrs 725 000 000, of which Bfrs 550 000 000 would be paid at the start of the project and the balance on 1 January 1984. It would take the form of a majority holding by Socobesom (Coöperatievevennootschap voor Bedrijfsomschakeling, a subsidiary of the NIM, Nationale Investerings maatschappij) in a newly formed enterprise, in which a large private textile group, mainly engaged in carpet production, would take a minority holding of Bfrs 200 000 000 and would use part of the aid to manage a rescue operation by undertaking certain investments in order to maintain the nylon production of the insolvent firm. Other parts of the aid would be used to convert part of the plant in Zwijnaarde to production of PVC, a non-textile floor covering, and to modernize and increase the existing production capacity for polymer 6-6. Finally, on the insolvent company's site in Zwijnaarde, which would be bought with the remainder of the aid, the private textile group concerned planned to erect a large distribution centre for the sale of its carpet output.

Before the date of the notification the Commission had received complaints from several Governments of other Member States and some trade associations, on the basis of which it had by telexes of 2 June, 22 June and 12 July 1983 reminded the Belgian Government of its obligations under Article 93 (3) of the EEC Treaty, which requires prior notification of aid measures.

By letter dated 28 July 1983, the Commission acknowledged receipt of the notification.

On 8 August 1983, the Commission initiated the procedure provided for in the first subparagraph of Article 93 (2) in respect of the aid, on the grounds that it could affect trade between Member States to an extent contrary to the common interest and that it would, therefore, be incompatible with the common market.

The Commission also considered that the aid would not be in conformity with the conditions laid down in the sectoral aid scheme for the textile and clothing industries approved by the Commission on 9 February 1983 and in force in Belgium in 1983. The Commission particularly referred to the fact that the proposed aid would disregard the conditions set for this scheme relating to the form of aid, its intensity and the exclusion of certain subsectors. The Commission also underlined the fact that the aid proposal would breach the Synthetic Fibre Aids Code, introduced in 1977 and extended in 1979, 1981 and 1983, under which aid for creating new capacity in this sector was prohibited. The letter gave the Belgian Government notice to submit its comments.

The Commission, having learned that Bfrs 550 000 000 of the total aid proposed had been granted when the new company started business on 1 August 1983, reminded the Belgian Government by telexes of 11 August and 5 September 1983 of its obligations under Article 93 (3) of the EEC Treaty, which required that it should not put its proposed measure into effect until the Article 93 (2) procedure had resulted in a final decision. No answer was received.

II

The Belgian Government, in submitting by letter dated 6 September 1983 its comments under the procedure provided for in Article 93 (2), pointed out that the project would be economically viable. It argued that the synthetic fibre aid ban did not apply as the aid was being granted for a restructuring operation at the synthetic fibre producer in question which, as far as its nylon production was concerned, had never ceased production, and therefore the aid would not be used for the creation of new capacity in this subsector of the textile and clothing industry.

The Belgian Government also disputed that the proposed measure was State aid, as referred to under Article 92 (1), because a private investor was participating in the project with Bfrs 200 000 000 and maintained that the project was to be regarded as the partial conversion of the synthetic fibre production plant at Zwijnaarde into a PVC floor-coverings plant and a carpet distribution centre, with an associated reduction in nylon capacity from 6 000 to 4 000 tonnes per year.

The comments of three other Member States, 10 federations of firms in the sector and five individual companies, submitted to the Commission under the Article 93 (2) procedure, supported the Commission's view and underlined the overcapacity problems which the synthetic fibres sector was facing and the sensitivity of the carpet sector because of the volume of trade and the degree of competition between Member States. It was also claimed that the proposed aid would transfer the problems of the man-made fibre producer in question to its competitors and that it would give an unfair advantage to the carpet manufacturer in question in competition with other Community carpet producers.

III

The acquisition of shareholdings in companies either by central government or by public agencies under government authority may constitute aid under Article 92 (1) of the EEC Treaty.

The Zwijnaarde synthetic fibre producer, which has been owned by the Belgian State since February 1978, has been making major losses for a long period. Between 1979 and 1982 these losses constantly increased and by 1982 totalled some Bfrs 1 050 000 000, having reached more than 30 % of turnover in 1981 and 1982. The losses were absorbed by public funds and over the same period a number of unsuccessful restructuring projects were undertaken.

On 23 April 1982, the Belgian Government notified the Commission of a restructuring plan based on a study prepared by an outside expert group under which nylon production was to be discontinued, as it was considered that this was the only way the company could return to viability. The plan was not implemented by the Belgian Government, however.

Later in 1982, the company was formally declared bankrupt and a legal administrator appointed on 5 November 1982. Under his supervision, the nylon plant continued in production while all other units stopped functioning.

By acquiring a majority holding of Bfrs 725 000 000 in a newly-formed enterprise to be operated by the carpet manufacturer in question, who would take a minority holding and manage the operation, the Belgian

Government proposes to inject finance in order to rescue the insolvent synthetic fibre producer.

In these circumstances the proposed operation constitutes aid within the meaning of Article 92 (1) of the EEC Treaty.

A substantial proportion of the insolvent synthetic fibre producer's output was, and a very high proportion of the carpet manufacturer's output is, exported to other Member States (the latter was awarded the Belgian Oscar for exports in 1982). Consequently, trade between Member States is affected by the aid to be granted by the Belgian Government.

Article 92 (1) of the EEC Treaty lays down the principle that aid having the features there described is incompatible with the common market. The exceptions from this principle set out 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 contributing to such an objective 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 aid is justified by the contribution the recipient is making to attainment of one of the objectives set out in Article 92 (3), and is necessary to that end. Where this cannot be demonstrated, and especially where the aided investment would take place in any case, 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 two recipients in the present case cannot be said to be making such a contribution in return for the aid.

The Belgian 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).

With regard to the exceptions provided for by Article 92 (3) (a) and (c) for aids that promote or facilitate the development of certain areas, the area in which the recipient undertaking's factory is located 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), a purpose moreover for which it is not intended.

As far as the exceptions in Article 92 (3) (b) are concerned, the measure does not have the feature 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 this exception clause. Although the economy of Belgium faces serious social and economic difficulties, these are not the most serious in the Community. In this situation the danger of an escalation of State aids is most immediate and any State aid is most likely to affect trade between Member States.

On 18 November 1981, the Commission decided to raise no objection to the implementation of a sectoral aid scheme for the textile and clothing sector in Belgium. Once the sectoral aid scheme was put into operation, enterprises in that sector in Belgium were ineligible for any other specific, regional or general aid.

On 9 February 1983 the Commission, at the specific request of the Belgian Government, which wanted to abolish the 1982 system of State shareholdings in the capital of the enterprises benefiting under the scheme, authorized a modified aid programme for 1983, under which aid could take no other form than that of loans of up to 50 % of total investment.

In its decision of 9 February 1983, the Commission excluded — as it had done in 1982 — the production of synthetic fibres and yarns from the scheme. It extended the exclusion *inter alia* to the production of tufted carpets, while insisting on prior notification of assistance to production of other carpets.

The reasons for these exclusions were the persistent and uncontested overcapacity problems which the synthetic fibres industry was facing in the Community and the high degree of competitiveness which the Belgian carpet and tufted carpet industry had already achieved.

In 1983 as in 1982, then, enterprises in the textile and clothing industry in Belgium are ineligible for any specific, regional or general aid other than under the approved sectoral scheme.

The part of the aid which is to be used for the modernization of nylon production disregards the exclusion of synthetic fibres from the sectoral aid scheme in force in Belgium during 1983, as it is to be used to support the production of nylon 6-6, a polyamide. Polyamide is one of the groups of products specifically referred to by the Commission in its letters to the Belgian Government of 18 November 1981 and 15 February 1983 authorizing the sectoral aid scheme and excluding the production of polyester, polyacrylic and polyamide from this scheme.

The textile group, which is to take a minority holding in the new company set up to rescue the insolvent synthetic fibre producer, will also use part of the aid to erect a large carpet distribution centre on the site of the insolvent enterprise. The part of the proposed aid to be used for this purpose disregards the condition as to the exclusion of tufted carpets from the sectoral programme in force in Belgium, as well as from any other aid.

Therefore, the aid to be used for the reactivation of the nylon plant and the building of a carpet distribution centre, both in Zwijnaarde, cannot be authorized under the sectoral aid scheme in force in Belgium both on the ground of the form of the aid and on the ground of the products to be aided. Furthermore, no other aids may be granted for these purposes in view of the overcapacity in the synthetic fibres sector and the high degree of competitiveness which the Belgian carpet industry has already achieved.

Another part of the aid is to be used for partially financing the building of a large production unit for PVC floor coverings. Production capacity for this product is being utilized at a rate of only 50 to 55 % in the Community, and the creation of additional capacity in this field should not be encouraged with State aid. Furthermore, in a situation where other Community producers of PVC floor coverings are faced with serious overcapacity problems, the proposed aid is liable to affect trade to an extent contrary to the common interest.

The balance of the aid is to be used for modernizing and increasing production capacity for polymer 6-6, which is at least partly intended to be used for the production of polyamide fibres. The plastics sector, and particularly the production of polyamide resins, also faces serious overcapacity difficulties, and the aid proposed for this purpose is contrary to the common interest.

It is concluded that all the aid in question, in view of the absence of any justification on grounds of the Community interest and the fact that the industry is one in which competition within the Community is very keen, is liable to affect trade to an extent contrary to the common interest. Accordingly, there is no factor which could justify the Commission in exempting the aid from the rule that aids are incompatible with the common market by applying the exceptions provided for in Article 92 (3) (c) of the EEC Treaty.

Therefore, that part of the aid relating to the second phase of the project which is due to be executed on 1 January 1984 may not be granted and that part of the aid amounting to Bfrs 550 000 000 which was granted on 1 August 1983 in disregard of Article 93 (3) of the EEC Treaty, which requires that a Member State shall not put its proposed measure into effect until the Article 93 (2) procedure has resulted in a final decision, must be withdrawn,

HAS ADOPTED THIS DECISION :

Article 1

The aid which the Belgian Government notified the Commission by letter dated 20 July 1983, in favour of a synthetic fibre producer at Zwijnaarde and of a textile group which was to take over and operate the

Zwijnaarde plant, is incompatible with the common market within the meaning of Article 92 of the EEC Treaty. The said aid shall therefore be withdrawn and that part of it relating to the second phase of the project due to be executed on 1 January 1984 shall not be paid.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 30 November 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission