II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 May 1984

concerning the proposal by the Italian Government to award aid to an engine and tractor manufacturer

(Only the Italian text is authentic)

(84/364/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 to submit their comments as required by the above provision, and having regard to those comments,

Whereas :

I

By letter dated 6 September 1983 the Italian Government notified the Commission of its intention of awarding aid under Law No 675/77 to an engine and tractor manufacturer.

The firm in question planned to install a flexible manufacturing system which would be used initially to produce a new range of engines. The project costs involved building work and the purchase of numerically controlled machine tools and other equipment.

The new flexible production line, together with existing plant, would lead to a net increase in the firm's engine production capacity. The flexibility the investment would give the firm in adoptimg to market requirements would enable it to lower its overall profitability threshold and so improve its competitive position on the market. The new engine, which embodied numerous user improvements, had been developed amid considerable R & D competition between different firms and would give an advantage to the firm putting the new product on the market.

The project was estimated to cost a total of Lit 46 344 million and it was proposed to grant an 8,4 % interest subsidy on a five-year loan covering half that amount.

On a preliminary scrutiny the Commission considered that the award did not fulfil the eligibility conditions for aid under Law No 675/77, which the Commission had approved on 18 January 1983.

It therefore opened the procedure provided for in Article 93 (2) of the EEC Treaty and by letter dated 23 December 1983 gave the Italian Government notice to submit its comments.

II

The Italian Government replied to the Commission's letter opening the Article 93 (2) procedure by letter dated 9 February 1984. It argued that the project accorded with the objectives of the programme adopted by the Interministerial Industry Policy Committee (CIPI). The flexibility the investment would give to the production process held distinct

advantages for the company's overall profitability and working conditions and the new product embodied a series of improvements for the user. The project also represented a major piece of investment for the company.

The governments of two Member States replied to the Commission's invitation to comment and took the view that the aid would affect inter-State trade and, in a scarcely growing market in which trade was important, was liable to distort competition to the detriment of their own producers.

One trade association and four individual firms from the industry also made submissions. They argued that the aid would be an unacceptable distortion of competition, since price was a major selling point in that market and the relief of part of the firm's investment costs would mean that it did not pass on all the normal costs in its final selling price.

The Italian Government acknowledged in its submission that the market in question was competitive and in a state of stagnation. The company's engine output had fallen by some 40 % between 1980 and 1983. In 1982 it had sold 75 % of the tractors it produced in the Community and 33 % in Member States other than Italy. It also manufactured industrial engines mainly for the Community market. Both in engines and tractors the firm was in direct competition with other Community firms and there was intra-Community trade in the products.

III

The new investment will consolidate the firm's general competitive position on the engine market and also in the tractor market since some of the engines it produces are fitted in its tractors.

The investment is one which is conducive to the firm's own development and in line with market trends and it would be in the firm's interest to carry it out in any case in order at least to maintain its competitive position in response to changing demand patterns.

The aid proposed by the Italian Government is therefore liable to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the firm in question or production of its type of goods.

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 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 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 scrutiny of individual awards under general aid schemes, 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 particularly where the investment would be undertaken 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 recipient in the present case cannot be said to be making such a contribution in return for the aid.

The Italian Government has been unable to give, or the Commission to discover, any justification for a finding that the aid in question 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 which promote or facilitate the development of certain areas, the Treviglio area is not one where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 92 (3) (a), nor has the Italian Government designated the area as in particular need of regional development so that it could qualify for the exception in Article 92 (3) (c).

As far as the exceptions in Article 92 (3) (b) are concerned, the investment is one which a firm would be led to undertake in any case by market forces and 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 to the principle laid down in Article 92 (3) (b), from the incompatibility of the aid laid down by Article 92 (1).

Finally, as for the exception in Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', an examination of the situation of the industry in question shows it to be suffering from excess capacity caused by weak demand, whereas the proposed aid is to help replace part of an old production line with a flexible manufacturing system which, together with the part of the present plant which is to be retained, should lead to a net expansion of the firm's production capacity, even though this is not the primary purpose of the project.

The investment will also improve the firm's overall profitability by better adapting its production to market requirements. It therefore ought to be treated as a normal business expense, and the granting of aid for the project would place the firm at an advantage since its competitors will be forced by the market to undertake equivalent investment without aid. The fact that the project may be a large one for the firm does not alter this assessment of its nature and its potential effects on the market and on the firm's competitors. The considerable R & D effort that has gone into the new engine, in the face of competition from other firms, cannot of itself justify aid for investment in the production of the engine.

The proposed aid is therefore devoid of any compensating benefit for the Community as a whole and is liable to affect trade between Member States to the detriment of the common interest, since the recipient belongs to an industry which is fiercely competitive even within the Community. There can therefore be absolutely no justification for applying to it the exception in Article 92 (3) (c) to the principle that aids are incompatible with the common market.

The aid proposed by the Italian Government in this case does not therefore fulfil the conditions necessary for the application of one of the exceptions provided for in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Italian Government proposes to grant to an angine and tractor manufacturer at Treviglio and which it notified to the Commission by letter dated 6 September 1983 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must consequently not be granted.

Article 2

The Italian Government shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 May 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission