II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 September 1984

on the FF 200 million of aid in the form of equity loans which the French Government granted to a newsprint producer in 1981 and 1982

(Only the French text is authentic)

(84/489/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, in accordance with the above provision, and having regard to those comments,

Whereas :

In 1981 and 1982 the French Government extended approximately FF 200 million of equity loans (prêts participatifs) to the country's largest newsprint producer, which was insolvent.

Such public support of ailing businesses involves elements of State aid. The French Government had also breached its obligations under Article 93 (3) of the Treaty by failing to notify the aid to the Commission beforehand.

On 16 June 1982 the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty in respect of the aid since it did not appear to qualify for any of the exceptions from the State-aid rules provided for in Article 92 (3), which were the only ones potentially applicable in the case. By letter dated 9 July 1982 the Commission accordingly gave the French Government notice to submit its comments.

The French Government replied to the Commission's letter by a telex sent on 24 November 1982, in which it adduced the following reasons to justify the search for an industrial solution to the firm's difficulties : exploitation of indigenous raw materials, the need to preserve jobs in the Upper Normandy region, and the need to maintain a relative security of supply for newsprint. The telex stated that the Government had been forced to step in to help the firm in 1981 and 1982 with about FF 200 million in equity loans pending an industrial solution. The search for such a solution had, however, so far been unsuccessful.

The French Government submitted further comments at a bilateral meeting held on 25 January 1983 and by a letter dated 2 April 1984.

The third parties that responded to the Commission's invitation to comment on the case, namely three other Member States and one trade association, said they shared the Commission's concern about aid to the firm. One of the Member States particularly stressed that the aid was liable to affect its export trade.

The provision of public funds in the form of 'equity loans' may involve elements of State aid. In the present case the aid character of the funding is seen from the fact that the firm was in financial difficulties brought about by poor management and in particular a serious neglect of investment in the period 1975 to 1980, which finally led it to declare itself insolvent in December 1980.

These difficulties made it very unlikely that the firm could have raised the funds essential for its survival and/or restructuring on the private capital markets.

Aid sustained over a period of years to keep production capacity operating is apt to have a marked effect on competitive conditions.

The aid which the French Government granted was likely to affect trade between Member States and to distort competition within the meaning of Article 92 (1) of the Treaty by favouring the aided firm or production of its goods (newsprint and wood-containing light-weight coated printing paper).

Article 92 (1) provides that aid having these features is in principle incompatible with the common market. The exceptions which are provided for in Article 92 (3) require that the aid should serve specified objectives in the Community interest rather than simply serving 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, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the said objectives.

To apply the exceptions to aid not serving 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 one of the objectives specified in Article 92 (3) and is necessary to that end. Where this cannot be demonstrated, it is evident that the aid does not serve the objectives of the exception clauses but merely serves to bolster the financial position of the recipient firm.

The recipient in the present case cannot be said to be serving one of the objectives.

The French Government has been unable to give, or the Commission to discover, any justification for a finding that the aid in question fulfils the conditions for application of one of the exceptions provided for in Article 92 (3).

With regard to the exceptions provided for in subparagraphs (a) and (c) of Article 92 (3) for aids that promote or facilitate the development of certain areas, the Rouen area of Upper Normandy is not one where the standard of living is abnormally low or where there is serious underemployment within the meaning of subparagraph (a) and the French aid award does not have the requisite features of aid to facilitate the development of certain economic areas within the meaning of subparagraph (c) and was not intended for this purpose.

Nor has the aid measure the features of a 'project of common European interest' or of a project likely to 'remedy a serious disturbance' in the French economy, so as to qualify for the exception in subparagraph (b) of Article 92 (3). The data available on the social and economic situation in France do not indicate that its economy is suffering from a serious disturbance of the kind referred to by the Treaty, and the action of the French Government was not meant to deal with such a situation.

Finally, as for the exception in subparagraph (c) of Article 92 (3) for 'aid to facilitate the development of certain economic activities', it must be emphasized that the aid in the form of equity loans was granted to keep the firm going pending an industrial solution. The well-established policy of the Commission is to insist that rescue aid solely intended to keep a firm going while a solution to its problems is being devised should take the form of loan guarantees or repayable loans at market rates of interest. 'Equity loans' do not fall within either of these categories.

Therefore, the aid in the form of equity loans which the French Government granted to the undertaking does not fulfil the conditions necessary for application of one of the exceptions provided for in Article 92 (3) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The FF 200 million of aid in the form of equity loans which the French Government granted to a newsprint producer in 1981 and 1982 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must therefore be withdrawn.

Article 2

The French Government shall inform the Commission, within three 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 French Republic.

Done at Brussels, 28 September 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission