II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 April 1984

on aid which the Belgian Government has granted to an undertaking at Tournai manufacturing equipment for the food industry

(Only the Dutch and French texts are authentic)

(84/496/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 required by the said provision, and having regard to those comments,

Whereas :

The Belgian Government decided to grant assistance through a regional body to an undertaking at Tournai manufacturing *inter alia* equipment for the food industry. The assistance took the form of a participating interest of Bfrs 145 million in the capital of the undertaking by a regional public holding company and the granting of a 5 % interest-rate subsidy on a loan of Bfrs 19 600 000.

After hearing of the decision to grant the aid, the Commission took the matter up with the Belgian Government in telexes sent on 22 July and 17 September 1982, in which it reminded the Government of its obligations under Article 93 (3) of the EEC Treaty to notify aid proposals in advance. The Government replied to the Commission's request for information on 25 November 1982.

The Commission decided to open the procedure provided for in Article 93 (2) of the EEC Treaty and by letter dated 7 January 1983 gave the Belgian Government notice to submit its comments. The Commission noted in the letter that the aid had already been implemented in disregard of the Article 93 (3) procedure.

In its reply by letter dated 23 March 1983 the Belgian Government confirmed that the subscription of new capital had been decided on 23 June 1982. It argued, however, that the aid in the form of a 5 % interest-rate subsidy on the Bfrs 19 600 000 which had been decided on 6 May 1980, was too small to have an effect on competition and trade between Member States, and that in proposing to disallow the support of the company's restructuring plans by the Société Régionale d'Investissement de Wallonie (SRIW) because it was a public financing corporation, the Commission was discriminating against the SRIW by comparison with private financial groups.

Two Member State Governments and two trade associations in the industry sent submissions stating that they shared the Commission's concern about aid to the company.

The two aid measures by the Belgian Government are 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 and production of equipment for the food industry.

The 5 % interest-rate subsidy granted in May 1980 on a Bfrs 19 600 000 loan, although aid of only relatively low intensity, was liable to affect trade and distort competition notably because the decision to grant it was not taken in isolation but formed part of a package which included a Government guarantee on a loan of Bfrs 75 million.

Subscriptions of capital whether by central government or by public agencies under the Government's authority may constitute aid falling within Article 92 (1) of the EEC Treaty.

In the present case, the company's financial situation was a handicap which makes it very unlikely that it could have raised the finance it needed to survive on the private capital market.

Considering its history of repeated serious financial difficulties, the injection of Bfrs 145 million in the company by SRIW constituted aid within the meaning of Article 92 (1) and not a subscription of risk capital according to normal practice in the market sector.

Since 1977 the firm's operating profit has not been sufficient to cover the depreciation of its assets and its net losses have averaged about 5 % of turnover over the period, with 1978 the only year in which it made a net profit. Since 1979 the cash flow has also been negative, which means that in all probability the firm would be unable to finance the planned Bfrs 100 million investment programme without State aid. The Belgian Government came to the firm's rescue in April 1979 with a subscription of Bfrs 40 million of new capital and in May 1979 gave a Government guarantee on a bank loan of Bfrs 45 million and a 7 % interest-rate subsidy on a further loan of Bfrs 34 million. In May 1980 the Government intervened again to guarantee a Bfrs 75 million loan for working capital and in August of the same year subscribed a further Bfrs 150 million of new capital as part of a financial reconstruction of the firm to reduce its indebtedness.

Whenever financial aid granted by a Member State strengthens the position of an undertaking relative to other firms which compete with it in intra-Community trade, the latter must be considered to be affected by the aid.

The undertaking concerned exports about 40 % of its output to other Member States. The aid by the Belgian Government has, by reducing the firm's financial costs, given it an advantage over its competitors which have to bear those costs themselves.

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) — the only ones potentially applicable to this case — 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 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 Belgian 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 points (a) and (c) of Article 92 (3) for aids that promote or facilitate the development of certain areas, the Tournai 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 this exception clause to the prohibition of aids contained in Article 92 (1). First, Belgium belongs to the 'central regions' of the Community, that is to say, those which by Community standards do not have 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 Belgium that its economy is suffering from a serious disturbance of the kind referred to in the Treaty, and the aid awards are not meant to deal with such a situation in any case.

Finally, as for the exception in point (c) of Article 92 (3) for aid to facilitate the development of certain economic activities, the industry supplying equipment to the food industry is unquestionably suffering at present from overcapacity and the outlook of the industry suggests that the common interest is not served by preserving production capacity by means of State aid. This conclusion remains valid even if the aid is linked to a financial or commercial reorganization of the company or a restructuring of its production facilities,

HAS ADOPTED THIS DECISION :

Article 1

The aid which the Belgian Government granted in May 1980 and June 1982 to an undertaking manufacturing equipment for the food industry as incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must consequently be abolished.

Article 2

The Belgian Government shall inform the Commission, within three months of the notification of this Decision, of the measures which it has taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 17 April 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission