COMMISSION DECISION

of 11 July 1984

on the proposal by the Netherlands Government to grant aid for the building of a petrol additive production plant in the Rotterdam Europoort area

(Only the Dutch text is authentic)

(84/499/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

Article 6 of the Netherlands Law of 29 June 1978 (Wet Investeringsrekening — WIR) (1) on the promotion and guidance of investment provides for an 'additional premium for major projects'. The premium is intended for investment projects exceeding Fl 30 million in value and depending on the number of jobs created, can amount to 4 % of the value of the investment concerned.

When it examined the abovementioned law in its draft stage under the procedure provided for in Article 93 (3) of the Treaty, the Commission took the view that the 'additional premium for major projects' constituted a general aid scheme, since it did not comprise any sectoral or regional objective. Since the system was applicable to all investment projects without any distinction as between firms, regions or sectors, it was not eligible for the exceptions provided for in Article 92 (3) (a) or (c) of the Treaty. In the absence of such specific features, the Commission was unable to assess the effects of the scheme on intra-Community trade and on competition or, consequently, its compatibility with the common market.

The Commission usually authorizes this type of general aid scheme if the Member State concerned can inform it either of a regional or sectoral implementation plan or, if that is not possible, of significant individual cases.

In accordance with this position, the Commission requested that all individual cases in which the 'additional premium for major projects' was granted, taking account of the level of the investment concerned, should be notified to it in advance and in sufficient time, in accordance with Article 93 (3) of the Treaty.

In the course of talks with the Netherlands authorities, the Commission indicated that it would assess each such case on its merits and in the light of the principles laid down in Articles 92 *et seq.* or developed in administering those provisions. The Netherlands Government was not entitled to assume that the Commission was generally sympathetic to the 'additional premium' system simply because it had asked for such systematic prior notification.

The Netherlands Government complied with the Commission's request by making the abovementioned prior notification procedure the subject of Articles 6 (7) and 7 (3) of Chapter V of the abovementioned Netherlands Law of 29 June 1978.

II

By telex dated 25 August 1983, the Netherlands Government, acting in accordance with the prior notification procedure, informed the Commission of its intention to grant the 'additional premium for major projects' to an investment project to be carried out by a firm in the Rotterdam-Europoort area.

The proposed aid is intended to allow the recipient firm to build a plant for the purification of tertiary butyl alcohol (TBA), which would be used as an additive to motor vehicle fuel (gasoline-grade TBA (GTBA)), and to secure improved raw material transport.

The new GTBA production unit thus set up will have a capacity of 400 000 tonnes a year. A total of 41 % of output will be for the Dutch market and 56 % will be for export to other Community countries. The firm's production capacity in its other sectors of activity (propylene oxide and isobutanol), more than 90 % of which is for the Dutch market, will be maintained unchanged.

(1) Staatsblad 1978, No 368.

Measures have already been adopted, or are in the process of being adopted, in the Community to reduce the lead content of petrol used in motor vehicles. These measures mean that non-metallic anti-knock agents must be produced in order to maintain the quality of petrol. TBA is one such agent. According to the Netherlands authorities, the market for lead substitutes could in the years ahead amount to five million tonnes a year, which is substantially in excess of the current capacity of European producers.

The firm also plans to build a gas pipeline to pipe in its supplies of LPG.

The total amount of investment is thus expected to be Fl 180 million, of which some Fl 10 million will be for the gas pipeline.

The 'additional premium for major projects' which it is proposed to grant in this instance is Fl 1 350 000 equivalent to 0,75 % of the total investment. No other aid will be granted to the project.

The investment will create an additional 55 skilled jobs.

III

After an initial examination, the Commission took the view that the proposed aid appeared liable to lead to distortions of competition contrary to the common interest, since other firms in the sector also had plans to enter the growing market for non-polluting petrol additives. Consequently, in accordance with Article 93 (2) of the Treaty, it gave formal notice to the Netherlands Government to submit its comments. In the comments which it submitted, the Netherlands Government emphasized the ecological value of building the gas pipeline to pipe in supplies to plants in the Rotterdam-Europoort area.

When interested parties were consulted, the governments of three Member States pointed out that competition might be distorted if aid were granted to a project which, in view of the state of the market, appeared bound to be profitable, since other European firms were preparing to make comparable investments without the benefit of aid. These governments therefore opposed the granting of the aid proposed by the Netherlands Government.

IV

The Netherlands Government's aid plan is liable to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the Treaty by favouring the firm in question or its output.

Article 92 (1) of the Treaty lays down the principle that aid having the features there described is incompatible with the common market. The exceptions to 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 sectoral 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 plan of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to the 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 under general aid schemes, the Commission must satisfy itself that the aid is justified by the contribution that the recipient is making to the 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 proposed investment would take place in any case, it is clear that the aid does not contribute to the attainment of the objectives specified in the exceptions, but merely serves to increase the financial strength 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 Netherlands 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) of the EEC Treaty.

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 Rotterdam 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). With regard to the exception provided for in Article 92 (3) (c), the Rotterdam area is not an area eligible for regional aid.

As far as the exceptions in Article 92 (3) (b) are concerned, investments of this type will at all events be prompted by market forces, since the imbalance between the growing demand for products such as GTBA and the limited capacity as yet installed in Western Europe ensure that this type of investment will generate a sufficient rate of return, making the granting of aid unnecessary. In addition, the investment in question does not have any features which make it a 'project of common European interest' or one likely to remedy 'a serious disturbance in the economy of a Member State', the promotion of which justifies application of an exception under Article 92 (3) (b) to the rules on the incompatibility of aid laid down in Article 92 (1). In particular, as far as the building of the Vlissingen-Rotterdam gas pipeline is concerned, the information provided by the Netherlands Government does not show to what extent the raw materials thus transported will supply the new TBA unit rather than the firm's other operations. Neither the information provided nor, to the best of the Commission's knowledge, the experience of other producers within the Community indicate that transport by gas pipeline would confer any decisive advantage in terms of safety. In any case, the building of the gas pipeline, the cost of which presents only 5,5 % of the total cost of the investment planned, is intended primarily to provide the firm with cheaper supplies and is therefore a profitable investment.

With regard to the exceptions provided for in Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities . . ., where such aid does not adversely affect trading conditions to an extent contrary to the common interest', examination of the sector concerned shows, as indicated above, a sufficient rate of return to ensure the development of the activities without aid. Several Community firms are considering comparable investments.

Consequently, granting aid to one of them would adversely affect trading conditions to an extent contrary to the common interest, especially since the bulk of its output is to be exported to other Member States and since the Dutch industry already enjoys a particularly strong position in the sector.

Lastly, with regard to the exceptions provided for in Article 92 (3) (c) for 'aid to facilitate the development . . . of certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest', the Commission stated, in its position on the WIR, that the Netherlands formed part of the Community's central regions, i.e. those which, in a Community context, are not faced with the most serious social and economic problems, while at the same time constituting regions in which the risk of escalation in aid is most real and in which, more than elsewhere, any aid would be liable to affect trade between Member States. Furthermore, the socio-economic information available on the Netherlands does not reveal any factors indicating that there is a serious disturbance in its economy such as is referred to in the Treaty. The 'additional premium for major projects' as granted in specific cases is not intended to deal with any such situation. To take any other position would be to allow the Netherlands, in the context of slower growth and high unemployment throughout the Community, to attract away for its own benefit investment which might be carried out in other Member States experiencing a less favourable situation. Recent social and economic developments in the Community justify the maintenance of this attitude both with regard to the premium itself and with regard to any specific instances in which it might be granted.

Consequently, the proposed aid does not fulfil the conditions necessary to qualify for one of the exceptions provided for in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The Netherlands may not implement its proposal, notified to the Commission by telex of 25 August 1983 from the Netherlands Minister for Foreign Affairs, to grant the 'additional premium for major projects' to the investment planned in the Rotterdam-Europoort area by a Dutch chemical firm.

Article 2

The Netherlands 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 the Netherlands.

Done at Brussels, 11 July 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission