II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 October 1984

concerning aid which the Belgian Government granted in 1983 to a ceramic sanitary ware and crockery manufacturer

(Only the Dutch and French texts are authentic)

(85/153/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,

After giving notice to the parties concerned to submit their comments in accordance with the above provision, and having regard to those comments,

Whereas :

The Belgian Government decided to assist a ceramics manufacturer at La Louvière through a subscription of Bfrs 83 million of new capital by the regional investment agency, the Wallonia Regional Investment Corporation (SRIW).

On 16 February 1983 the Commission had taken a decision finding that a subscription of Bfrs 475 million of new capital in the same company in 1981 was incompatible with the common market and had to be recovered.

After learning of the Belgian Government's intention to come to the firm's assistance again, the Commission raised the matter with the Belgian Government in telexes and letters sent on 31 January, 24 February, 7 June, 20 and 22 July, 1 September and 25 October 1983, stressing that such measures had to be notified at the proposal stage under Article 93 (3) of the Treaty. The Commission also on a number of occasions reminded the Belgian Government that it could be ordered to recover aid it had granted without giving the Commission an opportunity to determine whether it was compatible with the common market. When a notice was published in the Moniteur Belge of 25 August 1983 announcing that the Belgian authorities had subscribed Bfrs 83 million of new capital in the company, the Commission contacted not only the Belgian Government but also the SRIW and the company itself to make it clear that any aid granted without observing the notification procedure and without allowing the Commission to determine beforehand whether it was compatible with the common market could be subject to a recovery order.

The Belgian Government replied to the Commission's reminders by telexes sent on 18 February and 29 July 1983 stating that a decision to subscribe Bfrs 125 million towards further capital increases had been taken in 1981 and was therefore not new. On 1 December 1983 the Belgian Government telexed the Commission to say that further information on the new capital injection would be sent by the middle of December, but the Commission never received this information or any formal notification under Article 93 (3).

On 17 April 1984 the Commission decided to open the procedure provided for in Article 93 (2) in respect of the new assistance since it did not appear to qualify for any of the exceptions provided for in Article 92 (3), the only ones potentially applicable, and on 25 May 1984 gave the Belgian Government notice by letter to submit its comments.

The Belgian Government replied to the opening of the Article 93 (2) procedure by letter dated 6 August 1984, in which it confirmed that the subscription of Bfrs 83 million of new capital had taken place in 1983 under the Government's decision taken in 1981. It claimed, however, that the Commission had been informed of the decision by the telex sent on 18 February 1983, which constituted a notification, to which the Commission had failed to respond, and that after such a long time the Commission's objections were inadmissible. It also argued that the Commission was practising discrimination between public and private shareholders.

The governments of four other Member States, one trade association and two individual firms from the industry replied to the Commission's invitation to comment and stated that they shared the Commission's concern about the Belgian Government's assistance of the company. Three of the Member States, the trade association and the two individual firms considered that the repeated assistance given to the company would cause serious distortions of competition.

The provision of public funds to companies in the form of subscriptions of new capital may involve elements of State aid. The company in the present case was handicapped by its financial position and by the current overcapacity in the ceramics industry, particularly the sanitary-ware sector, which made it unlikely that it would be able to raise on the private capital market the finance necessary for its survival.

The firm has been making substantial losses for a number of years : Bfrs 134 million in 1979, Bfrs 243 million in 1980, Bfrs 302 million in 1981 and Bfrs 168 million in 1982. These losses represented respectively 23, 39, 45 and 20 % of its turnover in those years. The firm's accumulated arrears to the social security fund also increased between 1979 and 1983 from Bfrs 120,8 million to 248,5 million. When the Bfrs 475 million granted in 1981 is recovered as the Commission has ordered in its Decision of 16 February 1983, the company's financial position will be even worse.

In these circumstances the injection of Bfrs 83 million of new equity in the company by the State constitutes aid within the meaning of Article 92 (1) of the EEC Treaty.

Such aid intended to preserve production capacity which market forces would ordinarily cause to go out of business, allowing expansion by more efficient competitors, is likely to have a particularly adverse effect on competitive conditions. The company exports over 70 % of its output of ceramic sanitary ware to the other Member States. Hence the aid is likely to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the Treaty by favouring the firm in question and the production of ceramic sanitary ware and crockery.

Article 92 (1) provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. The exceptions provided for in Article 92 (3) require that the aid should serve specified Community objectives 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 scheme is scrutinized. In particular, they may be invoked 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 in the case of aid that did not serve 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 the principles set out above 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 specified in the exceptions clauses, but does little more than bolster the financial position of the recipient.

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

The Belgian 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 Article 92 (3) (a) and (c) for aids that promote or facilitate the development of certain areas, the La Louvière 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) and the Belgian aid award does not have the requisite features of aid to facilitate the development of certain economic areas within the meaning of Article 92 (3) (c).

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 Belgian economy, so as to qualify for the exception in Article 92 (3) (b). Belgium belongs to the central regions of the Community, which do not have, by Community standards, the most severe economic and social problems and in which there is a greater danger than elsewhere of a competitive bidding-up of aid and of aid affecting trade between Member States. The data available on the economic and social situation in Belgium do not indicate that its economy is suffering from a serious disturbance of the kind referred to in the Treaty, and the action of the Belgian Government was not meant to deal with such a situation.

Finally, as for the exception in Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', the situation of the ceramics industry, and particularly the overcapacity that exists in that industry in the Community, suggests that to preserve capacity artificially through aid is against the common interest.

The aid which the Belgian Government has granted to the company in the form of a subscription of new capital therefore does not qualify for application of any of the exceptions provided for in Article 92 (3) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Belgian Government granted in 1983 to a company in the ceramics industry in the form of a subscription of Bfrs 83 million of new capital is incompatible with the common market within the meaning of Article 92 of the Treaty and must therefore be withdrawn.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 24 October 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission