COMMISSION DECISION

of 23 April 1986

on a proposal by the Italian Government to grant aid to a firm in the chemical industry (producing industrial auxiliaries, intermediates and pesticides)

(Only the Italian text is authentic)

(87/16/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, in accordance with the above Article, to interested parties to submit their comments, and having regard to those comments,

Whereas :

I

By letter dated 7 January 1985, the Italian Government notified the Commission, as required by Article 93 (3) of the EEC Treaty, and in accordance with the Commission Decisions of 11 July 1983 and 2 August 1985 on Law No 46/82 (Innovation Fund), of a proposal to grant aid under the said Law for a programme relating to innovation in the field of finished and intermediate products in the fine chemicals sector.

The programme involves research, development and experimentation for new processes and products in the field of industrial auxiliaries, intermediates and pesticides.

The cost of the programme comes to Lit 30 399 million. The proposed aid would take the form of a low-interest loan of Lit 12 958 million, which corresponds to 42,6 % of the programme's cost. With a reference rate of 17,13 %, the cost of the loan amounts to 2,57 % during the first five years and 10,27 % during the following 10 years. The net grant equivalent may be estimated at approximately 11 % of the programme's cost.

Law No 46/82 of 17 February 1982, published in the *Gazzetta Ufficiale della Repubblica Italiana* No 57 of 27 February 1982, established in its Articles 14 to 19 a 'Fondo Speciale rotativo per l'innovazione technologica' having as its object the promotion of programmes aimed at bringing about technological advances centred on new products or production processes or on the improvement of existing products or production processes.

The Fund provides support at the design stage of programmes and at the experimental, development and pre-production stages in the form of low-interest loans of up to 55 % of the programme cost, granted for 15 years with a five-year suspension of principal repayment. The rate of interest payable on such loans is 15 % of the reference rate during the first five years and 60 % of the reference rate during the next 10 years. Taking as a basis a reference rate now fixed at 17,13 %, the cost of the loans amounts to 2,57 % during the first five years and 10,27 % during the following 10 years. A non-repayable grant may be awarded, where appropriate, instead of all or part of a low-interest loan. Aid given under the Fund may not be combined with other aid for the same programme.

By letter dated 11 July 1983, and more recently by letter sent on 2 August 1985 concerning the reconstitution of the Fund, the Commission approved the implementation of Law No 46/82. It took the view that, in the case in point, the encouragement of research and innovation programmes as provided for in the Law can be in the Community's interest, on condition that the aid is not granted for productive investments and that an excessive concentration of the aid in question on certain sectors is avoided as it might affect trade between Member States to an extent contrary to the common interest.

The Commission also made its authorization of the implementation of Law No 46/82 subject to the condition that significant individual cases, that is to say those where the cost of the programme exceeds Lit 15 000 million (10 000 million if the programme is carried out by a firm which has already received support from the Fund for another programme), should be notified to it in advance, pursuant to Article 93 (3) of the EEC Treaty, since it was not possible for the Commission to ascertain on the basis of Law No 46/82 alone whether operations were actually involved which (a) were of an innovative nature, (b) did not concern the production cycle, and (c) contributed to the attainment of an objective of value to the Community as a whole. The Commission reserved the right to examine each significant case on its merits in the light of the above factors and having regard to the effects of the aid in question on the competitive position of firms in the sectors concerned within the meaning of Article 92 (3) of the EEC Treaty.

After an initial examination of the aid proposed, notified by the Italian Government by letter dated 7 January 1985, the Commission came to the conclusion that it could not be considered compatible with the common market.

It was not apparent from the information furnished to the Commission that the aid was in fact intended for an innovation operation which would lead to the attainment of an objective of value to the Community as a whole. Instead, the expenditure seemed to be needed to enable the firm concerned to continue operating normally in this sector. Consequently, the Commission decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty in respect of the aid proposal.

The Italian Government was informed of this decision by letter dated 18 April 1985; the Governments of the other Member States were informed by letters dated 25 June 1985. The notice in the *Official Journal of the European Communities,* informing interested parties other than the Member States, was published on 11 July 1985 [1].

II

The Italian Government replied within the framework of the Article 93 (2) procedure by letter dated 12 June 1985 from its Permanent Representation and at a technical meeting held in Brussels on 17 June 1985.

It maintained that the research programme in question could not be considered as forming part of the normal innovatory activities which every Community chemical company carries on. The objectives pursued by the programme would make it possible to widen the Community's technology base. This would then include new products and production processes which would be so secret that the company would be ill-advised even to take out patents.

The sectors in which the research would be carried out were as follows:

— new industrial auxiliaries,

— new processes for synthesizing industrial intermediates,

— new technologies for producing pesticides.

As regards the first sector, the Italian authorities stated that the research would be aimed at discovering, developing and introducing onto the market new industrial auxiliaries which would help improve the performance of plastics under hostile conditions. The improvement would consist in creating higher-stability polymers using new compounds with properties not yet found in currently marketed products, which are mostly imported from the United States and Switzerland. Because of their special characteristics, the new compounds might be used in areas not covered by conventional products.

As regards the second sector, the research would be directed towards discovering original, innovative processes for synthesizing organic intermediates for pharmaceutical products, additives for polymers, feed or food additives, etc.

In particular, the research would be aimed at:

— eliminating the potential hazards inherent in working with certain chemical reagents. An example would be the new process whereby dimethylcarbonate can be utilized without having to store dangerous reagents such as methyl isocyanate and phosgene,

— reducing energy consumption. An example would be the activation of oxygenated water by zeolitic catalysis. This entirely new catalysis had led to the discovery of a process for the hydroxylation of phenol, making possible energy savings of 50 % compared with existing processes.

As regards the third sector, the research would be aimed at developing new methods for synthesizing pesticides, exploiting the opportunities afforded by the availability of dimethylcarbonate. In particular, these were plans to study the synthesis of urea compounds, carbonates and methyl isocyanate, using dimethylcarbonate as a carbonylating or carboxylating agent instead of phosgene.

The Italian authorities concluded their observations by asserting that, not only should the research programme not be considered a normal activity of the firm, but, on the contrary, it was an extremely innovative programme entailing a high degree of technical and commercial risk. Consequently, the programme would not only not cause any distortions of competition contrary to the common interest but would, on the contrary, be of much value to the Community as it would widen its technology base.

Among the observations submitted under the same procedure, four other Member States and certain competing firms supported the Commission's point of view and expressed deep concern about the aid proposal.

They stated that, in their opinion, the activities in the present case already existed more or less in other Member States and that the programme did not have any innovative aspects beyond what other firms were achieving in the normal course with their own resources.

In the field of plastics and pesticides, there were, moreover, many European firms engaged in research. The aid in question was therefore likely to distort competition in the Community by giving the recipient Italian firm an unfair advantage. They stressed the scale of intra-Community trade and the capacity of producers to satisfy the market's pesticides requirements without difficulty.

[1] OJ No C 172, 11. 7. 1985, p. 3.

III

First of all, the Commission consideres that the aid proposal in question, which was notified by the Italian Government as an individual case of application of Law No 46/82, constitutes an aid within the meaning of Article 92 (1).

The Commission has established that the proposal concerns a major European chemical company which exports to the other Community countries a substantial proportion of its production. In this connection, it is worthwhile examining the statistics for 1983 relating to the company, supplied by the Italian authorities.

In 1983, the company exported to the other Member States :

— 30,5 % of its plastics,

— 44,4 % of its synthetic rubber and latex,

— 20,9 % of its fine chemicals,

— 17,3 % of its intermediates for detergents,

— 6,7 % of its fertilizers and pesticides,

— 14,3 % of its pharmaceutical products,

— 28,2 % of its synthetic fibres and textiles.

It must be borne in mind that these percentages correspond to large quantities of goods, as the company's total production of each of the products referred to above is considerable.

The company's output of products to which the research relates was worth Lit 2 500 million in 1983. The Italian authorities have stated that the destination of the research-related products will remain essentially the same as the present destination of similar products. As a guide, the Italian authorities indicated that the company estimates it will export about 40 % of its industrial auxiliaries production to the other Member States ; it forecasts that it will export 10 % of its industrial intermediates production ; it also forecasts that it will export its entire production of pesticide intermediates to non-member countries.

When the relative position of a firm *vis-à-vis* its competitors in intra-Community trade is strengthened by financial assistance from the State, that assistance must be regarded as affecting such trade. In the present case, the planned assistance, which would reduce the investment expenditure the chemical company in question would normally have to bear itself, is likely to affect trade and distort, or threaten to distort, competition by favouring the said company within the meaning of Article 92 (1) of the EEC Treaty. That provision states that, in principle, any aid fulfilling the criteria it sets out is incompatible with the common market.

The exceptions to this principle set out in Article 92 (2) of the Treaty are inapplicable in this case owing to the nature of the proposed aid, which would be granted under a law (Law No 46/82) which does not pursue the objectives specified in those exceptions.

Article 92 (3) of the Treaty lists the aids which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and not in that of a single Member State. In order to safeguard the proper functioning of the common market, the exceptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be understood in the strict sense in examining any aid scheme or any individual case, regard being had to the principle embodied in Article 3 (f) of the Treaty.

In particular, they may be applied only where the Commission establishes that, in the absence of the aid, the free play of market forces would not by itself induce the potential recipient to act in such a manner as to contribute to the attainment of one of the objectives set out in the exception clauses.

To apply such exceptions to cases in which the aid is not essential to the attainment of those objectives would be tantamount to granting an undue advantage to the industries or firms of certain Member States in that their financial position would be strengthened, and might affect trade between Member States and distort competition, without this being justified in any way by the Community interest within the meaning of Article 92 (3).

Without expressly mentioning any of the categories of exception provided for in Article 92 (3), the Italian Government, nevertheless, affirmed that the research programme satisfied the conditions underlying Law No 46/82, that is to say it would be highly innovative and, in general, not only would it not cause any distortions of competition contrary to the common interest but was indeed clearly of value to the Community as it would widen its technology base.

The Commission considers that the Italian Government was invoking the exception provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities. This exception is the one which the Commission considered could justify the general aid scheme introduced by Law No 46/82 as a means of promoting research, development and innovation in industry. As indicated above, the Commission examines

each significant case of application of Law No 46/82 on its merits and having regard not only to the innovative aspects of the operation, which must contribute to the attainment of an objective in the common interest, but also to the effects of the aid on the competitive position of firms in the industry concerned.

The Commission thus proceeded to examine in detail the aid proposal in question to see whether any of the exceptions provided for in Article 92 (3) were applicable to it.

As to the exceptions provided for in Article 92 (3) (a) and (c), in favour of aid to promote or facilitate the development of certain areas, it should be noted that, first of all, the standard of living in the areas concerned is not abnormally low, secondly there is no serious underemployment there within the meaning of the exception in Article 92 (3) (a) and, thirdly, this exception was not mentioned by the Italian Government.

As to the exceptions provided for in Article 92 (3) (b), it is clear that the aid is intended neither to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Italian economy.

The last exception possible is that which is provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities.

This is the exception indirectly invoked by the Italian Government. After examining the research programme, the Commission has come to the conclusion, however, that the aid proposal in question does not qualify for application of this exception.

In the light of the observations submitted in writing by the Italian Government, the Governments of four other Member States and competing firms, and of the explanations given at a technical meeting by representatives of the Italian Government, the Commission has reached the conclusion that, while it has certain innovative features — and this is inevitable as the sectors in which the research is being carried out are fields in a constant state of flux where all the major chemical companies, whether they be European or from outside the Community, are conducting research — the research programme does not display on the whole the high degree of innovation required for the individual cases of application of Law No 46/82.

The Commission has established that the sectors in which the research is being carried out are as follows :

— new industrial auxiliaries,

— new processes for synthesizing industrial intermediates,

— new technologies for producing pesticides.

As regards the first sector, the Commission has been unable to find that the research is into new products not yet available on the market. As the Italian authorities themselves state, it is aimed at producing products having improved characteristics. The term 'new auxiliaries' is so sweeping and vague that it is impossible to assert, as the Italian authorities do, that the Community depends for its supplies of such products on more advanced, non-member countries. On the contrary, the larger part of industrial auxiliaries is produced by Community firms.

According to the Italian authorities, the company implementing the programme is already the European market leader in certain industrial auxiliaries ; 40 % of the new auxiliaries would, moreover, be exported, in the proportions given by the Italian authorities, to the other Community countries.

As regards the sector of new processes for synthesizing industrial intermediates and that of new technologies for producing pesticides, the Commission has found that the technological innovations mentioned by the Italian authorities are, in reality, not as innovative as they claim. The Italian authorities also explained that, in the company's new plants, methyl isocyanate (MIC) is present as a temporary intermediate during the chemical process and, moreover, in very small quantities, i.e. less than 1,5 kilograms in the case of a plant producing 800 tonnes a year of carbonyl or carbufuron. The Commission, whilst it does not underestimate the scale of the effort made by the Italian firm, has established that other Community producers already use phosgene-free precursors such as dimethylurea and diphenyl carbonate which, from the point of view of the protection of health and safety, are comparable to the dimethylamine gas used by the Italian firm.

As regards the second innovative aspect referred to, that is, the presence during the chemical reaction, only temporarily and in small quantities, of MIC, the Commission is of the opinion that this is not a true innovation but is the consequence, rather, of the fact that the new plants use continuous processes. Any new plant using continuous processes rather than batch processes does not need to store the intermediate product MIC.

There are in the Community other plants using the continuous process in which, as a result, the quantities of the intermediate MIC are smaller than those found in conventional plants. Even if the Italian firm's new plants were to prove even better from the safety angle than those of the same type currently in existence, solely because they are more modern, this would not alter the Commission's assessment. The Commission considers that the present case involves normal technical improvements stemming from new investment rather than true innovations.

As regards the research effort to reduce energy consumption, for example the activation of oxygenated water by zeolitic catalysis, which is the chief example given by the Italian authorities of the innovative nature of the research being carried out by the firm concerned, the Commission has found that other competing European firms state that they already use the same process.

In the Community there is at present a zeolite production capacity of the order of 300 to 320 000 tonnes, of which 200 000 tonnes are in Germany. It would appear, moreover, that several European companies are in the middle of an intensive programme of research into zeolites and that some already lay claim to innovations similar to those put forward by the Italian firm in question.

In the Commission's view, therefore, the programme at issue does not possess the highly innovative features which are essential if the aid the programme would receive is to qualify for application of the exception contained in Article 92 (3) (c) of the EEC Treaty.

In the chemical industry, it is only natural that firms should devote large sums of money to research into new processes, new products and the improvement thereof.

What is more, as indicated earlier, there is strong competition between Community firms in the sector to which the research relates, and trade in that sector is very substantial. In addition, the Commission has already pointed out that the products into which the research is being conducted are the subject of intra-Community trade, although it was unable to give precise figures on trade flows as NIMEXE often classifies whole groups of chemicals under one heading.

The Commission has already reproduced the statistics forwarded by the Italian authorities on exports in 1983 and on future estimates. Only in the case of pesticide intermediates does the firm not intend exporting to other Member States.

This is probably due to the awareness that Europe's pesticide requirements are satisfied in full without any difficulty, and shows that the Commission's position regarding the insufficiently innovative nature of the products in question is justified, for if they were really highly innovative they would without doubt be exported to other Community countries.

The Commission considers that in the case of the research programme in question the high degree of innovation is lacking. This factor is to be taken into consideration, together with the other factors examined above, in determining whether the aid awarded to the programme qualifies for application of the exception provided for in Article 92 (3) (c) of the EEC Treaty.

In short, in the Commission's opinion the proposed aid would be granted solely in the interests of the firm, which would enjoy a considerable financial advantage and would benefit from a reduction in the financing costs it would at all events have to bear in order to modernize its products and remain competitive, as the other European firms, which do not receive the same financial benefits, also have to do for their part. The proposed aid, which would favour the firm in question, would therefore adversely affect trading conditions to an extent contrary to the common interest.

Consequently, the aid proposal in question does not satisfy the conditions necessary for the application of one of the exceptions set out in Article 92 (2) and (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Italian Government proposes to grant under Law No 46/82 to an Italian firm with plants in the North and South of Italy, for the carrying-out of an innovation programme in the field of chemistry concerning industrial auxiliaiaries, intermediates and pesticides, is incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

The Italian Government shall therefore refrain from implementing its aid proposal.

Article 2

The Italian Government shall inform the Commission within one month 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, 23 April 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission