II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 12 November 1986
on a FIM loan to a mineral-water and glass-bottle manufacturer

(Only the French text is authentic)

(87/194/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 :

I

On 11 November 1985 the French Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a proposal to grant aid to a mineral-water and glass-bottle manufacturer.

The proposal provides for the grant of a FIM (Fonds Industriel de Modernisation — Industrial Modernization Fund) loan of FF 70 million for an investment of FF 266,5 million which the recipient firm intends to undertake in 1985/86 with a view primarily to stepping up and automating its glass-bottle production and increasing the output of its two bottling plants, while saving energy and improving working conditions.

By Decision 85/378/EEC [1], the Commission informed the French authorities that the grant of FIM loans constituted aid within the meaning of Article 92 (1) of the EEC Treaty and made the grant of such loans subject to the obligation to notify, at the proposal stage, all significant individual awards.

At the end of 1985 such loans were made available at a rate of 8,75 % for a maximum period of 10 years, and were coupled with a grace period of up to two years. They are designed to assist investments of an innovative nature and, in particular, those aimed at the installation of high-technology machinery and equipment and the development of office automation and biotechnology.

II

After scrutinizing the aid proposal under Article 93 (3) of the Treaty, on the basis of an analysis of the market in the products concerned and of the information furnished by the French authorities, the Commission decided, on 18 December 1985, to initiate the procedure laid down in Article 93 (2) in respect of the aid consisting of the FIM loan of FF 70 million to the abovementioned mineral-water and glass-bottle manufacturer on grounds of the aid's effect on trade between Member States and on competition between the recipient firm and its rivals in the Community.

As part of that procedure, the Commission gave the French Government, the other Member States and interested parties other than Member States notice to submit their comments.

[1] OJ No L 216, 13. 8. 1985, p. 12.

On 2 April 1986 the French Government answered the letter the Commission had sent it on 24 December 1985 informing it of the initiation of the Article 93 (2) procedure.

It argued among other things that the grant of the FIM loan in question would not threaten between Member States but would contribute to the development of activities in a manner in keeping with the European interest. The loan would help finance investments aimed at introducing innovative technology, automating the entire production process and improving the control both of quality and of energy savings.

Within the framework of the consultation of other interested parties, the Governments of three Member States and an industry federation sent their comments to the Commission.

III

The FIM loan planned by the French Government contains elements of aid within the meaning of Article 92 (1) because it would enable the recipient firm to be relieved, through State resources, of a part of the cost of the investment which it would normally have to bear itself.

Between 1975 and 1984, the production and consumption of mineral water in the Community grew by approximately 40 %, from about 63 million hectolitres to about 88 million hectolitres. The size of the increase differed from one Member State to another.

France is the Community's largest producer with an output of 33,8 million hectolitres in 1983, followed, in descending order, by Germany, Italy and Belgium.

In some Member States, annual *per capita* consumption is still very low (a few litres) but is tending to increase rapidly, whereas in France and Belgium it is in the region of 55 litres and in Germany 50 litres.

Over the same period, intra-Community trade in such water practically doubled, from 289 000 tonnes to 583 000 tonnes, attaining a value of 224,8 million ECU and accounting for 6,3 % of production. In 1984, French exports represented about 73 % in volume and more than 80 % in value of that trade, although French production accounts for less than 40 % of Community production.

Some 90 % of the production and marketing of mineral water in France is in the hands of four large industrial groups. The recipient of the FIM loan in question is the biggest of those groups and ranks first in its sector in the Community. Its share of the French market comes to about 30 % in the case of non-effervescent water and over 50 % in that of effervescent water. The firm exports much of its production both to the other Member States and to non-member countries. Its turnover from the sale of mineral water is steadily increasing (FF 2 618 million in 1983/84 compared with FF 2 344 million in 1982/83).

Export earnings totalled FF 887 million in 1983/84, over half of which from sales in other Member States, against FF 738 million in 1982/83.

As far as glass bottles and flasks are concerned, hollow glass output in the Community fell in the 1980s, owing mainly to the utilization of competing materials and to energy costs; as a result, a number of plants have closed in the Member States. In France, on the other hand, hollow glass production has increased by 8 % since 1979 (Community = —5 %); in 1983, the French industry's output was the highest in the Community, accounting for 27 % of Community production. France nevertheless remains a net importer of hollow glass.

Glass is still the preferred material for bottling effervescent beverages. However, in several Member States including France, plastic is overtaking it in the mineral water market. The cost of the container is one of the factors determining the production cost of drinks.

In view of the above considerations, the situation in the market concerned and the position of the firm in question in that market, the aid contemplated by the French Government is likely to affect trade between Member States and distort competition within the meaning of Article 92 (1) by favouring the firm concerned and French drinks and hollow glass production.

Where financial assistance from the State strengthens the position of certain firms compared with that of others competing with them in the Community, it must be regarded as affecting those other firms.

Article 92 (1) provides that aid having the features there described is in principle incompatible with the common market. The exceptions to this principle provided for in Article 92 (2) are inapplicable in this case in view of the nature and objectives of the proposed aid.

Under Article 92 (3), aid capable of being considered compatible with the common market must be assessed in the Community context and not in that of a single Member State. To safeguard the proper functioning of the common market and take account of the principles set out in Article 3 (f) of the Treaty, the exceptions to the principle laid down in Article 92 (1) set out in paragraph 3 of that Article must be constructed narrowly when any aid scheme or individual award 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 recipients towards patterns of behaviour that would serve one of the objectives sought.

To invoke the exceptions in the case of aid that did not serve such an objective, or where the aid was not necessary for that purpose, would be to give unfair advantages to the industries or firms of certain Member States, whose financial position would be artificially strengthened, and to allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of the common interest referred to in Article 92 (3).

In view of the above, the proposed aid does not fall into any of the categories of exception provided for in Article 92 (3). With regard to the provisions set out in subparagraphs (a) and (c) of that paragraph concerning aid to promote the development of certain areas, the areas where the investment is to be undertaken are not suffering from an abnormally low standard of living or serious underemployment within the meaning of the exception provided for in subparagraph (a).

As to the exception referred to in subparagraph (c), the aid planned by the French Government is not likely to facilitate the development of certain economic areas within the meaning of that provision.

FIM loans are as a rule not granted to firms doing business in economic sectors and in areas determined in advance.

They are therefore not intended to compensate for regional handicaps, and in this particular case the French Government has at all events not invoked grounds of this nature in order to justify the grant of the FF 70 million loan to the firm concerned.

As far as the exceptions provided for in Article 92 (3) (b) are concerned, it is obvious that the aid at issue is not intended to support a project of common European interest or to remedy a serious disturbance in the French economy.

Lastly, as regards the exception provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, the FIM loan is principally aimed at modernizing and expanding production plant. Such investments, which are necessary to enable the recipient firm to respond effectively to increasing demand for the products in question, are as a rule carried out without the need for incentives in the form of aid. It is only natural and in the producer's own interest that it should use the most efficient technology and materials permitting a reduction in overheads, including energy consumption.

The French firm's competitors are faced with the same problems without their being able to qualify for aid to cover part of the cost of solving them. To agree to the grant of the FF 70 million FIM loan to the abovementioned French mineral-water manufacturer would be tantamount to inflicting on its competitors a disadvantage which might take the form of an unjustified drop in their sales.

For these reasons, by Decisions 82/774/EEC [1], 82/775/EEC [2] and 82/776/EEC [3], the Commission found that aid planned by the Belgian Government for altogether similar investments by mineral-water and soft-drinks manufacturers in Belgium were incompatible with the common market and should therefore not be awarded. As the situation in the sector concerned has not changed much since, the Commission feels it must be guided by the same sectoral considerations in the present case.

Consequently, aid for the modernization and expansion of the production plants concerned does not fulfil the requirements of the development of the sector in question without adversely affecting trading conditions to an extent contrary to the common interest within the meaning of Article 92 (3) (c),

HAS ADOPTED THIS DECISION:

Article 1

The grant of a FF 70 million FIM loan, constituting aid within the meaning of Article 92 (1) of the EEC Treaty, to a firm manufacturing glass bottles and effervescent and non-efferverscent mineral water, notified to the Commission by letter dated 11 November 1985, is incompatible with the common market and may not be implemented by the French Government.

Article 2

The French Government shall take whatever steps are necessary to comply with this Decision within one month of the date of its notification and shall inform the Commission thereof within the same period.

[1] OJ No L 323, 19. 11. 1982, p. 31.
[2] OJ No L 323, 19. 11. 1982, p. 34.
[3] OJ No L 323, 19. 11. 1982, p. 37.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 12 November 1986.

For the Commission
Peter SUTHERLAND
Member of the Commission