COMMISSION DECISION

of 14 January 1987

on an FIM (Industrial Modernization Fund) loan to a brewery

(Only the French text is authentic)

(87/303/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 30 April 1985 the French Government informed the Commission that in 1984 it had granted aid to a brewery.

The aid had been awarded in the form of an FIM (Industrial Modernization Fund) loan of FF 40 million towards an investment of FF 181 million which the recipient had undertaken in 1984 and 1985 with a view mainly to modernizing its brewhouse and installing outdoor tanks.

By Decision 85/378/EEC [1] the Commission had made clear to the French authorities that the granting of FIM loans constituted aid within the meaning of Article 92 (1) of the Treaty and made the granting of such loans subject to the obligation to notify to it in advance all significant awards and to inform it also of significant awards made before that Decision was adopted. It had added that the latter type of award constituted unlawful aid which might have to be recovered.

At that time such loans were granted at a rate of 9,25 % over a maximum period of 10 years, with a principal repayment holiday of up to two years. They were intended to support projects of an innovative nature including those for the installation of high-technology machinery and equipment and the development of office technology and biotechnology.

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

II

After scrutinizing the aid on the basis of an analysis of the market in the products concerned and the information furnished by the French authorities, the Commission decided, on 18 December 1985, to open the procedure provided for in Article 93 (2) of the Treaty in respect of the aid consisting of the FF 40 million FIM loan to the brewery on grounds of the effect the aid would have on trade between Member States and on competition between the recipient 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.

On 22 May 1986 the French Government answered the Commission's letter of 29 January 1986 which had informed it of the opening of the Article 93 (2) procedure.

It stated that the FIM was concerned only with those investments undertaken by the brewery which were truly innovative. The purpose of the investments was to introduce innovative techniques into the brewery's production process. This was especially the case with the following :

— the brewery process, in which a fully automated brewhouse incorporating advanced technology was added on to an existing brewhouse : the two could be operated either simultaneously or separately by a single person ; a steam condenser made it possible to recover 54 % of the energy used in boiling,

— the high-speed bottling process featuring a new pallet unloader which removed bottles under vacuum and coordination of the various bottle conveyors according to the output of each of the machines on the line and the delivery rate of each of the conveyors, thereby ensuring optimum throughput overall.

The innovations involved in the brewery's investment programme were process innovations. The technological equity loan which was helping to finance them was therefore entirely consistent with the object of the FIM as notified to the Commission.

Account also had to be taken of the prospective energy savings.

In short, the award of the FIM loan to the brewery would not distort competition between Member States but would, on the contrary, contribute to the development of economic activities in a manner in keeping with the European interest.

III

The FIM loan granted by the French Government comprises elements of aid within the meaning of Article 92 (1) of the Treaty because it relieves the recipient, through State resources, of part of the cost of the investment which it would normally have to bear.

Between 1975 and 1985 the annual consumption of beer per head either stagnated or fell in all Member States except Italy. In Germany and the United Kingdom, where some 65 % of the Community's beer is produced, consumption fell from 147,8 and 117,6 litres per head respectively in 1975 to 145,8 and 108,9 litres in 1985. Over the same period beer sales in the EEC (minus Greece), after having risen slightly in 1980 to 232 million hectolitres, fell back in 1985 to the 1975 level of 228 million hectolitres. In terms of volume, external trade between Member States (minus Greece) accounts for about 4 % of sales and, with seasonal variations, changed very little between 1975 and 1985.

In France, between 1975 and 1985, beer sales remained fairly static at around 21 to 23 million hectolitres, although in 1985 they fell to 19,3 million hectolitres. This market accounts for approximately 9 % of all sales in the Community (minus Greece). Annual consumption per head, which is considerably lower than the Community average (84 litres), was down to 38,2 litres in 1985 compared with 44,9 litres in 1975. France traditionally imports just over 10 % of its requirements from the other Member States. In volume terms, these imports have varied little during the past 10 years, at between 2 and 2,5 million hectolitres. French exports to other Member States declined over the same period and represent about 1,5 % of French production.

The brewery in receipt of the FIM loan is wholly owned by a French group whose beer production accounts for over 50 % of total French production and which participates in intra-Community trade in beer. The brewery itself holds about 20 % of the French market and in 1984 and 1985 it suffered a drop in sales revenue compared with 1983.

This seems to be due above all to the fact that the consumption of table beer is steadily declining in France and that such beer accounts for a large proportion of its sales.

IV

In view of the above considerations, the situation in the relevant market and the position occupied by the brewery in that market, the aid awarded by the French Government is likely to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the Treaty by favouring the brewery and the production of French beer.

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 deemed to affect those other firms.

Article 92 (1) provides that aid having the features set out therein is in principle incompatible with the common market. As far as the exceptions to this principle are concerned, those provided for in Article 92 (2) of the Treaty are inapplicable in this case owing to the nature and objectives of the aid.

Article 92 (3) of the Treaty provides that aid which may be considered compatible with the common market must be viewed in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market and take into account the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be strictly construed in examining any aid scheme or any individual aid award.

In particular, they may be applied only where the Commission establishes that, without the aid, the free play of market forces would not by itself induce potential recipients to act in such a manner as to contribute to the attainment of one of the objectives sought.

To apply the exceptions to cases which do not contribute to the attainment of such an objective, or where the aid is not essential to that end, would be tantamount to granting undue advantages to the industries or firms of certain Member States, the financial position of which would be artificially bolstered, and might affect trade between Member States and distort competition without this being justified in any way by the common interest referred to in Article 92 (3).

In view of the above, the aid in question does not fall within any of the categories of exception provided for in Article 92 (3). As to the exceptions provided for in Article 92 (3) (a) and (c) concerning aid to promote or facilitate the development of certain areas, the standard of living is abnormally low in none of the areas where the investments are to be carried out and there is no serious under employment there within the meaning ot the exception provided for in subparagraph (a).

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

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

They are not, therefore, designed to further the development of certain areas. In the present case, the French Government has in any case not put forward such a reason to justify the award of the FF 40 million loan to the brewery.

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 French economy.

Lastly, as to the exception provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, the FIM loan in question is chiefly aimed at modernizing and extending production plant.

In its reply to the Commission's letter of 29 January 1986, the French Government stated that the FIM loan recipient had in fact carried out investments in 1984 and 1985 totalling FF 690 million. Of that figure, the FIM had subsidized only investments of an innovative nature costing FF 181 million. The brewery had, moreover, totally automated two brewhouses enabling them to be operated by a single person, and the high-speed operation of the bottling plant helped achieve an optimum throughput.

Even if the Commission were to acknowledge that such investments are innovative, it would still have to point out that they form only a small part of the total investment of FF 181 million. The outdoor tanks element alone — which the French Government does not claim to be innovative — accounts for more than FF 100 million, whereas the brewhouse investment respresents only FF 34 million.

What is more, automated brewing processes have already been installated in rival breweries in other Member States without government support. The same applies to the bottling plant.

As part of a drive to modernize its plants, the brewery in question has closed three facilities with a capacity in excess of one million hectolitres. At the same time, the capacity of the main plant is being increased by one million hectolitres. It stands to reason that, when installing this new capacity, the brewery will not resort to outdated technology but will try to acquire machinery and equipment incorporating the latest technology. This technology is by no means so innovative that it justifies the granting of aid.

On the question of the energy savings achieved as a result of the abovementioned investments by the French brewery, it should be noted first of all that use of the most efficient technology and materials leads almost inevitably to reduced energy consumption. Secondly, from such data as are available on their operations, it is apparent that the brewery's competitors conduct research into energy savings on a regular basis and put the results of this research to good use when the opportunitity arises, without the help of State aid.

To agree to the FF 40 million FIM loan being granted to the French brewery would be to inflict a disadvantage on its competitors which might take the form of an unjustified fall in their sales.

Consequently, aid for the modernization and extension of the plants concerned does not satisfy the requirements of development of the industry without affecting trade to an extent contrary to the common interest within the meaning of Article 92 (3) (c) of the Treaty.

In Decision 85/378/EEC, the Commission drew the attention of the French authorities to the fact that aid granted in the form of FIM loans prior to that Decision had to be considered illegal and that it might be recovered in significant cases. The FF 40 million FIM loan granted to a brewery must be considered a significant case having regard to the thresholds laid down in Article 2 of the said Decision. The French Government's intention of granting it to the recipient ought therefore to have been notified to the Commission in advance in accordance with Article 93 (3) of the Treaty. By not informing the Commission until 30 April 1985 of the actual grant of the

FIM loan, the French authorities have failed to fulfil their obligation to notify this significant case at the proposal stage and have thus infringed the procedural rules laid down in Article 93 (3). Moreover, the aid is incompatible with the common market for the reasons set out above,

HAS ADOPTED THIS DECISION :

Article 1

The FIM loan of FF 40 million, containing elements of aid within the meaning of Article 92 (1) of the EEC Treaty in view of the interest subsidy of 4,75 percentage points, granted to a brewery and notified to the Commission by letter dated 30 April 1985, was granted unlawfully in infringement of Article 93 (3) of the Treaty and is incompatible with the common market within the meaning of Article 92 of the Treaty.

Article 2

The aid in question must be recovered and the French Government shall inform the Commission within two months from the date of notification of this Decision of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 14 January 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission