COMMISSION DECISION

of 20 January 1988

on the Belgian Government's aid proposal in favour of Roger Vanden Berghe NV, a polypropylene yarn and carpet producer located in Desselgem, Belgium

(Only the French and Dutch texts are authentic)

(88/173/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

By letter dated 23 March 1987 and with reference to the synthetic fibres and yarn aid code, the Belgian Government notified the Commission of a proposal to grant financial assistance to Roger Vanden Berghe NV, a producer of polypropylene yarn and carpets located in Desseigem. Additional information was provided by telex of 13 May 1987.

The aid which would be granted under the Economic Reform Act of 4 August 1978 is intended to facilitate investments of Bfrs 47,98 million for the purpose of increasing polypropylene yarn production capacity and would take the form of a grant amounting to Bfrs 6 812 450.

Following an initial acrutiny, the Commission considered that the proposed aid would not meet the conditions which must be fulfilled in order to benefit from any of the exceptions set out in Article 92 (3) of the EEC Treaty and, in particular, that it would not be in line with the synthetic fibres and yarn aid discipline introduced by the Commission in 1977, notified to the Member States by letter of 19 July 1977 and published in the *Bulletin of the European Communities* of July/August 1977 under point 1.5.3 and of November under point 2.1.47 and prolonged in 1979, 1981, 1983, 1985 and 1987.

Under this discipline aid has to be avoided if it has the effect of increasing production capacity in the sector concerned. In the present case the aid is intended for an extension of polypropylene yarn production capacity by 100 %.

The Commission also considered that this investment had been undertaken as early as 1985 without the use of State aid which was proposed retrospectively in 1987. Thus, the aid was and is not necessary for the development of the economic activities at issue and, consequently, would give an unfair advantage to the undertaking concerned, the financial position of which would merely be bolstered. The aid would allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest as set out in Article 92 (3).

Therefore, the Commission initiated the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty.

By letter of 26 June 1987, it gave the Belgian Government notice to submit its comments. The other Member States were informed on 4 August and third parties on 8 October 1987.

II

By letter dated 21 September 1987, the Belgian Government informed the Commission that it had no comments to make under the procedure thus initiated.

In commenting under this procedure, four other Member States and two federations of firms in the sector supported the Commission's view as stated at the opening of the procedure.

III

There is a high volume of trade in synethetic yarn and particularly in polypropylene yarn with approximately 60 % of total EC-production of this product being traded within the Community. The company in question, the production capacity of which has risen from 2,95 % to 5,9 % of total EC capacity by way of the investment at issue here, participates actively in this intra-Community trade by exporting 30 % of its production to other Member States.

The relevant market in this case is the market for polypropylene yarn for the purpose of carpet production, which takes approximately two-thirds of total polypropylene yarn production in the EC. Despite growing consumption, considerable over-capacity persists in this market as new capacities are being installed at a very fast rate. From 1985 to 1986, for example, production and

consumption in the EC increased by 3,8 % while capacity rose by 9,0 %. The present capacity-utilization rate in the EC is 82 %, down from 86 % in 1985, which, particularly in view of considerable and growing pressure from third countries, is insufficient.

As a result there is heavy competition amongst the 47 polypropylene yarn producers in the EC. The firm at issue here ranked 18th in this group before the investment; now it is amongst the 10 most important polypropylene yarn producers in the EC.

The proposed assistance of Bfrs 6 812 450 to be granted under the Economic Reform Act of 4 August 1978 is State aid within the meaning of Article 92 of the Treaty (1). This amount, even if relatively small in absolute terms, contains an important advantage because the aid would reduce the investment costs by 8,1 % net grant equivalent and would allow the firm to increase its capacity by 100 % without having to support all the costs related to this increase as unaided competitors would have, if they wished, to undertake such investments. Therefore, the aid would strengthen the firm's position compared to its competitors in intra-Community trade and the latter would be affected by this aid. As there is considerable trade in polypropylene yarn in the EC, because competition is very keen and as the firm in question participates actively in intra-EC trade, the proposed assistance is liable to affect trade and distort or threaten to distort competition within the meaning of Article 92 (1) of the Treaty. Article 92 (1) lays down the principle that aid having the features there described is incompatible with the common market.

The exceptions from this principle set out in Article 92 (2) are not applicable in this case because of the character of the aid and as the act under which the aid is to be granted is not intended for such purposes.

Article 92 (3) sets out which aid may be considered to be compatible with the common market. The compatibility with the Treaty must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and taking into account the principles of Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) of the Treaty as set out in Article 92 (3) must be construed narrowly when an aid scheme or any individual award is scrutinized.

In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective or where an aid is not necessary to that end would be to give unfair advantages to certain Member States' industries or undertakings, the financial positions of which would merely be bolstered, and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

The Belgian Government has been unable to give, or the Commission to discover, any justification for a finding that the proposed aid falls within one of the categories of exceptions in Article 92 (3).

With regard to the exemptions provided for in Article 92 (3) (a) and (c) relating to aid intended to promote or facilitate the development of certain areas, it must be observed that the standard of living in Belgium is not abnormally low nor is there serious underemployment within the meaning of the exemption specified in (a). Furthermore, the exemption set out in subparagraph (a) has not been put forward by the Belgian Government. Because the proposed aid applies to an individual firm in a given economic sector irrespective of where it is located, it is not intended for or suited to the development of certain areas as provided for in the exemption specified in (c).

As regards the exemptions provided for in Article 92 (3) (b), it is evident that the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Belgian economy. A specific aid in favour of only one polypropylene and carpet producer is not suited to remedying the kind of situation described in Article 92 (3) (b).

With regard to the exemption provided for in Article 92 (3) (c) in favour of 'aid to facilitate the development of certain economic activities', it must be observed that in synthetic fibres and yarns in general and particularly in polypropylene yarn there is a high level of trade between

Member States and competition is very keen, because of persistent and uncontested over-capacity as documented above. For these reasons, synthetic fibres and yarns are subject to the synthetic fibre aid discipline, introduced by the Commission in 1977 and prolonged in 1979, 1981, 1983 and 1985.

In its letter of 7 July 1987, by which it extended the system of control of aid for a further two-year period ending on 19 July 1989, the Commission pointed out to Member States that it will express an unfavourable *a priori* opinion with regard to proposed aid, be it sectoral, regional or general, which has the effect of increasing the net production capacity of companies in this sector. It also reminded Member States that it will continue to give sympathetic consideration only to proposals to grant aid for the purpose of speeding up or facilitating the process of conversion away from synthetic fibres into other activities or restructuring leading to reductions in capacity.

Polypropylene carpet yarn belongs to the group of products which is subject to the synthetic fibres and yarn aid code and the investment at issue here, which took place in 1985, concerned the expansion of polypropylene yarn production capacity by 100 %.

Any artificial lowering of the expansion costs of a polypropylene yarn producer would in the situation described above weaken the competitive position of other producers and would have the effect of reducing capacity utilization and depressing prices, to the detriment and possible withdrawal from the market of producers, not only of polypropylene but also of substitutable yarns such as polyamide, which have hitherto survived owing to restructuring and productivity improvements undertaken from their own resources.

For the same or similar reasons, the Commission has had to prohibit State aid to other polypropylene yarn producers in the EC in the past (Decisions No 84/428/EEC of 27 June 1984 and No 85/471/EEC of 10 July 1985).

Therefore, the proposed aid does not meet the conditions which must be fulfilled in order for one of the exceptions of the synthetic fibres and yarn aid discipline to apply.

Furthermore, the aid is proposed retrospectively for an investment carried out in 1985 without the use of State aid. Thus, the aid was and is not necessary for the development of the firm at issue and would merely give unfair advantages to this undertaking.

It is therefore concluded that the aid proposed for the benefit of Roger Vanden Berghe NV as notified to the Commission, by retrospectively favouring, in a sector facing severe over-capacity problems, a capacity expansion undertaken by this firm, the market position of which would no longer be solely determined by its own efficiency, merits and powers, while contributing to the development of a given economic activity must be considered as adversely affecting trading conditions to an extent contrary to the common interest.

Consequently, the proposed aid does not meet the conditions which must be fulfilled in order for one of the exceptions of Article 92 (2) and (3) of the EEC Treaty to apply,

HAS ADOPTED THIS DECISION:

Article 1

The proposed aid amounting to Bfrs 6 812 450 to be granted to Roger Vanden Berghe NV and notified to the Commission by letter of 23 March 1987 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

The Belgian Government shall therefore refrain from implementing this proposal.

Article 2

The Belgian Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply herewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 20 January 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission