II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 March 1988

on aids granted by the French Government to a farm machinery manufacturer at St Dizier, Angers and Croix

(International Harvester/Tenneco)

(Only the French text is authentic)

(88/468/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

Upon repeated requests from the Commission, the French Government belatedly informed the Commission by letters of 3 October 1985 and 30 January 1986 that financial assistance had been granted to the third largest farm machinery manufacturer in France.

The aid, which had been granted in 1985 and 1986 in order to finance the restructuring of the recipient, took the following forms :

— a grant of FF 40 million paid in 1985 ;

— a 15-year equity loan of FF 135 million, half paid in 1985 and half in 1986 with a three-year grace period for repayment ; the rate varies according to the cash flow of the undertaking, with a ceiling of 14%.

The Commission considered that the aid fell within Article 92 (1) and that, on the basis of the information available to it and that sent by the French authorities, the aid did not appear to satisfy the conditions of Article 92 (3) in order to qualify for one of the exemptions laid down therein. It therefore opened the procedure under Article 93 (2) against the aid in question.

By letter of 3 March 1986, it gave the French Government notice to submit its comments. The other Member States were informed on 20 May 1986 and interested parties on 27 May 1986.

II

The French Government submitted its comments under the procedure provided for in Article 93 (2) of the EEC Treaty letter of 27 August 1986.

According to the French authorities, the grant constitutes an exceptional loan because of the serious social and regional consequences for employment in the areas in question if Tenneco were not to take over the French subsidiary of International Harvester.

According to their initial information, the French authorities had pointed out that the future of the French branch of International Harvester at its production plants at Angers, St Dizier and Croix had been under threat for several years owing to the serious difficulties besetting the parent company in the United States and its concentration on other activities to the detriment of heavy agricultural equipment, an industry which is facing a lasting, worldwide market depression.

According to the information sent, the aids in question are intended to finance the restructuring of the recipient, starting with the closure of the combine-harvester plant at Angers (2 000 units per annum, 185 jobs), the Croix plant being limited to the production of cabs (jobs cut from 515 to 260) and the St Dizier tractor assembly to specialize in the manufacture of transmissions for the group's middle and top range tractors with a workforce of 1 800 jobs. The planned investment of FF 1 200 million for the two remaining plants (St Dizier and Croix) over the period 1986 to 1989 will help to create 500 and 250 jobs respectively in that period.

As part of the procedure, three other Member States, two local administrations, a bureau for government relations and one undertaking sent their comments to the Commission.

III

The grant of FF 40 million, the interest subsidy and the grace period for repayment of the equity loan of FF 135 million are aids which enable the recipient to carry out a series of investments without having to bear all the costs.

The equity loan and the interest subsidy were granted for 15 years with a three-year period of grace, the rate depending on the cash flow situation of the undertaking with a ceiling of 14%. The aid elements stem from the three-year grace period for repayment and the difference between the interest on the equity loan effectively paid by the undertaking and the reference market rate in France, i.e. the interest rate applied by the Crédit National for equipment loans. During the period in which the aids in question were awarded (1985 and 1986), the reference rate varied between 14,0% and 9,25%. In view of the very poor results of recent years and the current difficulties in the farm machinery sector, it must be assumed that the cash flow of the undertaking in question has been and will continue at least for the next few years to be small, and that therefore the interest rate will be lower than the market rate.

As regards the aid arising from the equity loan, it is difficult if not impossible to identify the interest subsidy and hence the amount of the aid itself. This lack of clarity is one factor which makes the aid incompatible with the common market, and at the same time makes it impossible to consider applying one of the exceptions provided for in Article 92 (3).

In order to remedy this situation, the Commission invited the French Government on three occasions by telex of 23 October 1985 and letters of 3 December 1985 and 3 March 1986 to furnish details of the equity loan. The French authorities simply stated by way of reply that interest on the equity loan varied in keeping with the recipient's future cash flow, with a ceiling of 14%, but it did not specifiy the relationship between the volume of the cash flow and the rate of interest charged.

Thus the lack of information concerning the date on which the loan was granted, the cash flows and the relationship between the cash flow and interest actually paid by the firm prevents the Commission from calculating or estimating the aid element of the equity loan.

Under these circumstances, which stem from the lack of cooperation shown by the French Government, the Commission is nevertheless obliged to close the present procedure by adopting a decision on the basis of the information at its disposal (see the Judgment of the Court of Justice of 10 July 1986 in Case 234/84 (Meura)).

This factor, and the complexity of the aid in question, explains the time required to scrutinize the case and pursue the administrative investigation provided for by Article 93 (2).

IV

All these aids had to be notified to the Commission pursuant to Article 93 (3). Since the French Government failed to notify the aids in good time, the Commission was unable to state its views on the measures before they were implemented. Thus the aids are illegal in relation to Community law from the time that they came into operation. The result of this failure to fulfil obligations is particularly serious since the aids have already been paid to the recipient. Furthermore, half the equity loan of FF 135 million was granted after the opening of the Article 93 (2) procedure. Hence all the aids are to be regarded as being illegal under Community law. In this respecct it has to be pointed out that in view of the imperative character of the rules of procedure laid down in Article 93 (3) which are also of importance as regards public order, (see Court Judgment of 19 June 1973, Case 77/72 (Capolongo)), the illegality of the aids at issue here cannot be remedied *ex post*. The illegal nature of the aids in question is due to their failure to conform to the rules of procedure laid down in Article 93 (3).

Moreover, in cases of aids incompatible with the common market, the Commission, making use of a possibility given it by the Court of Justice in its Judgment of 12

July 1973 in Case 70/72 (Kohlegesetz), can require Member States to recover aid granted illegally from recipients.

V

In addition, the aids in question are incompatible with the common market under Article 92 (1) of the EEC Treaty.

There is a considerable amount of intra-Community trade in the farm machinery sector, representing 28% of Community production. A large part of the market is held by multinational undertakings (Massey-Ferguson, Case/Brown/International Harvester, John Deere, Ford) which invest in the Member States under worldwide investment programmes. So as to achieve economies of scale, their production plants specialize in products or product components which are then assembled at other plants often located in other Member States.

The considerable amount of trade in farm machinery between the Member States is thus not limited to finished products and spare parts — it also includes machine components such as motors, transmissions, tractor cabs, etc.

It should also be noted that the market is characterized by structural overcapacity amounting to some 50%, resulting in intensive competition between the different manufacturers, enormous pressure on prices and considerable cuts in the workforce in this industry (of 31% in the Community overall and 51% in Belguin, 50% in the United Kingdom, 34% in Germany, 29% in the Netherlands and 24% in France in the period 1976 to 1986).

Community production of tractors dropped in the period 1979 to 1985 by 10% in France, 21% in Italy, 22% in Germany and 27% in the United Kingdom, with a Community average of 23%.

The recipient undertaking, with a market share of 14% of registered tractors in 1985, is the third largest manufacturer in the French farm machinery market, and exports 37% of its turnover of FF 2 255 million, a large proportion going to other Member States.

In the light of the above, the aids in question are liable to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the undertaking concerned and the production of farm machinery in France.

Where a State financial aid strengthens the position of certain undertakings in relation to other competitors in the Community, it must be regarded as affecting such competitors.

The aids under consideration affect competition by improving the financial position of the recipient and his return on investment by reducing his other costs, which gives him a competitive advantage over other manufacturers who have completed or intend to complete similar actions at their own expense.

VI

Article 92 (1) establishes the principle that aid having the features there described is incompatible with the common market. The exceptions from this principle as set out in Article 92 (2) are not applicable in this case because of the character and objectives of the proposed aids.

Under Article 92 (3) of the EEC Treaty, aids which may be considered compatible with the common market must be viewed in the context of the Community. In order to safeguard the proper functioning of the common market and take account of the principles of Article 3 (f) of the Treaty, exeptions to the principle of Article 92 (1) 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 invoked only when the Commission is satisfied that without the aid, market forces alone would be insufficient to guide the prospective recipients towards patterns of behaviour that would serve the objectives in view.

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 industries or undertakings in Member States, the financial position of which would be artificially bolstered, and could allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of common interest as set out in Article 92 (3).

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

In view of the above considerations, the aids in question do not qualify for any of the exceptions provided for in Article 92 (3).

As regards the exceptions provided for in Article 92 (3) (b), it is obvious that the aid measures are not intended to promote the execution of a project of common European interest or to remedy a serious disturbance in the French economy. Specific aids awarded to an individual undertaking in the agricultural equipment sector are not designed to remedy the type of situations described in Article 92 (3) (b). Nor has the French Government given any such reasons to justify the aids question.

As regards Article 92 (3) (a) and (c) concerning aid to promote the development of certain areas, the regions (Haute Marne et Nord, the factory at Angers, Maine and Loire being closed) in which the investments were and will be made do not have an abnormally low standard of living or serious underemployment within the meaning of the exception referred to in Article 92 (3) (a). The regions in question do not, moreover, form part of the regions qualifying for that exception.

Nor do the aids satisfy the conditions of Article 92 (3) (c) of the three production plants referred to, only the Angers plant (185 jobs), shut down under the investment programme, is located in an area qualifying for regional aid. In addition, neither the grant of FF 40 million nor the soft equity loan come under a regional aid scheme. The aid in question is not intended to facilitate the development of certain economic areas pursuant to Article 92 (3) (c). Furthermore, in view of the present situation and the market prospects for farm machinery, the award of the aid in question distorts competition to an extent contrary to the common interest. Consequently, the aids in question do not qualify for exemption under Article 92 (3) (c) under the regional heading.

Lastly, as regards the exception under Article 92 (3) (c) in respect of aid to facilitate the development of certain economic activities, it must be concluded that while the aids in question facilitate the development of the undertaking in question, they do not facilitate the development of that sector at Community level and have an effect contrary to the common interest on trade between the Member States.

The Comunity farm machinery market is characterized by excess production capacity of some 50%, chiefly due to a sharp drop in sales over the last 10 years. Sales of small and medium-sized tractors fell by 23% between 1979 and 1984.

Owing to the crisis in the farm machinery sector, there has been considerable pressure to reduce prices, resulting in manufacturers giving large discounts and thus reducing their profit margin which is already not very large.

In 1984, the Commission decided that an Italian proposal for aid to manufacturers of agricultural motors and tractors in the form of an interest subsidy was incompatible with the Treaty pursuant to Article 92 owing to the increased production capacity resulting from the assisted investment (Commission Decision 84/364/EEC [1]).

International Harvester/Tenneco is a multinational undertaking (one of the 50 largest groups in the world with a turnover of FF 130 000 million and a net profit of FF 5 500 million in 1984) producing agricultural machinery and/or components in the United States and, within the Community, in France, Germany and in the United Kingdom, at several locations.

Before Tenneco purchased International Harvester's operations in Europe, it was already manufacturing farm machinery in the United Kingdom through its subsidiary J. I. Case at two plants (Leigh and Meltham). By taking over International Harvester's French, (at Croix, Angers and St Dizier), United Kingdom, (at Doncaster) and German activities (at Neuss), Tenneco not only took over its competitor's market shares and capacities, but also the distribution systems in markets where it was relatively under-represented.

In Europe, Tenneco manufactures farm machinery at several plants in France, the United Kingdom and Germany. The measures it has taken in France (closure of combine-harvester plant, specialization at other plants) form part of a worldwide investment programme aimed at modernizing and adapting Tenneco capacities to world markets.

The reorganization carried out under the world investment programme, with plants specializing in the manufacture of components and/or certain products, and the export of components to other sites for final assembly, makes it difficult to evaluate the consequences for the Community farm machinery market.

The decision of the French authorities to grant aids probably does not affect the overall volume and the objectives of the programme. On the other hand, as shown below, the aids in question affect decisions concerning the geographical distribution of investment, specialization and the closure of production sites. The aid measures thus adversely affect the other two Community subsidiaries of Tenneco and all other manufacturers of farm machinery in the Community.

The award of the aids motivated Tenneco to take over International Harvester France and prevented a greater reduction in capacity in France. On the other hand, Tenneco decided to close down tractor production at its Meltham/Huddersfield plant in the United Kingdom in 1988, to pare down operations to the production of components, and to close the component manufacturing plant at Leigh, Manchester, leading to a loss of some 1 000 jobs.

The only real capacity cut communicated by the French authorities is the closure of the Angers plant (185 jobs, capacity of 2 000 units/year) as it did not have the critical minimum size Tenneco considers necessary in order to compete against its main European rivals. In addition, the capacity reductions communicated chiefly concern under-utilized capacity and therefore have a very limited effect on the market.

[1] OJ No L 192, 20. 7. 1984, p. 35.

The capacity cuts introduced by Tenneco are due solely to recent market trends; demand has fallen considerably, and undertakings throughout the Community have had to adjust to the new situation.

The fact that the other plants specialize in the production of tractor modules that are for the most part exported to final assembly plants in other Member States is even connected with an increase in capacity. Apart from the closing down of the combine-harvester plant and the specialization of other sites leading to a loss of 440 jobs, the assisted investment programme of FF 1 200 million involves the creation of 750 jobs in an industry with very high surplus capacity (approximately 50%) and a considerable volume of intra-Community trade. This net increase of 310 workers at Tenneco France in conjunction with a productivity increase under the investment, rationalization and specialization programme necessarily entails an increase in production at that undertaking. It should be noted that — through the aid grant in question — the investment was made in France and not in the other Member States in which Tenneco has production plants. The aids in question thus enable the recipient to increase production capacity in a sector already experiencing excessive overcapacity.

In view of the very difficult position of the market for farm machinery which is not expected to level off before the 1990s, a decision to approve the grant of FF 40 million, the interest subsidy and the grace period for repayment of the equity loan of FF 135 million in favour of International Harvester France would amount to imposing a disadvantage on its competitors which could take the form of an unjustified decline in their sales and/or their withdrawal from the market.

The gravity and duration of the crisis currently affecting the farm machinery sector in the Community have forced other firms to undergo major readjustments without any State aid, in spite of the financial difficulties experienced by many and the problems posed by the reduction of their workforces which called for stringent restructuring measures.

In view of the financial situation of the parent company and its own interest in implementing the investment programme, it must be assumed that market forces should suffice and that the investment would go ahead without the aid in question.

As a result, the aids in question cannot be regarded as helping to produce a trend capable of offsetting, from the Community standpoint, their distorting effects on trade.

It must be concluded, therefore, that the aids are illegal as the French Government has not fulfilled its obligations under Article 93 (3) of the EEC Treaty. Furthermore, the aids do not satisfy the conditions to qualify for exemption under Article 92 (2) and (3) of the EEC Treaty.

As a result, the aids should be abolished and made subject to a recovery order. As regards the equity loan in particular, the Commission has been unable to quantify the aid element to be recovered for the reasons given in Part III of this Decision. It is therefore the duty of the French Government, when implementing the measures to comply with this Decision, to determine itself the amount of aid to be recovered on the basis of the procedures defined by the Commission; the amount of aid will thus be equal to the difference between the equipment loan interest rate applied by the Crédit National on the date on which the equity loan in question was awarded and the interest rate actually paid by International Harvester/Tenneco France up to the date on which this Decision is adopted; these measures must be communicated to the Commission within two months to enable it to verify that they are in conformity,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the French Government in 1985 and 1986 to International Harvester/Tenneco France in the form of a grant of FF 40 million, an interest subsidy on an equity loan of 135 million, equal to the difference between the market interest rate and the repayment of the equity loan are illegal for breach of the rules of procedure provided for in Article 93 (3) of the EEC Treaty. The aids are also incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

Article 2

The French Government shall abolish and recover the aids referred to in Article 1.

Article 3

The French Government shall inform the Commission within two months of the measures taken to comply with this Decision.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 29 March 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission