II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 15 November 1988**

**relating to aid which the Belgian Government has granted to a petrochemicals company at Ottignies/Louvain-la-Neuve (SA Belgian Shell)**

**(Only the French and Dutch texts are authentic)**

(89/254/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 22 December 1987, received on 4 January 1988, the Belgian Government notified a plan to grant investment aid to SA Belgian Shell at Ottignies/Louvain-la-Neuve under the Expansion Law of 17 July 1959.

The investment aid is to be granted for the creation of a research laboratory for the development of new, technologically advanced petrochemical products and the improvement of existing products such as epoxy resins, polyurethanes, elastomers, polypropylene, polyethylene, polybuthylene, polyvinyl chloride and expansible polystyrene. The research will also investigate new applications for these productsd. It is not planned to start production at Louvain-la-Neuve.

In view of the considerable volume of trade in petrochemicals between Community countries, the Commission considered that the measure in question was an aid pursuant to Article 92 (1) of the EEC Treaty and that, according to the information at its disposal and that made available by the Belgian authorities, it did not *prima facie* satisfy the conditions for exemption pursuant to Aticle 92 (3). It therefore opened the procedure provided for in Article 93 (2) in respect of that aid.

By letter dated 11 February 1988 it gave the Belgian Government notice to submit its comments. Comments were also invited from the other Member States by letter dated 29 April and from other interested parties by letter dated 3 May 1988.

II

The Belgian Government, in reply to the opening of the Article 93 (2) procedure, sent its comments by letter dated 7 April 1988, received on 14 April 1988.

It argued that the laboratory to be assisted had been specifically designed to undertake basic and experimental applied research in order to identify and assess new potential applications and to develop, at the stage of basic industrial research, innovative high technology products capable of satisfying new, predetermined needs.

Within the framework of the procedure, four other Member States, an enterprise in the relevant sector and one association submitted observations.

III

The measures proposed by the Belgian authorities consist in a direct grant of 15,6 % of planned investment (Bfrs 217 015 million in aid for an investment of Bfrs 1 391 125 million) and in a five-year exemption from property tax with a net grant equivalent of 9,56 %.

The Community petrochemicals market is characterized by strong competition and considerable intra-Community trade.

The petrochemicals industry in Europe comprises a large number of companies, both independent and subsidiaries of national and multinational chemical and oli companies, located in various Member States and emnploying between 550 000 and 600 000 pesons.

In 1987, total turnover in the Community petrochemicals industry reached ECU 99 180 million. Exports to Member States accounted for ECU 39 800 million, or 40,13 % of turnover.

In 1986, intra-Community trade in unsaturated ethylene and propene not for carburation or combustion attained a volume of ECU 693 million and 294 million respectively. The figures for unsaturated butenes, butadienes and methylbutadienes, and styrene were ECU 204 million and 457 million.

The recipient of the planned aid, Belgian Shell, is one of the trading firms belonging to the Royal Dutch-Shell Group that are established in the Member States and market petroleum and petrochemical products manufactured at the Group's production centres in Europe. Thus the chief market for Belgian Shell is Belgium (94 % of petroleum products and 68 % of petrochemical products are sold in Belgium). The company obtains 17,4 % of its turnover from petrochemical products, of which 32 % were exported to other Member States in 1986.

In view of the above considerations, the situation in the market in question and the position of the firm in question on that market, the aid envisaged is 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.

When a State aid strengthens the position of some undertakings in relation to their competitors in the Community, it must be regarded as affecting such competitors.

The aid in question distorts competition by reducing the cost of investing in the laboratory which gives the undertaking concerned a competitive advantage over other producers in the petrochemicals industry.

IV

Article 92 (1) provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. The exceptions provided for in Article 92 (2) are not applicable in this case because of the nature of the proposed assistance and its objectives.

According to Article 92 (3) of the Treaty, aid which may be regarded as compatible with the common market must be determined 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 having regard to the principle embodied in Article 3 (f) of the Treaty, the exceptions provided for in Article 92 (3) must be construed narrowly when any aid scheme or any individual aid award is scrutinized.

In particular, the exceptions may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to encourage the recipients to attain one of the objectives of the exceptions.

Applying the exceptions to cases not contributing to such an objective or where aid is not needed to this end would mean conferring advantages on the industries or undertakings of certain Member States, thus artificially strengthening their financial position, adversely affecting trading conditions between Member States and distorting competition without any justification based on grounds of the ocmmon interest referred to in Article 92 (3).

The Belgian Government was unable to provide, and the Commission to find, any reason for classifying the aid in any of the categories of exception pursuant to Article 92 (3).

Article 92 (3) (a) and (c) allows exceptions for aid that promotes or facilitates the development of certain areas, but there is no region in Belgium which has an abnormally low standard of living or serious underemployment within the meaning of subparagraph (c); as regards the exception in subparagraph (c), the Ottignies/Louvain-la-Neuve area in the province of Brabant where the investment in question is located, was not included in special regional aid zones in Commission Decision 82/740/EEC [1] on the definition of development areas in Belgium.

As for the exceptions provided for in subparagraph (b) of Article 92 (3), it is clear that the aid is not intended to promote the execution of a project of common European interest or to remedy a serious disturbance in the Belgian economy. A specific aid for a single company in the petrochemicals sector would not remedy the type of situaitons described in Article 93 (3) (b), and the Belgian Government has not put forward any such justification for the aid in question. The Commission has therefore come

[1] OJ No L 312, 9. 11. 1982, p. 18.

to the same conclusions as those contained in the Court of Justice Judgment of 8 March 1988 in joined Cases 62/87 and 72/87, point 22 *et seq.*

As to the exception in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, it must be concluded that whilst the aid facilitates the development of the undertaking in question, at the same time it affects trading conditions to an extent contrary to the common interest.

As the Community framework for State aids for research and development shows (1), the Commission is in favour of aid for research or development projects.

The aid in question, however, is not aimed at financing certain specific R & D projects but contributes essentially to the purchase of land and the construction of a building to house the laboratory in question (86,9 % of total cost of project). The purchase of scientific and data-processing equipment, however, represents only 13,1 % of total costs. Furthermore, although the laboratory will be carrying out so-called 'experimental' industrial basic and applied research, in the sense that its planned to establish a permanent dialogue with universities and industry, it will initially be given traditional petrochemical development work, including techniques for the application of polymers.

The activities of the company building the laboratory to be assisted are limited to marketing the petroleum and petrochemical products of Royal Dutch-Shell. As a result, the exploitation of the results of the research conducted in the laboratory will be entrusted to the Group's various production centres. Thus aid granted to the laboratory would benefit not Shell but also the whole Royal Dutch-Shell group.

The Community petrochemicals market is affected by a certain degree of instability reflected in large cyclical fluctuations of supply and demand. The overcapacity which arose in the second half of the 1970s led to a crisis in the early 1980s entailing extensive losses. Although the sector has now returned to profit, following capacity cuts and a rise in demand, capacity increases in certain sub-sectors such as propylene and ethylene and the emergence of new non-Community producers (Gulf countries, South-East Asia, Eastern Europe) is liable to lead once again to overcapacity.

It is in the interest of any company in the sector wishing to maintain or improve its position on the market to identify and assess new potential applications for petrochemical products and to design new products.

In view of the difficult market situation that could arise with the appearance of overcapacity and the arrival of new producers, approval of the proposal to grant aid for the Belgian Shell laboratory would mean putting its competitors at a disadvantage which could cause an unjustified drop in their sales and/or compel them in the medium term to withdraw from the market.

Taking account of the financial position of the parent company and its interest in having the laboratory, it is concluded that the aid in question is not necessary and that market forces alone should suffice for the investment to be achieved without an aid grant.

Consequently, the aid in question does not facilitate the development of the industry in question and alters trading conditions to an extent contrary to the common interest within the meaning of Article 92 (3) (c).

The aid proposed by the Belgian Government does not therefore meet the conditions required for application of any of the exceptions provided for in Article 92 (3) of the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

Belgium shall not implement the proposal notified to the Commission by letter dated 22 December 1987 to grant aid for an investment programme implemented at Ottignies/Louvain-la-Neuve by SA Belgian Shell.

*Article 2*

Belgium shall inform the Commission, within two months of the notification of this Decision, of the measures it has taken to comply therewith.

*Article 3*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 15 November 1988.

*For the Commission*

Peter SUTHERLAND

*Member of the Commission*

(1) OJ No C 83, 11. 4. 1986, p. 2.