II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 May 1989

concerning aid provided or to be provided by the Spanish Government to Enasa, an undertaking producing commercial vehicles under the brand 'Pegaso'

(Only the Spanish text is authentic)

(89/633/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,

Whereas :

I

By letter dated 17 September 1986, the Commission requested from the Spanish Government information concerning an alleged aid in the form of new capital that the Spanish authorities, according to press information, intended to inject in Enasa in 1986.

By letter dated 6 February 1987 from the Spanish Permanent Representation, it was confirmed that the public holding INI contributed in 1986 Ptas 5 000 million to Enasa destined for the finance of extraordinary costs subsequent to adjustments in capacity and employment as well as for the finance of stocks from military production. Information was also given as concerns the capital injections awarded in 1983 and 1985, Enasa's industrial activities, its commercial and financial problems, the ongoing reduction of employment, the future investments and the company's difficulties resulting from Spain's accession to the Community.

On 20 May 1987, the Commission decided to initiate the procedure provided for in Article 93 (2) with respect to the non-notified capital injection provided by the public holding INI to ENASA for the year 1986. In taking its decision, the Commission considered that in view of the financial performance of the undertaking in question since 1981, which was characterized by losses and heavy indebtedness, the injection of new capital of Ptas 5 000 million cannot be considered as the provision of risk capital according to standard company practice in a market economy and that therefore it constitutes an aid within the meaning of Article 92 (1) of the Treaty.

In view of the overcapacity problems that the commercial and industrial vehicle industries are facing at Community level, and of the lack of an agreed and concise restructuring plan for Enasa, which should not only restore the undertaking's viability but should also contribute in a significant way to the rationalization of the concerned Community industries, the Commission considered that the aid measure in question could not benefit from the exceptions in Article 92 (2) and (3) of the Treaty.

By letter of 25 May 1987 the Commission gave the Spanish Government notice to submit its comments and respond to the precise questions which were raised in the letter. In accordance with Article 93 (2), the other Member States and third parties were also given notice to submit their comments.

II

Within the framework of the procedure, the Spanish Government submitted its observations by letter dated 14 September 1987. In this letter, the Spanish Government expressed its view that the capital injection of Ptas 5 000 million which was contributed by INI on 30 December 1986, cannot be considered as aid in terms of the

Commission's position as public holdings in company capital, cannot fall within Article 92 (1) of the EEC Treaty because it does not affect intra-Community trade, is an existing aid under Article 93 (1) because it was already agreed in 1982 by INI, long before Spain's accession to the Community and covers redundancy costs incurred between 1983 and 1985, has possibly to be considered as compatible with the common market under Article 92 (3) (c) because of the restructuring elements it involved, should partly be considered under Article 92 (3) (a) because 15 % of Enasa's production is realized in a less-favoured area, and part of the public funds fall within the scope of Article 223 (1) (b) of the Treaty because they concern Enasa's military production activities.

Within the same communication the Spanish authorities provided on a strictly confidential basis the main lines of Enasa's restructuring plan for 1987 to 1991 which involves very large future capital injections.

Four other Member States submitted observations under the abovementioned procedure.

III

By letter of 2 October 1987, the Commission requested the notification pursuant to Article 93 (3) of the new aids envisaged within the framework of the 1987 to 1991 restructuring plan.

By letter of 18 December 1987 from its Permanent Representation the Spanish Government notified to the Commission its intention to provide Ptas 96 000 million financial assistance to Enasa through the public holding INI in support of its restructuring plan for 1987 to 1991.

The restructuring plan is designed to restore Enasa's viability by closing its production capacity of vans and light trucks in Valladolid as well as some component capacities and concentrate on the heavy-truck market segments. The plan also provides for an overall reduction employment, financial restructuring, and an investment and R&D programme by which Enasa will rationalize the remaining production facilities and introduce new technologies.

According to the Spanish authorities the contributions of funds from INI for Enasa cannot be considered as aid measures falling under Article 92 (1) because INI, in its position of sole shareholder of Enasa and convinced of the viability of the undertaking, acts in a similar way as a private investor. And even when the contributions contain State aid elements such aid does not fall under Article 92 (1) because it does not affect intra-Community trade nor distort intra-Community competition as set out in that Article. In fact, in 1986 Enasa produced only 8 500 units which represents only 3 % of total Community production. As total intra-Community trade of trucks reached 81 070 units in 1986, the 314 units of exports by Enasa to other Member States corresponded to only 0,4 %. Moreover, the market share of Enasa in the Spanish truck market decreased again in the first semester of 1987, falling from 18,5 % to 13,9 %. There exists also no evidence that Enasa has distorted competition because there exists no such fact.

On 17 February 1988, the Commission decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty with respect to the notified public assistance of Ptas 96 000 million in support of Enasa's 1987 to 1991 restructuring plan. In taking its decision, the Commission considered that, in view of the financial performance of the undertaking since 1976 which was characterized by rapidly increasing losses and debts, the contribution of Ptas 96 000 million cannot be considered as the provision of risk capital according to standard company practice in a market economy and that therefore it constitutes an aid within the meaning of Article 92 (1).

In view of the lack of further information on the aid measures and the future restructuring efforts of Enasa, of the sensitivity of the motor vehicle industry, the surplus capacity in the truck and bus industries at Community level, and the link of this aid plan with the pending aid procedure for the same undertaking, the Commission concluded that there was no sufficient ground to believe that the new aid could benefit from one of the exceptions in Article 92 (2) and (3) of the Treaty.

By letter dated 25 February 1987 the Commission gave the Spanish Government notice to submit its comments and respond to the precise questions raised in the letter. In accordance with Article 93 (2), the other Member States and third parties were also given notice to submit their comments.

IV

The Spanish authorities presented their comments on this procedure by letters dated 25 March and 30 September 1988. Detailed information on request of the Commission was also provided by letters of 5 July, 21 November and 25 November 1988 as well as during several bilateral meetings with Commission departments which took place between July 1988 and February 1989.

The information concerns the following aspects of the case :

— description of the restructuring measures,

— description of investments and R&D expenditures,

— production, capacity and trade data,

— financial position and prospects.

— reduction of workforce and cost of redundancy schemes,

— viability forecast at the end of the restructuring plan and market prospects,

— taxation and accounting principles and data,

— pricing strategy of the company and cooperation agreements with other Community truck producers.

It became apparent from the Spanish response of 30 September 1988 that the capital contribution by INI in 1986 amounted to Ptas 12 500 million instead of Ptas 5 000 million, originally communicated. This capital injection should in the opinion of the Spanish authorities not be considered as aid because its contribution was decided already before 1 January 1986, the date of Spain's accession to the Community. In this communication the Spanish authorities extended the time scope of the restructuring plan to the period of 1986 to 1991, reviewed its cost and the company's cash-flow and advanced arguments on the aid content of the envisaged public assistance totalling Ptas 108 500 million (Ptas 12 500 million in 1986 plus Ptas 96 000 million between 1987 and 1991). In their opinion the following elements should not be regarded as aids under Article 92 (1):

— Ptas 44 869 million losses which occured before Spain's accession, of which Ptas 26 464 million were losses which were booked during the financial years before 1986 and Ptas 18 406 million other losses which will be booked in future years. INI, advised by independent consultants, recognized these losses and the necessity to compensate them by capital contributions. However, due to a lack of funds the capital contributions additional to the Ptas 12 500 million of 1986 were postponed to later years,

— Ptas 21 050 million fiscal credits which INI will pay in order to buy the tax loss advantages of Enasa (similar to any other asset) and is based on the approval by the Spanish Finance Ministry dated 2 February 1987 of the fiscal consolidation for the INI group covering the years 1986 to 1988. A note from the Finance Ministry on the subject was handed over,

— Ptas 9 304 million military investments required by national defensive objectives of which Ptas 5 200 million are purely military and non-disclosed projects and Ptas 4 104 million corresponds to 50 % of the investments which benefit both military and civil products,

— Ptas 16 242 million or the part of the cost of the voluntary redundancies which exceeds the minimum legal requirements and corresponds to normal business practice in Spain. It has to be noted that, according to Spanish Law, enterprises can only make workers redundant on a voluntary and negotiated basis,

— Ptas 6 113 million additional financial charges which the company has to bear since beginning of 1986 due to the delayed capital contributions.

In consequence, according to the Spanish authorities only Ptas 10 908 million should be regarded as aids under Article 92 (1) and the aid intensity would under these assumptions only be 20 % given that the relevant restructuring cost amounts to Ptas 54 000 million.

The purpose of the restructuring plan is to restore the company's viability and according to the Spanish authorities the amounts of public assistance represent a minimum to assure the financial and technical restructuring of the company. At the same time the company undertakes a maximum effort to contribute to the finance of the plan by a drastic reduction of its working capital, by sales of assets and buildings and by a positive cash-flow by the later years of the plan.

Four other Member States submitted observations under the abovementioned procedure.

V

Enasa was created in 1946 by INI, the public holding responsible for the industrial reconstruction in Spain, incorporating the activities and resources of the former Hispano Suiza car company, Spain's pioneer automotive company. Enasa grew in a closed market as an integrated manufacturer for trucks, buses and military vehicles. It attained its historic maximum production in 1974 with 26 000 vehicles, with a labour force of 12 500 persons. Faced with an economic crisis and losses since 1976, which coincided with the opening of the Spanish economy to international trade, INI concluded in 1980 an agreement with International Harvester, the leading US truck producer by which International Harvester obtained a 35 % share in Enasa and introduced an ambitious expansion plan for the development and production of trucks, engines and tractors by Enasa, destined mainly for exports to the US and to Europe. However, in 1982, due to the crisis in the US market, International Harvester pulled back from its involvement in Enasa, abruptly ending the completion of the investment plan. Enasa, which already had invested heavily in the new activities, remained with overcapacity in export products for which the markets were not available anymore, e.g. diesel engines, and with a lack of financial resources for the renewal of its traditional products. As a consequence, Enasa sought new joint-venture partners for a full merger and for development cost-sharing projects: While Enasa did not succeed in finding a merger partner, it concluded technical cooperation agreements with DAF and ZF.

Enasa is presently the biggest truck and bus producer in Spain. It employed in 1987, 6 959 workers and produced 12 980 civil and military vehicles. In Spain it operates four production plants, i.e. in Madrid, Barcelona, Mataró (Barcelona) and Valladolid. Two of its subsidiaries also produce vehicles, i.e. Seddon Atkinson in the United Kingdom and Pegaso Venezuela. Enasa also controls distribution subsidiaries in Spain, France, Benelux and Chile as well as several smaller financing subsidiaries.

In Spain, Enasa has an annual capacity to produce 19 100 vehicles, 23 850 engines, 13 000 gearboxes, 15 000 rear axles, 18 000 cabs and many other smaller components. Seddon Atkinson which operates independently from Enasa, has an annual capacity of 3 600 vehicles.

Enasa is a strong market leader on the Spanish bus and heavy truck markets (40,7 % and 38,2 % respectively in 1987) and has a relatively small position in the Spanish light truck and van markets, where it is offering imported models (VW and MAN) badged Enasa while gradually eliminating its in-house produced range. Seddon Atkinson has a small market position on the United Kingdom truck market. On the European level, Enasa holds some 3 % of the Community market for trucks above 6 tonnes. It however exported in 1987 only some 600 vehicles to other Community countries.

VI

The restructuring plan for Enasa notified to the Commission covers the years 1986 to 1991 and will cost Ptas 138 831 million (some ECU 1 000 million). It foresees the closure of three obsolete production units, i.e. the closure of the manufacturing plant for vans and light trucks in Valladolid, the closure of a component unit in Madrid and the closure of a bus assembly line and of a component unit in Barcelona. The rationalization costs (other than social costs) of these three closures is equivalent to Ptas 2 000 million. By the end of the plan, capacities in Spain will be as follows: 13 280 vehicles (— 31 %), 18 800 engines (— 21 %), 13 000 gearboxes, 15 000 rear axles, 17 300 cabs (— 4 %) and a reduced number of other components.

The surfaces which have to be cleared in two locations will be used for other purposes. In Valladolid a new capacity will be created for the production of special-purpose and military vehicles (annual capacity of 1 080 vehicles). In Madrid the available area will mainly be used for storage.

In order to improve the productivity of the remaining capacities, Ptas 39 394 million will be needed for tangible, financial investments and R&D expenditures. Apart from 1986, the investment budget for 1987 to 1991 can be divided as follows:

(million pesetas)

Modernization of Madrid plants	7 127
Modernization of Barcelona plant	3 441
Modernization of Valladolid plant	510
Product development	7 604
Commercial and financial investments	4 544
R&D expenditures	1 067
Defence	5 200
Other minor projects	1 907
Total	31 400

Through these investments, Enasa will be able to increase its production during the restructuring plan from 11 984 civil vehicles in 1986 to 12 887 (+ 7,5 %), due to higher utilization of remaining capacities. Furthermore, in the product segments where production will be abandoned the company expects to sell in 1991, 8 677 imported vehicles badged Enasa in order to keep or strengthen its market share. As a consequence Enasa will be able to increase its turnover from Ptas 61 800 million in 1986 to Ptas 114 800 million in 1991.

The plan foresees the reduction of labour force from 8 633 employees at the end of 1985 to 5 100 at the end of 1991. The majority of these redundancies will have to take place through expensive voluntary redundancy schemes. The total cost of the social restructuring corresponds to Ptas 42 891 million.

The restructuring plan also provides for the repayment of Ptas 54 546 million net financial debt by which the financial charges will be reduced to a normal proportion of 3,5 % of turnover by 1991 which compares to 17 % in 1985. At the end of the restructuring plan Enasa will reach a debt level which will be still the double of its equity and the net financial debt will correspond to 23 % of its turnover.

According to the final updated figures submitted by the Spanish authorities, the total cost of Ptas 138 800 million will be financed as follows:

— from the company's own resources through the reduction of working capital, cash flow and sales of assets for Ptas 30 355 million,

— from INI through capital injections, extraordinary contributions and fiscal credits for Ptas 108 436 million.

VII

The European truck industry (6 tonnes and above) has been facing serious problems since 1980 when production was around 421 000 units. Production dropped in 1986 to only 287 000 units, or 32 % lower than in 1980. This was due in part to weak domestic demand, but mainly to a slump in exports which fell from 184 000 to only 90 000 units in 1986. The reductions in exports concentrate in the African and Asian developing countries which suffered from falling oil and commodity prices and where

Japanese competition was particularly strong. This situation led to large degree of overcapacity estimated in 1983/84 to be around 40 %, fierce price competition on the European market and serious financial difficulties for the European producers. In 1983 and 1984 it is estimated that their combined net losses amounted to around ECU 600 million. Since 1984, the peak of the crisis, the European producers have initiated a restructuring process which was translated in reductions in capacity and workforce, and productivity improvements, joint-ventures in product development and since 1986 the withdrawal of several manufacturers (in 1986 GM withdrew, Ford merged with Iveco and in 1987 Leyland merged with DAF). This restructuring enabled the European truck industry to adapt to new levels of demand (overcapacity in 1987 was estimated at 20 %). At present Enasa is the only loss-making truck producer in the Community (exclusion is made for small producers for which complete financial data are not available).

The situation of the European bus industry is very similar to that of the truck industry, also because most Community truck producers manufacture buses.

In Spain there are four producers of commercial vehicles (trucks and/or buses): apart from Enasa, there is RVI (Renault), Motor Iberica (Nissan) and Daimler-Benz. It has to be noted that the commercial vehicle producers in Spain were protected from external competition through an import tariff of 28 % until the date of Spain's accession to the Community. This tariff has been gradually reduced and will be completely eliminated by the end of 1992. The reduction of tariff protection since 1986 has caused a rapid increase of imports into Spain and subsequently led to a loss of market shares of local producers.

VIII

In its examination of the compatibility with the common market of total sums of Ptas 108 436 million of public intervention proposed or already awarded in support of Enasa's restructuring plan, the Commission has verified to what extend these measures constitute aid under Article 92 of the Treaty.

As concerns the Ptas 12 500 million capital injections awarded in 1986, the Spanish authorities provided evidence that the decision to inject this capital was already taken before 1 January 1986, i.e. before Spain's accession to the Community, and were awarded in 1986 only because of INI's budgetary constraints at that time. This amount includes the Ptas 5 000 million for which the Commission initiated the first procedure and which served to finance redundancy costs that occurred in the years 1983 to 1985. It can be considered that the Ptas 12 500 million capital injections which rescued Enasa from receivership in 1986 fall outside the scope of this Decision as they were decided before 1 January 1986, i.e. before Spain was a Member of the Community and, thus, subject to Community Law.

The remaining financial assistance corresponds to Ptas 95 976 million which was notified to the Commission in connection with the restructuring plan for 1987 to 1991 and consists of three elements:

— Ptas 21 040 million fiscal credits,
— Ptas 34 317 million capital injections,
— Ptas 40 619 million extraordinary contributions.

As for the estimated Ptas 21 040 million fiscal credits, the Spanish authorities have provided evidence by notes of 15 and 24 February 1989 that there exists a very particular tax system in Spain installed by Royal Decree 1414/77 which introduces the possibility of consolidation of the tax carry-forward advantages at group level. The net result of the consolidated group is then the only taxable basis and tax losses of the group can be deducted from future group profits during the next five years. By Ministerial Decree of 2 February 1987 the Spanish Ministry of the Economy and Finance awarded to INI Group the advantage of that system for the fiscal years 1986, 1987 and 1988. During these years, the tax losses generated by Enasa can only be used by the INI Group in as far as the Group is making losses during these years. Enasa automatically loses its rights to benefit from its tax losses generated during these years.

Like other industrial groups in Spain which benefit from this particular tax system, INI has installed a mechanism which distributes the tax payments and advantages over its subsidiaries. Profitable subsidiaries have to pay 35 % to INI while INI awards 28 % of the losses in the form of a fiscal credit to loss-making subsidiaries (27 % up to 1987). This last percentage is based on the maximum degree of fiscal incentives to investments. INI itself has had losses during 1986 and 1987 for which it obtained a tax credit. In 1988 INI has been profitable and will be able to use part of the tax losses it has generated in the previous years. It is expected that INI will also benefit from this system after 1988.

The estimated Ptas 21 040 million fiscal credits are equivalent to the normal tax carry-forward advantages generated by Enasa's losses which benefit the mother company INI. As this amount results from the provisions of the Spanish tax systems, it does not constitute State aid within the meaning of Article 92 (1).

As concerns the Ptas 34 317 million capital injections, Ptas 29 117 million which are destined to compensdate past accumulated operating losses and Ptas 5 200 million to reconstitute Enasa's social capital, this amount constitutes State aid within the meaning of Article 92 (1).

The Commission has established its policy as regards State participations in company capital in September 1984 and has informed the Member States hereof by letter dated 17 September 1984. According to this communication, State aid is involved where fresh capital is contributed by the State in circumstances that would not be

acceptable to a private investor operating under normal market economy conditions. This is the case where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested, or where, because of its inadequate cash-flow, if for no other reason, the company would be unable to raise the funds needed for an investment programme on the capital market.

In view of Enasa's continuous losses which increased dramatically from 1985 onwards (i.e. Ptas 17 000 million in 1985, 24 000 million in 1986 and Ptas 11 000 million in 1987), as well as its deteriorating net debt situation amounting to Ptas 89 300 million at the end of 1986, the capital contributions of Ptas 29 117 million constitute State aid because under the described circumstances a private investor operating under normal market economy conditions would not have undertaken this investment.

The Commission can neither accept the argument that these capital injections cover losses of the period before 1986 given that there was no formal decision, dated before 1986, to inject such amounts.

The remaining capital contribution of Ptas 5 200 million is exclusively linked to military projects imposed under national defence objectives. The investments and specific aids in the military vehicles activities come within the terms of Article 223 (1) (b) of the Treaty and have not, accordingly, been considered in the Commission's assessment in this case.

As concerns the Ptas 40 619 million extraordinary contributions which are destined to compensate for pluriannual restructuring costs, this amount constitutes State aid within the meaning of Article 92 (1). Indeed, the public shareholder provides this amount in order to finance specific extraordinary costs of Enasa, i.e.

— long-term R&D (Ptas 1 363 million),

— exchange rate losses (Ptas 5 218 million),

— voluntary redundancy costs (Ptas 34 038 million).

These costs should normally be borne by the undertaking itself. Through the full coverage by INI of Enasa's extraordinary costs, Enasa obtains an artificial financial advantage compared to its competitors, who have to bear such costs by their own resources. These amounts can neither be considered as investments given that they are awarded by INI in the form of grants without affecting the level of equity capital.

In consequence, of the total sum of Ptas 108 436 million, Ptas 69 736 million constitute State aid in the meaning of Article 92 (1) considering also the fact that there is intensive intra-Community trade for all products manufactured by Enasa. In fact, total intra-Community trade for large trucks and buses reached 10 147 units in 1987 of which 11 484 units or 11,4 % were exported from Spain to the other Member States. In 1987 Enasa had a market share of 3 % in the Community truck market. Enasa exported in 1986 314 buses and trucks to the other Member States and expects to increase its Community exports by 1991 to 1 740 units. Therefore, the aid affects intra-Community trade and threatens to distort competition within the meaning of Article 92 (1).

IX

Article 92 (3) of the Treaty lists those forms of aid which may be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community as a whole 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), the exceptions from the principle of Article 92 (1) as set out in Article 92 (3) must be construed narrowly when an aid scheme or any individual aid 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 the attainment of one of the said objectives.

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, the application of the aid measure cannot benefit from the exception provided for in the abovementioned Article. Although one of Enasa's production plants is located in a regional assisted area, i.e. the Valladolid plant, the aid measures under consideration are not intended to specifically develop the region concerned but to restructure a company operating throughout the Member State concerned. Moreover, the aids relate to the financing of a very small amount of investments in such areas. The concept of regional development to which the exception of Article 92 (3) (a) is linked, is based essentially on the provision of aid for new investment or major expansions or conversions of undertakings involving investments of a physical nature and the costs associated with these. In this case, the amount of investments foreseen in the restructuring plan for the Valladolid plant corresponds only to Ptas 510 million, i.e. only 1,5 % of the total investments and 0,4 % of the total restructuring cost.

As regards the exemptions provided for in Article 92 (3) (b), it results from the foregoing that the aid in question was not intended nor suited to promote the execution of an important project of common European interest or to remedy a serious disturbance of the Spanish economy. Furthermore, the Spanish Government has not invoked this.

With regard to the exception provided for in Article 92 (3) (c) of the Treaty in favour of 'aid to facilitate the development of certain economic activites', the Commission may consider certain restructuring aid to be compatible with the common market if the aid is necessary for the development of the sector from a Community standpoint, and does not alter trading conditions to an extent contrary to the common interest (1).

The restructuring plan will reduce the assembly capacity of Enasa by 31 % mainly through the closure of the Valladolid plant where vans and light trucks are manufactured. The component capacity will also be reduced through the closure of two units and an important reduction in engine capacity. The remaining capacities will be modernized and integrated in order to produce a large number of new models covering less market segments. The closed plant of Valladolid will be converted for the manufacture of special purpose and military vehicles.

The Commission analysed the restructuring plan in detail and concluded that it assured the technical, economic and financial recovery of the company through a reduction of the break-even point which will guarantee that the company will in the future operate on a profitable level. The reduction of capacity also ensures that Enasa will not be able to increase its market share in the Community truck and bus market. Furthermore, it is expected that with the further elimination of the tariffs, Enasa's market shares will be further eroded in Spain.

This restructuring contributes to the overall restructuring of the truck and bus industry of the Community. In 1986, when the restructuring plan of Enasa was drawn up, the truck and bus industry was still suffering from a large surplus capacity and all other Community producers were adapting their production and capacity to lower demand by the elimination of surplus capacity for trucks and buses and by reduction of their in-house produced model range. Therefore Enasa contributes in a significant way to the rationalization of the sector concerned at Community level.

(1) See Judgement of the Court of Justice of 17 September 1980, Case 730/79, Philip Morris/1980/ECR 2671.

In its appreciation the Commission took also account of the fact that Enasa was operating in the past in a well-protected national market without having to face the strong competition from other European manufacturers. This lack of competition had a direct negative bearing on the company's competitiveness and general performance. The access of Spain to the Community and the resulting gradual opening of the Spanish commercial vehicle market to Community competition forced Enasa to adapt its productive structure to the conditions of international competition in a very drastic way and within a relatively short time period. Therefore, the aid contributes to the necessary adaptation of the company to the open competition reigning in the common market.

The situation of Enasa can be compared to some extent with the precarious situation of Renault's and Rover Group's bus and truck subsidiaries two years ago, i. e. RVI, Leyland Bus and Leyland Trucks. This situation is characterized by the ocntinuous loss of market share, an enormous debt burden due to several years of high losses, a productivity level which falls far behind the competitors, an ageing and too-diversified product mix, a lack of integration of the various production sites and last but not least a serious overmanning problem. Also in common is the will of both the company itself and the public shareholder to drastically reorganize the business and make the necessary social sacrifices in order to stop the vicious circle and regain profitability. Such reorganization does not only require a long and continuous technical, economic and financial restructuring effort but also an expensive rationalization programme.

By its decisions of 18 March 1987 concerning the restructuring and privatization of Rover Group's truck and bus subsidiaries and of 29 March 1988 concerning the restructuring of Renault Group which involved also the restructuring of its truck subsidiary RVI, the Commission approved in both cases substantial aid in the form of capital injection. The restructuring plans of both commercial vehicle producers involved substantial capacity reductions and redundancies. In both cases the Commission made sure that the aid was in proportion to the problem it was designed to resolve, that distortions of competition are kept to a minimum and that the recovery of the companies is secured by the end of the restructuring plan.

In the case of Enasa, the Commission came to the conclusion that while the restructuring assures the comapny's recovery, the envisaged aid must be regarded as excessive when seen in relation to the total restructuring and investment costs. Indeed, the total amount of aid of Ptas 69 736 million is very high as related to the total cost of the restructuring plan for 1987 to 1991 of Ptas

128 434 million (excluding the military projects) and represents 54 % (1). Thus the aid intensity is by far exceeding the anticipated 31 % capacity reduction. It would furthermore place the company in a more favourable financial position than some of its Community competitors.

Consequently, the Commission in consultation with the Spanish authorities has analysed in how far the aid can be reduced without jeopardizing the technical, economic and financial recovery of the company and which would bring the intensity of aid, to be awarded in relation to the total cost of the restructuring plan, in proportion to the problem which the plan will resolve, e. g. the degree of overcapacity in the company which is to be eliminated through capacity reductions.

The Commission concluded that the aid should be reduced by Ptas 23 000 million to Ptas 46 736 million which would bring the aid intensity to 36 %, i. e. which compares to the planned capacity reduction of 31 %. The net financial debt of the group which at the end of 1986 is according to the companies accounts Ptas 89 275 million will be brought down to less than Ptas 50 000 million at the end of 1991. However, both these figures are in the Commission's opinion overestimated because they include at least a Ptas 10 000 million of commercial debt which the Commission was able to identify as working capital and which, following the principles set out in Decision 89/58/EEC (2) concerning the Rover Group, it cannot consider as net financial debt. Therefore, the Commission considers that the company's net financial debt at the end of 1986 and 1991 is respectively Ptas 79 300 million and 40 000 million. Therefore, despite the reduction of the aid by Ptas 23 000 million, the financial debt/turnover ratio will improve from a level of 106 % at the end of 1986 to 35 % by the end of 1991.

The higher financial charges resulting from the reduction of aid volume will not prevent the company from obtaining profitability by the end of the restructuring plan. Furthermore, despite the reduction of the aid, the net worth of the company will improve from minus Ptas 16 600 million before the restructuring plan to an estimated positive value of Ptas 4 400 million at the end of the plan.

The above demonstrates that the success of the technical, economic and financial restructuring will not be endangered through an aid reduction of Ptas 23 000 million. A further reduction of the aid would however seriously endanger the success of the financial part of the restructuring plan.

(1) In view of the absence of an agreed reference interest rate for Spain, the aid amounts and the restructuring costs could not be actualized.
(2) OJ No L 25, 28. 1. 1989, p. 92.

In conclusion, the aid of Ptas 46 736 million to be awarded to Enasa will lead to the recovery of the company in technical, economic and financial terms and, through the proposed restructuring, will contribute to the avoldance of structural problems which the Community truck and bus industry still faces and may face in the near future. For these reasons the Commission considers that the aid facilitates the development of the sector concerned at Community level witout adversely affecting trading conditions to an extent contrary to the common interest.

The limitation of the trade-distorting effect of the aid depends, however, largely on the future restructuring being carried out within the provisions of the notified restructuring plan in the anticipated period. Moreover, it is necessary to assure that the financial contributions which were not considered aid will not exceed the estimated amounts communicated to the Commission.

Consequently, if the Commission considers that the exception under Article 92 (3) (c) is applicable to Ptas 46 736 million aid to be granted to Enasa up to 1991, its authorization is only valid if certain conditions are respected in order to ensure that trading conditions in the sector concerned are not altered to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The aid to Enasa amounting to Ptas 69 736 million which constitutes the aid element of the notified public assistance in support of the restructuring plan for 1987 to 1991 is compatible with the common market pursuant to Article 92 (3) (c) up to a maximum amount of Ptas 46 736 million, and can be awarded provided that the Spanish Government:

1. refrains from granting any further aid in the form of capital contributions and any other form of discretionary aid to Enasa till the end of the year 1991, the end of restructuring plan;
2. ensures that Enasa completes its restructuring plan by the end of 1991 in accordance with the details communicated to the Commission.

Throughout the implementation of the restructuring plan the Spanish Government shall provide the Commission with a half-yearly report on Enasa's restructuring efforts, trading performance, capacity changes, production, pricing policy and intra-Community exports by product as well as on the aid payments and the fiscal credits it recelved from INI during the previous six months. The first report concerning the first semester of 1989 shall be communicated to the Commission by the end of September 1989.

Article 2

The remaining part of the notified aid to Enasa amounting to Ptas 23 000 million constitutes State aid which is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and shall therefore not be awarded.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 3 May 1989.

For the Commission

Leon BRITTAN

Vice-President