II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 November 1991

concerning aid granted by the Italian Government to Nuova Cartiera di Arbatax

(Only the Italian text is authentic)

(92/296/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, in accordance with the abovementioned Article, given notice to the parties concerned to submit their comments to it,

Whereas :

I

Nuova Cartiera di Arbatax (NCA) was constituted on 23 May 1988. Its initial capital of Lit 200 million was subscribed by Società finanziaria industriale rinascita Sardegna SpA (SFIRS) (55 %) and by Cartiera Burgo SpA (45 %). In July 1989 its capital was increased to Lit 100 billion, consisting of Lit 56 billion ordinary shares and Lit 44 billion privileged shares. Additional shareholders were the companies SIVA SpA and SAF SpA, belonging to the Ente nazionale per la cellulosa e la carta (ENCC), the Credito industriale sardo (CIS) and Cartiera di Toscolano SpA.

The capital of NCA was now subdivided as follows :

(in Lit billion)

Shareholders	Ordinary shares	Privileged shares
Burgo	16,4	—
Toscolano	1,6	—
CIS	16	—
SFIRS	6	—
ENCC (SIVA + SAF)	16	44

CIS also provided a loan of Lit 14,5 billion to NCA, whereas SFIRS provided a loan of Lit 10 billion. The possibility was left open for the ENCC to provide an additional Lit 12 billion in other forms than ordinary shares at a later stage.

Neither the provision of capital nor the provision of loans by public entities was notified to the Commission in advance pursuant to Article 93 (3) of the Treaty.

On 11 July 1989 NCA took over the largest manufacturer of newsprint in Italy, Cartiera di Arbatax, which had been declared insolvent on 25 March 1985 and had been put under *amministrazione straordinaria* by decree of the Minister of Industry dated 16 April 1985 (1). NCA's conduct of business was now managed by Burgo.

(1) *Gazzetta ufficiale della Repubblica italiana* No 93, 19. 4. 1985.

II

Already in 1986 the Commission learned of the plans of the Italian Government and the Sardinian authorities to restructure Cartiera di Arbatax. The Commission requested information on all aid provided or planned in favour of this company by letters dated 19 November 1986 and 2 April 1987.

The Italian Government replied by letter dated 12 February 1987 and by telex dated 5 May 1987 that no aid at all had been provided to Cartiera di Arbatax since it had been put under *amministrazione straordinaria.*

By letter dated 21 May 1987 the Commission made it clear that if the Italian Government were to envisage public shareholdings in a new legal entity in order to continue Cartiera di Arbatax's activities, this could well contain elements of State aid within the meaning of Article 92 (1) and recalled the necessity of prior notification of such aid pursuant to Article 93 (3) of the Treaty.

Commission Decision 90/215/EEC (1) dealt with aid granted by the Italian Government to the newsprint industry via the ENCC. The Decision stated that the ENCC had been misusing an aid scheme for the press in order to aid the Italian newsprint industry as well, by buying increasing amounts of domestically produced newsprint at artifically high purchase prices in comparison with the market price. The Commission estimated in its Decision that the Italian newsprint industry received aid of some Lit 900 million in 1985, Lit 21 billion in 1986 and Lit 12 billion in 1987. Cartiera di Arbatax was the main beneficiary of this operating aid. The Decision declared the aid incompatible with the common market and demanded its immediate abolition. The Decision was notified to the Italian Government under cover of a letter dated 7 June 1989.

The Italian Government replied by letter dated 9 June 1989, drawing the Commission's attention to the grave consequences of Decision 90/215/EEC for Cartiera di Arbatax, as this company was about to be taken over by a new legal entity, which had drawn up a restructuring and investment plan. In view of the difficult regional and industrial problems involved, the Italian Government requested that an exception be made under Decision 90/215/EEC for Arbatax during its restructuring, i.e. for a period of five years.

In a bilateral meeting held on 11 July and by letter dated 12 July 1989 the Commission replied that it could not agree to a continuation of the operating aid to Cartiera di Arbatax. Any new investments at Arbatax would however be eligible for regional aid under the terms of the aid regime for the Mezzogiorno, provided the usual conditions of eligibility for such aid were met.

By letter dated 10 August 1989 the Italian Government informed the Commission that it would comply with Decision 90/215/EEC and that it had instructed the ENCC accordingly. In view of the Commission's unfavourable opinion on any continuation of the aid to Arbatax, the Italian Government had decided in favour of the constitution of a new and larger company with public and private shareholders, among which Burgo and SIVA, which would carry out the restructuring of Arbatax.

As this letter did not contain any precise information, the Commission requested, by letter dated 9 October 1989, to be informed of the sums made available by public and private investors and the conditions attached to these interventions, of the anticipated restructuring measures and their financing and of any other public support given directly or indirectly. A reminder was sent on 11 April 1990.

By letter dated 15 June 1990 the Italian Government provided some information but it was only by letter dated 17 December 1990, after additional reminders dated 10 July, 9 August and 19 November 1990, that the Commission received the information it needed for a first assessment of the various interventions on the basis of Article 92 of the Treaty.

On the basis of this information the Commission concluded that the financial means necessary for the continuation and restructuring of Cartiera di Arbatax could not have been found on the capital market and that, consequently, the Lit 66 billion shareholdings provided by ENCC and SFIRS constituted State aid. The Commission also concluded that the loan of Lit 10 billion provided by SFIRS constituted State aid and possibly the interventions of CIS as well. The Commission considered that the aid was likely to distort competition and affect trade between Member States within the meaning of Article 92 (1) of the Treaty and that none of the exceptions set out in that Article could apply. The Commission therefore decided to initiate the procedure laid down in Article 93 (2).

(1) OJ No L 114, 5. 5. 1990, p. 25.

The Italian Government was informed of this decision by letter dated 20 March 1991 and, by letter dated 7 May 1991, was urged to provide its comments within one month. The other Member States and interested third parties were also given notice to submit their comments (1).

III

Within the framework of the procedure, meetings took place with representatives of the Italian Government on 14 June, 22 July and 24 July 1991. In the meetings held on 14 June and 24 July the Italian representatives announced that written observations, of which an advance copy was informally provided, would be submitted officially; the representatives of the Commission in these meetings urged the Italian delegation to do this swiftly, given that the Commission intended to take a final decision in September. After a further reminder dated 11 September 1991, the Italian Government announced, by letter dated 4 October 1991, that it would send all the information the Commission needed for its evaluation within a week's time. After a last reminder dated 17 October 1991, meetings with representatives of the Italian Government took place on 21 October and 14 November 1991. In these meetings the Italian Government submitted a parliamentary document dated 17 October 1991 and a study made by GEPI on NCA dated 31 October 1991. However, the Italian Government did not submit any written comments under the procedure and did not present any new elements, such as, for instance, a restructuring plan leading to a situation of profitability, which might have led the Commission to change its assessment of the case.

In this situation the Commission is obliged to terminate the procedure by adopting its decision on the basis of the information available to it (see judgment of the Court of Justice in Case 301/87 Boussac, ground 22).

As part of the procedure, the Government of Denmark, the British Newsprint Manufacturers' Association, SFIRS and NCA submitted their observations. These observations were submitted to the Italian Government for its comments by letter dated 2 July 1991. No such comments were received.

IV

Under Article 92 (1) of the Treaty and the relevant jurisprudence of the Court of Justice (2), as well as the Commission's general approach to acquisition of shareholdings by public authorities of which all Member States were informed in 1984, the provision of public funds to companies in the form of subscriptions of capital may involve elements of State aid. In order to verify whether such a provision of public funds is aid, it would be appropriate, ignoring any social elements or regional or sectoral policy, to consider whether under similar circumstances a market economy investor would go ahead with such an injection of capital in the same conditions on the basis of expected profitability.

In this content it should be noted that Cartiera di Arbatax made losses of Lit 17 billion in 1983, 30 billion in 1984 and 29 billion in 1985, which represented 20 %, 24 % and 27 % of its turnover in these years. In 1985 the company was declared insolvent and put under *amministrazione straordinaria;* Cartiera di Arbatax financial results for the following years were not communicated to the Commission by the Italian authorities.

Several factors help explain these losses: Firstly, Cartiera di Arbatax, being situated on Sardinia, had to pay high transport costs on its raw material — wood and cellulose — coming from the mainland and on the newsprint it produced, which had to be shipped back, mainly to Northern Italy. Secondly, cellulose accounted for 20 to 25 % of Arbatax's raw materials, whereas the average newsprint manufacturer in the Community had reduced his consumption of cellulose to ± 4 % and had started using waste paper instead. Without a de-inking installation and more capacity for producing wood-pulp and thermomechanical pulp, which would have allowed Cartiera di Arbatax to process waste paper and more wood, the company was forced to continue to rely on the much more expensive cellulose. Thirdly, natural gas not being available, the company's use of energy was relatively high. Fourthly, Cartiera di Arbatax was overstaffed and, fifthly, its real production of some 130 000 tonnes per year was too low compared to its capacity of 183 000 tonnes per year.

It is the Commission's opinion that in this situation Cartiera di Arbatax could not have found the funds it needed for its continued operations and for necessary investments on the capital market.

The fact that a new company NCA was constituted which took over Cartiera di Arbatax does not alter this appraisal. In its general approach to the acquisition of shareholdings by the public authorities the Commission stated in point 3.3 (iv) that there is aid where the public authorities' holding involves the taking over or the continuation of all or part of the non-viable operations of an ailing company through the formation of a new legal entity.

(1) OJ No C 123, 9. 5. 1991, p. 12.
(2) See ruling on cases 323/82 (Intermills) dated 14. 11. 1984, C-142/87 (Tubemeuse) dated 21. 3. 1990, C-303/88 (ENI-Lanerossi) and C-305/89 (Alfa Romeo) dated 21. 3. 1991.

SFIRS commented under the procedure that its decision to acquire a shareholding in NCA had been taken on the basis of a restructuring plan elaborated by Burgo and on the basis of SFIRS' own report, which foresaw a situation of profitability within two years. Both the plan and the report were submitted by SFIRS to the Commission.

The Commission notes that this plan is based on, among others, a continuation of the aid granted by the ENCC for the sale of newsprint for a period of five years. Given that the Commission in Decision 90/215/EEC found this misuse of aid to the press to be incompatible with the common market and given that the regional aid scheme in favour of transport costs based on Law 64/86 expired on 30 September 1990, the restructuring plan in question was founded on the unsound assumption that an aid of Lit 45 would be paid to NCA for every kilogram of newsprint sold during a period of five years. With a production target of 183 150 tonnes per year the restructuring plan hence involved an aid of Lit 8,2 billion every year. The Commission concludes that without this aid NCA can be expected to make a loss of Lit 5 billion in 1991 instead of the profit of Lit 3,2 billion the restructuring plan foresaw in 1989.

The Commission also notes that the restructuring plan for NCA has proved overly optimistic in its social and environmental aspects. NCA was forced to stop its operations between 15 December 1989 and 9 February 1990 for environmental reasons and it lost additional days due to strikes later that year. Its financial losses amounted to Lit 12 billion in 1990. According to the parliamentary document dated 17 October 1991, its losses for 1991 are expected to amount to between Lit 18 and 20 billion.

In view of the preceding considerations, it is the Commission's finding that the provision of capital by public entities to NCA cannot be assimilated with the act of a market economy investor, but rather constitutes State aid.

In this context, the fact that Burgo as a private company also invested in NCA does not change this appraisal. Burgo, being a large paper manufacturing group, pursues group-strategic purposes in which NCA may play a role, a consideration which does not apply to SFIRS or to the ENCC. This difference is also reflected by the fact that NCA's management is in the hands of Burgo. The Commission also notes that after Burgo's investment in NCA's initial capital of Lit 200 million, in which it had a stake of 45 %, there has been a relative disentanglement of Burgo in favour of public groups, given that its stake in the much larger share capital of Lit 100 billion is reduced to 16,4 %. In this situation, it is the Commission's opinion that the conditions set out in point 3.3 (v) of its general approach to acquisitions of shareholdings by public authorities referred to above are fulfilled; i.e. that there is aid, where the injection of capital into companies whose capital is divided between private and public shareholders makes the public holding reach a significantly higher level than originally and the relative disengagement of private shareholders is largely due to the companies' poor profit outlook.

The Commission also notes that Burgo's real risk in investing in NCA was different from that of a market economy investor. Until the Commission adopted Decision 90/215/EEC, Burgo could be assured that NCA's production would be bought by the ENCC at inflated prices for at least five years. After Decision 90/215/EEC Burgo was assured of an additional financial cushion in NCA of Lit 60 billion and ultimately Lit 72 billion, most of it in a form not limiting its voting power, with which inevitable losses of NCA would be absorbed.

According to Article 4 of its Statute, the majority of SFIRS' shares are held by public enterprises and authorities; at present 95,5 % of its capital is held by the autonomous region of Sardinia. SFIRS has the statutory task of promoting and helping economic and particularly industrial initiatives in Sardinia, among others by taking shareholdings in Sardinian companies, notably in small and medium-sized enterprises.

The Commission notes that the financial reports SFIRS provided within the framework of the procedure show that it made losses on its participation in every one of the years on which a report was provided. The Commission concludes from this that SFIRS' main concern is the development of Sardinia rather than its own profitability and that it therefore differs from a market economy investor.

The ENCC is a corporation under public law consisting of all producers of paper and cellulose as well as undertakings using cellulose in Italy. The ENCC has the statutory task of promoting the development of cellulose production in Italy, of facilitating the production and use of domestic raw materials for the production of cellulose, of organizing the production and sale of paper and of collecting and providing information concerning the production of cellulose and paper. The Commission notes that the ENCC was only authorized by the Italian Minister for Industry to take a stake in NCA on 10 July 1989, more than a month after the Commission had notified its Decision 90/215/EEC to Italy. The Commission concludes from this and from the Italian Government's letters dated 9 June and 10 August 1989 referred to in point II that the Italian Government's decision to authorize the ENCC to provide capital to NCA was taken as an alternative to its previous wish to continue to grant

operating aid to NCA for five more years. As the Court of Justice stated in its ruling in case 323/82 (Intermills) (1) no distinction can be drawn between aid granted in the form of loans and grants and aid granted in the form of a holding acquired in the capital of an undertaking. Aid taking either form falls within the prohibition laid down in Article 92 where the conditions set out in that provision are fulfilled.

The provision of Lit 6 billion capital by SFIRS, Lit 0,5 billion of which out of its own funds and Lit 5,5 billion out of a special fund based on Regional Law 66/76 for which a decision of the Sardinian authorities was required, constitutes State aid within the meaning of Article 92 of the Treaty.

The Lit 60 billion provided by the ENCC's subsidiaries SIVA and SAF equally constitute State aid within the meaning of Article 92, as well as the Italian Government's intention to provide an additional Lit 12 billion through the ENCC at a later stage. The fact that Lit 44 billion of the Lit 60 billion was used to acquire privileged shares in NCA does not change this appraisal, given that the additional dividend on priviliged shares depends on NCA's being profitable, as does the dividend on normal shares. To the contrary, as the privileged shares have limited voting rights, the ENCC's shareholding mainly serves as a financial cushion to absorb expected losses of NCA.

Lit 16 billion capital was provided to NCA by CIS. In the Commission's letter dated 20 March 1991, in which the Commission informed the Italian Government of its decision to initiate the procedure, that Government was invited to supply evidence that CIS is acting independently and is not influenced in its actions by the public authorities. If this were not the case, the amount of Lit 16 billion injected by CIS would also constitute State aid.

In its observations under the procedure, the Italian Government stated that CIS is a corporation under public law, created by Law No 298 of 11 April 1953, with the task of financing industrial enterprises in order to favour the economic development in Sardinia. Neither of CIS' shareholders has a controlling stake. CIS obtains its financial means in the capital market and uses them independently of regional or national authorities, but under the control of the Bank of Italy, just like other public or private credit institutions.

The Commission also notes that, according to the information submitted by SFIRS, CIS had a claim of Lit 33 billion on Cartiera di Arbatax in *amministrazione straordinaria.* Its shareholding in NCA came about by conversion of Lit 16 billion of its claim into capital as part of the takeover of Cartiera di Arbatax by NCA. Of the remainder of CIS' claim, Lit 2,5 billion were repaid immediately by NCA and Lit 14,5 billion will be repaid within five years.

On the basis of these observations the Commission accepts that in this particular case CIS did not act differently from what a private investor in a similar situation might have done and that, consequently, the provision of Lit 16 billion capital by CIS does not constitute State aid.

Apart from capital, SFIRS also provided a 10-year loan of Lit 10 billion at an interest rate of 5 % to NCA on 1 May 1990 in order to finance its investment programme. In its letter dated 16 January 1991, before the Article 93 (2) procedure was opened, the Italian Government acknowledged that this loan constituted State aid. Within the framework of the procedure, SFIRS on the other hand claimed that neither the loan nor its shareholding constituted aid.

It is the Commission's opinion that NCA was the beneficiary of an interest subsidy of 9,66 % on a Lit 10 billion loan, this subsidy being the difference between the 5 % interest charged and the reference rate in Italy in 1990 which was 14,66 %. This interest subsidy out of public funds constitutes aid because it allows NCA to carry out investments without having to bear all the costs thereof. SFIRS could not reasonably have expected that a reduced interest rate on the money it lent to NCA would be a profitable investment.

Finally, the Commission also investigated the price at which Cartiera di Arbatax was sold to NCA. The Commission notes that a call for tender was published in 1987 and that several offers for taking over Arbatax and four other companies in *amministrazione straordinaria* were submitted. Within the framework of the procedure SFIRS submitted copies of the sales contract as well as of two other offers. The Commission notes that the price NCA paid for Cartiera di Arbatax amounted to Lit 38 958 million. One of the other two bidders offered a similar amount, albeit with deferred payment, whereas the third offer concerned all five companies together. Under these conditions and in the absence of other information the Commission concludes that the sales price itself did not involve additional aid.

The Commission therefore identifies the following aid to NCA : aid of Lit 6 billion in the form of capital and aid of Lit 10 billion in the form of a subsidized loan via SFIRS and aid of Lit 60 billion in the form of capital provided by the ENCC. The ENCC's plans to inject an additional Lit 12 billion capital into NCA would equally constitute State aid.

(1) [1984] ECR 3830, ground 31.

V

The Italian Government failed to notify the aid in advance pursuant to Article 93 (3) of the Treaty. At least since the Commission's letter dated 21 May 1987 the Italian Government knew that the Commission was likely to regard public shareholdings in a new legal entity in order to continue Cartiera di Arbatax's activities as aid.

The Commission notes in this context that it approved, by letter dated 20 November 1974, intervention by the ENCC in favour of forestry, papermaking research and the press. Even if the Lit 60 billion capital provided by the ENCC to NCA was in conformity with the Italian Legal dispositions governing the ENCC's operations, it is clearly not one of the types of intervention approved by the Commission.

As for the operations of SFIRS, the Commission requested the Italian Government in its letter dated 20 March 1991 to specify which aid scheme had been applied. Within the framework of the procedure the Italian Government failed to identify any specific aid scheme approved by the Commission as the basis of SFIRS' operations.

Since the Italian Government did not notify the aid before granting it, as it should have pursuant to Article 93 (3) of the EEC Treaty, the Commission was unable to make known its views on the measures before they were implemented. The aid has thus been illegal under Community law from the date it was granted. The situation resulting from this breach of the legal requirements is particularly serious, since the aid has already been paid to the recipient. Moreover, the aid measures have had effects deemed to be incompatible with the common market.

In the case of aid which is incompatible with the common market, the Commission may — as the Court of Justice has confirmed in its Judgments of 12 July 1973 in Case 70/72 (Kohlegesetz), of 21 March 1990 in Case 142/87 (Tubemeuse) and of 20 September 1990 in Case 5/89 (BUG-Alutechnik) — require the Member States to have the recipients repay aid granted illegally.

VI

There is competition between manufacturers of newsprint in the Community and there is trade in newsprint between Member States, even though the Community as a whole imports more than half of the newsprint it needs from third countries.

According to the data collected annually by the European confederation of pulp, paper and board industries, CEPAC, Italy produced 242 000 tonnes of newsprint in 1987, 264 000 tonnes in 1988 and 252 800 tonnes in 1989, representing some 10 % of community production and some 4 % of Community consumption. With its capacity of 183 000 tonnes per year of newsprint, NCA has a very important position on the domestic market.

In 1987 Italy imported 303 000 tonnes of newsprint, of which 125 000 tonnes (41 %) from other Member States; in 1988 265 000 tonnes, of which 124 800 tonnes (47 %) from other Member States; in 1989 Italy imported 363 800 tonnes of newsprint, of which 139 400 tonnes (38 %) from other Member States.

Italy exported 28 000 tonnes of newsprint in 1987, 25 100 tonnes in 1988 and 11 700 tonnes in 1989, mainly to third countries.

In its observations within the framework of the procedure, the Italian Government stressed that Nuova Cartiera di Arbatax does not engage in exports and that the effect of the measures in question on intra-Community trade would therefore be limited to shutting out potential imports from other Member States.

The Italian Government also stated that even if the production of Nuova Cartiera di Arbatax were replaced by imports from other Member States, the final effect would be a net increase of imports from third countries, given that consumption of newsprint in the Community is higher than available production capacity.

In this context the Commission notes that the Court of Justice, in its ruling in Case 102/87 (SEB) [1], stated that:

'... aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States, even if it does not itself export its products. Such a situation may exist even if there is no overcapacity in the sector at issue. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that, in circumstances such as those found to exist by the Commission, undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition.'

Consequently, the aid which the Italian Government has granted to Nuova Cartiera di Arbatax affects trade between Member States and distorts competition between newsprint manufacturers within the meaning of Article 92 (1) of the Treaty [2].

VII

Article 92 (1) of the EEC Treaty lays down the principle that aid having the characteristics which it specifies is incompatible with the common market. As far as the exceptions from that principle are concerned, those

[1] [1988] ECR 4087.
[2] Ruling of the Court of Justice in Joined Cases 296/82 and 318/82 (Leeuwarder Papierwarenfabriek).

provided for in Article 92 (2) of the EEC Treaty do not apply in the case in point, given the nature and objectives of the aid.

For the purposes of Article 92 (3) of the EEC Treaty, so as to maintain the proper functioning of the common market and take account of the objectives set out in Article 3 (f) of the EEC Treaty, the exceptions from the principle of incompatibility of aid must be construed restrictively in assessing any aid scheme or individual aid measure.

In particular, the exceptions may be applied only if the Commission establishes that, without the aid, market forces would not in themselves be sufficient to persuade any recipients to act in such a way as to achieve one of the desired objectives.

Applying the exceptions to cases which do not contribute to such an objective, or where the aid is not necessary for this purpose, would amount to conferring advantages on the industries or firms of certain Member States, whose financial position would be artificially strengthened and to affecting trade between Member States and distorting competition without any justification based on the common interest, referred to in Article 92 (3) of the EEC Treaty.

In view of the above, the aid to which this Decision relates does not qualify for one of the exceptions set out in Article 92 (3) of the EEC Treaty.

As far as the exceptions set out in Article 92 (3) (b) of the EEC Treaty are concerned, the aid is clearly not intended to promote a project of common European interest or to remedy a serious disturbance in the Italian economy. Nor has the Italian Government attempted to justify the aid on such grounds.

As regards the exception provided for in Article 92 (3) (a) and (c) [1] concerning aid to promote the development of certain areas and notably the exception in Article 92 (3) (a) in favour of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, the Commission is aware of the fact that Nuova Cartiera di Arbatax is located in Ogliastra, Nuoro, on the island of Sardinia, which meets these definitions. Even though the Commission generally does not consider operating aid compatible with the common market, it decided on 2 March 1988 by Decision 88/318/EEC [2] to apply the exception of Article 92 (3) (a) to Law No 64/86, which provides for special intervention in the Mezzogiorno, for *inter alia* temporary aid to alleviate the transport costs of Sardinian companies.

In its letter dated 20 March 1991 with which it informed the Italian Government of its decision to initiate the Article 93 (2) procedure, the Commission invited the Italian Government to inform it of any other aid to NCA, such as the application of regional aid schemes in favour of this company's investments and transport costs.

Within the framework of the procedure the Italian Government replied that the transport aid had stopped on 30 September 1990. No other intervention in favour of NCA had taken place on the basis of Law No 64/86 in 1989 or in the following years.

On this point the Commission notes that Cartiera di Arbatax and subsequently NCA had the benefit of aid towards transport costs for several years. In 1990 NCA received Lit 1 billion for this purpose. The Commission also notes that NCA's restructuring plan foresees that investment aid under Law No 64/86 will be granted for its Lit 37 billion investments foreseen in the first phase of this plan, including the investments that took place during the period of *amministrazione straordinaria.* The Commission therefore concludes that the disadvantages which Nuova Cartiera di Arbatax faces due to its location in Sardinia are offset by a specific aid scheme and that there is no regional justification for additional aid in the form of capital or subsidized loans. Furthermore, the Commission is of the opinion that aid to a company without a perspective of viability cannot be said to promote the economic development of a region. As set out below, this perspective is lacking for NCA.

Lastly, as regards the exception set out in Article 92 (3) (c) of the Treaty for aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission has examined the restructuring plan for Cartiera di Arbatax developed in 1987 and used for NCA in 1989. The Commission notes that this plan contained several indispensable elements, such as investment in order to reduce the use of cellulose as a raw material. But the Commission contests that this restructuring plan was sufficient for making NCA a profitable company, given that it was based on an aided sales price for the newsprint produced by NCA that was incompatible with the common market (see point IV). It was also too optimistic : the investments foreseen in the plan were not carried out within the time limits set, the social arrangements led to strikes and the local standards for the protection of the environment were not met. As a consequence NCA only reached 75 % of its production target for 1990 by producing 122 000 tonnes of newsprint, of which 97 % was sold to the ENCC, and made a loss of Lit 12 billion in that year. As stated above, losses for 1991 are expected to amount to between Lit 18 and 20 billion.

[1] Method for application of Article 92 (3) (a) and (c) to regional aid (OJ No C 212, 12. 8. 1988, p. 2).
[2] OJ No L 143, 10. 6. 1988, p. 37.

Within the framework of the procedure NCA and SFIRS recognized the limited value of the 1989 plan and claimed that a new restructuring plan for NCA was to be drawn up by June/July 1991. NCA explicitly requested the Commission to judge the compatibility of the interventions in 1989 on the basis of this new plan. Despite its requests to the Italian Government in the course of several meetings and to NCA by letter dated 31 July 1991, no new restructuring plan was submitted to the Commission within the framework of the procedure. The Commission is therefore obliged to assess whether the 1989 plan, on the basis of which the aids were granted, was likely to lead NCA to a situation of profitability. For the reasons set out in the preceding paragraph the Commission concludes that a perspective of viability was lacking for NCA. The Commission notes that its criticism of the restructuring plan is shared by GEPI's analysis dated 31 October 1991.

The Commission concludes that the aids granted to NCA in 1989 and 1990 permitted it to take over and continue Cartiera di Arbatax's loss-making activities, without effecting any changes that might bring about a profitable exploitation. The aid therefore does not facilitate the development of the newsprint industry, but merely serves artificially to preserve NCA. It is operating aid, i.e. aid for continued production, which allows NCA to compensate its operating losses.

Within the framework of the procedure the Italian Government also claimed that newsprint production is a strategic sector. The Commission recognizes the importance for the press in the Community to have access to cheap newsprint. This concern can, however, not justify the artificial maintenance of a company by means of operating aid. If the Italian Government was concerned about the future supply of newsprint to its press, it could have taken other measures which are compatible with the common market, such as the building up of stocks of newsprint acquired on the world market, in order to use these for bridging periods of short supply.

VIII

In conclusion, the aid granted by the Italian Government to NCA is not compatible with the common market, since it was granted in violation of Article 93 (3) of the Treaty and furthermore does not meet any of the conditions provided for in Article 92 (3).

The aid must be abolished and any aid granted must be repaid (see judgment of the Court of Justice in Case C-301/87 Boussac, ground 22).

The aid consists of Lit 66 billion capital provided by SFIRS and the ENCC in July 1989 and an interest subsidy of 9,66 % (the difference between the 5 % interest charged and the reference rate in Italy in 1990, which was 14,66 %) on a Lit 10 billion loan granted by SFIRS on 1 May 1990. From this date until 1 December 1991 the interest subsidy granted to NCA amounts to Lit 1 529,5 million. In case of non-repayment of this sum within the two months set by the present Decision, the interest subsidy on the Lit 10 billion loan will be increased by a supplementary amount of Lit 80,5 million for every month of delay.

Repayment must be made in accordance with the procedures and provisions of Italian law, in particular those relating to interest on arrears on State liabilities, with interest starting to run on the date on which the unlawful aid was granted. This measure is necessary in order to restore the status quo by removing all the financial benefits which the firms receiving the unlawful aid have improperly enjoyed since the date on which the aid was paid (see Judgment of 21 March 1990 in Case C-142/87 Tubemeuse, ground 66),

HAS ADOPTED THIS DECISION:

Article 1

1. The aid in the form of Lit 66 billion capital granted in 1989 and the aid of Lit 1 529,5 million resulting from the interest subsidy of 9,66 % on the loan of Lit 10 billion granted to the company Nuova Cartiera di Arbatax in 1990 are illegal for violation of the provisions laid down in Article 93 (3) of the Treaty and are furthermore incompatible with the common market within the meaning of Article 92 (1).

2. The aid in the form of Lit 12 billion capital in favour of this company is incompatible with the common market under Article 92 (1).

Article 2

1. The Italian Government shall abolish the interest subsidy and ensure that the aids of Lit 66 billion and Lit 1 529,5 million referred to in Article 1 (1) are recovered within two months of the notification of this Decision. Lit 80,5 million is to be added to the aid of Lit 1 529,5 million for every month of delay in recovery from the date of the present Decision. The aid shall be recovered in accordance with the procedures and provisions of national law, in particular those relating to interest on arrears payable on State liabilities, with interest starting to run on the dates on which the unlawful aid was granted.

2. The Italian Government shall refrain from granting the aid of Lit 12 billion in the form of capital referred to in Article 1 (2).

Article 3

The Italian Governement shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 27 November 1991.

For the Commission

Leon BRITTAN

Vice-President