COMMISSION

COMMISSION DECISION

of 22 July 1993

concerning aid the Italian Government intends to grant to Cartiere del Garda

(Only the Italian text is authentic)

(93/564/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

Provincial law No 7 dated 8 April 1991 (1) of the Autonomous Province of Trento (PAT) provides, at Article 1, for financial interventions to safeguard the environment and to reorganize land in the productive sector. The provincial authorities can thereby provide grants to existing companies in areas indicated by the PAT for a complete or partial transfer of their activities. Such grants can also be provided in the case of existing companies that wish to expand in areas indicated by the PAT. According to Article 1 (1) of the law, the grants will cover the additional cost incurred by the company for the transfer. If it should be particularly difficult to identify that additional cost, Article 1 (2) provides the option of a lump-sum grant of up to 30 % of the total cost of investment in fixed assets, with the exception of the cost of land.

Provincial law No 7/91 was not notified to the Commission pursuant to Article 93 (3) of the Treaty before it was adopted. The Commission was, however, informed of the intention of the provincial authorities to apply the law for the first time in favour of the paper manufacturer Cartiere del Garda, located in Riva del Garda.

Cartiere del Garda in its present state has the capacity to manufacture annually 180 000 tonnes of middle-weight or heavy coated printing paper ; it has some 600 employees. The company, which belongs to the German Bertelsmann publishing group, is today a relatively modern and profitable company. But in order to remain so in the years to come, it needs to double its productive capacity by installing an additional machine.

For this expansion the company possesses 70 000 m^2 of land adjacent to its present site. This land, which belonged to the former Atlas Holzwerke, was bought by Cartiere del Garda eight years ago. According to the provincial urban plans and the municipal plan of Riva, this land is earmarked for productive and industrial activities.

The provincial authorities would, however, prefer that the expansion take place not in Riva del Garda but rather in Mori, 20 km away. Riva del Garda is popular with tourists and additional industrial activities there would not improve this town's touristic attraction but rather impair its environmental situation.

If Cartiere del Garda should decide to install its new machine in Mori, whilst its present plant in Riva remained as it is for the rest of its useful life, this choice would entail additional investment and operating cost when compared with an expansion in Riva. The additional investments are caused by the differences between a greenfield site (Mori) and a brownfield site (Riva), the additional operating cost being due to additional personnel and transport between the two sites if Mori is chosen.

(1) Legge provinciale 8 aprile 1991, n. 7 'Provvedimenti in materia di armonizzazione dello sviluppo produttivo agli obiettivi ambientali e di tutela della qualità e dell'ambiente di lavoro' in *Bollettino Ufficiale della Regione Autonoma Trentino* — Alto Adige, 16 aprile 1991, n. 17.

The PAT intends to compensate the additional investment cost at Mori if Cartiere del Garda should choose that site, but would not compensate the additional operating cost. The legal basis for this compensation would be Article 1 of Provincial law No 7/91.

II

By letter dated 11 December 1992, registered on 15 December, the Commission was informed of the intention of the PAT to apply Article 1 of Provincial law No 7/91 in favour of Cartiere del Garda's expansion project in Mori. Additional information was provided by letter dated 20 January 1993. Information had previously been submitted on the law and on this first project by the provincial authorities by letter dated 15 June 1992, in a bilateral meeting held on 2 July 1992 and by letter dated 12 November 1992. The beneficiary company and the group to which it belongs had submitted information in a bilateral meeting held on 9 November and by letter dated 9 December 1992.

Although it had never approved Provincial law No 7/91 as such, the Commission considered that the Italian Government could notify a particular application of that law pursuant to Article 93 (3) of the Treaty, in the same way as it might notify an *ad hoc* aid. On the basis of the information made available to it, the Commission held the opinion that the intervention proposed by the PAT in favour of Cartiere del Garda could constitute aid, as it would allow the company to invest at Mori without having to bear all the cost thereof. Cartiere del Garda had had a study commissioned in order to identify and quantify this additional cost. The cost had then been investigated by the Mediocredito bank on behalf of the PAT. Whereas Cartiere del Garda arrived at an extra investment cost of Lit 316 billion and an extra operating cost in the first five years of Lit 197 billion, the PAT calculated the extra investment cost at Lit 173 377 million and operating cost at Lit 148 560 million. In view of the uncertainties in indentifying the additional cost, the PAT considered using the option offered by Provincial law No 7/91 of paying as a lump sum 30 % of total investment cost at Mori, which would amount to Lit 186 billion.

The Commission also held the opinion that this presumed aid of up to Lit 186 billion would be likely to distort competition and to affect trade between Member States within the meaning of Article 92 (1) of the Treaty.

The Commission furthermore doubted whether any of the derogations set out in Article 92 could apply to the aid. It noted that neither Riva nor Mori is located in an area eligible for regional assistance pursuant to Article 92 (3) (a) or (c) and that the aid could be potentially anti-cohesive by excluding other potential sites in assisted areas from the investment in question. The Commission also noted that an aid for an expansion of capacity does not meet the conditions set out in the Community framework for environmental aids, which is based on the derogation provided for in Article 92 (3) (b) of the Treaty. The Commission furthermore doubted whether the derogation provided for in Article 92 (3) (c) could apply; it doubted whether the aid was necessary to achieve the desired objective of dissuading Cartiere del Garda from making its investment at Riva, and it stressed the situation of overcapacity for coated paper in the Community.

The Commission therefore decided to initiate the procedure provided for in Article 93 (2) of the Treaty; by letter dated 10 February 1993 the Italian Government was informed of this decision and invited to submit its observations. The other Member States and other interested parties were also given notice to submit their observations [1].

III

The Italian Government submitted observations under the procedure by letter dated 11 March 1993 and by telex dated 22 April 1993. The Italian Government once more set out the reasons why the provincial authorities proposed to intervene financially in order to induce Cartiere del Garda to invest at Mori rather than in Riva. It also stated the willingness of the provincial authorities not to use the opportunity under Provincial law No 7/91 to award a lump-sum grant of 30 % of total investment cost, but rather only to pay the additional investment cost that had been identified in the Mediocredito study; the additional operating cost entailed by a decision in favour of Mori would not be paid by the PAT. The Italian Government claimed that the payment of additional investment cost would constitute a partial compensation of disadvantages taken on by Cartiere del Garda, rather than an aid to that company. It also claimed that the company had lost at least three years in carrying out its investment due to the bureaucratic and legal difficulties entailed by the possible decision in favour of Mori. According to the Italian Government, Cartiere del Garda would carry out its investment at Riva if the PAT were not enabled to intervene financially in favour of the alternative at Mori and the company would have every right to do so; the

[1] OJ No C 75, 17. 3. 1993, p. 7.

PAT has no instruments to oppose this choice. Any attempt to modify retroactively the standards with which Cartiere del Garda must comply at Riva could be challenged by that company. The Italian Government furthermore repeated the conclusion of an environmental impact study concerning the investment of Cartiere del Garda, which was negative neither for Mori nor for Riva; this study had previously been submitted to the Commission.

In reply to a question the Commission had put in its letter dated 10 February 1993 concerning the other means by which the municipality of Riva might dissuade Cartiere del Garda from investing at Riva, the Italian Government stated that it would not be legally and politically justifiable to change at that stage the industrial designation of the land owned by Cartiere del Garda in Riva. The Italian Government also stressed that the PAT wished to achieve two goals through its intervention: to protect the environment, while at the same time maintaining the planned investment in the same area, and to do so without distorting competition because there would be no advantage to the company in question. The intervention would furthermore have no effect on capacities in the paper industry, because Cartiere del Garda would in any case carry out its investment either at Riva or at Mori.

In reply to another question concerning the land Cartiere del Garda possesses in Riva, if the company should decide to construct its new paper-making machine in Mori, the Italian Government stated that the land would then be ceded by the company to the PAT. The land would lose its industrial designation and the PAT would see to it that the company would not profit financially from the sale.

Finally, the Italian Government stated its willingness to limit the use of Provincial law No 7/91 to the one case of Cartiere del Garda, if the Commission should have insurmountable objections to this law. The Italian Government believed the law to be an interesting and promising experiment in environmentally motivated industrial reconversion.

The case was also discussed bialterally on 8 March and 11 June 1993.

Within the framework of the procedure, observations were also submitted by the United Kingdom Government, the French Government and the German Government, by the largest United Kingdom manufacturer of heavy coated printing paper and by the Austrian paper industry federation.

Those observations were submitted to the Italian Government for its comments by letter dated 11 May 1993. Such comments were provided by letter dated 25 May 1993.

IV

A payment by public authorities to a company in order to cover part of the investment cost of that company at a given site constitutes aid to that company within the meaning of Article 92 (1) of the Treaty. It is irrelevant to this appraisal whether the investment cost at some other site would have been lower and the payment only amounts to the difference between the investment cost at those two sites. The assessment that such payments constitute aid is in line with the well-established practice of the Commission concerning payments to companies which accept additional cost by investing in less-favoured regions or which assume additional investment cost in order to modify their existing installations for environmental reasons.

Consequently, the intention of the PAT to pay Lit 173 377 million (ECU 103 million as at the date of this Decision) to Cartiere del Garda if that company should decide to invest at Mori rather than at Riva constitutes aid to that company, even though this sum only represents the additional investment cost which an investment at Mori would entail. The company is favoured by that aid, because it is enabled to carry out its investment at Mori without having to bear all the cost thereof.

There is competition between manufacturers of paper and their products are traded between Member States. According to the information submitted to the Commission, Cartiere del Garda at present produces some 175 000 tonnes annually of medium-weight and heavy coated wood-containing and wood-free printing paper. The installation of an additional paper-making machine at Mori or at Riva would double the company's productive capacity from 180-200 000 tonnes per year to some 400 000 tonnes per year.

Italy exported 532 320 tonnes of coated paper and paperboard (CN code 4810) to other Member States in 1990, 572 877 tonnes in 1991 and 596 278 tonnes in 1992, while the corresponding imports from other Member States amounted to 200 531, 195 586 and 238 535 tonnes.

Cartiere del Garda participates in intra-Community trade by exporting part of its production to other Member States. In 1990 Cartiere del Garda exported 39 300 tonnes of wood-free coated paper to other Member States, notably France, Germany and Spain; the exports accounted for one-third of its production of this type of paper. In 1991, 41 100 tonnes were exported to other Member States and in 1992, 45 000 tonnes. Cartiere del Garda's production of wood-free coated paper represented some 3,4 % of total Community production of that type of paper in 1990 to 1992. The data provided to the Commission under the procedure concerns only wood-free paper and not Cartiere del Garda's production of wood-containing paper.

Financial aid to companies strengthens their position as compared with others that are competing with them in the Community. Where this occurs, such aid must be deemed to affect competition with such other undertakings.

Article 92 (1) of the Treaty lays down the principle that aid having certain characteristics, which it specifies, is incompatible with the common market.

The derogations from that principle which are set out in Article 92 (2) of the Treaty are inapplicable in this instance, given the nature and objectives of the aid, and were not in any case invoked by the Italian Government.

V

Article 92 (3) of the Treaty specifies the aid which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and not of a single Member State. So as to maintain the proper functioning of the common market and take account of the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) which are set out in Article 92 (3) must be interpreted strictly in examining any aid scheme or any individual aid measure.

In particular, the derogations may be applied only if the Commission finds that, if the aid were not granted, market forces alone would not be sufficient to induce the recipients to act in such a way as to achieve one of the objectives pursued.

Applying the derogations to cases which do not contribute to such an objective, or where the aid is not necessary for that purpose, would mean conferring undue advantages on the industries or undertakings of certain Member States and affecting trading conditions between Member States and distorting competition, without any justification based on the common interest referred to in Article 92 (3).

With regard to the derogations provided for in Article 92 (3) (a) and (c) for aid to promote or facilitate the development of certain regions, it should be noted that the standard of living in the PAT is not abnormally low, nor does it suffer from serious underemployment within the meaning of the derogation laid down in Article 92 (3) (a). Neither are Riva and Mori located in an assisted area pursuant to the derogation in Article 92 (3) (c).

With regard to the derogations provided for in Article 92 (3) (b), it is to be noted that the aid is not intended to remedy a serious disturbance in the Italian economy, nor has the Italian Government claimed that this was the case.

The other derogation provided for in Article 92 (3) (b) concerns aid to promote the execution of an important project of common European interest. In the Community framework on State aid in environmental matters, of which the Member States were informed by letters dated 7 November 1974 and 23 March 1987, the Commission allowed for the possibility that such aid could qualify for the derogation provided for in Article 92 (3) (b), provided that it was granted to finance additional adaptation investments in existing plant, other than investments leading to increased production capacity.

Given that the investment to be made by Cartiere del Garda consists of the building of an additional paper-making machine and therefore concerns solely an increase of capacity, any aid for this investment does not fulfil the criteria to be considered eligible for the derogation provided for in Article 92 (3) (b). The Commission notes in this context, however, that the environmental aid framework allows for the possibility that aid not fulfilling the requirements of the framework may be found to be compatible with the common market on the basis of Article 92 (3) (c).

Article 92 (3) (c) of the Treaty provides for the possibility that aid to facilitate the development of certain economic activities may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The Commission notes that the Italian Government's main argument in favour of the aid to Cartiere del Garda is of an environmental nature. The Commission also

notes that the investment which this company intends to carry out will comply with existing environmental legislation, whether it takes place at Riva or at Mori. The additional paper-making machine will however be more of a nuisance at Riva than at Mori, in terms of pollution of air and water and in terms of traffic and noise. The aid proposed by the PAT in order to induce the company to invest at Mori rather than at Riva therefore does serve an environmental purpose, although other motiviations for it exist as well, such as the desire to keep the investment in question in the area and physical planning considerations.

Article 130r (2) of the Treaty stipulates that action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Environmental protection requirements should be a component of the Community's other policies.

In applying these principles to the case of Cartiere del Garda, the Commission notes that the intervention of the PAT is preventive and rectifies damage at source. Regarding the third principle, however, the Commission considers that the intervention would not lead to a situation where the polluter pays. Indeed, the provincial authorities intend to compensate the total additional investment cost incurred by the company.

It is true that the company also expects additional operating costs if it should produce at Mori as well as at Riva and that this cost will not be compensated. But when taking a longer-term view, a choice in favour of Mori may also be beneficial to the company; it may decide to transfer its existing plant at Riva to Mori as well, at the end of its useful life, and the site at Mori is not only closer to the main motorway but also offers opportunities for future expansion which would not be available at Riva.

The Italian Government also claimed that Cartiere del Garda had lost considerable sums of money because its investment had been delayed for three years due to the difficult decision-making process. The Commission notes that the cost due to delays in carrying out the investment will have to be borne by the company regardless of where it invests and can therefore not be linked to the additional investment cost at Mori or the operating cost entailed by having plants at two different locations.

The Commission therefore concludes that the proposed aid to Cartiere del Garda does not meet the 'polluter pays principle' contained in Article 130r (2) of the Treaty.

In its letter dated 10 February 1993, in which it informed the Italian Government of its decision to open the procedure pursuant to Article 93 (2) of the Treaty, the Commission asked to be informed of other possibilities the municipal and provincial authorities might have in order to dissuade the company from investing at Riva, including the possibility of refusing permission for this investment on environmental grounds or for reasons of urban or provincial planning. According to the information provided by the Italian Government under the procedure, the PAT has no other means at its disposal than State aid to prevent the company's investment at Riva.

As for the municipality of Riva, the Italian Government stated that the area Cartiere del Garda owns at Riva has been destined for industrial purposes and that it would be neither legally nor politically correct to modify such determination now by changing the rules during the game.

This reply fails to convince the Commission. The Italian Government has failed to demonstrate that there never was and that there is not at present an option open to the municipality of Riva of altering the designation of the zone in which the site in question is located. This might have been politically difficult in view of the important number of jobs at stake — the company will employ 784 if the investment takes place at Riva and 968 if the investment is realized at Mori — but it would not have been absolutely impossible. Rather, it would seem that the municipality of Riva believes that the advantages of the investment in terms of employment outweigh its environmental disadvantages; the PAT, which perhaps also has as broader view of the development of the municipal area in a wider context such as the development of tourism at Riva and of industry at Mori, has a different opinion but is unable to prevent the investment at Riva by means other than aid. The different powers involved and the divergent opinions of authorities in a Member State cannot be taken into account by the Commission to justify State aid given that none of the derogations mentioned in Article 92 provides for that possibility.

The Commission concludes that the Italian Government has failed to demonstrate that the aid is an absolute necessity to avoid investment by Cartiere del Garda at Riva del Garda.

If the zone at Riva in which Cartiere del Garda bought its site had lost its industrial designation, the company would have been forced to choose an alternative location for its investment, which it needs to carry out in order to retain its longer-term profitability. Without an aid in the case of an investment at Mori, the company would have been completely free to choose between all potential sites available not only in the PAT, but in other regions of Italy and other countries as well. The Commission notes in this context that it allows investment aid in certain regions of the Community on the basis of the derogations provided for in Article 92 (3) (a) and (c) and that those regions might have stood the chance of being chosen for this investment, once it could move freely.

Under the procedure the Italian Government rejected this reasoning, by stating that the company had already made up its mind to either invest at Riva or at Mori and that consequently other potential sites had already been excluded.

This argument cannot convince the Commission. In the situation created the municipal and provincial authorities, the choice of the company is indeed realistically limited to the cheaper solution at Riva and the aided solution at Mori. If, however, the site at Riva had been excluded for environmental reasons and no aid had been available for an investment at Mori, Cartiere del Garda might well have taken into consideration other potential sites, including those where regional considerations allowed for investment aid.

The Commission concludes that the Italian Government's proposal to award aid for Cartiere del Garda might well have taken into consideration other portential sites, including those where regional considerations allowed for investment aid.

The Commission concludes that the Italian Government's proposal to award aid for Cartiere del Garda's investment at Mori runs counter to regional policy in the Community and that it is potentially hostile to economic and social cohesion.

The Italian Government also stated under the procedure that without the possibility of investing at Riva and without the intervention of the PAT at Mori, the company would be unable to raise on the capital market the money it needs for its investment.

The Commission notes that in that event Cartiere del Garda would have found itself in the same position as any competitor who wishes to increase capacity and who does not have the land or the permits needed simply to expand his present plant. Whether the money needed for the more costly construction of a second plant can be procured depends on expected market developments, but certainly also on the financial position and past performance of the investor. In this context the Commission notes that Cartiere del Garda, according to the annual reports of the Bertelsmann group to which it belongs, returned very good results in 1990/91, although operating in a more difficult market. In 1991/92 the results of the company were described as 'again excellent' and 'very gratifying', and this despite 'an extremely tough paper market'. Also taking into account the very favourable results of the Bertelsmann group itself, the Commission considers that the company could well have found the funds necessary for its investment at sites other than Riva without the financial assistance of the PAT.

Finally, as regards the sectoral impact of the aid, and notably the question whether the aid is likely to facilitate the development of the sector without adversely affecting trading conditions to an extent contrary to the common interest, the Commission notes that it also raised this matter in its letter dated 10 February 1993, in which it informed the Italian Government of its decision to open proceedings pursuant to Article 93 (2) of the Treaty.

The Italian Government stated under the procedure that the financial intervention by the PAT in favour of the investment at Mori would have no effect on production capacity, because without it the investment would take place anyway, albeit at Riva. The company had decided to make the investment on the basis of its entrepreneurial responsibilities, as had several of its competitors. The Commission was provided with a list of eight of those competitors in the Community and in EFTA countries who had started up new capacity in 1991/92.

The Commission agrees with the Italian Government that it is the entrepreneur who should decide whether to invest in order to increase capacity or not. This decision should as a matter of principle not be influenced by State aid. As has been set out above, the Italian authorities could have prevented the investment from taking place at Riva for environmental reasons by other means granting aid at Mori. In that case the company, as described in the preceding paragraph, would have faced the choice between various sites and, indeed, the choice as to whether to carry out its investment at all, in view of the higher investment cost. The aid the Italian Government proposes to grant at Mori not only eliminates other potential sites for the investment but also facilitates the choice whether to invest at all in a difficult period, as described in the annual reports of the group to which Cartiere del Garda belongs. Given that the additional production which the investment will create will be partly exported to other Member States, the aid the PAT intends to provide for the investment at Mori will not facilitate the development of the sector without adversely affecting trading conditions to an extent contrary to the common interest. This conclusion is not altered by the expectation of the Italian Government that the rate of growth of Cartiere del Garda's sales between 1989 and 1997 will only slightly exceed the rate of growth of expected consumption of the type of paper in question in the Community.

Finally, the Commission has also taken note of the Italian Government's contention that the aid it proposes to grant to Cartiere del Garda is similar to an aid in favour of a manufacturer of newsprint in the United Kingdom, SCA Aylesford, to which the Commission did not object.

The Commission would firstly point out that the compatibility with the common market of an aid must be judged in isolation, on the basis of Article 92 of the Treaty, and not on the basis of previous decisions of the Commission concerning aid to other companies. The Commission also disagrees that the proposed aid to Cartiere del Gardas is similar to the aid that the Commission accepted in December 1992 in favour of SCA Aylesford (1). That company intended to expand its production of newsprint, for which exclusively waste paer would be used as a raw material; the new and untested technology in the investment made it more than a simple modernization and expansion project. No information has been provided to the Commission that the investment of Cartiere del Garda involves similar risks regarding raw material, technology and commercialization. Because of these risks, the aid of the United Kingdom authorities was necessary for the investment to take place at all; other sites had been taken into consideration by SCA, but they presented higher risks which outweighed any assistance offered there. In the case of Cartiere del Garda however, the aid is not necessary for the investment to take place at all; it is only necesasary for the investment to take place at Mori. In the case of SCA Aylesford, the Commission took into consideration that the proposed aid would be outweighed by the expected savings of local authorities on landfill, due to the amount of waste paper collected by SCA, for its additional production. This feature is also absent from the proposal of the PAT. The approval of the aid to SCA Aylesford was also motivated by the peculiarities of trade and competition in the newsprint sector, which limited the effect of the aid on trading conditions between Member States.

Finally, the Commission notes that the aid to SCA of £ 20 million represented 8 % of this company's investment at Aylesford in gross terms, whereas the aid of Lit 173 billion the PAT proposes to grant to Cartiere del Garda represents 27 % or more of that company's investment at Mori For all those reasons, the Commission does not believe that for the sake of consistency its decision to approve the aid to SCA Aylesford should induce it to approve the proposed aid to Cartiere del Garda as well.

On the contrary, the Commission has repeatedly taken decisions against aid to investments that create new capacity in the paper sector in unassisted areas (2).

Consequently, the aid proposed by the Italian Government does not fulfil the conditions for a derogation pursuant to Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Italy shall not implement the plan of the authorities of the Autonomous Province of Trento to provide aid of Lit 173 377 million to Cartiere del Garda for investments to be carried out at Mori.

Article 2

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 22 July 1993.

For the Commission

Karel VAN MIERT

Vice-President

(1) OJ No C 46, 18. 2. 1993, p. 5.

(2) OJ No L 156, 20. 6. 1991, p. 39.