COMMISSION

COMMISSION DECISION

of 17 January 1995

on aid awarded by the French Government to Allied Signal Fibers Europe SA, Longwy, Meurthe-et-Moselle

(Only the French text is authentic)

(Text with EEA relevance)

(95/253/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments to it,

Whereas :

I

By its judgment of 24 March 1993 [1], the Court of Justice annulled the decision by which the Commission refused to open the procedure provided for in Article 93 (2) in respect of aid totalling FF 160 000 000 awarded to Allied Signal Fibers Europe SA, a subsidiary of Allied Signal Inc., in June 1989 for a new facility for the production of high tenacity polyester filament yarn at Longwy, Meurthe-et-Moselle.

The aid awarded was in the form of a grant of FF 160 000 000 under the regional planning grant scheme (*Prime d'aménagement du territoire*), which is co-financed by the European Regional Development Fund (ERDF) and was authorized by the Commission in October 1984 [2]. By its decision on the scheme, the Commission decided that it was compatible with the common market for aid to be granted in respect of industrial projects situated in the *département* of Meurthe-et-Moselle as provided for by the scheme at a maximum rate of 25 % of the investment. Following the creation by the French, Belgian and Luxembourg Governments of a European development zone (*pôle européen de développement*), which includes the Longwy region, the Commission authorized regional aid in support of investment projects in that zone up to 30 % net grant equivalent [3].

To comply with the Court's judgment, the Commission decided on 30 June 1993 to open the procedure provided for in Article 93 (2) in respect of this aid, and in respect of the aid totalling FF 40 000 000 in the form of the financing of the clean-up and de-pollution of the site, which the Commission had not been aware of at the time of its earlier, annulled decision.

The French Government was informed of the Commission's decision to open the Article 93 (2) procedure by letter dated 29 July 1993. Other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities* [4].

II

The French Government submitted the following comments by letter dated 8 October 1993 and at meetings

[1] Case C-313/90, *Comité international de la rayonne et des fibres synthétiques and Others* v. *Commission*, [1993] ECR I, p. 1125.

[2] OJ No L 11, 12. 1. 1985, p. 28.

[3] Decision communicated to the French, Belgian and Luxembourg Governments by letter SG(86) D/14423, dated 1 December 1986.

[4] OJ No C 215, 10. 8. 1993, p. 7.

with the Commission on 10 November 1993, 4 and 11 February 1994 and 12 March 1994.

The French Government stated that, of the aid totalling FF 160 000 000 awarded to Allied Signal Fibers Europe SA on 21 June 1989, FF 134 339 000 had already been paid to the company. The French Government also stated that no further payments of aid would be made until the Commission had taken a final decision on the aid.

As regards the products covered by the investment, the French Government and the company argued that, while rayon yarn had for many years been the most common material used in tyre reinforcement, polyester yarn now dominated tyre production in the United States of America and Japan.

Share of the market for passenger car/light truck tyre cord made from high tenacity yarn

(%)

	United States of America	Japan	Western Europe
Polyester	98	83	15
Rayon	2	3	75
Polyamide	0	14	10

Although rayon retained the largest share of the tyre cord market in western Europe, the technical characteristics of polyester — lower density, greater strength and higher thermal resistance — had increased its share of the market from 7 % (1986) to 14,3 % (1991). Access to high tenacity polyester yarn — the product concerned in the aided investment — would be essential to the future international competitiveness of Community-based tyre manufacturers.

Yarn used in tyre reinforcement in Europe

('000 tonnes (% share))

	1986	1991	% change
Polyester	5,9 (7)	12,3 (14)	+ 109
Rayon	50,2 (60)	46,4 (54)	− 8
Polyamide	27,1 (33)	26,7 (32)	− 2
Total	83,2 (100)	85,4	+ 3

In the medium term, demand for polyester was expected to continue to increase, largely to the detriment of rayon, for which demand was already falling in line with international developments, leading to reductions in rayon production capacity in western Europe and several plant closures. Suppliers of polyamide tyre cord would not be displaced as, although their properties were similar, polyamide yarn was used in tyres for heavy duty vehicles while Allied Signal's product was mainly used in radial tyres for passenger cars and light trucks.

The French Government stated that, whereas there was overcapacity in western Europe for production of most synthetic fibres, the level of imports showed that there was undercapacity for production of high tenacity polyester yarn. Therefore, given forecast changes in the nature and level of demand for high tenacity polyester yarn, the product of the new installation would — in the short term — substitute existing imports into the Community and — in the long term — provide a production capability to enable Community-based tyre manufacturers to respond to an inevitable shift in demand.

Allied Signal's product was innovative and technologically advanced compared to other types of high tenacity polyester yarn. Its high modulus and low shrink properties gave it dimensional stability similar to that of rayon and make it especially suitable for tyre reinforcement. It would be uneconomic and technically difficult to adapt the installation to produce regular — rather than high — tenacity yarn; and similarly unattractive for other synthetic fibres producers to meet increased demand by converting capacity to produce high tenacity yarns.

The French Government stressed the regional aspects of the investment in question, particularly the pivotal nature of the aided investment within Longwy, one of only two regions in France where the authorized regional aid ceiling was more than 30 %. Since 1975, the contraction

of the French steel industry and consequent de-industrialization of Longwy had resulted in a 20 % fall in the town's population and, between 1982 and 1990, there had been an 11 % decrease in the level of employment. Allied Signal's installation was by far the most important installation in Longwy, creating 280 jobs, and having wider beneficial effects on local finances, the environment, infrastructure and training in an area of high unemployment and social hardship, weak infrastructure and pollution. The total cost of the aided investment would exceed FF 1 000 000 000 and Allied Signal had incurred significant additional costs in connection with the installation, in particular because of the shortage of skilled manpower, obsolete infrastructure and state of the site. Furthermore, Allied Signal's production process was less-polluting than the analogous process for rayon.

Taking all these factors into account, the French Government considered that the aid awarded to the company was compatible with the common market.

The French Government also responded to the Commission's specific concerns about the fact that the company had not had to meet the cost of the clean-up and de-pollution of the site of the aided investment, estimated at FF 40 000 000.

Since the early 1980s there had been a concerted drive to reclaim the coalfields and sites of steelworks throughout the Lorraine region. The process was expensive and time-consuming, requiring demolition of disused buildings, the removal of foundations, cleaning of heavily polluted land, new landscaping and the installation of retail premises, basic services and utilities. Allied Signal's new installation was sited in the new International Business Park, built on the site of the former steelworks of Longwy. Initial clean-up of the affected land of the Park was carried out by the steelworks responsible for the pollution, and the estimated total cost of FF 297 000 000 financed jointly by the ERDF, the State and local authorities. The work had not been carried out with the intention of benefiting any specific company but to restore the land to a condition where it could be used by a new enterprise. The aid identified by the Commission represented the proportional cost of cleaning that part of the Park that subsequently became the site of Allied Signal's new installation. Secondary costs associated with the construction of the plant were met by Allied Signal. Therefore, the French Government considered that the financing of the clean-up and de-pollution of the site did not constitute aid within the meaning of Article 92 (1).

As a supplement to the comments of the French Government, Allied Signal commented by letters dated 10, 13 and 14 September 1993, and 26 November 1993, and at meetings with the Commission on 10 November 1993, 4 and 11 February 1994 and 12 March 1994.

Quoting data provided by European tyre manufacturers, Allied Signal forecast that European tyre production and consumption of polyester in tyres would continue to rise ; and that, by 2000, the market for all end uses of high tenacity polyester yarn would have increased by 60 000 tonnes, of which approximately half would be for use in tyres.

Therefore, at the time it was considering whether or not to locate in the Community, the company concluded that, without new production capacity in the Community, the anticipated increase in demand would be met by increased imports from the United States of America, Japan or South Korea. Similarly, increasing demand for replacement polyester-reinforced car tyres would promote imports if Community-based tyre manufacturers were unable to satisfy the demand. Accordingly, the company had decided to locate a new installation in Europe. Allied Signal reiterated that the availability of aid had been an essential pre-condition of their locating in Longwy and noted that, at meetings with the company on 27 July and 24 October 1989, officials of the Commission had confirmed the French Government's view that the aid had been awarded at a time when, because of the nature of Allied's product, it was outside the scope of the code on aid to the synthetic fibres industry.

According to Allied Signal, western European tyre manufacturers' continued preference for rayon reinforcement of passenger car/light truck tyres resulted from what they claimed was a duopoly in the supply of tyre cord with high barriers to entry as well as inadequate supplies of suitable, competitively priced high tenacity polyester yarn generally and severe undercapacity for production of advanced high tenacity yarns such as Allied Signal's product. In support of its forecasts, Allied Signal cited a multi-client consultancy study [1] which forecast that, taking into account Allied Signal's new installation, demand for polyester tyre cord in western Europe would increase by over 60 % by 1995.

[1] 'Tyre Cord : Prospects in Europe and North America in the 1990s', Landell Mills Commodities Studies Ltd & Landell Mills Commodities Inc. (April 1992).

Allied Signal stated that the aid, though a determining factor in the decision to locate and operate the plant in Longwy rather than any of the other locations considered by the company, would probably not wholly offset the initial cost disadvantages given that its principal competitors were already established in Europe and could expand existing facilities less expensively. If production costs had been the only consideration, it would have been significantly less costly for Allied Signal to have responded to the forecast increased demand in Europe for polyester tyre cord and other end-uses by expanding its operations in the United States of America, which were currently sold out, and increasing its exports to the Community.

Furthermore, secondary costs — for which no aid had been awarded — had been higher than forecast: recruitment and training costs were much higher than was usual with a new installation because of the shortage of skilled construction labour and engineers, language difficulties and the need for overseas training; the workforce was generally unfamiliar with modern technology and would take time to gain experience in operation of the plant, resulting in initial losses in yields and quality; the costs of the installation of services and building construction had exceeded forecasts because of the unreliability of electric power and, despite the clean-up and de-pollution of the site that had already been carried out, secondary de-pollution and site preparation was required.

Allied Signal accepted the initial cost disadvantages of location and operation in Longwy because they were satisfied that the expected growth of demand from European-based tyre manufacturers warranted the company's presence in Europe, and because the superior technological quality of their product would ensure a satisfactory share of the market.

Allied Signal stated that the new installation, whose annual production capacity was 19 000 tonnes, had commenced operations on 19 September 1993, six weeks ahead of schedule. The company forecast that, once full output was reached in 1996, sales of tyre cord would account for 67 % of production with other products accounting for 29 % and exports only 4 %. Furthermore, the investment would allow Allied Signal to reduce its own exports of high tenacity polyester yarn to Europe from the current level of approximately 6 000 tonnes annually.

Allied Signal believed that their new capacity would reduce but not eliminate the existing undercapacity and, if their forecast proved correct, they might seek to extend the new plant. If, however, the western European tyre cord market did not develop as forecast, the company would increase exports to the United States of America and Asia or divert the output of the plant to any of the numerous other growing markets in the Community for high tenacity polyester yarns, for example airbags or industrial rubber applications for which Allied Signal currently exported 2 800 tonnes of yarn to Europe.

Allied Signal argued that, as its product was innovative, authorization of the aid awarded would be in line with the Commission's decisions to authorize aid to Filature du Hainaut [1] and Faserwerk Bottrop GmbH [2], both of which had concerned investment in new capacity for production of an innovative synthetic fibre by an innovative process. Allied Signal claimed that, at the time the aid was awarded by the French Government, no Community producer of synthetic fibres was supplying high tenacity polyester yarn to any Community tyre manufacturer for use in radial tyres for light trucks and passenger cars.

Accordingly, as no existing Community synthetic fibres producers would be disadvantaged as a result of the aid awarded to Allied Signal Fibers Europe SA, the aid should be authorized by the Commission for the same reasons as it decided to authorize the proposal to award aid to Filature du Hainaut. The company also noted that the Commission had authorized aid for a similar investment in new capacity for production of another type of advanced generation high tenacity polyester yarn by Hoechst Guben GmbH [3].

Furthermore, Allied Signal stressed the environmental advantages of polyester over rayon both for the region and for the workforce of the new installation. In particular the production processes differed significantly in that polyester production involved lower emissions and, whereas the hazardous by-products of rayon production required treatment and large containment facilities, the by-product of Allied Signal's one-step computer-controlled process was water which was easily treatable in a conventional biological system. The use of polyester tyre cord would also result in significant savings for tyre manufacturers through lower material costs because the material was less expensive and because less material would be required.

The company stated that the investment and, consequently, the aid did not solely concern fibre production. The investment, for which total costs were estimated at FF 1 093 000 000 could be broken down into three elements:

[1] Decision communicated to the French Government by letter SG(88) D/9703, dated 9 August 1988, and to other Member States by letter SG(89) D/439, dated 3 January 1989.
[2] Decision communicated to the German Government by letter SG(88) D/8126, dated 5 July 1988, and to other Member States by letter SG(88) D/11325, dated 4 October 1988.
[3] Decision communicated to the German Government by letter SG(92) D/13324, dated 6 December 1992.

Investments costs (FF 000 000)	Purpose
392	Equipment and engineering associated with synthetic fibres production
256	Equipment and engineering associated with polymerization and related chemical facilities to produce raw materials for the fibre production and high-viscosity resin chips primarily for sale to plastic bottle producers.
445	Equipment, facilities and engineering associated with the buildings, utilities, land and infrastructure to service current and future fibre and non-fibre operations on the site

Finally, the company expressed the view that, as polymerization was only brought within the scope of the Code in 1992, aid in support of the investment in equipment and engineering in polymerization and related chemical facilities should be excluded from the Commission's assessment. The company also doubted that the assessment should include the aid in support of the investment in equipment, facilities and engineering associated with the buildings, utilities, land and infrastructure.

At the request of the Commission, the French Government, by fax dated 20 April 1994, provided additional information, comprising an updated estimate of the total cost of the investment, an explanation of how much of the total cost had been considered eligible for aid, and a breakdown of the supported costs to show those associated with polymerization and related-chemical activities and those associated with the production of synthetic fibres. In other words, the expenditure on support activities isolated in the company's submission (i.e. FF 445 000 000) was split over fibre and non-fibre operations. Some of it was not eligible for aid.

The French Government advised that the costs eligible for aid totalled FF 842 000 000, which is not very different from the planned figure of FF 840 000 000.

Investment costs	(FF 000 000)	Purpose
Supported by aid	386	Polymerization and related chemical facilities to produce raw materials for the fibre production and high-viscosity resin chips primarily for sale to plastic bottle producers
	456	Synthetic fibres production
Not supported by aid	207	
Total	1 049	

The costs of the project not supported by aid included the land and associated costs, i.e. surface improvements, fire protection, roads and paving, streetlighting and water, the cost of the main building, the administrative building and associated costs.

III

In commenting under the Article 93 (2) procedure, two tyre manufacturers supported authorization of the aid on the grounds that, in order to remain internationally competitive and given the international trend away from rayon tyre cord, Community-based tyre manufacturers would have to switch to polyester tyre reinforcement. Polyester tyre cord was not currently available in sufficient quantities or at prices that were competitive with suppliers from outside the Community.

However, the United Kingdom Government and the Apparel, Knitwear & Textiles Alliance opposed the aid on the grounds that it would give Allied Signal Fibers Europe SA an unfair competitive advantage at a time when other synthetic fibres producers were generally adapting to

changing marked conditions either without aid or with aid authorized by the Commission as compatible with the common market. In view of the continuing decline seen by the European vehicles industry in sales of new vehicles and hence original equipment, including tyres, the output of the new installation would either exacerbate the current under-utilization of tyre production capacity in the Community, or be diverted to other markets for high tenacity polyester yarn which did not show any signs of growth so that existing suppliers would be displaced. The International Rayon & Synthetic Fibres Committee also welcomed the opening of the procedure and expressed its support for the Commission in its intention to pursue a coherent policy for the synthetic fibres sector.

The comments submitted under the procedure were sent to the French Government.

IV

The Article 93 (2) procedure was opened in respect of two types of aid to Allied Signal Fibers Europe SA.

— First, the aid totalling FF 160 000 000 awarded under the regional planning grant scheme. A payment by public authorities to a company to cover all or part of the cost of an investment at a particular site constitutes aid to that company within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement. For the assessment of the compatibility of such aid with the common market, whether the cost at any other site would have been less is irrelevant as would be the argument that the aid in question represented only the difference between the cost of the investment at the two sites. This is in accordance with the well-established policy of the Commission concerning payments to companies that accept additional cost by investing in less-favoured regions or which assume additional investment cost in order to adapt existing installations for environmental reasons. Accordingly, the aid totalling FF 160 000 000 constitutes aid to Allied Signal Fibers Europe SA within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement as it has allowed the company to carry out the investment without having to bear all of the cost.

— Second, the aid implicit in the financing of the clean-up and de-pollution of the site, estimated at FF 40 000 000. On the information provided by the French Government, it is clear that the clean-up of the industrial park to which public resources contributed was decided upon before the sale of the plot to Allied Signal and would have been necessary regardless of the activities and identity of the new user. Moreover, Allied Signal paid FF 50 per m^2 which is the unfirom price at which all other plots of the park were sold and corresponds to the market value for non-polluted industrial land. Therefore, the financing cannot be said to have favoured Allied Signal Fibers Europe SA within the meaning of Article 92 (1) of the Treaty or Article 61 (1) of the Agreement and, therefore, does not constitute aid.

Accordingly, the assessment is focused solely on the compatibility with the common market of the aid awarded to Allied Signal Fibers Europe SA under the regional planning grant scheme.

There is significant trade in high tenacity polyester yarn among Member States and within the EEA and, consequently, significant competition between European producers and their products.

Trade in high tenacity polyester yarn

('000 tonnes)

	1988	1989	1990	1991	1992
Intra-EEA trade	51	56	63	56	63
Extra-EEA trade					
Imports	28	29	30	30	32
Exports	1	1	1	1	1
Balance	(27)	(28)	(29)	(29)	(31)

Despite the existence of imports — mainly from the United States of America, Switzerland, Japan, South Africa, Mexico, Canada and South Korea — the level of utilization of capacity for the production of high tenacity polyester yarn was significantly below 100 % in 1989 and has since deteriorated, albeit partly as a result of the unification of Germany.

Capacity and production of high tenacity polyester yarn

('000 tonnes)

	1988	1989	1990	1991	1992
Production	89	92	94	84	91
Capacity	102	104	109	114	122
Capacity utilization (%)	87	88	86	74	75

These figures do not take account of the new capacity of the aided investment, which — not accounting for any other changes that might occur — will reduce capacity utilization to approximately 65 % and depress prices to the detriment of other synthetic fibres producers, not only of high tenacity polyester yarn but also of high tenacity polyamide yarn and high tenacity rayon yarn with which Allied Signal's yarn will compete in the tyre market and other markets, such as airbags, sewing yarns, conveyor and transportation belts, layering wovens, marquees and air suspension halls, transmission belt, belts, hoses, ropes and sailing materials.

Accordingly, by favouring Allied Signal Fibers Europe SA, and regardless of whether or not the company's forecasts of growth in tyre production and demand for polyester tyre cord and other products incorporating high tenacity yarns are correct, the aid in question has strengthened its position compared as compatible with the common market. Therefore the aid distorts competition and affects trade within the meaning of Article 92 (1) of the Treaty and Article 61 of the Agreement.

V

Artricle 92 (1) lays down the principle that, except where otherwise allowable, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. However, Article 92 (2) and Article 92 (3) describe the circumstances in which such aid is or may be allowed.

Article 92 (2) specifies certain types of aid that are compatible with the common market. Because of the character, location and purpose of the aid in question, none is applicable.

Article 92 (3) specifies aid that may be compatible with the common market. Compatibility must be determined in the context of the Community 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 (g), the exceptions to the principle of Article 92 (1) set out in Article 92 (3) must be construed narrowly when scrutinizing any aid scheme or individual award.

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 attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective or where aid was not necessary to that end would give an unfair advantage to certain Member States' industries or undertakings, whose financial positions would merely be bolstered, thereby affecting trading conditions among Member States and distorting competition.

The exception provided for in Article 92 (3) (a) relates to aid intended to promote the economic development of certain areas. As the standard of living in Longwy is not abnormally low nor is there serious under-employment within the meaning of Article 92 (3) (a), it is not applicable in this case.

The exception provided for in Article 92 (3) (b) relates to aid intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of any Member State. Evidently, it is not applicable to the aid in question.

The exception provided for in Article 92 (3) (c) relates to aid intended to facilitate the development of certain economic areas or activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The aided investment by Allied Signal Fibers Europe SA has facilitated the development of Longwy by creating 280 jobs in an area that has suffered significant job losses with the decline of the steel industry and which is classed as a region eligible for regional aid by virtue of Article 92 (3) (c) and is also among the regions eligible for support under Objective 2 of the Structural Funds. However, the sectoral effects of regional aid to the synthetic fibres industry have to be controlled even for the most underdeveloped areas of the Community — which do not include Longwy — and the aid in question has therefore to be examined in the framework of the Community interest. Since 1977, the conditions under whcih aid may be awarded to the synthetic fibres industry have been prescribed by a Code whose terms and scope have been revised from time to time, most recently in 1992 (1).

In this case, the Commission has been required to take a new a decision taken in 1990 on aid awarded on 21 June 1989. Accordingly, as in the earlier, annulled decision, the aid has to be assessed in the light of the 1987 to 1989 Code which was in force on that date (2).

Allied Signal expressed doubts as to whether the whole of the aid awarded in support of the investment under the regional planning grant scheme should be included in the Commission's assessment.

The Commission agrees that polymerization was not brought within the scope of the Code until the introduction of the current Code in December 1992. Furthermore, the related chemical activities for the production of high-viscosity resin chips also involved in the investment, for which the company was awarded aid, have never been covered by any version of the Code on aid to the synthetic fibres industry. Therefore, polymerization and related chemical activities were not covered by the 1987 to 1989 Code and aid awarded to the company in support of equiment, facilities and engineering for these activities may be excluded from the Commission's assessment. Accordingly, this aid is compatible with the common market by virtue of Article 92 (3) (c) to the extent that it is awarded in conformity with the approved regional aid system. Therefore, it is also compatible with the functioning of the EEA Agreement. In accordance with the terms of the Commission's authorization of aid in support of investments in the *pôle européen de développement* permitting aid up to 30 % net grant equivalent of the eligible investment, aid totalling FF 133 718 000 may be awarded in support of these activities. This figure is arrived at by multiplying the eligible investment not linked to synthetic fibres of FF 386 000 000 by 30 % divided by the factor 0,866 which converts a net aid into a gross aid.

Therefore, the Commission has to consider solely whether or not aid awarded to the company in support of the production of synthetic fibres conforms with the 1987 to 1989 Code and is compatible with the common market.

In its letter dated 7 July 1987, which extended the system of control of aid for a further two-year period ending on 19 July 1989, the Commission informed Member States that it would continue to express an unfavourable a priori opinion with regard to proposed aid, whether sectoral, regional or general, that would have the effect of increasing the net production capacity of companies in the synthetic fibres sector (acrylic, polyester, polypropylene and polyamide fibre and yarn and texturization of these yarns). It also reminded Member States that it would continue to give sympathetic consideration only to proposals to grant aid for the purpose of solving serious social or regional problems by speeding up or facilitating the process of conversion away from synthetic fibres into other activities or restructuring leading to reductions in capacity. The aid in question has neither accelerated nor brought about the process of conversion away from synthetic fibres into other activities or restructuring leading to reductions in capacity. On the contrary, it has increased capacity for the production of high tenacity polyester yarn, lowered Allied Signal's costs and weakened the position of other producers. Therefore, the aid does not fulfil the requirements of the Code.

Allied Signal noted the Commission's decisions to authorize aid to Filature du Hainaut and Faserwerk Bottrop GmbH, both of which were taken in the light of the 1987 to 1989 Code and were considered relevant to the Commission's assessment of the aid in question. The company also noted that Hoechst GmbH had been awarded aid in support of the production of advanced high tenacity polyester filament yarn. As to these references the Commission can limit its arguments to the principle established by the Court of Justice in Case C-313/90 that a framework with general impact cannot be altered by the Commission's decisions in individual cases.

The 1987 to 1989 Code, as with all other versions of the Code, does not allow for aid in support of the production of fibres covered by the Code to be exempted from the need to conform with the Code on the grounds that future demand is considered likely to outstrip current

(1) OJ No C 246, 30. 12. 1992, p. 2.
(2) OJ No C 183, 11. 7. 1987, p. 4.

supply. Therefore, the Commission does not need to take a view on the accuracy of Allied Signal's forecast of the size and timing of an increase in demand from Community-based tyre manufacturers for high tenacity polyester yarn in tyre reinforcement, nor to speculate on the extent to which such a change in demand might only occur as a specific consequence of the arrival on the market of the additional capacity of the new installation at Longwy. However, it should be noted that, as indicated in the consultants' report cited by Allied Signal, further improvements in the properties of rayon, especially its tenacity, could help blunt the growing challenge from the new generation of synthetic fibres.

Similarly, the Commission does not need to consider the company's views on the reasons for European tyre manufacturers' continued preference for rayon over polyester other than to note that, as the consultancy study cited by Allied Signal makes clear, the choice of tyre reinforcement material is always determined by the performance requirements for the tyre which differ between the United States of America and western Europe for various historical and other reasons. For example, European driving conditions are different, with higher speed limits and twistier roads, and require a tyre with high modulus reinforcement for safe high speed driving; European car manufacturers dislike the sidewall indentation that can occur with polyester reinforcement.

Finally, whether or not Allied Signal's product and its production process are more benign in terms of the environment than competing products and their production processes is not relevant to the assessment of this case as it is clear that the environmental characteristics of Allied Signal's product and its production process did not determine the availability or size of the regional aid awarded to the company.

By favouring Allied Signal Fibers Europe SA so that its market position is no longer determined by its own efficiency, merit and power and, thereby, increasing the difficulties of other synthetic fibres producers which adapt to change without aid or with aid authorized as compatible with the common market, the aid in favour of synthetic fibres production cannot be regarded as having facilitated a development that, from the Community's perspective, is sufficient to counteract the resulting distortion of trade.

Therefore, while it has facilitated the development of an area within the meaning of Article 92 (3) (c), the aid in question has adversely affected trading conditions to an extent contrary to the common interest and the conditions which have to be fulfilled in order to apply the exception provided for in Article 92 (3) (c) are not satisfied.

The exception provided for in Article 92 (3) (d) relates to aid intended to promote culture or heritage conservation. Evidently it does not apply to the aid in question.

In view of all the foregoing considerations, the aid in support of the production of synthetic fibres is illegal because the French Government did not fulfil its obligations pursuant to Article 93 (3) and, moreover, as it does not meet the conditions which must be satisfied in order to apply any of the exceptions set out in Article 92, the aid is incompatible with the common market. Therefore, it is also incompatible with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The aid, totalling FF 133 718 000, awarded to Allied Signal Fibers Europe SA by the French Government under the regional planning grant scheme in support of polymerization and related chemical activities at its new facility at Longwy, Meurthe-et-Moselle, is compatible with the common market by virtue of Article 92 (3) (c) and, therefore, is compatible with the functioning of the EEA Agreement.

Article 2

The remainder of the aid, totalling FF 26 282 000, awarded to Allied Signal Fibers Europe SA by the French Government under the regional planning grant scheme in support of the production of synthetic fibres at its new facility at Longwy, Meurthe-et-Moselle, is illegal and incompatible with the common market within the meaning of Article 92 (1) and, therefore, is incompatible with the functioning of the EEA Agreement.

Article 3

The French Government shall recover from Allied Signal Fibers Europe SA FF 621 000, being the difference between the amount of aid referred to in Article 2 and the amount of aid already paid to the company, and shall charge interest on this amount from the date of the payment of the aid at the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of the various types of aid in France.

Article 4

The French Government shall not now pay to Allied Signal Fibers Europe SA FF 25 661 000, being the balance of the total aid awarded by the French Government under the regional planning grant scheme in support of its new facility at Longwy, Meurthe-et-Moselle but not already paid to the company.

Article 5

France shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with it.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 17 January 1995.

For the Commission

Karel VAN MIERT

Member of the Commission