COMMISSION DECISION

of 17 July 1996

on aid granted to the Compagnie Générale Maritime in the context of a restructuring plan

(Only the French text is authentic)

(Text with EEA relevance)

(97/14/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having given the parties concerned notice, in accordance with the abovementioned Articles, to submit their comments, and having regard to such comments,

Whereas:

THE FACTS

I

The Commission learned from press reports beginning in July 1993 that the French authorities had granted aid totalling FF 700 million to the State-owned shipping company, Compagnie Générale Maritime (CGM), and its parent company the Compagnie Générale Maritime et Financière (CGMF). By letter of 13 August 1993, the Commission asked the French authorities to provide information on this situation and justification for any sum of aid paid out. However, official bilateral meetings and exchanges of correspondence failed to provide comprehensive answers.

In November 1994, the French authorities advised the Commission that CGM was accelerating its restructuring plan and had decided to withdraw from liner services to the Far East. In return, the French Government had granted additional aid of FF 1 550 million.

Despite the repeated assurances given by the French authorities that they would provide justification for the aid, they did not succeed in allaying the Commission's doubts as to its compatibility with the common market; by Decision of 31 October 1995, the Commission decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty against the French Government.

This procedure was extended by Decision of 20 December 1995 to include an additional amount of aid which the French Government had notified to the Commission for investigation. Both decisions were published in the Official Journal on 28 February 1996 [1].

As a result of publication, comments have been received from the United Kingdom Government and from two companies, one of which competes with CGM on the French West Indies route and the other of which was formerly a partner of CGM in a consortium providing services to the islands of the Indian Ocean. The French authorities have also submitted comments and information, both in writing and at bilateral meetings, the most recent of which was held on 3 July 1996.

II

CGM has primarily operated liner shipping services in a highly competitive international environment, involving many of the major shipping lines of the Member States and third countries. At the end of the 1980s, CGM developed a global strategy to provide independent east-west container services by investing in commercial, logistics and information technology areas. Despite its improved productivity, its freight rate dropped and its operating returns were not sufficient to cover its development costs. In its 1989 guidelines the Commission recognized this situation as a prolonged recession.

Because of its worsening level of indebtedness and its increasingly heavy operating losses, CGM began a restructuring process in May 1992. It agreed with its shareholder, the French authorities, on the outline of a coherent physical and financial restructuring policy to restore the company's viability. Accordingly, it withdrew its loss-making North American services and adopted a restructuring plan — approved by the French authorities in October 1992 — which proposed three areas for action:

[1] Commission Decision 96/C 58/06, OJ No C 58, 28. 2. 1996, p. 4; Commission Decision 96/C 58/07, OJ No C 58, 28. 2. 1996, p. 6.

(i) *reduction of debts through the sale of assets, including shares and real estate;*

Since July 1992 CGM has surrendered its interests in various subsidiaries of the group and has sold real estate and vessels;

(ii) *structural changes to improve efficiency and reduce costs;*

CGM has set up subsidiaries and partnerships to improve commercial efficiency and make accounting more transparent. On 28 December 1992 it created seven new subsidiaries, which began to operate on 1 May 1993. Three separate shipping subsidiaries were made responsible for liner services:

— CGM Sud, which covers Latin American services;

— CGM Orient, which covers Far Eastern services;

— CGM Tour du Monde, which covers services between Europe and the islands of the Pacific via various American and Asian ports.

Four CGM agencies, in Le Havre, Marseilles, Bordeaux and Dunkirk, were converted into handling subsidiaries and CGM sought partners to operate their scheduled services and port agencies.

CGM has also withdrawn from its loss-making services, including those to North America and the Far East. Its annual turnover was reduced by FF 7 100 million to FF 3 800 million between 1995 and 1996.

(iii) *reduction of fleet, personnel and operating costs.*

The CGM fleet has been flagged out to the Kerguelen register (TAAF — French Southern and Antarctic Territories), which has enabled the company to make savings in the order of FF 50 million a year.

Staff was reduced from 3 529 at the end of 1991 to 1 576 at the end of 1996. Job losses affected both seafarers and the company's administrative staff.

The CGM fleet has been reduced from 25 to 16 vessels. By the end of 1996 the company is expected to have only 15 vessels, 9 of which will be operated by CGM and 5 others chartered out.

III

The French authorities have confirmed that to date the restructuring plan has cost it a total of FF 2 050 million, which has been made to CGM in instalments without the Commission's authorization. It is proposed to pay a further FF 1 125 million, plus an amount of FF 148 million for the transfer of the lease on the building which is currently occupied by the registered office of CGM. Of this final instalment, FF 250 million has already been paid, in June 1996, when CGM had a serious cashflow problem with debts to be paid immediately. The aid was linked to measures taken by CGM under the restructuring plan.

Date	Action	Aid (in FF million)	Comment
October 1992	Restructuring plan adopted; sale of assets begins	150	Current returns improved by FF 270 million a year; social restructuring aid of FF 233 million
December 1992	Plan to set up subsidiaries adopted, negotiations on fleet organization begin; North American services stop	200	
June 1993	Subsidiary plan goes ahead	150	
June 1994	More assets sold, European agencies reorganized	800	Assets worth FF 1 360 million sold
Autumn 1994	Far East services cease: cost of FF 587 million plus loss of FF 66 million for future charters and FF 70 million for a staff reduction programme	750	Continuation of services: additional cost of FF 120 million in annual operating losses for seven years, plus the same costs for possible sale

Date	Action	Aid (in FF million)	Comment
June 1996	Debt servicing	250	Total debt reduction: FF 2 900 million; aid used: FF 1 586 million, plus FF 1 314 million from the activities of CGM
After July 1996	Debt reduction; transfer of lease on building used as CGM registered office	875 148	1995 debts (FF 2 000 million) reduced to less than FF 1 000 million
1992-1996	Total amount: social aid (FF 535 million), debt reduction (FF 2 471 million), debt servicing (FF 250 million), other physical and financial restructuring (FF 77 million); operating losses (FF 1 020 million), paid for by sale of assets (FF 1 360 million), and other debt reductions (FF 340 million)	3 323	Staff cuts: 55 % (1992-96); capacity reduction: 31 %; reduced turnover: 46 %

IV

When initiating the procedure, the Commission listed the principal questions which it considered had remained unanswered:

(a) How had the aid already granted been distributed?

(b) What were the detailed restructuring plans and how, in the context of the programme of State support, would viability be restored?

(c) How and when did the French authorities intend to complete the privatization of CGM?

The procedure was extended to include the measures which the French authorities were intending to take to give a further capital injection of FF 1 125 million (ECU 173 million) to CGMF (the parent company of CGM), which would itself subscribe to an increase in the capital of CGM.

Provision was also made for CGMF to take over the registered office of CGM. As was stressed by the French authorities at a bilateral meeting on 21 November 1995, this additional capital injection formed part of the restructuring of CGM, an undertaking since 1992, and was intended to facilitate its switch from the public to the private sector.

According to these authorities, the amount of this injection was determined on the basis of two elements:

— the need to deal with CGM's debts in order to achieve a financial structure enabling the undertaking to return to the viability and profitability needed for a transfer to the private sector;

— the prior transfer to CGMF of the building partly occupied as the registered office of CGM and of the corresponding lease in order to meet the expectations of potential purchasers.

At the above meeting, the Commission obtained some clarification as to the details and timetable of the planned privatization procedure. This procedure began when CGM was included on the list of companies to be privatized under the Law of 14 July 1993. Given the objective of transferring CGM to the private sector as soon as possible, the French Government stressed the need to initiate the privatization procedure at the earliest opportunity through a public call for bids, with the choice of purchasers and conditions of transfer being determined with the agreement of the French privatization commission.

The aim pursued by the Government is to transfer all CGM shares held by CGMF, if necessary after transfer by CGM to one or more separate purchasers of all or some of its port-handling activities in continental France. This should give CGM private share ownership, enabling it to develop a normal commercial strategy. It was stated that there would be no discrimination of any kind against potential purchasers on the grounds of their nationality.

V

Three interested parties have submitted comments on the State aid to CGM pursuant to the procedure set out in Article 93 (2) of the Treaty.

(i) *The United Kingdom Government*

The United Kingdom Government welcomed the decision to initiate the procedure since State aid had been used to subsidize inefficient operations, thus protecting CGM from market forces and seriously distorting competition between undertakings established in the EU. The UK authorities agreed with the Commission's assessment which was designed to show that the restructuring plan was inadequate since it failed to envisage clearly the point at which the viability of CGM would be restored. They also argued that the State aid had allowed CGM to cut its rates to below operating costs in order to eliminate competition on the French West Indies route. Once competition had been eliminated, CGM immediately increased its rates. The United Kingdom Government highlighted a number of points raised by the thorough investigation conducted by the Commission and concluded that, unless the French Government had acted in the same way as a market investor who had fully evaluated the various possible options, the aid should be declared incompatible with the common market.

(ii) *A competitor of CGM on the West Indies route*

A competitor of CGM on the West Indies route reported behaviour by CGM which it claimed to be anti-competitive. However, the Commission officials responsible have found no proof of this behaviour, nor of predatory pricing (which would have led CGM to offer rates below the average variable cost).

(iii) *A competitor of CGM on the Indian Ocean routes*

A competitor of CGM on the Indian Ocean routes considered that, in this highly competitive market, the granting of aid to cover operating losses protected CGM against market forces and that CGM should not be authorized to use the aid to move into new markets or to remain in existing markets from which it would have been forced to withdraw had it not been for the aid.

A particular cause for concern was the situation in the Southern Indian Ocean where a consortium had recently disappeared since the competitor had withdrawn. It was suggested that a CGM decision to continue to operate this service would entail significant investment in agencies, staff and vessels.

(iv) *Reply by the French authorities*

The French authorities replied to these comments by insisting that all the aid already paid or to be paid in the future was part of the plan to restructure and privatize the company. The French authorities made the following comments on the specific points raised:

With regard to services to the French West Indies, the French authorities stated that aid had always been paid each time a new stage in the restructuring process had been completed. CGM had not applied rates which would have allowed it to operate below cost and the service had always been profitable, over the years. The increase in freight rates in April 1996 was made possible by the increase in demand and the improvement in the quality of services provided by CGM.

With regard to the Indian Ocean trade, the French authorities stressed that the consortium in question had made profits and that the service had recently been reorganized (financed jointly by two companies) so that profits could be expected in the future. The market had developed steadily over the last decade (from 65 000 to 82 000 TEU in the ten years up to 1995) and the French authorities consider that CGM, using the shipping capacity available under a charter-party, has the staff and know-how required to operate the service economically, and that in the present circumstances no restrictions should be placed on CGM.

VI

The Commission issued a call for tenders and selected a consultant to evaluate the financial structures of the CGM and the economic proportionality of the aid package envisaged by the French Government. The consultant examined all the relevant documents made available by the French authorities and by the complainants and questioned the managerial staff. The final report concluded that:

(a) the payments made under the staff reduction plan are in conformity with similar major restructuring operations;

(b) the level of indebtedness at the end of 1995 was 40 % lower than the 1991 level (down from FF 4 904 million to FF 2 000 million); since the FF 2 904 million reduction exceeds the aid granted for this purpose (FF 1 586 million), this implies that reducing the debt burden was a fundamental component of CGM's restructuring strategy;

(c) the costs allocated to withdrawal of services were realistic;

(d) CGM should be profitable in the future and, with the total capital injection proposed, can be considered viable.

LEGAL ASSESSMENT

VII

Article 92 (1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

In order to be compatible with the common market the aid in question must be covered by one of the exceptions to Article 92 (1). The only possible exception would seem to be that specified in Article 92 (3) (c), namely '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'.

Two documents setting out guidelines on State aid (for Community shipping companies and for the reorganization of companies in difficulties) elaborate on this measure in contexts which relate to the CGM aid package.

The 1989 guidelines for the examination of State aid to Community shipping companies [1] recognized that the prolonged recession in world trade and excess shipping capacity had caused problems for Community fleets. Many of these problems were due to the tax and employment rules by which Community operators were bound, including income tax and social security payments for seafarers, and company tax. These aids were therefore considered acceptable where they helped to support the development of Community fleets and the notion of 'common interest' was defined in terms of keeping vessels under a Community flag and keeping as high a proportion of Community seafarers as possible on board those vessels.

At the same time, the aid had to be proportional to the objective sought (the Commission specified that a ceiling would be set based on the recorded difference between the operating costs of vessels flying a Community flag and non-Community vessels); aid should also be transparent, provisional and preferably degressive.

Guidelines were given on the different types of aid which the Commission may authorize. Operating aid in particular was considered to be in the common interest of the Community, *inter alia,* if it is directly linked to a restructuring plan which is considered compatible with the common market.

The compatibility of a restructuring plan with the common market therefore has to be evaluated on the basis of the Commission's general approach to reorganizing companies in difficulties. The Commission's guidelines [2] lay down a number of conditions in this connection, all of which must be met:

— restoration of long-term viability,

— avoidance of undue distortions of competition through the aid,

— aid in proportion to the restructuring costs and benefits,

— full implementation of restructuring plan and observance of conditions,

— monitoring by the Commission together with annual reports.

VIII

When initiating the procedure, the Commission stated that at this stage all that was required of the French authorities was to demonstrate that the aid formed an essential part of a complete restructuring plan designed to restore viability. Although staff had been cut, it was not clear that a coordinated strategy has been developed to restore viability. Generally the aid had been granted in response to the awkward financial position in which the company found itself rather than as a tool for developing and improving economic performance. In fact, it seemed that the aid had protected CGM from market forces.

The company's problems derived mainly from management decisions, like the new strategy adopted in 1989, the serious overcapacity on certain routes (particularly services to North America and the Far East where CGM was making heavy losses) and the weakness of the dollar. This resulted in higher levels of debt (which levelled out at FF 2 500 million in 1990 and then rose to FF 5 million at the end of 1992) that could not be wiped out by operating revenue.

The plans for restructuring CGM prepared by the French authorities identified areas where costs could be reduced, envisaging the gradual withdrawal of the company from loss-making activities and the gradual sale of its assets and

[1] 'Financial and fiscal measures concerning shipping operations with ships registered in the Community', Doc. SEC(89) 921 final of 3 August 1989.

[2] 'Community Guidelines on State aid for rescuing and restructuring firms in difficulty', OJ No C 368, 23. 12. 1994, p. 12.

reductions in staff and capacity. The aim of the national authorities is to privatize the company in the autumn since they considered that market conditions are currently favourable. In view of the number of declarations of interest, this assessment is probably correct.

The alternative to State support leading to the restructuring of CGM would have been the liquidation of the company. However, for political reasons, the French authorities did not consider this option.

IX

The common interest of the Community

The main question concerning aid to CGM is whether granting this aid is in the common interest. In shipping, the common interest would be served by measures designed to keep vessels flying a Community flag and to employ as high a proportion of Community seafarers as possible on board these vessels. To date, the subsidies have allowed CGM to continue to operate vessels under the French flag and to continue to employ Community seafarers.

In addition, the restructuring aid must satisfy a number of conditions:

(i) *Restoration of long-term viability*

Restructuring plans must make it possible to restore long-term viability within a reasonable timescale and on the basis of realistic assumptions. The improvement in viability must result mainly from internal measures contained in the restructuring plan and should involve the abandonment of structural loss-making activities.

CGM has considerably reduced its operations (46 % of turnover and 55 % of staff) and capacity (31 %) during the 1992-1996 period. It is now concentrating on its main profitable activities. The French authorities, who originally calculated losses for 1996 at FF 23 million, have now revised their estimates to between FF 40 million in losses and FF 4 million in profit, on a turnover of FF 3 800 million. Estimates for the future put profits for 1997 at between FF 25 and FF 65 million and for 1998 at between FF 70 and FF 105 million if CGM continues to operate as at present. Those improvements in profitability would be the result of gradual reductions in the cost of employing seafarers (as the agreements signed with the trade unions at the end of 1996 expire and seafarers on CGM vessels are gradually replaced by cheaper foreign sailors), more management changes at head office and at the different agencies (on the assumption that a purchaser would not need to maintain the whole CGM organization, since in some areas such as administration there would be duplication with his own company), the expected returns on loadings of bananas on the French West Indies route and the lower debt burden requiring to be wiped out. Successful privatization should enable the company to operate profitably thereafter.

CGM made a sizeable contribution to its own restructuring by using the money from the sale of its assets (FF 1 360 million). The aid was used for the physical and financial restructuring of CGM. The first instalment concentrated on the social aspects, the commercial activities and the non-essential assets of the company. The last instalment of aid completed the financial restructuring process leaving the company with a debt burden similar to that of other companies in the sector, which can be reduced in an acceptable manner through normal operations.

OECD forecasts predict growth in world trade in the order of 8 % and over-capacity on certain shipping routes. The investigations carried out by independent consultants show that CGM is operating in sectors where the company could benefit from these developments as early as 1998, or even earlier. On the basis of present forecasts, CGM should make a profit in 1997, so it has to be concluded that the aid has restored the company's viability.

(ii) *Avoidance of undue distortions of competition through the aid*

A further condition of the aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. This is particularly important where there is an excess of production capacity in the relevant market in the European Community served by the recipient. Where, on the other hand, there is no structural excess of production capacity, the Commission will normally not require a reduction of capacity in return for the aid. However, the aid must be used only for the purpose of restoring the firm's viability and not to enable the recipient to expand production capacity during implementation of the restructuring plan.

In this connection, the independent consultants confirmed that the principal activities of CGM are the French West Indies route (the banana trade) and the French overseas interests (overseas departments and territories), including the islands of the Indian Ocean and the Pacific. The restructuring of the company is therefore covered by the concept of

'common interest', partly because CGM has withdrawn from services where there is currently excess capacity and partly because, once privatized, the company will have to face up to normal market pressures and its commercial strategy will then fully meet market conditions. Moreover, there is no proof of structural over-capacity on the routes currently operated by CGM.

With regard to the specific complaints made regarding the West Indies route, the Commission has not been given sufficient proof to conduct a formal inquiry into the allegations concerning anti-competitive behaviour pursuant to Article 86 of the Treaty on the abuse of dominant positions.

As regards use of the aid to encourage development of the market, the Commission has to take into consideration the fact that CGM is already involved in shipping links with the islands since it is still a member of a consortium. The Commission will impose conditions to ensure that CGM does not use the final instalment of aid to develop new or loss-making activities on these routes.

(iii) *Aid in proportion to the restructuring costs and benefits*

The amount and intensity of the aid must be limited to the strict minimum needed to enable the restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources, and the company should not be provided with surplus cash which could be used for aggressive, market-distorting activities.

The aid granted is the minimum required to restore CGM to a position of viability and profitability compatible with transfer to the private sector. It was granted in order to meet the real needs of CGM so as to meet the objectives set for restructuring. Furthermore, it has been confirmed that the total aid amount envisaged by the French Government is the minimum required to restore CGM's viability and allow the proposed privatization. The aid provides the company with an adequate financial structure without giving it a cash surplus. As already mentioned, the CGM has also used the revenue from the sale of its assets — a total of FF 1 360 million — to help with the restructuring process.

The aid is provisional, since it was granted during the period from 1993 to 1996, and no further aid is envisaged after privatization.

(iv) *Full implementation of the restructuring plan and observance of conditions*

The full restructuring plan adopted for the company in 1992 planned to restore its viability by the adoption of specific measures. The plan has been implemented and viability has been restored.

The Commission did not impose conditions since it was not sent the plan for approval.

(v) *Monitoring by the Commission by means of annual reports*

Progress with a restructuring plan must be monitored by the Commission. To this end a report will be sent to the Commission by 1 February 1997 at the latest.

X

In conclusion, an amount of aid of FF 2 050 million has been paid and another amount estimated at FF 1 125 million is still envisaged, after which the company will be privatized. At present, of the planned total amount of FF 1 125 million, a first instalment of FF 250 million has already been paid in June 1996 to settle pressing debts. In addition, the French authorities are paying FF 148 million towards the transfer to CGMF of the building used by the CGM as its registered office and of the lease on it (after re-evaluation to take account of the slump in real estate prices) so that the operation will have a neutral impact on CGM.

It has not been shown that the aid has resulted in distortion of competition to an extent contrary to the common interest, but it has been shown that the State aid has supported a radical restructuring scheme and helped to restore the viability of a Community shipping company which employs Community seafarers.

In addition, the French authorities have undertaken to ensure the transparency of the CGM privatization procedure.

XI

GENERAL CONSIDERATIONS

As a general point, the Commission would emphasize that pursuant to Article 93 (3) of the Treaty it should be given prior information of any operation which could involve elements of State aid.

Moreover, the Member States are required not to put State aid measures into effect before the Commission has given a final decision. The Commission regrets that the French Government did not comply with the provisions of Article 93 (3) in this respect and that the aid was granted to CGM illegally,

HAS ADOPTED THIS DECISION:

Article 1

1a. The restructuring aid granted to CGM in the form of capital injections during the period from 1992 to 1996 is unlawful, having been granted in breach of the provisions of Article 93 (3) of the Treaty. However, the aid may be considered to be compatible with the common market, pursuant to Article 92 (3)(c) of the Treaty, provided that the French Government complies with the commitments and conditions set out in paragraph 2 of this Article.

1b. The additional restructuring aid to be paid to CGM in 1996 in the form of further capital injections is also considered to be compatible with the common market pursuant to Article 92 (3)(c) of the Treaty, provided that the French Government complies with the commitments and conditions set out in paragraph 2 of this Article.

2. The French authorities shall comply with the following conditions and commitments:

— until privatization has been completed CGM shall confine itself to operating only its current services;

— until privatization has been completed CGM shall confine itself, as far as the Indian Ocean is concerned, to operating capacity on a scale comparable with that used by the consortium, namely 9 000 TEU in both directions annually;

— the French authorities shall submit a report to the Commission after privatization or by 1 February 1997 at the latest; this report shall give details of the services operated by CGM, its transport capacity on those services and its operating revenue so that the Commission can check that the aid has not been used to support aggressive behaviour on the market or loss-making activities; the report shall also include details of the procedure leading up to privatization so that the Commission can check that the financial objectives set for the company have been met;

— until privatization has been completed, CGM shall not apply rates for any of its services which do not fully cover the additional operating costs; accordingly, the report to be submitted must include details of the operating returns for all the services operated by CGM, either by using its own vessels or by means of chartering agreements, up to the date on which privatization is completed;

— no further aid shall be granted to CGM and all aid granted shall be used for the physical and financial restructuring of the company;

— the CGM restructuring plan shall be implemented in its entirety, as agreed with the Commission.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 17 July 1996.

For the Commission

Neil KINNOCK

Member of the Commission