COMMISSION DECISION
of 20 July 1999
which Germany is planning to implement for Saxonylon Textil GmbH

(notified under document number C(1999) 2535)

(Only the German version is authentic)

(Text with EEA relevance)

(1999/673/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2) thereof,

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and in particular Article 7 thereof [1],

Having called on interested parties to submit their comments pursuant to the provision cited above [2] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 19 June 1998, Germany notified the Commission of a proposal to grant aid to Saxonylon Textil GmbH in connection with an investment in a plant to produce polyamide yarn in Meerane, Saxony. By letter dated 10 September 1998, it provided further information.

(2) By letter dated 17 November 1998, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid. Germany responded to the opening of the procedure in its letter dated 7 January 1999.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from six interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by letter dated 15 June 1999.

II. DETAILED DESCRIPTION OF THE AID

(5) The proposed aid relates to an investment project by Saxonylon Textil GmbH, a subsidiary of the Tolaram Group, Singapore. The Tolaram group operates in more than twenty countries and manufactures and sells textiles, fibres, yarn, floor coverings, paper, chemicals, telecommunications equipment, food, electronic goods and household commodities. The plan is to build a state-of-the-art production plant at Meerane for polyamide 6.6 industrial and textile filament yarn, including fully drawn yarn (FDY), partly drawn yarn (PDY), textured yarn, and plied and dyed yarn. The plant is to manufacture micro, fine and medium-weight multifilament yarns with filaments of 0,5 to 1 denier.

(6) The planned capacity of the plant is 12 140 tonnes per year and production is scheduled to begin in the third quarter of 1999. Output from this plant would replace between 3 000 and 4 000 tonnes a year of nylon products which are currently imported by the Tolaram Group from outside the Community. The project would create at least 150 jobs.

(7) The eligible project costs total DEM 120,990 million. The proposed financial support comprises DEM 35,208 million under the Commission-approved 26th framework for the joint Federal/*Länder* programme for improving regional economic structures [3] and an investment allowance of DEM 7,138 million, with an overall aid intensity of 35 %.

(8) When opening the procedure, the Commission expressed doubts as to the compatibility of the aid with the common market since the project clearly did not comply with the relevant provisions of the Code on aid to the synthetic fibres industry [4] (hereinafter referred to as the 'Code').

III. COMMENTS FROM INTERESTED PARTIES

(9) The International Rayon and Synthetic Fibres Committee (CIRFS) stated that it was clear that a situation of structural overcapacity existed for both polyamide textile filament yarn and polyamide industrial filament yarn and that, consequently, the provisions of the Code relating to structural shortage of supply were not applicable in this case. Since the project involved an increase in the company's capacity in circumstances where no structural shortage of supply could be established, the aid was incompatible with the Code. CIRFS added that many companies active in this sector had modernised and in some cases had added new capacity without infringing the provisions of the Code. There were currently further projects in the pipeline, not involving the use of State aid, which could be put at risk if subsidies were to be permitted for a competing project. CIRFS anticipated

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 39, 13.2.1999, p. 2.
[3] Commission letter (SG) D/7104, of 18 September 1997.
[4] OJ C 94, 30.3.1996, p. 11.

that between 1998 and 2003 demand for polyamide textile filament yarn in the Community would decline by an average of 1,6 % a year, while demand for polyamide industrial filament yarn would remain relatively static. It rejected the German authorities' argument that the aid was intended to help restructure the industry in the new *Länder*. This argument had no foundation in terms of the Code. Moreover, restructuring of the polyamide filament production sites in the former GDR had already been completed in a relatively successful manner.

(10) The Industrievereinigung Chemiefaser e.V. also argued that the proposed aid was incompatible with the Code. It stated that there was no structural shortage of supply for the relevant products in Germany and that the non-subsidised producers in East Germany would be particularly hard hit by the aid.

(11) Profibra, the Spanish Association of Chemical Fibres Producers, stated that the proposed aid would harm Spanish competitors, which were already facing difficult market conditions and requested the strict application of the Code.

(12) Comments were also received from Poliseda SL, a textile company producing polyamide textile and industrial filament yarn; referring to the low capacity utilisation rates in this sector, Poliseda opposed the granting of the aid, which it considered incompatible with the Code. Nurel SA, a producer of polyester fibre and filament textile yarns and polyamide textile yarns, also referred to the difficult situation facing existing producers. The proposed aid would endanger investment financed from internal resources, thus giving subsidised operations an unfair competitive advantage. Nylstar GmbH claimed that, if the aid were granted, it would be obliged, given the adverse market trends, to halt production in the German plants at Freiburg im Breisgau (Baden-Württemberg) and Neumünster (Schleswig-Holstein) with a consequent loss of 525 jobs.

IV. **COMMENTS FROM GERMANY**

(13) By letter dated 7 January 1999, Germany responded to the opening of the procedure, stating that the proposed aid would assist the economic development of Meerane, an Objective 1 area. In Germany's view, an assessment of the project should attach just as much importance to the effects of the planned investment on the regional economy as to its effects on competition and trade between the Member States.

(14) As regards the question of a reduction in capacity, Germany stressed that the project concerned investment in a new plant. Since the enterprise had no existing capacity in the European Economic Area (EEA), it was not dismantling capacity elsewhere in the EEA. As regards the project's impact on the capacity utilisation rate for fibres and yarns, particularly in respect of planned exports and import substitution given the anticipated increase in demand, Germany referred to the comments it had made prior to the opening of the procedure.

(15) Germany further argued that, following the restructuring of the former GDR's synthetic fibres industry, a substantial proportion of production facilities in the new *Länder* had been closed, with a consequent reduction in capacity. Of the 28 000 people previously employed by the industry, only 3 205 were still working in 1996. It had been hoped that it would be possible for the new *Länder* to create or at least to partially retain their synthetic fibre capacity but restructuring had taken longer than originally foreseen. Even investors not previously involved in manufacturing within the EEA could help to restructure local industry by means of their investment. The construction of a new plant in Saxony would help to convert the chemical industry in the new *Länder* into a competitive, state-of the-art branch of the economy. It would be regrettable if a potential investor who sought to achieve a substantial expansion in the region's industrial base and thereby to help increase income in this Objective 1 area were obliged to abandon its plans because the Commission decided not to allow aid which it had included in its plans as a major locational factor.

(16) By letter of 15 June 1999 responding to the comments from third parties, Germany indicated that the information provided by potential competitors and their representatives in some respects contradicted the information it had submitted. The letter also pointed out that all the information necessary for a decision had already been sent to the Commission.

V. **ASSESSMENT OF THE AID**

(17) Article 87(1) of the EC Treaty states that, save as otherwise provided, 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. Similarly, Article 61(1) of the EEA Agreement states that, save as otherwise provided, such aid is incompatible with the functioning of that Agreement.

(18) The proposal to award aid to Saxonylon Textil GmbH undoubtedly constitutes aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, as it would allow the company to carry out the investment in question without having to bear the full cost. There is significant infra-EEA trade in polyamide industrial and filament yarn, which in 1997 amounted to some 1 million tonnes. It can therefore be assumed that the proposed aid threatens to distort competition and affect trade within the meaning of Article 87(1) EC and Article 61(1) EEA.

(19) The derogations under Article 87(3)(a) EC and Article 61(3)(a) EEA relate to aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. If the company is allowed to carry out the investment in question, the proposed aid would assist the economic development of Meerane, an Objective 1 area in Saxony. However, it is necessary to monitor the effects of the aid on the synthetic fibres industry, even in the most structurally weak areas of the Community.

(20) Since 1997 the conditions under which measures may be taken to assist synthetic fibre producers have been prescribed by an aid Code, the terms and scope of which have been regularly revised; its period of validity was last extended in 1999 [1].

(21) The current Code requires Member States to notify the Commission of any proposal to award aid in whatever form, irrespective of whether or not the Commission has authorised the scheme concerned, where the aid would not satisfy the *de minimis* criterion in direct support of:

(a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or

(b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or

(c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

(22) In the present case the aid is to be awarded for the installation of new capacity for the extrusion of BCF polyamide yarn and hence falls within the scope of the Code. It ought therefore to have been notified.

(23) The Commission notes that the proposed aid is to be granted under Commission-approved schemes. However, the implementation of the schemes in question, i.e. the 26th framework for the joint Federal/*Länder* programme for improving regional economic structures and the Investment Allowance Law [2], must comply with the provisions of Community law applicable to the cumulation of aid with different objectives and to specific industries, transport, agriculture and fisheries.

(24) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states, *inter alia*, that, in assessing the compatibility of the proposed aid, the fundamental consideration is the effect of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. Investment aid will only be authorised for larger firms, i.e. firms that are not SMEs, at up to 50 % of the applicable aid ceiling if the aid would either result in a significant-reduction in the relevant capacity or if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity.

(25) Capacity utilisation in this sector is rather unsatisfactory throughout the EEA. For polyamide filament yarn it was approximately 75 % in 1995 and 1996 and 79 % in 1997. Clearly, there is no structural shortage of supply on the relevant market since, if such a shortage did exist, then according to the Code the capacity utilisation rate for production of the fibre or yarn concerned, averaged on an annual basis over the previous two years, would be expected to be at least 90 %.

(26) Since the market is not characterised by a structural shortage of supply, the Commission must be satisfied that the aid results in a significant reduction in the relevant capacity, i.e. the capacity to extrude polyamide filament yarn. Since the parent company of the prospective aid beneficiary does not currently produce synthetic fibres in the EEA, it is self evident that no capacity reduction, significant or otherwise, will occur as a result of the project. On the contrary, capacity will be increased by some 12 140 tonnes per year.

(27) The Commission notes that the total amount of proposed aid is DEM 42,346 million, equivalent to an aid intensity of 35 % (gross), which is the applicable regional aid ceiling for the *Land* of Saxony. Even if the other criteria of the Code were satisfied, the proposed aid is therefore twice the maximum allowed under the Code for larger firms.

[1] OJ C 24, 29.1.1999, p. 18.

[2] Commission letter SG(95) D/17154, of 27 December 1995, and corrigendum SG(96) D/3794, of 11 April 1996.

(28) The Commission cannot accept the German argument that the aid should be permitted because the investment will contribute to the restructuring of the synthetic fibres industry in the new *Länder*. Since the investor is not currently a producer in the EEA, it is not apparent that the investment will contribute directly to the restructuring of the domestic industry. Nor have the German authorities supplied any data on the effects of this investment on production capacities in Saxony or the other *Länder*. Moreover, the Code clearly states that the relevant capacity is that of the prospective aid beneficiary.

VI. **CONCLUSIONS**

(29) The Commission therefore finds that the proposed aid for Saxonylon Textil GmbH is incompatible with the common market and with the functioning of the EEA Agreement since it does not satisfy the requirements of the Code on aid to the synthetic fibres industry,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany is proposing to implement for Saxonylon Textil GmbH, a subsidiary of the Tolaram Group, and which comprises a grant of DEM 35,208 million and an investment allowance of DEM 7,138 million is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to Germany.

Done at Brussels, 20 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission