COMMISSION DECISION

of 5 February 2003

on the ad hoc aid which the United Kingdom is planning to implement for CLYDEBoyd under the Freight Facilities Grant Scheme (FFG)

(notified under document C(2003) 388)

(Only the English text is authentic)

(Text with EEA relevance)

(2003/295/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provisions [1],

Whereas:

1. PROCEDURE

(1) By letter dated 14 March 2002, the United Kingdom notified the Commission of an ad hoc aid to CLYDEBoyd (Fort William) Ltd (hereinafter CLYDEBoyd) in accordance with the extended Freight Facilities Grant scheme, which was approved by the Commission on 20 December 2001 (State aid case N 649/01). The notification was registered by the Secretariat General of the Commission on 15 March 2002 under No N 221/2002. The notification was considered incomplete and, on 26 April 2002, the United Kingdom was asked to provide additional information. The Commission received the requested information on 28 May 2002. The Commission sent a second request for information on 1 July 2002. The reply received was registered by the Commission on 17 July 2002.

(2) By letter dated 2 October 2002, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. This procedure was registered as C 62/2002.

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

(4) The United Kingdom submitted its comments to the Commission by letter dated 29 October 2002, registered on 4 November 2002.

(5) The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE AID

A. Commission's decision of 20 December 2001, State aid — UK-N 649/2001 — Freight Facilities Grant Scheme

(6) On 20 December 2001 the Commission adopted Decision number N 649/01 approving the extended Freight Facilities Grant (FFG) scheme, which grants aid to operators of freight handling facilities for coastal/short-sea shipping. The aid is intended to tip the balance in favour of short-sea shipping and to financially support investments in expensive and specialised equipment required for sending freight by water, which would not be needed if the goods went by road.

(7) Grant intensity will be calculated by the United Kingdom competent authorities for each individual scheme following the FFG rules. The FFG scheme first assesses the environmental benefit using a standard formula which takes into account the lorry-miles that will be saved over the agreed period of the individual

[1] OJ C 269, 5.11.2002, p. 3.

[2] OJ C 269, 5.11.2002, p. 3.

scheme and their monetary value. This monetary environmental benefit, calculated by the United Kingdom competent authorities using the FFG formula, constitutes the maximum amount of grant that can be offered by the United Kingdom Government to the applicants.

(8) As a condition of FFG, operators are required to notify the tonnage to be moved each year during the agreed period of the scheme and to report to the government the actual tonnage moved each year. This is subject to verification by government audit of company records. This monitoring also allows the United Kingdom authorities to confirm the expected proportion of lorry journeys saved, and therefore to validate the lorry mile saving.

(9) The FFG scheme contains an express provision which allows the Government to claw back a proportion of the grant paid in the event of a shortfall in the freight tonnage transferred from road to water. In the event of such a shortfall, the circumstances are examined to establish whether it is appropriate to extend the original time period in order to obtain the full environmental benefit or to require reimbursement of a proportion of the grant. Recovery is unlikely where the reason for the shortfall is outside the beneficiary's control and the beneficiary has made reasonable efforts to secure traffic.

(10) The Commission's decision of 20 December 2001 stated that the aid intensity should not be higher than 50 % of the total project cost for facilities that are accessible on non-discriminatory terms for all existing and potential operators. Where access to the infrastructure is limited to one or more specific operators, the latter must be chosen through a transparent, fair and non-discriminatory public tendering procedure. Exceptionally, if the authorities can prove that the commitment agreed between the United Kingdom authorities and the beneficiary cannot be met through the aid amounts as described above, higher percentages may be granted after prior notification and approval by the Commission.

B. **The notified aid**

(11) In line with the aim of the FFG scheme to secure a modal shift from road to water transport, CLYDEBoyd wishes to provide a larger berth and freight handling facilities at Corpach Pier, near Fort William, Scotland. CLYDEBoyd is a limited company. Its shareholders are Boyd Brothers Ltd (road haulage company) and Clydeport plc (port operator), who own 50 % each. Clydeport plc also owns and operates several ports on the Clyde estuary and the Firth of Clyde, namely Hunterston, Ardrossan, Greenock and Glasgow.

(12) The existing facility has severe limitations due to the size of the pier (31 metres) and the lack of adjacent storage and handling facilities. CLYDEBoyd believe that any further loss of existing volumes will render the current facility uneconomic and lead to closure. In such circumstances CLYDEBoyd would be forced to close the facility and around 40 000 tonnes per annum of timber, pulp and wood chip would revert to road transportation. The work to be carried out with grant assistance would not only safeguard this existing traffic but would make it possible to secure the transport of an additional 50 000 tonnes per year.

(13) In order to do this, the port must be enlarged to allow vessels of up to 6 000 tonnes dwt to berth safely, and the pier must be extended to accommodate two vessels at the same time. A greater area is needed close by the quayside for goods handling and placement during loading and unloading, plus a covered area for short term storage of vulnerable products. Finally, mobile freight handling equipment is required to load and unload the larger vessels quickly and efficiently.

(14) Apart from the aid intensity, the proposal complies fully with the conditions of the approved FFG scheme (N 649/2001).

C. **Aid intensity**

(15) The aid will take the form of a non-reimbursable subsidy. Financial analysis of the case in accordance with the provisions of the FFG scheme has determined that aid is required at the level of 85 % (GPB 3,332 million) of the eligible costs at Corpach (GBP 3,92 million). The environmental benefits calculated by the United Kingdom competent authority in line with the scheme rules are GBP 5,4 million.

INFRASTRUCTURE COSTS

(in GBP million)

Berth structure	2,19
Construction and fitting of freight handling facility	0,64
Mobile plant	1,02
Project management and legal fees	0,07
Total cost	3,92
Grant	3,332
Aid intensity	85 %

D. **Market analysis**

VOLUME OF TRAFFIC THROUGH CORPACH

(Tonnes)

Year	1999	2000	2001	Pre-dicted	Of which is new traffic
Timber	8 180	15 155	14 379	23 000	8 600
Woodchip	9 000	13 540	25 091	25 000	0
Baled Pulp	4 000	3 000	6 000	30 000	24 000
Salt	600	4 170	13 622	8 000	0
Other	4 608	1 362	2 455		
Total	26 400	37 200	61 500	86 000	32 600

(16) The additional timber is internal United Kingdom traffic, which otherwise would be moved by road. The baled pulp is imported into the United Kingdom through a number of different ports, but is now being brought mainly through Greenock (owned and operated by Clydeboyd, one of the partners in the Corpach project). The estimate of the average annual balep pulp handled by the various ports is as follows:

Greenock	12 000
Inverness	3 000
Montrose	2 500
Dundee	2 500
Aberdeen	2 000
Leith	2 000
Total	24 000

(17) This project will be also able to unlock the potential for significant further volumes in the near future. CLYDEBoyd has identified a number of specific traffic flows which, it is actively pursuing with the relevant customers, and should be in a position to finalise these proposals shortly. For instance, the letter of support sent by Scanfiber AS ([3]) states that 'unless you are able to offer us better/longer quays … we are afraid that Corpach in the future will have difficulties in competing with other export facilities, like Belfast and other Irish ports'.

([3]) Oslo, 1 March 2001.

(18) In addition, although they are not part of the initial development of the port, additional round timber exports to different places in Ireland and Scandinavia are expected. CLYDEBoyd is also in discussion with Arjo Wiggins regarding the possibility of shipping paper to Belgium directly from Corpach. Finally, it is envisaged that CLYDEBoyd will use the facility for all types of traffic (except for timber/paper traffic ([4])).

E. **Grounds for initiating the procedure**

(19) The Commission decision to initiate the procedure laid down in Article 88(2) of the Treaty and to request clarification from the United Kingdom authorities was the outcome of an initial examination of the notified project. Furthermore, concern was expressed regarding the proportionality of the aid. The Commission normally considers State aid beyond 50 % aid intensity for transport infrastructure as not compatible with the Treaty, unless a detailed and neutral commercial and financial analysis shows that the main beneficiary of the facilities is not capable of financing a higher amount without State intervention ([5]). It should be noted that CLYDEBoyd declined a 50 % grant of GBP 1,96 million to undertake the project.

(20) The Commission expressed doubts regarding the following issues in particular:

— the necessity and proportionality of the aid for the realisation of the project. In addition, information was needed to show that the aid proposed is the least necessary to realise such port facilities and that the relevant market could not have provided a cheaper alternative.

— the impact of the aided project on existing transport infrastructures in the area.

3. **COMMENTS FROM THE UNITED KINGDOM**

(21) The United Kingdom authorities indicated that the project has been subject to scrutiny by both Scottish Executive and Department of Transport officials and third party consulting engineers appointed by the Scottish Executive. They stated that the proposed 85 % aid is both necessary and proportional for realisation of the project and that it will not proceed without this aid. In addition, no other port is in a position to provide the

([4]) Scottish Executive, Meeting notes — Visit to Corpach, 31 August 2001.

([5]) Commission Decision of 31 January 2001, N 597/2000 — The Netherlands; Commission Decision of 14 September 2001, N 208/2000, NL — SOIT; Commission Decision of 15 November 2000, N 755/1999 IT — Bozen.

service and benefits to the environment in the Corpach proposal, irrespective of the level of aid. As the BSW sawmill is adjacent to Corpach port, the use of any other port would generate additional road journeys to Corpach, defeating the purpose of the grant by causing negative environmental impact in this sensitive area on the periphery of the Community.

(22) Regarding a possible distortion of competition, the United Kingdom stated that any possible distortion would be negligible and would not affect trade between Member States. Furthermore, there would be no adverse effect on the rail industry since there is no railway serving most of the points of origin of the traffic. Letters from the United Kingdom Strategic Rail Authority and English, Welsh and Scottish Railways, the main private sector United Kingdom rail freight operator, confirm this view. With respect to maritime competition, the redeveloped Corpach would seek to service small amounts of balep pulp not currently handled through ports owned by Clydeport (one of the joint partners in the CLYDEBoyd venture). This traffic only represents around one ship every two years.

4. ASSESSMENT OF THE MEASURE

A. Existence of aid within the meaning of Article 87(1) of the Treaty

(23) According to Article 87(1) of the Treaty 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'.

(24) The Treaty's State aid rules only apply to undertakings. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ([6]). Any activity consisting in offering goods and services on a given market has to be considered as an economic activity ([7]).

(25) Therefore, it is clear that CLYDEBoyd is an undertaking involved in the economic activity of providing services in a given market.

([6]) Case C-41/90 Höfner and Elser v Macrotron [1991] ECR I-1979, paragraph 21; Case C-35/96 Commission v Italy [1998] ECR I-3851, paragraph 36.

([7]) Case 118/85 Commission v Italy [1987] ECR 2599.

(26) The provisions of the Treaty do not imply that all types of public financing fall under the notion of 'State aid' caught by Article 87(1). Community State aid rules apply only to measures that satisfy all the criteria listed in Article 87(1) of the Treaty. Since no two ports are identical with regard to their physical characteristics, specific responsibilities and commercial activities of their managing bodies, the applicability of those criteria has to be examined individually, on a case by case basis.

Transfer of State resources

(27) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources. Under the notified project, CLYDEBoyd will receive a State grant for the provision of a larger berth and freight handling facilities at Corpach Pier. Therefore, it is clear that the notified measure involves a transfer of state resources.

Conferring an advantage

(28) The legal status of ports varies greatly among Member States. Private companies holding the ownership of the port are a feature of the United Kingdom, where privatisation of a considerable number of ports was carried out, mainly in the 1980s. Ports, irrespective of their legal status, are structured essentially as separate and fully commercial entities. Therefore, in general, they have to finance all port infrastructure investments from their revenues.

(29) The notified project intends to provide a larger berth and freight handling facilities at Corpach Pier. The aid measure in question confers a measurable economic advantage to a particular undertaking involved in an economic activity in respect of its competitors, even though the subsidised infrastructure will be open to all potential operators on non-discriminatory terms.

Selectivity

(30) The aid measure favours CLYDEBoyd and is therefore selective in nature.

Effects on trade and distortion of competition

(31) Under the notified project, the port of Corpach will mainly constitute a timber hub port. Experience has shown that small ports engaged in local coastal trades serving local interest have not threatened to distort competition or affect trade between Member States to a significant extent.

(32) Nevertheless, CLYDEBoyd envisages using the facility for any traffic not just traffic linked to the timber/paper industry. In view of CLYDEBoyd's intention to act on different goods traffic and the existence of cross-border maritime trade, the possibility of an impact on trade between Member States cannot entirely be ruled out.

(33) In a sector with specific difficulties and a high degree of competition ([8]), as well as in sectors specially exposed to international competition, an effect on trade between Member States cannot be ruled out.

(34) The measure in question therefore constitutes State aid within the meaning of Article 87(1) of the Treaty and is incompatible with the common market, unless it qualifies for exemption under Article 87(2) or (3) of the Treaty.

B. **Legal basis for the assessment**

(35) The aim of the notified aid measure is to provide a larger berth and freight handling facilities at Corpach Pier, in order to enable coastal/short sea shipping to compete on financial terms with road transport by providing the necessary infrastructure. The Commission considers that none of the exemptions in Article 87(2) of the Treaty apply to the scheme. Nor is the State aid in question destined to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b) of the Treaty, or to promote culture and heritage conservation within the meaning of Article 87(3)(d).

(36) Article 73 of the Treaty states that aids shall be compatible with the Treaty if they meet the needs of coordination of transport. The notion of coordination in Article 73 implies more than facilitating the development of an industry, it involves some form of planning by the State. Nevertheless, Article 80 of the Treaty limits the provisions under the transport chapter by stating that '(t)he provisions of this Title shall apply to transport by rail, road and inland waterway …'. Thus, Article 73 does not apply to the maritime sector.

(37) The development of activities shifting traffic from road to other modes is in the common interest within the meaning of Article 87(3)(c) of the Treaty. Article 87(3)(c) of the Treaty is therefore the appropriate legal basis to analyse aid for investments in the infrastructure for coastal/short sea shipping and to assess its compatibility with the common market.

(38) Article 87(3)(c) states that aid to facilitate the development of certain economic activities or of certain economic areas, may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(39) It is thus necessary to verify if these requirements are fulfilled in order to apply Article 87(3)(c) of the Treaty.

C. **Appraisal of the compatibility of the aid measure**

1. *Necessity of the aid*

(40) The Community has for some time pursued a policy of promoting the achievement of a balanced intermodal transport system and a policy of fostering the transfer of goods from road to other more environmentally friendly modes ([9]). The Commission's White Paper on transport policy ([10]) states that water transport is not expensive and does less damage to the environment than road transport. Intra-Community maritime transport is a key component of intermodality, which must provide a means of coping with growing road congestion. It must be considered as a real competitive alternative to land transport. Therefore, efforts must be made to harness the advantages of short-sea shipping, for example by installing transhipment equipment and encouraging shipping routes between European ports to create networks.

(41) The new Marco Polo proposal ([11]) intends to shift the expected increase in international road freight of 12 billion tonne-kilometres per year, from congested roads to short sea shipping, rail and inland waterway services.

([8]) Case C-305/89; Italy v Commission [1991] ECR I-1603, paragraph 26, and Joined Cases C-278/92, 279/92 and 280/92, Spain v Commission [1994] ECR I-4103, paragraph 41.

([9]) See Commission's Green Paper on Fair and Efficient Pricing, COM (1995) 691 of 20 December 1995; Commission's White Paper on Fair Payment for Infrastructure Use, COM (1998) 466 of 22 July 1998 and Council Resolution of 14 February 2000 on the promotion of intermodality and intermodal freight transport in the European Union, OJ C 56, 29.2.2000, p. 1.

([10]) European transport policy for 2010: time to decide. COM (2001) 370.

([11]) COM (2002) 54 final.

(42) The Commission's view is that in order to achieve an intermodal and sustainable transport system for the future, priority should be given to infrastructure investments.

(43) Sending freight by water can require expensive and specialised equipment, which would not be needed if the goods went by road. By contributing to the cost of such facilities coastal/short sea shipping may compete in financial terms with road transport. However, if intermodal terminal infrastructures were not cofinanced by the public sector, operators performing economic activities would not invest in them, as their viability could not be ascertained without State funding.

(44) The objective of the notified project is to safeguarde the existing maritime traffic at the port of Corpach. Unless the port is improved, all existing Corpach traffic will be lost and revert to road transportation since any reduction below present volumes would render the activity totally uneconomical. As well as safeguarding the existing sea traffic, additional volumes of road traffic would be transferred to sea.

(45) No other port is in a position to provide the service and benefits to the environment in this area, irrespective of the level of aid, due to the location of the port of Corpach close to a number of forest product industries. The use of any other port would generate additional road journeys to Corpach, defeating the purpose of the grant by causing negative environmental impact in this sensitive area on the periphery of the Community. Thus, the proposal is in the Community interest.

2. *Proportionality*

(46) The Corpach project is an example where modal shift can not be obtained at a 50 % grant level. The substantial environmental benefit (GBP 5,4 million) can only be achieved by a significant investment in the new port infrastructure.

(47) The Commission has previously ([12]) recognised the possibility to allow a high degree of aid intensity if the market does not provide society with the public transport infrastructure necessary to achieve sustainable mobility.

(48) The United Kingdom authorities have verified, through a market analysis, that the objective of equalising the cost of road and water transportation could not be met with a lower amount of aid. The cost of the development has been demonstrated in an economic appraisal carried out in March 2001 by economists from the Scottish Executive and Department of Transport officials, and by a third party appointed by the Scottish Executive (Scott Wilson Kirkpatrick & Co Ltd).

(49) In accordance with the terms of the general FFG scheme, the grant would be awarded against an annual tonnage commitment of 90 000 tonnes to be moved by water for 10 years. In the event that the target is not achieved or the recipient fails to comply with grant conditions, the grant may be recovered.

(50) The Commission considers that the subsidy of GBP 3,92 million is necessary for the realisation of the project and is justified by the environmental benefit (GBP 5,4 million), being in the interest of the Community.

3. *No distortion of competition*

(51) In order to ascertain that there is no undue distortion of competition, it is necesssary to analyse competition between the notified project and road transport, other modes of transport and existing services.

(a) Competition between the notified project and road transport

(52) Road freight and coastal/short sea shipping transport traditionally respond to different user requirements. Road freight transport is more flexible and faster than coastal/short sea shipping transport. It is therefore used for high value general cargo, which is time sensitive, needed in smaller quantities and heterogeneous. As coastal/short sea shipping transport is slower, it can not ask the same prices as road and is as a rule be relied on for less time-sensitive and regular transport flows of larger volumes.

(53) The aim of the subsidy is to equalise the cost of road and water transportation.Operators who choose to send freight by water do not gain a commercial advantage over competitors who use road.

(b) Competition between the notified project and other modes of transport

(54) An adverse effect on rail traffic must be ruled out since the rail network does not serve most of the points of

([12]) N 464/99 — The Netherlands: Grant of aid for the building and operation of the 'Pilot Transferium Sittard'.

origin of the traffic. The Scottish railway network is used to move timber for the long distance markets internally, while timber intended for transport by water is currently distributed locally.

(55) In 1993 the original FFG scheme was extended ([13]) to combined transport operators and international railway groupings.

(56) The Commission takes note that after the publication of the formal investigation procedure no comments were received by rail companies. Further, the main private sector United Kingdom rail freight operator, English, Welsh and Scottish Railways, stated by letter dated 17 October 2002 that it had no objections to the project.

(c) Competition between the notified project and existing services

(57) The volume of traffic through Corpach in 2001 was 61 500 tonnes. With the improvement of the port this volume will increase to 86 000 tonnes, of which only 32 600 tonnes will be new traffic. This added new traffic would mostly come from internal United Kingdom traffic currently moved through Scottish ports. The most substantial new traffic will be the balep pulp, which will only represent 12 000 tonnes for the Port of Greenock per year. The minor importance of this traffic is stressed if the Corpach traffic volume is compared with of other Community ports ([14]):

(a) Rotterdam (The Netherlands): 320 000 000 tonnes;

(b) Le Havre (France): 67 500 000 tonnes;

(c) Tees-Hartlepool (United Kingdom): 51 500 000 tonnes;

(d) Forth Port (Scotland): 41 100 000 tonnes;

(e) Liverpool/Mersey-side (United Kingdom): 30 600 000 tonnes.

(58) No comments have been received from interested third parties. Consequently, the Commission assumes that competitors providing existing services do not considered the planned project as a threat for the market.

(59) The environmental benefit of the project will be considerably higher than the potential impact on competition. The Commission considers that there will be a limited impact on competition, and that that impact is acceptable.

5. **CONCLUSION**

(60) The Commission concludes that the aid measure is compatible with the EC Treaty in accordance with Article 87(3)(c) thereof,

HAS ADOPTED THIS DECISION:

Article 1

The ad hoc aid which the United Kingdom is planning to implement for CLYDEBoyd (Fort William) Ltd under the Freight Facilities Grant Scheme is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty. Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 5 February 2003.

For the Commission
Loyola DE PALACIO
Vice-President

([13]) State aid N 162/93.
([14]) Source: Institute of Shipping Economics and Logistics, Bremen, *Shipping Statistics Yearbook 2001*.