COMMISSION DECISION

of 8 September 2004

concerning investment aid in favour of Stora Enso Langerbrugge notified by Belgium

(notified under document number C(2004) 3351)

(Only the Dutch and French versions are authentic)

(Text with EEA relevance)

(2005/164/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 the provision(s) cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 4 April 2003, pursuant to Article 88(3) of the Treaty and the point 76 of the guidelines for aid for the protection of the environment [2] (hereinafter 'environmental aid guidelines'), Belgium notified aid in favour of Stora Enso Langerbrugge (hereinafter 'SEL'). The case was registered under number N167/03. The Commission asked Belgium further information by letters of 20 May 2003, 17 July 2003 and 20 October 2003. Belgium provided further information by letters of 19 June 2003, 15 September 2003. On 9 July 2003 and 8 October 2003 meetings between representatives of the Commission, the Belgian authorities and the company took place.

(2) By letter of 27 November 2003 the Commission informed Belgium of its decision to initiate the procedure of Article 88(2) of the Treaty with respect to the notified aid. The decision was published in the Official Journal of 21 January 2004 [3].

(3) The Commission received two comments, including those of SEL. These were forwarded to Belgium by letter of 1 October 2003; the letter contained as well further questions from the Commission. By letter of 18 December 2003, Belgium asked to keep certain information in the decision confidential, commenting at the same time on parts of the content. Having asked for a deferral of the deadline by letter of 19 December 2003, which was granted by letter of 12 January 2004, Belgium commented on the Commission's decision by letter of 29 January 2004. The Commission asked further questions by letters of 5 February 2004 and 5 April 2004. Belgium answered to these questions and commented on the comments received from third parties by letters of 8 March 2004, 2 April 2004, 10 June 2004 and 4 August 2004. Meetings took place on 28 April 2004 and 18 May 2004, and on 7 July 2004 a Commission representative visited the plant.

2. DETAILED DESCRIPTION OF THE AID

2.1. The beneficiary

(4) The beneficiary is N.V. Stora Enso Langerbrugge, subsidiary of Stora Enso Oyj, a large producer of magazine papers, newsprint, fine papers, packaging boards and wood products. In 2001 its turnover amounted to EUR 13.5 billion and its capacity was approximately 15 million tonnes of paper and board. The company employs some 43 000 persons. The aid concerns the establishment in Langerbrugge, near Gent. Turnover in Belgium amounted to EUR 55 million in 2000 [4].

2.2. The project

(5) The project consists of five parts:

(a) a new paper mill (PM4) and a de-inking plant (DIP2) for the production of newsprint with 100 % recycled fibre (100 % RCF newsprint);

(b) adjustments to a paper mill (PM3) that in the past produced *newsprint* of 80 % recycled fibre, and is now to produce *magazine* paper with 80 % recycled fibre (80 % RCF magazine paper);

(c) a combined heat and power sludge combustor (sludge CHP installation);

[1] OJ C 15 of 21.1.2004, p. 10.
[2] OJ C 37 of 3.2.2001, p. 3.
[3] See footnote 1.
[4] http://www.storaenso.com

(d) water treatment installations;

(e) rail infrastructure to realise a connection to the public rail network and related additional investments in waste paper storage.

(6) Presently, the investments have largely been realised. The project increases employment by 40 and guarantees existing employment for 410 persons. The indirect employment would be some 1 350 jobs. In order to avoid an overall capacity increase ahead of market growth, an old paper mill in Langerbrugge (PM2 with an annual capacity of 120 000 tonnes) was closed and production in establishments in Finland and Sweden was rearranged.

2.3. **Paper mill 4 and de-inking plant 2: 100 % RCF newsprint production**

(7) PM4 has an annual capacity of 400 000 tonnes. The total investment cost of PM4 amounts to EUR 259 622 000. Since the European average RCF content at the moment of the aid request was only 49,8 %, Belgium held that 50,2 % of PM4's investment cost can be considered as an 'extra cost'. The total investment in DIP2 is EUR 90 111 000 and this would fully be eligible. Taking into account the savings for the first five years, total eligible cost would amount to EUR 127 388 000.

(8) Belgium later explained that various parts of the investments in PM4 and DIP2 would go beyond the norms that are applicable to SEL. A non-exhaustive list includes investments in re-circulation of cooling water, maximum closure of the white-water circuit, heat recuperation systems, special presses for achieving a dryer paper web after the press section, advanced paper sustainance technology in the drying section, innovative techniques for rolling and handling finished paper, and additional cleaning equipment. According to Belgium, these investments would account for at least an eligible extra environmental cost of EUR 19 106 000.

(9) PM4 has an innovative design which reduces consumption of energy, additives, chemicals and process water. A crucial feature is a higher machine width compared to conventional newsprint machines. This requires adaptations throughout the machine, in particular a closed instead of open passage from the pressing-part to the drying-part and a somewhat lower production speed. Based on two detailed cost studies, it is estimated that the cost of a more conventional investment with the same capacity would be EUR 14,1 million lower. The new design will lead to cost savings, but due to higher costs to start and optimise the machine, there is no net operational benefit over the first five years.

2.4. **Paper mill 3: switching from newsprint to 80 % RCF magazine paper**

(10) PM3 has been constructed in 1957 for the production of newsprint. It was renovated in 1989 and its speed was increased in 2000 and 2001. Now it has been refurbished in order to produce 80 % RCF magazine paper (SC-quality, […] (*) g/m^2, uncoated). Its capacity is to be 165 000 tonnes per year. The investments concern adaptations to the raw materials treatment and supply (in particular the existing DIP1), to the mill itself and to its gas, heating and quality control systems, etc. The total investment cost amounts to EUR 39 555 000.

(11) In the alternative, SEL could have continued production of its magazine paper mill PM2, which was constructed in 1937 and modernised in 1985 and which has a capacity of 115 000 tonnes per year. Compared to this mill, the transformed PM3 has lower electricity cost, but higher costs for steam, condensate losses and treatment of ashes. The net saving would amount to EUR 4 342 000 over the first five years. This would leave an eligible cost of EUR 35 213 000.

2.5. **Sludge CHP installation**

(12) SEL constructed a CHP installation that combusts the biomass available from the two de-inking plants and from the water treatment plant co-fired with natural gas. The installation has a fluidised bed system. The installed maximum energetic output is (1) electricity, P_e = 10,4 MW_e gross and 8 MW_e net, (2) high pressure overheated steam at 480 °C, 80 bar, P_{th} = 53 MW_{th}, and (3) warm water, recovered in the flue gas cleaning, at around 60 °C, P_{th} = 5,6 MW_{th}. A back-pressure boiler transforms the high pressure steam in low pressure steam at around 4 bar that is fed into the paper production process. The energy conversion efficiency of the boiler will be about 87,5 % at partial loading and about 90 % in full loading conditions. The designed capacity of the installation is about 250 000 tonnes of sludge per year, in practice maximum capacity is lower. With maximum capacity use of the paper machines, an annual quantity of sludge is expected of about 200 000 tonnes.

(13) The total investment cost amounts to EUR 55 147 000. As the sludge CHP installation requires more maintenance and is less reliable than a conventional CHP installation, the investment includes two back-up steam generators. Cost of engineering and technical project management are put on the balance and subsequently depreciated, and are therefore also included.

(*) Confidential information.

2.6. **Water treatment installations**

(14) SEL will use surface water from the local 'Kalebeek'. This water has to be treated and disinfected before it can be used in the production process. Belgium held that the eligible investment cost amounts to EUR 7 429 000.

(15) SEL foresees substantial water discharges in the Zeekanaal Gent-Terneuzen. Discharge takes place after a two-step biological process. Belgium held that the eligible cost amounts to EUR 4 431 000.

(16) The environmental permit states as a particular condition that a techno-economical study should be executed in order to evaluate the chemical oxygen demand (COD)-load and concentration of the effluent that will be discharged in the Zeekanaal. The analysis could result in an extra investment of about EUR 1 million in a tertiary water purification plant. This eventual investment is included in the notification, although eventual aid would be granted only following a separate application for ecological support. A decision on this investment is still pending as the Flemish authorities have not yet decided on the request for derogation from the COD-norm that is generally applicable.

2.7. **Waste paper storage and rail infrastructure**

(17) The investment project comprises a large depot for waste paper and a rail connection to the existing rail network for transport of waste paper and the finished product. All streams of incoming and outgoing products could be dealt with by road transport. Belgium considers only the additional investments due to rail transport eligible for aid, i.e. the rail infrastructure, the additional cost of the waste paper depot and the additional cost of the loading quay and finished paper warehouse. Unlike road transport, waste paper transported by rail is packed in bales. Therefore also investment costs for conveying, equalising and de-wiring the bales is included. The investment in containers and special vehicles for combined transport is not included due to their multi-purpose character, nor is the cost of offices and social rooms, sprinkler installations and indirect cost. This leaves an expected eligible cost of EUR 8 864 000. If afterwards it would appear that the actual investment cost is lower, the Belgian authorities will re-calculate the aid on the basis of the actual investment cost. The investments in rail infrastructure do not lead to savings on operational costs compared to road transport.

2.8. **The aid**

(18) The aid consists in:

— a grant of EUR 25 892 425,

— five-year exemption of real estate tax. Belgium calculated a theoretical maximum benefit of EUR 2 035 162 per year, i.e. some EUR 9 million net present value over five years. The Flemish authorities, however, have frozen the value of property on the basis of which the tax is calculated at the 1998 level and therefore, the investments would not lead to any higher real estate tax and consequently the exemption would not have a real benefit. It may, however, regain relevance in case of changes to the calculation method of the scheme,

(19) Both measures are based on the decree of 15 December 1993 on the economic expansion in the Flemish Region, which was approved by the Commission in 1993. Modifications to the environmental aid scheme based on this law were approved by the Commission in 2000 [5]. The scheme foresees aid intensities of 8 to 12 % for different types of measures. The scheme has been put in line with the environmental aid guidelines according to point 77 thereof.

2.9. **Reasons to initiate the procedure of Article 88(2)**

(20) In its decision to initiate the procedure of Article 88(2) of the Treaty, the Commission expressed its doubt as regards the eligibility of the investment cost under the environmental aid guidelines. It appeared in particular that the investment in 100 % recycled fibre newsprint capacity was to be considered as a normal state-of-the-art investment for the industry. 80 % recycled fibre magazine paper might be less common, but it was not clear whether such an investment would not be necessary for any (large) paper producer that wishes to keep up with increasingly stringent environmental standards and that wishes to remain competitive in the long run through continuous innovation. For the other investments it was not clear to what extent the eligible cost was restricted to what was strictly necessary to meet the environmental objectives.

3. **COMMENTS FROM THIRD PARTIES**

(21) One competitor sent comments. It argued that the aid distorts competition in the markets for newsprint, for magazine paper and for recovered paper. On the latter market a net shortage exists in the region from where SEL plans to source its fibres. As other producers, in competition with SEL, would absorb recovered fibres, there is no net environmental benefit of the investments in PM3 and PM4.

[5] N223/93 and N40/99, OJ C 284 of 7.10.2000, p. 4.

(22) The upgrade at Langerbrugge is no more than a market and competition driven update to state-of-the art technology and an investment taken to maintain and/or increase the long-term competitiveness. Both the investments in PM4 as in PM3 represent an update to current state-of-the-art in the paper industry. This is illustrated by an overview of latest upgrades made by various paper producers in the past years. As regards magazine paper, a distinction is made between supercalandered (SC) magazine paper and coated (LWC) paper. Only if SEL would be able to produce LWC-magazine paper out of high contents of recycled fibres, the upgrade would be considered to go beyond common and current industry standards.

(23) The investment is one that any producer of publication paper grades would need to take. It was announced as early as 2001 and the aid does not seem to have been relevant for the investment decision. It is in line with SEL's goal for return on capital employed of 13 %, the goal of capital expenditure at or below the level of depreciation and the whole project was financed from SEL's cash flow. A number of SEL's press releases confirm this. Investing in PM4, refurbishing PM3 and closing down PM2 had the additional advantages that it was cheaper than building new greenfield mill both for newsprint and magazine paper and it allowed SEL to introduce new capacity while phasing out old capacity, which is necessary in order not to suffer from introducing capacity without corresponding demand. Demand for high quality papers is increasing and the customers and authorities require an increasing content of recycled fibre in paper.

(24) The building of a new sludge combustion capacity and the investments in water and effluence treatment could *potentially* be approved under the environmental aid guidelines, although the latter is directly linked to the production capacity and are not strictly necessary in order to meet environmental objectives and should therefore not be eligible for any aid. The building of rail infrastructure seems excessive in the sense that transportation by lorry would be an obvious alternative which would not require any additional investments. The environmental effects would be minimal.

4. COMMENTS FROM BELGIUM AND SEL

4.1. General remarks

(25) Belgium and SEL hold that the aid would not affect negatively trade between Member States and there would not be an advantage to SEL capable of distorting competition. For all parts of the project, sufficient cost would be eligible to justify the aid. Detailed information and justifications on the eligible costs was provided. In as far as this is already presented in sections 2 and 6, it is not repeated in this section.

4.2. PM4 and DIP2, production capacity for 100 % RCF newsprint

(26) Recycling percentages are indeed norms imposed on Member States, but in the factual situation in Belgium, there is a direct link between these norms and SEL's activities.

(27) 100 % RCF newsprint is not at all 'state of the art'. Only 5 to 6 newsprint installations in the same order of magnitude exist in western Europe. The large majority of installations results in RCF percentages between 40 % and 80 %. The installations are not serial products and each of them was innovative. Reaching optimal productivity takes normally about two years, which is much longer than usual for 'state of the art' installations. PM4 and DIP2 belong to the absolute world top.

4.3. PM3, 80 % RCF magazine paper

(28) In addition to the arguments already raised in the opening decision, Belgium and SEL stresses the innovative and unique elements of PM3 and point to the important run-up cost and the learning curve. This further proves that the investment cannot be considered as 'state-of-the-art'. It is acknowledged that the market evolves towards higher RCF percentages and lower energy consumption for magazine paper, but SEL's investment would not be 'state of the art'.

(29) The rebuild of PM3 has been done before it was technically or economically necessary. PM3 must be considered as a prototype for the Stora Enso group. The investment fits completely in the group's long term strategy that is to improve continuously the processes, the use of resources and the personnel's capabilities with a view to sustainable paper production.

(30) Belgium nor SEL have commented on the investments by LEIPA, where also magazine paper is produced from predominantly RCF [6].

4.4. Sludge combined heat and power installation

(31) Taking total cost of the sludge CHP installation, including depreciation, there would be no net benefits over the first five years of the life of the installation. Had SEL not invested in the sludge CHP installation, it could have sourced its steam and electricity from a nearby energy producer. In that case, SEL would have had to invest in an additional steam boiler with a cost of EUR 1 189 000. Hence, the full investment cost minus EUR 1 189 000 would be eligible for aid.

[6] Footnote 10 of the decision to initiate the procedure of Article 88(2), see footnote 1.

(32) In any event, as an alternative investment producing the same quantities of steam and electricity, a conventional CHP installation would be more appropriate than separate steam and electricity production units.

4.5. **Fresh water treatment**

(33) If SEL had had a permit for limited groundwater extraction, the continuation of such extraction would be realistic. The total cost per m^3 would be largely similar in both cases, but no investments would be required. However, in practice it would not be realistic to extract such quantities of groundwater.

4.6. **Effluent treatment**

(34) Belgium explained that there was no need to increase the capacity of the existing water treatment facilities in view of the optimisation of the effluent treatment and the production process. The investment consists basically of a buffer tank that is to ensure a stable functioning of the treatment and the necessary technical equipment to make a connection to the existing treatment installations. The effluent treatment installation has some innovative features.

(35) The treatment goes beyond the VLAREM norms, but also beyond the norms in the permit (for almost all substances). The latter are strict and in the negotiations with the authorities, they have been adjusted to the best possible results of the treatment facilities. They would go beyond the levels based on the 'best available technique'. An expert report holds that the imposed COD limit of 260 mg/l must be considered as extremely ambitious. The environmental permit imposes a further reduction to 180 mg/l, which has no precedent in the paper industry.

(36) Except for COD, all concentrations of substances are lower in the effluent than they are in the water taken from the Kalebeek.

4.7. **Tertiary water treatment**

(37) Belgium holds that aid for eventual tertiary water treatment would be compatible for the same reasons as for effluent treatment. In the light of the expert report and awaiting the decision of the Flemish authorities on the request for a derogation from the 180 mg/l COD norm, SEL has not yet decided on this investment. No subsidy has yet been requested either.

4.8. **Waste paper storage and rail infrastructure**

(38) Belgium and SEL underline that the switch from road to rail transport is completely in line with the Commission's white book on 'European transport policy for 2010 — time to decide' ([7]). The investments in rail infrastructure are not necessary for the operations of the paper plant, as the road infrastructure could be adapted to the new situation by means of a diversion of the main road. Under this alternative some less favourable effects remain, but these should be considered as minimal. This analysis is confirmed by a study made in the framework of the Environmental Impact Assessment. The cost of transport would not have increased without the rail infrastructure investments.

(39) The aid would also be in compliance with the State aid rules in the transport sector. The investments could have been eligible under the European Marco Polo programme, but no aid application has been foreseen. The aid is necessary to compensate for a part of the extra cost. Moreover, road transport is subsidised as well, as not all the cost of traffic jams and contamination is imposed.

5. **ASSESSMENT OF THE AID**

5.1. **State aid in the meaning of Article 87(1) of the Treaty**

(40) Article 87(1) of the EC Treaty lays down that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade among Member States, incompatible with the common market. The proposed grant and tax exemption, in as far as the latter reduces actual tax payments, constitute aid within the meaning of Article 87(1) of the EC Treaty as it allows SEL to be relieved, by means of State resources, of part of the investment costs which it would normally have to bear itself. The aid strengthens SEL's position in relation to its competitors in the Community, and therefore it must be regarded as affecting competition. As there is intense trade between Member States in newsprint, magazine paper, as well as in waste paper and pulp, the Commission considers that the aid to SEL affects trade between Member States.

(41) Belgium has complied with its obligation to notify the aid pursuant to Article 88(3) of the EC Treaty and point 76 of the environmental aid guidelines.

([7]) COM(2001) 370 final of 12.9.2001.

5.2. **General remarks on compatibility**

(42) The Commission has assessed whether the exemptions set out in Article 87(2) and (3) of the Treaty apply. The exemptions in Article 87(2) of the Treaty could serve as a basis to consider aid compatible with the common market. However, the aid (a) does not have a social character and is not granted to individual consumers, (b) does not make good the damages caused by natural disasters or exceptional occurrences and (c) is not required in order to compensate for the economic disadvantages caused by the division of Germany.

(43) The exemptions in Article 87(3)(a), (b) and (d) of the Treaty, which refer to promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to projects of common European interest or to remedy a serious disturbance of the economy of a Member State and to the promotion of culture and conservation, do not apply. Belgium has not attempted to justify the aid on any of these grounds.

(44) As far as the first part of the exemption in Article 87(3)(c) of the Treaty is concerned, namely aid to facilitate the development of certain economic activities, the Commission notes that the aid does not have purposes such as research and development, investment by small and medium-sized enterprises or rescuing or restructuring SEL. The aid may be important to encourage investment on the chosen location. Langerbrugge, however, is not located in an area where initial investments are eligible for regional aid. Therefore the aid cannot be found compatible with the common market as it would facilitate the development of certain regions.

(45) The Commission examined whether the aid qualifies for an exemption under Article 87(3) (c) of the Treaty on any other grounds, and in particular, whether the environmental aid guidelines apply to this case. The aid has been granted on the basis of an aid scheme that has been approved by the Commission in 2000. This approval, however, has been given before the entry into force of the new guidelines. When the Commission adopted the new guidelines, it proposed to the Member States, as appropriate measures, to adapt the earlier approved aid schemes to bring them in conformity with the new guidelines before 1 January 2002. Belgium has unconditionally accepted this proposal of appropriate measures and was therefore held to modify the scheme that was approved in 2000 ([8]). The Commission has therefore assessed the aid's compatibility under the new guidelines. The part of the project concerning the rail infrastructure, however, is assessed in the light of Article 73 of the Treaty which concerns State aid to meet the needs of coordination of transport.

5.3. **Compatibility under the environmental aid guidelines**

(46) In accordance with point 29 of the environmental aid guidelines, investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards. As explained in point 6 of the guidelines, Community standards also refer to the standards set by national bodies in application of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([9]). Following this Directive Member States have to base the required standards in environmental permits on the results that can be obtained by applying best available techniques (hereinafter BATs).

(47) Point 36 and 37 define the eligible cost as the investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment. Eligible cost must be confined strictly to the extra investment costs necessary to meet the environmental objectives.

5.3.1. *DIP2, PM4 and PM3: increasing the recycling rate*

(48) The Commission does not question the environmental benefit from recycling waste paper. It considers, however, that point 29 of the guidelines does not justify the aid for DIP2, PM4 and PM3 in as far as they increase the recycling rate.

(49) First of all, the Commission recalls that according to the general principles of law, an exception should be interpreted in a restrictive manner. The guidelines define the conditions under which the Commission may consider that aid is compatible with the common market in accordance with Article 87(3)(c) of the Treaty, and therefore form an exception to the general prohibition laid down in Article 87(1) of the Treaty. It should also be recalled that the environmental aid guidelines are based on the general principle of 'the polluter pays', and that every interpretation of the guidelines should strictly comply with this underlying principle.

([8]) See footnote 5.

([9]) OJ L 257 of 10.10.1996, p. 26.

(50) The investment in PM3, PM4 and DIP2 will be used to produce newsprint and magazine paper, which will eventually end up as waste paper. The increased production capacity will therefore lead to increased quantities of waste paper, which will only be partially recycled. In this respect, the closure of PM2 and the reduction of production in Finland and Sweden that (partially) counterbalance the increased capacity of PM3 and PM4, cannot be taken into account. The closed capacity is older than the newly installed capacity, has different technical characteristics and is positioned in the market in a different way. Therefore, a direct comparison is not appropriate.

(51) The investments are likely to increase the demand for waste paper. However, it is not ensured that the investments will actually lead to an increase of waste paper collection, not in general, and not as regards waste paper deriving from SEL's sales. Consequently, the investments will not reduce *SEL's own* pollution. The environmental benefits may derive from indirect effects on supply and demand for waste paper that affect all users and providers of waste paper concerned, not only SEL.

(52) A *fortiori*, the Commission notes that the norms as regards recycling percentages are not legal norms directly applicable to the individual companies, even though in the Belgian situation they have an important impact on SEL's activities. They are rather norms for the Member States that have been imposed by EU law, notably the Landfill directive [10]. and the Packaging directive [11]. The aid is not granted to improve on the standards applicable to the firm directly. The first situation referred to in point 29 of the environmental aid guidelines, which allows aid to be granted in order to enable *firms* to *improve* on Community standards applicable therefore does not apply in this case.

(53) Belgium held, instead, that the second situation referred to in point 29 of the environmental aid guidelines, concerning aid for firms to undertake investments in the absence of Community standards, would be applicable. The Commission, however, concludes that this is not the case. The aid in favour of the investments in PM3, PM4 and DIP2 as a whole intend to promote recycling and relieve the actual polluters from charges they should normally bear. The aid is not intended to reduce the quantity of waste paper that results from SEL's sales. It rather encourages SEL to take up waste paper that may originate from products sold by any paper producer. The Commission considers that point 29 of the environmental aid guidelines concerns cases where an undertaking invests to improve its own environmental record, and to reduce its own pollution. In such cases, aid can be allowed as an incentive to improve the environmental situation *of the company*. Otherwise, the rules could be easily circumvented by granting aid not to the polluters, but to the companies taking care of the pollution.

(54) This interpretation is confirmed by point 18(b) of the environmental aid guidelines, which states that aid 'may act as an incentive to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants.'

(55) Furthermore, the interpretation suggested by Belgium might result in Member States subsidising investments in all those sectors where the use of secondary raw materials is possible. Such aid could be granted without having to comply with State aid rules such as those for regional aid or for SME-investment aid. Such aid might entail serious distortions on the relevant markets.

(56) The Commission therefore considers that point 29 of the environmental aid guidelines does not apply to the investments in PM3, PM4 and DIP2 as a whole. The Commission, however, has also assessed whether points 29 or 30 of the guidelines could be applicable to parts of the investments.

5.3.2. *Separate environmental investments within PM3, PM4 and DIP2, energy reduction by PM4*

(57) As explained in point 9, Belgium held that within the investment in PM4 and DIP2, various elements with an extra cost of at least EUR 19.1 million would be eligible for aid under point 29. The description of these elements, however, points to various cost savings. The additional investment in cooling-towers, for example, would lead to a decrease of energy consumption in the winter period of 10 MW. The closure of the white-water circuit is intended to reduce the water consumption. The use of 'shoe presses' instead of conventional presses in the press-section of the paper mill allows SEL to reach a higher degree of dryness, it optimises the drying process and allows for energy saving. Despite the repeated request from the Commission, Belgium has neither demonstrated whether these costs can be fully accepted as additional cost, nor indicated which operating benefits SEL derives from these specific parts of the investment, as required in point 36 and 37 of the guidelines. Consequently, on this basis it is not possible to calculate which amount of aid could be allowed.

[10] Council Directive 99/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1). Directive modified by Regulation (EC) No 1882/2003 of the European Parliament and the Council (OJ L 284, 31.10.2003, p. 1).

[11] European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10). Directive modified most recently by Directive 2004/12/EC (OJ L 47, 18.2.2004, p. 26).

(58) As described in point 10, Belgium argued that PM4 would be eligible for aid under point 30 of the guidelines as it reduces energy consumption. Instead of investing in a paper machine with a conventional width, SEL chose for an innovative machine that uses less energy. The investment, therefore, falls within the definition of energy-saving.

(59) In accordance with point 36 and 37 of the guidelines only the investments that are strictly necessary in order to meet environmental objectives are eligible for aid. It is not just one part of PM4 that allows reducing energy consumption. The crucial factor is the higher width of all rotating elements. This, however, affects the whole design and construction of the machine, and requires as well a lower speed and the adaptations in the press-section. An independent expert had made a detailed estimate of the cost of a conventional newsprint machine. Later a detailed estimate of the cost of the actual investment was made. Differences result not only from the technical specifications, but also from more precise knowledge, estimates of potential price reductions, etc. The estimated eligible cost of EUR 14.1 million, however, concerns only the differences in cost as regards the investments in machinery [12]. This estimate has been made on the basis of conservative assumptions avoiding overestimation.

(60) In accordance with point 37, second sub-paragraph of the guidelines, the eligible costs must be calculated net of benefits accruing from any increase of capacity expansion and cost savings engendered during the first five years of the life of the investment. The benefits from savings on energy, raw materials and productivity, however, are outweighed by the higher start-up costs in the initial years of the investment.

(61) In conclusion, the Commission can find aid for PM4 compatible up to the amount of 40 % x EUR 14,1 million = EUR 5,64 million.

(62) There is no parallel on the basis of which aid for PM3 and DIP2 can be found compatible.

5.3.3. *Sludge combined heat and power installation*

(63) Point 31 of the environmental aid guidelines foresee that investments in the combined production of electric power and heat may be eligible for aid when the conversion efficiency is particularly high. In this connection the Commission will take into particular consideration the type of primary energy used in the production process. Such investment may be eligible for aid at the basic rate of 40 % of eligible cost as defined in point 36 and 37 of the guidelines.

(64) The installation will use bio-mass [13] available directly at the plant and natural gas and it will have an energy conversion efficiency of 87,5 to 90 %. Taking into account as well the dispositions of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC [14], the Commission deems that the investment falls within point 31 of the guidelines.

(65) All costs indicated in table 1 above concern buildings, plant and equipment that are necessary in order to produce and use the electricity and steam generated by the biomass CHP installation. They are therefore eligible pursuant to point 36 of the guidelines.

(66) In accordance with point 37, second subparagraph, of the guidelines, only the extra costs can be eligible. In this case, the most economical alternative investment is a conventional combined heat and power installation. This would consist in a high pressure steam generator of 55 000 kW and a back pressure steam turbine of 9 400 kW with a total investment cost of EUR 5 180 000.

(67) In accordance with point 37, third subparagraph, of the guidelines, eligible cost must be calculated net of the cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The savings are the following:

— cost forgone of operating a conventional CHP plant: this includes costs of fuelling the conventional CHP plant for producing the same quantities of steam and heat, operating personnel, maintenance, demineralised water of the conventional CHP plant,

[12] A small part actually concerns exchange parts necessary in order to safeguard continuity of the paroduction process.

[13] Within the meaning of Article 2(b) of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ L 283, 27.10.2001, p. 33). Directive modified by the Act of Accession of 2003.

[14] OJ L 52, 21.2.2004, p. 50.

— cost forgone of sludge treatment. If not combusted in the CHP-installation, SEL would have had the following options: (1) land-spreading, in particular as regards the sludge from the water cleaning, not as regards de-inking sludge, (2) use in the brick industry, (3) use as fuel in electricity production, in particular as the sludge qualifies as biomass, (4) use in the cement industry,

— operating aid: SEL will be entitled to green energy certificates for the electricity it produces. The Belgian authorities guarantee a minimum price of EUR 80 per certificate. The actual price obtained in 2003 was slightly higher.

(68) The additional cost, on the other hand, is the following operating cost of the sludge CHP installations: gas for co-fuelling, transport and disposal of ashes, demi-water consumption, a much higher personnel cost, cost of environmental certification and control and cost of flue gas cleaning. The cost of de-watering sludge before combustion is not to be subtracted, as de-watering is necessary in any case.

(69) Over the five-year period, from May 2003 until April 2008, the total net savings amount to EUR 16 343 000, net present value on 1 January 2003.

(70) Based on the above, the allowable aid amounts to 40 % × (EUR 55 147 000 − EUR 5 180 000 − EUR 16 343 000) = EUR 13 449 600.

(71) In some situations, sludge combustion in a CHP installation may fall within point 29 of the environmental aid guidelines. This could be the case where the company opts for a disposal technology for the sludge that is more environmentally friendly than another option that would be less environmentally friendly, but still allowed under the Community rules. SEL, however, does not have such alternative option. In all situations, the sludge would be incinerated, with or without recovery of the calorific value. The environmental benefit of the actual option chosen rests, therefore, in the energy recovery through combined power and heat production, and therefore, aid could eventually be allowed only under point 31 of the guidelines.

5.3.4. *Fresh water treatment*

(72) The investments are necessary in order to make use of the surface water from the Kalecreek. Belgium, however, has not confirmed that SEL would have had a cheaper alternative that would be in compliance with EU legislation. Belgium acknowledges that 'in practice it is not realistic to get such quantities of groundwater. If SEL would have had a permit for (limited) groundwater extraction, its continuation would reasonably be considered as realistic'. However, SEL currently does not dispose of a permit for groundwater extraction and no details were provided. Given the existing and increasing groundwater problems in Flanders, it appears that the authorities are restrictive in giving new permits. Moreover, as Belgium explains, not using groundwater is in anticipation to the provisions of sustainable water management as set out in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy [15] (hereinafter 'Water Framework Directive'). As regards groundwater, Article 4(1)(b)(ii) sets the objective for Member States to protect, enhance and restore all bodies of groundwater, and ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status. This objective has to be met by 2015 and various intermediary deadlines are set. The groundwater layer(s) that Stora Enso otherwise would use are currently over-drained. The 2015 deadline has therefore policy implications as from now. Therefore, the Commission cannot take into account this alternative for calculating eligible cost and pursuant to point 40 of the environmental aid guidelines, no aid can be found compatible for this particular item.

5.3.5. *Effluent water treatment*

(73) Belgium explained that the quality of effluent improves on most of the norms in the relevant permit and the VLAREM II norms, which, according to Belgium, are based on Best Available Techniques as required by the IPPC-Directive. The critical bottleneck, however, is the chemical oxygen demand (COD) content of the water. In the short term, SEL will not be able to reduce the COD below 260 mg/l.

(74) The relevant Best Available Technologies Reference document for the paper industry mentions a COD of 1 700 to 2 700 mg/l, but this is based on a much higher water consumption per tonne paper, which was considered BAT at the time of drafting the reference document. Belgium refers to an expert study stating that the norm of 260 mg/l is extremely ambitious and there would be no precedent in the paper industry. The environmental impact assessment (EIA), however, when noting that the discharge will be 260 mg/l, refers to the results of Stora Enso's plant in Saxony, Germany.

[15] OJ L 327, 22.12.2000, p. 1. Directive modified by Decision 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

(75) The environmental permit for Stora Enso's investments is even stricter and imposes a maximum COD value of 180 mg/l which is derived from the applicable Flemish legislation. SEL has requested a derogation to discharge effluent water with a COD content of 260 mg/l. The permit has been granted with a reference to this request and with a view to a study on future improvements, after which the 180 mg/l norm should be attained.

(76) Article 10 of the IPPC-directive holds: 'Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall in particular be required in the permit, without prejudice to other measures which might be taken to comply with environmental quality standards.' Stora Enso's mill discharges on the heavily polluted canal Gent-Terneuzen. According to the EIA, with 260 mg/l COD SEL's total discharge would be 10 to 15 % of all COD discharged on the canal, which would have a significant impact and would exceed the quality levels determined for the canal. The Water Framework Directive obliges Member States to define appropriate quality objectives for receiving waters in the Member States. Although the obligations ensuing from this Directive may not yet be fully binding, it appears that the objectives set for the canal Gent-Terneuzen do not exceed the requirements resulting from it.

(77) Consequently, if a COD discharge of 260 mg/l would be allowed, this norm must be regarded as a Community standard, set in compliance in particular with Article 10 of the IPPC directive and the more general objectives of the Water Framework Directive. Belgium has not demonstrated that the norm of 260 mg/l would go beyond what is required on the basis of Community legislation. In conclusion, the investment is necessary to comply with Community standards as meant in point 6 of the Environmental aid guidelines and therefore it is not eligible for aid. Although the investment improves on applicable environmental norms other than COD, it appears that there is no extra investment cost eligible for aid and the Commission cannot find any aid for these investments compatible.

5.3.6. *Tertiary water treatment*

(78) The additional investments in tertiary water treatment will be made in order to meet the norms for COD. Belgium has not explained whether this norm goes beyond the Community standards. In any case, Belgium has not notified aid in favour of these investments, as it is still unclear and depends on the outcome of the study that SEL has to make in order to comply with the environmental permit. Consequently, the Commission is not required to conclude on this point.

5.4. **Rail infrastructure and related waste paper storage**

(79) This part of the project concerns a transport activity, not the production of paper itself. The investment will affect competition in the transport market in the first place. Article 73 of the Treaty states that aids shall be compatible with the Treaty if they meet the needs of coordination of transport. Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway [16] implements Article 73. Article 3, paragraph 1, sub (b) of this Regulation stipulates that until the entry into force of common rules on the allocation of infrastructure costs, Member States may grant aid to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden. The Commission considers that, in line with its earlier practice [17], the costs for rail way sidings fall within the scope of this article as undertakings that offer competing modes of transport, notably road transport do not have similar infrastructure costs. Shifting transport from one mode to another, as in the case at hand, is considered to be a coordination activity in the meaning of Article 73. In line with this practice, aid up to an intensity of 50 % can be found compatible with the Common market on these grounds. Furthermore, SEL has demonstrated that the rail transport is not necessary for continued operations. The aid, therefore, may be considered to have an incentive effect on the company in order to undertake the investment. Therefore, aid for this part of the project can be justified on the basis of Article 73 of the Treaty up to the amount of EUR 4 432 000.

5.5. **Compatibility directly on the basis of Article 87(3)(c)**

(80) Since the environmental aid guidelines are not applicable to the investments in PM4, DIP2 and the investment in PM3, the Commission assessed whether aid for these investments can be found compatible on the basis of Article 87(3)(c) directly.

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[16] OJ L 130, 15.6.1970, p. 1. Regulation as last amended by (EC) No 543/97 (OJ L 84, 26.3.1997, p. 6).

[17] See the decision of the Commission of 19 June 2002, N643/2001, Austria, Programme for the support of extension of connecting rail way stretches (OJ C 178, 26.7.2002, p. 20), decision of 18.9.2002, N308/2002, Germany, Guidelines on granting investment aid for railway infrastructure in Saxony-Anhalt (OJ C 277, 14.11.2002, p. 2), and Decision of 9.2.2001, N597/2000, the Netherlands, aid scheme for dedicated waterway connections (OJ C 102, 31.3.2001, p. 8).

5.5.1. *PM4 and DIP2, production capacity for 100 % RCF newsprint*

(81) SEL's investment in 100 % RCF newsprint capacity must be considered as a state-of-the-art technique, to which many newsprint producers have switched or will switch at some time in the future. The availability of sufficient waste paper seems to be a determining factor in this respect. The examples of 100 % RCF newsprint mills mentioned by Belgium, one of them in another plant of Stora Enso, confirm this. 'State-of-the-art' should not be confused with the most commonly used technology. The fact that production of this type of mills is not (yet) serial production and that an optimisation period of two years is required does not change the Commission's assessment. Consequently, the Commission cannot find the aid compatible on this ground. The Commission recently assessed aid to a similar investment by Shotton in the United Kingdom in the same way [18].

5.5.2. *PM3, switching to 80 % RCF magazine paper*

(82) Production of SC magazine paper with an 80 % recycled fibre content may not be common and it may be true that SEL Langerbrugge is the first to set up 6 meter wide on line calandering equipment for SC quality paper with a recycled fibre content higher than 60 %. It may also be true that a high quality product like magazine paper would typically have lower recycled fibre content. For the following reasons, however, the Commission concludes that the investment in PM3 is not eligible for aid directly on the ground of Article 87(3)(c) of the Treaty.

(83) First, increasing rates or recycled fibre is a trend in the paper industry, not only for newsprint, but also for magazine paper, in particular SC quality. Possibly, purely from a technical point of view, the investment goes beyond the 'state-of-the-art', although it remains to be seen whether the objective of 80 % RCF content will be achieved. But in any case, the objectives do not appear to be fundamentally different from the objectives other paper producers may set for themselves already now or in the near future. This is confirmed by the information submitted by the third party, but also by the earlier cases the Commission assessed [19].

(84) Second, the investment fits well into SEL's investment programme that focuses on asset improvement without creating new capacity that could distort the markets and the closure of PM2 fits, in SEL's own words, 'fully within Stora Enso's continuous improvement programme that focuses on closure of production units that are not profitable in the long-run' ('*dit past volledig in Stora Enso's continue verbeteringsprogramma date er op gericht is productie-eenheden die op lange termijn niet rendabel zijn te laten uitlopen*'). PM4 improves on the old PM3 and the new PM3 improves on old PM2, the closure of PM2 and assets in Sweden and Finland avoiding overcapacity. This sequence of investments brings important benefits to SEL, as it does not have the cost of investing in a costly greenfield magazine paper mill, there is no excessive capacity expansion and it contains a convenient opportunity to develop its technology base without incurring excessive financial or economic risk. There was no alternative to the investment that would allow a recycling percentage of 80 % at a lower cost, e.g., adaptation of PM2 would allow a recycling percentage of 55 % at maximum. Any paper producer that wishes to remain technologically and environmentally competitive in the long run has to make such investments in innovation from time to time. The incentive effect of the aid, therefore, remains doubtful, even if the investment would be considered as going beyond the 'state-of-the-art'.

(85) Third, there is a commitment at a European level to obtain 56 % recycled fibre use on average by 2005. The current average in Belgium would be 49,8 %. Although magazine paper may typically have a lower RCF content, it appears difficult to attain these objectives by only increasing further the RCF content in paper other than magazine paper. SEL itself stresses that, because of its position in the Belgium paper industry, the norms have a direct link to its activities. Newsprint is only a limited part of all paper produced, not all newsprint facilities may be located sufficiently near sources of recovered paper and for several of them it may not be economically attractive to adapt them to a higher use of RCF already by 2005. Therefore it is not surprising that also for magazine paper increasing RCF content is a trend.

[18] Commission Decision 2003/814/EC of 23 July 2003 on the State aid C 61/2002 which the United Kingdom is planning to implement for newsprint reprocessing capacity support under the WRAP programme (OJ L 314, 28.11.2003, p. 26).

[19] Notably case N713/02 — Aid in favour of LEIPA Georg Leinfelder GmbH, Brandenburg (Germany), OJ C 110, 8.5.2003, p. 13.

(86) Fourth, Belgium and SEL have not explained what the alternative investment cost would have been of a similar investment for production of magazine paper of a (more) 'normal' recycled fibre content, and which cost savings the actual investment would engender in comparison to such an alternative investment. In contrast, they consistently explain that the additional cost is necessary not only for achieving 80 % RCF content, but also for achieving high quality magazine paper production with a machine that was originally built for newsprint. E.g., the investment cost includes items such as de-watering capacity (as 'SC'-paper dewaters more difficultly), a third drying-compartment (as 'SC'-paper is heavier), online 2×4-nips soft calanders for obtaining a good brilliance of the paper and reels adapted for SC quality, new pulping tools in order to pulp SC quality. At best, only a part of the investment could be considered as exclusively intended to increase the recycling rate ([20]).

(87) Fifth, as explained in sub-section 6.3.1., there is no guarantee that the investment will lead to an increased use of RCF or an increased use of RCF derived form SEL's own sales. The aid is, e.g., not made conditional upon taking up an additional quantity of waste paper from the municipal waste stream as was the case with the aid in favour of Shotton. Without a direct environmental benefit, the aid's objective appears to be in the first place innovation. On the basis of the Community Framework for State aid for Research and Development ([21]), however, the Commission may approve aid only for the phases of fundamental and industrial research and pre-competitive development. The closer the R & D is to the market, the more significant may be the distortive effect of the aid. Therefore, point 2.3 of the Framework excludes aid for activities that could be regarded as innovative but do not correspond to the above mentioned R & D phases from its scope. The third party's comment confirmed the likely distortive effect on competition in this case.

6. **CONCLUSION**

(88) Belgium has complied with its obligation to notify the aid pursuant to Article 88(3) of the Treaty and point 76 of the Environmental aid guidelines.

(89) SEL's investments in PM4 allow reducing consumption of electricity, additives and water compared to a conventional newsprint mill. The eligible investment cost amounts to EUR 14 100 000, hence aid to the amount of EUR 5 640 000 can be found compatible with the common market. With respect to the investment in the sludge CHP-installation the Commission finds an aid amount of EUR 13 449 600 compatible with the common market. With respect to the investments in rail infrastructure and related waste paper storage, the Commission finds a maximum aid of EUR 4 432 000 compatible with the common market. In total, EUR 23 521 600 is found compatible.

(90) SEL's investments in PM3, DIP2, fresh water and effluent water treatment are not eligible for aid.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Belgium is planning to implement for Stora Enso Langerbrugge, consisting in a subsidy to the amount of EUR 25 900 000 and an exemption from the property tax with a potential benefit of EUR 9 million, is compatible with the common market to the amount of EUR 23 521 600.

The implementation of this aid up to the amount of EUR 23 521 600 is therefore authorised.

The remainder is incompatible with the common market and may accordingly not be implemented.

Article 2

Belgium 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 the Kingdom of Belgium.

Done at Brussels, 8 September 2004.

For the Commission
Mario MONTI
Member of the Commission

([20]) This shows as well that *if* the investment in PM3 would be considered as eligible for aid, in analogy to point 36 and 37 of the guidelines only a part of the cost could be considered as *extra* cost.

([21]) OJ C 45, 17.2.1996, p. 5.