COMMISSION

COMMISSION DECISION

of 19 May 2004

on State aid which Belgium is planning to implement for Sioen Fibres SA

(notified under document number C(2004) 1622)

(Only the French and Dutch versions are authentic)

(Text with EEA relevance)

(2005/467/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 provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 20 December 2002, Belgium notified a proposal to grant aid to the company SIOEN Fibres SA (hereinafter 'Sioen') in connection with an investment in polyester industrial filament yarn production facilities. The Commission requested additional information by letter dated 12 February 2002, to which Belgium replied by letter dated 11 March 2003.

(2) By letter dated 2 May 2003, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

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

(4) The Commission received comments from Belgium on 8 July 2003. The International Rayon and Synthetic Fibres Committee (CIRFS) submitted comments on 10 July 2003 and the Spanish Association of Chemical Fibres Producers (Profibra) submitted comments on 15 July 2003. These comments from interested parties were sent to Belgium, which provided its observations on 8 October 2003. A meeting with the Belgian authorities and Sioen took place on 7 November 2003. On 27 November 2003 CIRFS agreed that certain information in its submission of 10 July 2003, which was initially classified strictly confidential, could be made available to the Belgian authorities. This information was sent to Belgium on 1 December 2003. Belgium gave its comments on 19 January 2004.

II. DESCRIPTION

(5) SIOEN is a large company active in the synthetic fibres sector. It is 99,99 %–owned by Sioen Industries SA, which in 2001 had a turnover of EUR 226,02 million and a workforce of some 3 900 employees.

(6) Sioen has declared eligible investment amounting to EUR 19,46 million during the period from May 2001 to June 2003 and designed to expand its production capacity for high–tenacity polyester industrial filament yarn [3]. The yarn is intended for the production of coated fabric for use in the production of final products such as canvas for lorries, tent fabric or airbags. According to Belgium, it is not intended for use in the textile sector (production of clothing or carpets). The investment is expected to create 39 jobs.

[1] OJ C 141, 17.6.2003, p. 4.
[2] See footnote 1.
[3] The CN number of the relevant product is 5402 20 00.

(7) The investment increases the production capacity from 8 500 tonnes in 2002 to 14 850 tonnes per year from 2003 onwards ([4]). Belgium states that the machinery could not be adapted easily and at low cost to produce other types of fibre. Actual production in 2002 amounted to 7 650 tonnes and increased to 13 543 tonnes per year from 2003 onwards. Given the vertically integrated structure of Sioen Industries, the entire production volume is intended exclusively for internal use within the group.

(8) The proposed aid of EUR 2,86 million is to be granted under an approved aid scheme ([5]) which does not, however, cover aid to the synthetic fibres sector. The aid application had been submitted by the Walloon authorities on 18 May 2001 and approved by them on 29 August 2002, subject to authorisation by the Commission. The applicable aid ceiling allowed under Community rules for the Hainaut region (Article 87(3)(c)) is 17,5 % net grant equivalent for large firms.

(9) In the decision to open the investigation procedure, the Commission, in view of the market situation and the effect of the aided investment on production capacity, expressed doubts as to the conformity of the aid with the criteria set out in the Code on aid to the synthetic fibres industry ([6]) (the 'Code') for compatibility with the common market.

III. COMMENTS FROM INTERESTED PARTIES

(10) The comments submitted by CIRFS can be summarised as follows:

(11) CIRFS points out that the synthetic fibres industry is acutely sensitive to distortions of competition from state aid. In this sector, which includes high–tenacity polyester industrial filament yarn, State aid, unless very strictly controlled, would have an inherent tendency to affect trading conditions to an extent contrary to the common interest.

(12) With respect to the question whether there is a structural supply shortage, CIRFS notes that, taking annual averages for the two years preceding that in which notification was given, the Belgian authorities' calculations do not show a structural supply shortage. This assumption would correspond to confidential CIRFS data based on returns from its members and estimates for non members which show that capacity utilisation in the Community amounted to 91,45 % in 2000, 88,06 % in 2001 and 88,23 % in 2002.

(13) As regards the effect on the market, CIRFS points out that the Sioen investments for which aid is proposed represent a significant increase in capacity, both for Sioen itself and for the sector as a whole. In this respect, it also notes that no producer among its members is currently making a satisfactory return on capital or sales, with the result that the impact of State aid on their competitive position would be particularly negative. CIRFS also explains that one competing producer has only recently re-emerged from receivership and its recovery plan could be seriously affected by the granting of State aid to a competitor. Other Community producers have invested an estimated EUR 59 million over the last five years in this activity without any access to State aid for investment, even investment in assisted regions. Lastly, CIRFS expects the market to remain highly competitive and low-margin for several years, not only because of competition between Community producers but also because of the pressure from dumped imports.

(14) The comments from Profibra can be summarised as follows:

(15) Profibra expressed its concerns regarding the aid to Sioen by letter dated 15 July 2003. There would be no circumstances in which Sioen's aid application would be justified. Profibra points out that the capacity increase sought by Sioen is equivalent to 74,4 % of its current capacity, which accounts for 3,5 % of total European capacity. In the current employment circumstances, in a globalised environment and with no barriers to access to the European market, the aid application would lack any entrepreneurial or economic logic. Profibra also contests the view that there would be a supply shortage, given that the capacity utilisation rate was 86,7 % in 2000 and 89,5 % in 2001. It also refers to a major increase in imports and points out that a company in the sector is most likely to make losses if it is not using at least 85 % to 90 % of its capacity.

([4]) The average decitex on which the calculation of texturisation capacity is based is 1 100 dtex.

([5]) Aid N 226/2000, Belgium, Regional aid scheme under the Law of 30 December 1970 on economic expansion in the Walloon Region, as amended by the Decree of 25 June 1992 (OJ C 37, 3.2.2001, p. 48).

([6]) OJ C 94, 30.3.1996, p. 11; period of validity extended in OJ C 24, 29.1.1999, p. 18, and OJ C 368, 22.12.2001, p. 10.

IV. COMMENTS FROM BELGIUM

(16) The comments from Belgium on the doubts raised by the Commission when it opened the investigation procedure and on the third-party comments can be summarised as follows:

(17) Belgium points out that CIRFS and Profibra are trade associations which represent the main producers of high-tenacity polyester industrial filament yarn and of which Sioen is not a member. It questions the impartiality of these comments, which are considered unfounded, imprecise and ambiguous. The Commission is asked to evaluate the comments carefully, particularly as there are no official statistics available for the relevant market.

(18) As regards the question whether there is a structural supply shortage, Belgium notes that there are no official statistics available for high-tenacity polyester industrial filament yarn. Sioen gathered information on production capacity and consumption from the main producers present on the market in order to obtain the best possible estimate of the capacity utilisation rate. On the basis of this information, which was provided *in tempore non suspecto*, Belgium explains that the capacity utilisation rate for high-tenacity polyester industrial filament yarn exceeds 90 %. It concluded that the sector was characterised by a structural supply shortage during the period 2000 to 2002, and it is claimed that this has been confirmed by several experts.

(19) In this connection, Sioen also explains that the yarn which it produces has a high value added and that the market has been characterised by a relatively high degree of price stability since 1999. It also rejects the allegations made by CIRFS regarding the strong pressure on profit margins in the sector, arguing that its members are active in less profitable markets than the one for high-tenacity polyester filament yarn, while Sioen's good results are due to extensive R & D activities aimed at continuous quality improvements and to the fact that it is present on very profitable niche markets.

(20) Belgium considers Sioen's capacity increase to be in accordance with the Code. In determining whether or not a change in capacity is significant, the Commission should, in line with the Code, consider a number of different elements.

(21) Firstly, Belgium points out that the additional production resulting from Sioen's capacity increase is used entirely within the group. Sioen's production would not have any impact on the prices or profit margins of the other producers of high-tenacity polyester filament yarn.

(22) Secondly, the aid concerns a high-technology investment project which will allow Sioen to supply its group with a product that has very specific characteristics. This internally developed and constantly improved polyester industrial filament yarn is not available on the market. Consequently, Sioen's capacity increase is motivated by its vertical integration and the production will be used entirely within the group.

(23) Thirdly, Belgium underlines the fact that the capacity increase of 3,5 % is not significant in relation to the European market and is below the rate of 5 %, which was not considered as a significant increase by the Commission in its decision with regard to Sioen in 1999 ([7]). If the Commission were to decide in the present case to assess the capacity increase at company level and not in relation to the European market, this would be in contradiction with its 1999 decision.

(24) Lastly, Belgium stresses that an assessment of the capacity increase at company level would discriminate against small producers as a given capacity increase would lead to a relatively lower increase in the case of a large company with an already high production capacity.

V. ASSESSMENT OF THE AID

1. Existence of aid

(25) Article 87(1) of the Treaty lays down the principle that, except where 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 between Member States, incompatible with the common market.

([7]) Aid N 118/99 (OJ C 340, 27.11.1999, p. 5).

(26) The proposed aid to Sioen consists of a grant to be financed through State resources. It will allow the company to carry out the investment in question without having to bear the full cost. Sioen operates in a sector of activity where trade between Member States is substantial and where the conditions of competitions are difficult, as evidenced by the existence until 31 December 2002 of a specific Code ([8]). The proposed grant to Sioen therefore constitutes aid within the meaning of Article 87(1) of the EC Treaty.

2. **Compatibility of the aid**

(27) Article 87(2) of the Treaty lists the types of aid that are compatible with the Treaty. In view of the nature and purpose of the aid and the geographical location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) specifies other forms of aid which can be regarded as being compatible with the common market. The Commission notes that the project is located in the area of Blanc Ballot in Mouscron (Hainaut region), which qualifies for assistance under Article 87(3)(c). The maximum aid intensity is 17,5 % net grant equivalent for large firms. Belgium intends to grant an aid intensity equivalent to 50 % of the regional aid ceiling.

(28) Since 1977 the conditions under which aid may be granted to synthetic fibres producers by way of support for such activities are set out in a Code whose terms and scope have been amended from time to time, most recently in 1996 ([9]). On 1 January 2003 the Code ceased to apply and no more regional aid is admissible for the synthetic fibres industry ([10]). However, in accordance with the last sentence of point 39 of the Commission communication on the multisectoral framework on regional aid for large investment projects ([11]), '(…) notifications registered by the Commission before 1 January 2003 for (…) the synthetic fibres sector will be examined in the light of the criteria in force at the time of notification'. As the aid in the present case was notified on 20 December 2002, it has therefore to be assessed under the Code.

(29) The Code requires the notification of any proposal to grant aid, in whatever form and irrespective of whether or not the Commission has authorised the scheme concerned, where the aid would not satisfy the *de minimis* criterion, to synthetic fibres producers by way of direct support for:

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

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

— 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.

(30) In the case in question, the proposed aid would be granted in support of the production of synthetic fibres which fall within the scope of the Code, namely the installation of new capacity for the extrusion of polyester industrial filament yarn. It was, therefore, correctly notified to the Commission.

(31) The Code sets out the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states among other things 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. According to the Code, investment aid for larger firms, i.e. firms that are not small or medium-sized enterprises, will be authorised only at up to 50 % of the applicable aid ceiling if the aid would 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. Sioen ranks as a large firm since the group to which it belongs has more than 250 employees and an annual turnover exceeding EUR 40 million ([12]).

([8]) See footnote 6.
([9]) See footnote 6.
([10]) See Commission communication, Multisectoral framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8), and in particular points 30 and 39 for the year 2003, and Commission communication on the modification of the multi-sectoral framework on regional aid for large investment projects (2002) with regard to the establishment of a list of sectors facing structural problems and on a proposal of appropriate measures pursuant to Article 88(1) of the EC Treaty concerning the motor vehicle sector and the synthetic fibres sector (OJ C 263, 1.11.2003, p. 3), and in particular the second paragraph.
([11]) See footnote 10.
([12]) See Commission recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

(32) The Commission considers that the capacity increase must be assessed at company level. Consequently, in assessing the capacity changes associated with the aided project, the beneficiary's capacity before the aid is granted has to be compared with its capacity after the aid is granted (adding the increase in capacity arising from the aid and deducting the capacity that will be scrapped).

(33) In its comments, Belgium referred to the Commission decision of 28 July 1999 ([13]), in which no objections were raised to aid for Sioen. It points out that, in that case, Sioen's capacity increase was assessed *in relation to the total market capacity* and the resulting 5 % capacity increase was not considered significant. However, the Commission considers that the situation then was quite exceptional and differed from the present case in that, at the time, the company did not have any extrusion capacity at all before the investment. The assessment of the new capacity in relation to total market capacity was justified in that particular case because Sioen was a new market entrant without any production capacity for the relevant product. If the Commission had assessed the capacity at company level, any new capacity of the new market entrant would, by definition, have resulted in a 'significant' increase. Such an approach would have discriminated against new market entrants. Sioen is now an established producer with pre-existing production capacity and there is, therefore, no longer any justification for deviating from the Commission's standard practice of assessing capacity at company level.

(34) As regards Belgium's argument that, in case of a structural supply shortage, the capacity increase should be assessed in relation to total market capacity, the Commission notes that the Code does not provide for different capacity measurements depending on whether or not there is a structural supply shortage. The Code already sets less strict conditions if there is a structural supply shortage in that, in the case of large firms, it does not require that the aid result in a 'significant capacity reduction' but only that it does 'not result in a significant capacity increase'. It does not provide, as an additional advantage, that the capacity increase is measured, in the case of a structural supply shortage, not at company level but in relation to total market capacity. Accordingly, irrespective of whether the market is characterised by a structural supply shortage, the aid may not, in any event, result in a significant capacity increase.

(35) Following the opening of the procedure, Belgium confirmed and explained to the Commission on the basis of documents provided by the machine manufacturer that tailor-made machines could not easily be adapted to produce different types of fibre. On this basis, the Commission accepts the method used to measure capacity. According to Belgium, the investment raises the production capacity for polyester industrial filament yarn from 8 500 tonnes per year in 2002 to 14 850 tonnes per year from 2003 onwards (based on an average decitex of 1 100 dtex), which represents a significant increase of around 75 % at company level.

(36) In the Commission's view, the fact that Sioen increases its capacity significantly dispenses with the need to decide whether or not the market is characterised by a structural supply shortage in this particular case.

(37) The Commission does not accept Sioen's argument that the production resulting from its capacity increase is used entirely within the Sioen group and would not have any impact on the prices or profit margins of the other producers of polyester industrial filament yarn. Even if the new production is used entirely within the Sioen group on account of its vertical integration, it cannot be ruled out that the yarn could, under other circumstances, be supplied by other producers, a fact underlined in the reactions from the two interested parties.

(38) In view of the effect on production capacity of the investment for which aid is planned, the Commission considers that the aid does not fulfil the main criteria of the Code determining compatibility with the common market in so far as it would lead to a significant increase in the relevant capacity. There is therefore no need to assess the two other criteria set out in the Code (state of the market for the relevant product, and innovative character of the relevant product). In any case, the Commission notes that it is not clear that the market for the relevant product is characterised by a structural supply shortage, given the information from the third parties (CIRFS and Profibra) on the capacity situation in the Community and given the figures provided by Belgium in the initial notification for the two years prior to the notification (capacity utilisation rate of less than 90 %).

(39) None of the other derogations provided for in Article 87(3) of the Treaty is applicable in the present case. The investment is not located in an Article 87(3)(a) region. The aid is clearly not designed to promote the

([13]) See footnote 7.

execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, as provided for in Article 87(3)(b). Lastly, the Belgian authorities did not claim and the Commission did not find that the aid could be designed to meet another horizontal or sectoral objective within the meaning of Article 87(3)(c) or (d),

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Belgium is planning to implement for Sioen Fibres SA, amounting to EUR 2,86 million, is incompatible with the common market.

The aid 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 Belgium.

Done at Brussels, 19 May 2004.

For the Commission

Mario MONTI

Member of the Commission